

Taiwan Human Rights Report
Parallel Report on the
Core Document Forming Part of the Reports

In response to the initial report submitted by the Government of the Republic of China
(Taiwan)

Submitted to the International Review Committee

by

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I. Executive Summary

1. The purpose of this document is to provide background material so that the International Review Committee may better understand the politics, economy, and culture of Taiwan. Because of the constraints of space, this document cannot provide a complete Taiwanese history, but only a very superficial history of its political development. However, since every society's present situation and future development are connected to its past, without an appropriate introduction, it may be difficult to examine our complex society from a suitable standpoint. As you have read in the human rights State Reports, Taiwan has had the basic conditions and organizational systems for democracy and human rights. Though the existing system meets the basic standards, Taiwanese people aspire to enjoy greater human rights protections. The authors of this article believe that it is important, when reading the government's report, to keep the following background factors in mind:

- (1) Though the presidency has changed hands twice now between the Chinese Nationalist Party (often referred to as Kuomintang and abbreviated as KMT) and the major opposition party, the Democratic Progressive Party (DPP) through direct elections, democracy is not yet fully consolidated in Taiwan. During the martial law era for 38 years, violations of human rights were an essential part of the mechanism for the regime to maintain its rule. Though 25 years have passed since the end of martial law, the government as a whole still lacks familiarity with the concepts of human rights. Therefore, it is difficult for the government to examine thoroughly the status of human rights in Taiwan through the preparation of the State Reports.
- (2) In the past 100 years, Taiwan has seen the Qing Dynasty cede control; Japanese rule; the KMT's arrival in Taiwan; withdrawal from the United Nations; and the advent of direct, democratic presidential elections. Due to such major and rapid changes, a solid consensus on national identity has never been able to develop. During the martial law period, advocating Taiwan independence was considered subversion of the state. Since the end of martial law, there has been more room for discussion, but until today national identity is still a problem deeply dividing the country.
- (3) With regard to the structure of the government, certain practices from the authoritarian era still influence the functions of the executive, legislative, and judicial branches.¹ The mechanisms to ensure implementation of

¹ Translator's note: The ROC Constitution actually distinguishes five branches of government, are designated by the term "Yuan": the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Control Yuan, and the Examination Yuan. In addition to the executive, legislative, and judicial branches, the

human rights, such as participation, monitoring, and accountability, are only partly in place.² The transfers of political power have only resulted in limited or partial challenges to these mechanisms or resolutions to these problems. As a result, the old interest groups, systems and structures, and ideologies remain in place.

- (4) Cross-strait relations (i.e. relations between the Taiwan (ROC) and China (PRC) have had a major influence on Taiwan's policies regarding national defense, foreign relations, industrial development, and international trade. Taiwan's cross-strait policies are therefore exceedingly important to national security in its widest sense. However, cross-strait policies are not built on general public consensus. In March 2005, while the DPP was in power, China enacted the so-called "Anti-Secession Law." However, while most people were alarmed by this step, at the end of April 2005, former vice president Lien Chan, as chairman of the KMT, carried on with his "ice-breaking" trip to China. Notably, he met Chinese Communist Party General Secretary Hu Jintao and signed a communiqué saying both political parties would maintain the "1992 Consensus," oppose Taiwan independence, strive for peace and stability in the Strait, and advance cross-strait relations. After May 2008, when the Ma Ying-jeou administration took office, he reasserted his policy on Mainland China: interaction through the "KMT-CCP Platform" (the KMT and the Chinese Communist Party). Therefore, an array of significant agreements were made with China based on the party's policies alone, bypassing both the legislature and participation by civil society. This prompted widespread concern.^{3,4}

Control Yuan functions as a government watchdog overseeing the conduct of civil servants, and the Examination Yuan handles government examinations and personnel matters concerning civil servants. As an illustration of the type of confusion resulting, although the Legislative Yuan is Taiwan's highest legislative body, the power to subpoena documents and records was handed to the Control Yuan together with the power to investigate. For a long time, under a flawed hearing system and vague regulations on this power to subpoena documents and records, legislators have been unable to secure cooperation from the executive branch, seriously undermining the legislature's ability to supervise the Executive Yuan. In the absence of sufficiently transparent information, it's difficult to foster responsible politics.

² Many laws from the martial law era and the earliest stages of Taiwan's democratic transition remain on the books to restrict basic civil rights today. One notorious example is the Assembly and Parade Act (enacted in 2002), which restricts freedom of assembly. Even though, after the Act to Implement the ICCPR and the ICESCR took effect in 2009, the Executive Yuan's human rights task force identified this law as a violation of the ICCPR, but the legislature still hasn't amended it, and prosecutors and courts still enforce it.

³ See Wu Chieh-min, 2009, "The China Factor and Taiwanese Democracy" (Chinese) in the journal *Si-hsiang*, Issue 11, Taipei.

- (5) During the martial law era, Taiwan strictly forbade all discussion of socialism and leftist ideas. Since the 1990s, it has embraced neoliberalism. Corporations have gradually come to play a major role in politics and the economy, while competition and self-reliance have become moral principles that inform the public's understanding of social justice. This in turn has, on the one hand, restricted the development of social welfare system and, at the same time, caused the society to have a relatively high tolerance for discriminatory treatment.
 - (6) Taiwan left the UN back in 1971, when the UN's human rights system was still in its infancy. As a result, both the government and public alike lack experience applying international human rights standards and concepts in practice. We look forward to the suggestions from the international experts.
2. This core document is structured as follows. The introduction briefly outlines Taiwan's political history, and in particular Taiwan's national status, the development of the democratic movement, and the continued influence of this history on the current political climate. That includes unfair aspects of the functioning of our democracy and discriminatory treatment in our social welfare system. This section also responds to Articles 1 and 2 of the State Report for ICCPR and ICESCR. The second section responds to specific articles in the core document of the state human rights reports. The third section describes Taiwan's preparations to implement the ICCPR and ICESCR since they were passed into law, as well as proposed changes to enhance the mechanisms for protecting human rights.

II. Taiwan's International Isolation

3. The fact that Taiwan cannot submit its state party reports as required by the ICCPR and ICESCR and other instruments for review through the UN treaty body system reflects in itself Taiwan's special and repressed national status. The current human rights situation needs to be understood in the context of Taiwan's history. This context is particularly relevant to the rights of Taiwanese people in two aspects: (1) the right to self-determination as enshrined in the first article of both covenants, (2) the development of a well-functioning democracy required for the protection and fulfillment of human rights. We must therefore look at Taiwan's democratic movement, the past changes in political power, and the

⁴ When the chairman of China's Straits Exchange Foundation, Chen Yunlin, visited Taiwan in October 2008, the police used excessive force in maintaining public order, even prohibited civilians from holding the national flag, demonstrating the government's confusion in its own national identity.

current ruling party's attitude towards democracy, in order to understand whether the government, as the main protector of human rights, has sufficient knowledge, capabilities and commitment to fulfill its duty.

4. The Republic of China (ROC) was founded in 1911. At that time, Taiwan was not under its administration, but a colony of Japan. After 1911, the ROC faced a state of civil war. In 1945, when the Japanese lost World War II, Chiang Kai-shek represented the Allied Powers as leader of the ROC military in accepting Japan's surrender in the "China theater" under General Order No. 1 (issued by General MacArthur). This order transferred administration of Taiwan to Chiang Kai-shek's Nationalist ROC Government.⁵ However, the end of the World War also marked the resumption of the Chinese Civil War, and in 1949 the Chinese Communist Party (CCP) emerged victorious and established the People's Republic of China (PRC). Chiang Kai-shek retreated to Taiwan, and after two military crises in the Taiwan Strait, the scope of the ROC's rule shrank to the current area.⁶

5. The ROC was a founding member of the UN, and it is named in the UN Charter as a permanent member of the Security Council. Following the establishment of the PRC in 1949, the ROC government based in Taipei continued to hold the "China seat" at the UN. However, in October 1971, the 26th General Assembly of the UN passed Resolution No. 2758, which transferred representation at the UN to the PRC government.⁷ Before the results of the vote were announced, the ROC

⁵ Lin Cheng-chang, 2009, *Taiwan: Splitting the Country and Democratization* (Chinese), p. 60, Taipei, Hsin Tzi-ran Chu-i Publishers.

⁶ In addition to the main island of Taiwan, as well as Penghu (the Pescadores) and other outlying islands that had been Japanese territory, the ROC government managed to retain control of two groups of islands on the coast of Fujian Province, Kinmen (Quemoy) and Matsu. Thus, e.g., Taiwan's official designation as a member of the World Trade Organization is "Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu."

⁷ The full text of Resolution 2758 is as follows (accessed at <http://www.un.org/documents/ga/res/26/ares26.htm>):

Recalling the principles of the Charter of the United Nations,
Considering that the restoration of the lawful rights of the People's Republic of China is essential both for the protection of the Charter of the United Nations and for the cause that the United Nations must serve under the Charter.

Recognizing that the representatives of the Government of the People's Republic of China are the only lawful representatives of China to the United Nations and that the People's Republic of China is one of the five permanent members of the Security Council,

announced its withdrawal from the UN, maintaining its strict “Hallstein Doctrine” of refusing to take part in any venue that permitted any participation by the PRC. It is worth noting, however, that the resolution in fact does not specify that Taiwan is part of China; indeed, it names neither Taiwan nor the ROC. Thus it does not preclude the possibility of Taiwan or the ROC having a separate UN membership. Indeed, such a compromise was actively considered by many UN member states in 1971, but the ROC government rejected the idea, preferring to insist that it was the only legitimate government of the whole China.

III. The Problems of National Identity

6. Due to Taiwan’s historical experience, as well as its unusual international situation, the primary political cleavage has been and remains the issue of national identity, often referred to as the “unification-independence” issue. This implies a package of concepts. First, each citizen’s self-identification (e.g. as “Taiwanese” or “Chinese”). Second, one’s understanding of the current status of Taiwan, as either an independent state, the legitimate government of all of China, or a quasi-state entity somehow attached to China. Third, and perhaps most saliently today, there is the question of the aspiration for the future of Taiwan, whether it should seek closer relations with China, and perhaps eventual unification, or whether it should keep its distance. Since democratization, the second aspect of the issue has largely faded, since the categories other than independent state have almost completely lost their persuasiveness for the vast majority of people; instead, it has been mostly replaced by the debate over whether the current status quo of independence implies a separate Taiwanese nationhood, or rather a Chinese nation divided into two states. The issue of the name of the country is bound up in this debate, with adherents of the former concept preferring to use the name Taiwan, while adherents of the latter insist on the ROC name and national symbols. Especially since 2000, when the formerly pro-independence Democratic Progressive Party began governing under the ROC official name and flag, it seems that there is a “third way” which blends the two and equates the ROC with Taiwan. According to an opinion poll from June of 2012, 63.2% of the people support the “status quo,” while 19.6% support independence, and 9.8% support

Decides to restore all its rights to the People’s Republic of China and to recognize the representatives of its Government as the only legitimate representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai-shek from the place which they unlawfully occupy at the United Nations and in all the organizations related to it.

unification.⁸ Despite these trends the current administration has re-emphasized traditional ROC rhetoric, even sometimes going as far as to state that the ROC is the “one China” (which implies a de-recognition of the PRC as a state). For example, in his 2012 inaugural speech, President Ma Ying-jeou said:

Within [the] constitutional framework, our cross-strait policy must maintain the status quo of “no unification, no independence, and no use of force,” and promote peaceful cross-strait development on the basis of the 1992 Consensus, whereby each side acknowledges the existence of “one China,” but maintains its own interpretation of what that means. When we speak of “one China,” naturally it is the Republic of China. According to our Constitution, the sovereign territory of the Republic of China includes Taiwan and the mainland. At present, the ROC government has authority to govern only in Taiwan, Penghu, Kinmen and Matsu. In other words, over the past two decades, the two sides of the Taiwan Strait have been defined as “one Republic of China, two areas.”^{9 10}

It could be said that this attitude is at odds with political reality. Former presidents Lee Teng-hui and Chen Shui-bian both deny that the so-called “1992 Consensus” ever existed.¹¹ In fact, in international politics, the one China that the vast

⁸ Survey data published by the Election Study Center of National Chengchi University, available at <http://esc.nccu.edu.tw/english/modules/tinyd2/content/tonduID.htm>. Note that the figures for independence and unification are totals of “independence as soon as possible” plus “maintain status quo, move toward independence” and “unification as soon as possible” plus “maintain status quo, move toward unification,” respectively. It is also worth noting that this dataset reaches back to 1994, during which time support for unification has steadily declined while support for independence has steadily grown, although support for the “status quo” has always been the predominant opinion.

⁹ Inaugural Address of President Ma Ying-jeou, 20 May 2012, available at: <http://english.president.gov.tw/Default.aspx?tabid=491&itemid=27199&rmid=2355&size=100>.

¹⁰ The “1992 Consensus” was a term put forward by then Mainland Affairs Council chairman Su Chi on 28 April 2000, when he briefly described the way in which the semi-official bodies from the two sides of the Strait got around the issue of “one China” when they met for the first time in 1992. The term was used to **rephrase** Taiwan’s earlier claim of “one China, separate definitions” (in which each side of the Strait has its own definition of “China”). China’s semi-official body, the Association for Relations Across the Taiwan Straits, did not use the phrase “1992 Consensus” until after Ma Ying-jeou became president in 2008. However, although the Chinese government now appears to accept this term, it argues that the phrase refers to a consensus by which the two sides of the Strait insist on the “one China” principle.

¹¹ Chen Shui-bian, “Beijing’s ‘one China’”, *Washington Times*, 3 July 2007. <http://www.washingtontimes.com/news/2007/jul/3/beijings-one-china/>

majority of people recognize is the PRC, and China has never recognized the concept of “one China, two definitions.” President Ma said “both sides of the Strait should ... reach an understanding of ‘mutual non-recognition of sovereignty and mutual non-denial of each other’s authority to govern’ so that each side can be assured and make progress.”¹² This wording essentially treats “mutual non-recognition” as a precondition of peaceful contact. Since it is common knowledge that China doesn’t need Taiwan to recognize its sovereignty, this phrasing only had the effect of belittling Taiwan and isolating it politically. (Please see Table 1, p. 56, for a list of significant events in cross-strait relations.)

7. That the two sides of the Strait have become two political entities is already a fact that the majority of Taiwanese recognize. The proportion of people who regard themselves “Taiwanese,” “both Taiwanese and Chinese,” or “Chinese” has changed notably in successive public surveys. In 1992, it was 16%, 36.5% and 44%, respectively; in 2012 it was 73.7%, 11% and 8.6%, indicating that increasingly more people see Taiwan and China as separate rather than a single entity.^{13,14} Yet President Ma’s position runs counter to this trend.¹⁵
8. The accelerating pace of interactions between Taiwan and China have opened up a new risk for Taiwan’s human rights development. President Ma’s frequently-expressed “good will” towards China may have facilitated some of the economic and trade agreements between the two sides. However, it has not generated any

¹² President Ma Ying-jeou’s speech delivered during his attendance of a celebration on March 9, 2011, marking the 20th anniversary of the founding of the Straits Exchange Foundation. News Release, Office of the President of Republic of China (Taiwan).

<http://english.president.gov.tw/Default.aspx?tabid=491&itemid=23743&rmid=2355>

¹³ Liu I-ling, 2010, “Analysis of Trends in the Public and Ethnicities’ Identities,” National Policy Research Report, <http://www.npf.org.tw/post/2/6909> (in Chinese).

¹⁴ According to data from the 2003 “Taiwan Society Changes Survey,” when asked about the territory of their country, only 15.4% of respondents said it included Mainland China. In a survey carried out by the National Chengchi University Center for Election Studies in 2000, when asked what they consider to be the scope of their country, 87.9% said it was Taiwan, 11.4% said it also included Mainland China, and 0.7% said it was only Mainland China.

¹⁵ Keith B. Richburg, “Amid warming relations with China, Taiwan’s president seeks more U.S. arms,” *Washington Post* Foreign Service, 17 February 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2011/02/17/AR2011021702176.html>: “Ma’s policy of pursuing direct economic ties and warmer relations with mainland China, Taiwan’s erstwhile enemy, is a stark reversal from the policies of his predecessor Chen Shui-bian ... As part of that rollback of his predecessor’s policies, Ma last week called for all public officials to refer to the other side of the Taiwan Strait as ‘the mainland,’ as opposed to ‘China.’ He said the semantics are dictated by Taiwan’s constitution, which calls for recognition that there is only one China.”

enhancements in human rights protection. To take only the most famous recent example, in 2012, Taiwanese businessman Chung Ting-bang was visiting relatives in Jiangxi Province, China, when he was detained at the Customs. His family could only find out on Xinhua News that the authorities had deemed him a “threat to national security.” On 11 August 2012, Chung was suddenly released after being detained illegally for 55 days for religion-related reasons (to assist in the investigation of a Falun Gong case). Throughout the process, the Taiwanese government repeatedly delayed rescue efforts, was unwilling to respond to the demands of Chung’s family and civic groups, and couldn’t explain the reasons for the detention or the release.¹⁶ Though relations between Taiwan and China are complicated, the Taiwanese government should not under any circumstances accept or tolerate lower human rights standards, or else the goodwill it shows Beijing will only embolden China to neglect the rights of Taiwanese people even more.

IV. Political and Constitutional Development

9. The Constitution: The ROC Constitution was established in 1947, during the Chinese Civil War. Several months later, the government declared a state of emergency and enacted the “Temporary Provisions for the Period of Mobilization to Suppress the Communist Rebellion.” Under these provisions, much of the Constitution was considered suspended until the “State of Communist Rebellion” was formally lifted in 1991. At that time, the reality of ROC’s territorial extent and certain other factors made amending the Constitution necessary, and a total of seven rounds of constitutional amendments were carried out from 1991 to 2005.¹⁷ These amendments, as well as successive national elections, established a political system in which the 23 million people of Taiwan and the other islands it controlled are sovereign. Taiwan became a political entity (a country) separate from China (i.e. the PRC) in terms of its people, territory, and government. However, it is important to note that the PRC has resisted acknowledging any of

¹⁶ “Chung Ting-bang detained by China, relatives want Ma to demand his release” 31 July 2012, Yam News, <http://n.yam.com/newtalk/politics/20120731/20120731676808.html> (in Chinese).

¹⁷ Regarding the issue of national territory, the original Article 4 of the Constitution read: “The territory of the Republic of China according to its existing national boundaries shall not be altered except by resolution of the National Assembly,” which was long been taken to mean that it includes the whole of mainland China as well as Mongolia. However, the Council of Grand Justices, in interpretation 328 (1993), ruled that the meaning of “existing national boundaries” was a political question. Furthermore, Article 4 was replaced by Additional Article 4, Paragraph 5 in 2000, which was itself further amended in 2005. Although the original term “existing national boundaries” was reused in the new articles, at that time the boundaries of the ROC as Taiwan and the various outlying islands had been stable for 50 years.

these changes, even when they constituted a more realistic position than Chiang Kai-shek's insistence that his was the only legitimate government in all of China. The PRC continues to adhere to a traditional view that Taiwan is an "inalienable" part of its territory, and it does not renounce the use of force to "recover" or "liberate" Taiwan.¹⁸ (Please see Table 2, p. 58, for a list of important political events since 1948)

10. The history of the Taiwanese democracy movement: Before the first democratic change of power in 2000, democracy reformers faced a political party that claimed absolute control over the country. The KMT held an overwhelming political advantage through its complete control of administrative power — including control of the legislative branch, courts at all levels, government agencies at all levels (from central to local), the military, education, and the media.¹⁹ During martial law, when democracy activists promoted the Tangwai movement (meaning "outside the Party") to protest the one-party system and start democratic participation, their efforts were met with ruthless repression. The Formosa Incident, which occurred when a rally in Kaohsiung to mark International Human Rights Day in 1979 was disrupted by agents provocateurs, made clear the government's resolve to hold onto complete control. Many key Tangwai figures were arrested and put on trial for "insurrection." In the end, in response to public pressure and international concern (notably from the US), the government gave the activists prison sentences instead of executing them. Soon after, President Chiang Ching-kuo gradually adopted more open policies that ended the ban on opposition parties and lifted martial law in 1987. However, it is noteworthy that even after the lifting of martial law many draconian restrictions on basic civil rights continued to be in effect. The self-immolation of *Freedom Era Weekly* publisher Cheng Nan-jung in 1989 illustrated the circumstances of the time.²⁰ Only after the "Temporary Restrictions" were lifted by President Lee

¹⁸ A few days before Taiwan's 1996 direct presidential election, China held missile tests off the shores of Taiwan to indicate its displeasure at this milestone in the realization of popular sovereignty. It also directly challenged the U.S.'s dominant position in East Asia. In 1998, President Lee Teng-hui called the relationship between Taiwan and China "special state-to-state relations," cleverly delineating the scope of Taiwan's national territory in practice. In 2008, Ma Ying-jeou said the two sides of the Taiwan Strait are not state-to-state but rather "region-to-region relations," making Taiwan's national boundaries vague again. See Wu Chieh-min, 2009, "The China Factor and Taiwanese Democracy" (Chinese) in the journal *Sihsiang*, Issue 11, Taipei.

¹⁹ In local politics, the KMT fully controlled local elections through the village and borough chiefs and the local farmers' associations and irrigation associations, as well as other channels.

²⁰ Cheng Nan-jung founded *Freedom Era Weekly* in 1984, with the goal of "striving for 100 percent freedom of speech" and fostering democracy and freedom in Taiwan. The magazine was repeatedly banned from publication. In 1986, he launched the "519 Green Movement" in protest of the KMT government's

Teng-hui in 1991, and the first full elections of the National Assembly and Legislative Yuan took place in 1991 and 1992, could democratic governance be said to have begun.²¹ (Please see Table 3, p. 59, for a list of the party affiliation of presidents, and seats in the legislature controlled by major political parties. Also, please see Figure 1, p. 60, for the interaction between KMT, Tangwai, and social movements.)

11. Social Movements in Taiwan: In the three decades since the 1980s, corresponding to Taiwan's transition from authoritarianism to democracy, there has been a rather

imposition of martial law, which had lasted 36 years at that point. The same year, he joined the Taiwan Democracy Party. In February 1987, he formed an organization together with Chen Yung-hsing, Lee Sheng-hsiung and others pushing the government to make historical facts public, rehabilitate the victims of the 228 Incident and declare February 28 a memorial day. On 10 December 1988, *Freedom Era Weekly* published scholar Hsu Shih-chieh's Draft Constitution for the Republic of Taiwan." In late December, he was charged with interference with public administration and offenses against personal liberty. On 21 January 1989, the High Court Prosecutors' Office subpoenaed Cheng on suspicion of "insurrection." He barricaded himself in the magazine's office for 71 days, refusing to return to court. On 7 April when Chief of Criminal Investigation Hou Yu-i led law enforcement officers to the magazine's office to arrest Cheng, Cheng burned himself alive with gasoline that he had prepared in advance. On 19 May his supporters held a funeral and demonstration in Taipei. While passing the Presidential Office, riot police broke up the crowd with barbed wire and high-pressure hoses, and Chan I-hua, a low-level Tangwai party worker, burned himself alive as well.

²¹ The National Assembly was a separate upper house of the legislative branch, with powers to amend the Constitution and elect the president. These powers were steadily diminished during the several rounds of constitutional amendments, and the National Assembly was finally abolished in 2005. For both the National Assembly and Legislative Yuan, all members who had been initially elected in 1947 were allowed to retain their seats until fresh elections could be held in their original districts throughout China. Thus, they became known as the "10,000 year parliament." Beginning in 1969, a limited number of "supplemental" seats were created, in order to allow some Taiwanese representatives to be elected.

On the eve of martial law's end in 1987, the US House of Representatives passed a resolution concerning democracy in Taiwan, calling on the government to speed up democratic reforms and carry out full elections for all legislative seats. In the years after martial law ended, the opposition and civil society repeatedly called for all the members to be subject to re-election, and from 1987 to 1989 organized a mass movement to call for such elections. In response to broad support for this reform, the government introduced the Statute for the Voluntary Retirement of First Session Senior Central Government Representatives, but this proved largely ineffective. In 1990, the calls for re-election grew even louder, and even some of the KMT's "supplementary" elected legislators came out in support of the demand. In June 1990, the Council of Grand Justices ruled in Constitutional Interpretation No. 261 that all first-session elected central government representatives must retire no later than the end of December 1991. At that time an election was held for the "second session" of the National Assembly and in December 1992 there was a further election for the "second session" of the Legislative Yuan, making the entire legislative branch finally subject to regular elections. (Hsueh Hua-yuan, Full Legislative Elections, Encyclopedia of Taiwan, Ministry of Culture, <http://taiwanpedia.culture.tw/en/content?ID=3897>).

complicated relationship between the spontaneous organization of Taiwanese society on the one side and political parties and government on the other. The early period of social movements (1980-1987) took place against a backdrop of authoritarianism, one-party rule, and weak human rights and rule of law. Grassroots community groups who saw their rights infringed and had nowhere to turn for help, acted to help themselves.²² For example, public resistance to defend their livelihoods against the government seizing land in violation of their rights, raising fees and taxes, or regulating peddlers, fish farmers, etc., and victims of environmental pollution, and resistance of workers against industry exploitations. After the mid 1980s, movements were more organized and involved more social participation. In the latter half of the 1980s, authoritarian control started to loosen and there were more election opportunities. All kinds of advocacy groups and topics arose; particularly evident were the environmental movement, the labor movement, the farmers' movement and the Aboriginal movement. Authoritarian control by the KMT and its representatives, along with its obsession with economic growth, were identified as the root of social problems. These spontaneous social movements therefore rarely allied themselves with the KMT, but tended to approach DPP candidates. When the DPP was formed in 1986, its founding platform included protecting consumers, the environment and ecology, Aboriginal rights, a stance against nuclear power, and welfare for workers and farmers, with the intention of building alliance with the oppositions. The social groups of this period sought to use elections to influence voters and candidates. Starting in the 1990s, social movement groups began pushing for social progress by lobbying for new laws and amendments. For example, workers groups pushed to change the Labor Standards Act, women's rights groups sought to amend the Civil Code and pushed for the Domestic Violence Prevention Act and the Gender Equality in Employment Act, and environmental groups pushed for a law on restitution for public hazards and the Environmental Impact Assessment Act. Ironically, as the DPP's political territory grew, some DPP officials and public representatives formed ties with business owners and withdrew from their original stance on environmental issues; the DPP lost its position as the spokesperson for social reform. At the same time, in the political sphere, national identity, amending the Constitution and vying for political power were the main battles; the relationship between political activists and social activists grew more complex.

V. Transitional Justice and the Authoritarian Legacy

²² Chang Miao-kuei, 2012. "Taiwan's Political Democratization and the Development of Civil Society", in Ho Di ed. *Experiences and Revelations from Taiwan's Democratic Transformation*, 78-124, Beijing (in Chinese).

12. Further complicating the national identity issue is the issue of transitional justice. During the era of martial law, the KMT often invoked the crime of “spying for the communists” to oppress dissidents — including activists for democracy, for lifting the ban on forming political parties, for free speech, or for Taiwan independence. These people were all labeled communist spies and received severe punishment, and for many of them the names were never cleared. Now, many government leaders, up to and including the president, have been making repeated gestures of goodwill toward an enemy that at the former KMT government insisted could only be referred to as “communist bandits,” without providing a reasonable explanation for this abrupt change.²³ Historically, the KMT’s assertion that it is the only legitimate Chinese government was at the core of its ideology behind the totalitarian rule. For several decades, it suppressed the development of democracy. Since the 1950s, it has demonstrated a high level of thought control through monopolizing teaching materials in formal education, the civil servant examination system, unified system of teacher training, and suppressing reflections by the educational system and the press.^{24,25} Even today, the KMT still retains a high level of influence over education and the media — for example, by interfering in the editing of history textbooks to try to increase the emphasis on Chinese history and embellish or even distort the historical origins of China and Taiwan — twisting the opinions of the academic community.²⁶ As a result, the government not only refuses to provide opportunities for public discussion of the identity issue which affects the future of this country, it also pushes its own policy preferences in the absence of a public consensus. The dis-ability to discuss this most fundamental problem that Taiwan faces hinders democratic discussion of other public matters as well. Further attempts to manipulate school curricula have occurred in the very recent past, indicating that this is not only an issue of the

²³ See para. 19 on “Transitional Justice” below.

²⁴ Huang Hsiao-wei, 2004, “De-colonization or Re-colonization? Reflections on Social Education Policies During the Authoritarian Period,” (Chinese), The 2004 Annual Meeting of the Taiwanese Sociological Association and Forum on “Walking Through Taiwan: Generations, History and Society,” National Tsing Hua University.

²⁵ He Ming-hsiu, 2011, “Policy Responses to the Education Reform Movement”, in “*The Decades of Social Movement: the Past 20 Years of Taiwanese Activism*” (Chinese), Taipei, Chun Hsueh.

²⁶ Chou Wan-yao, 2010, “Is the New Government Straightened Out? Or Has History Education Been Revived?” Nan-fang E-News, <http://enews.url.com.tw/south/56491> (in Chinese). The author is a professor of history at National Taiwan University. In 2009 she served on the Ministry of Education’s panel for revising the guideline for high school history textbooks. In this article, she describes in detail how the Ministry of Education used the power to appoint committee members to meddle in the professional committee.

past.^{27,28} President Ma did not act as a neutral administrator; instead he approved these provocative actions as the KMT party chairman, and said this was national policy in line with the Constitution.²⁹ In doing so, he ignored the significant domestic opposition to this stance.

13. Today, although competition between the main political parties is generally quite fierce, the authoritarian period has left a legacy that still affects the normal functioning of democracy. This can be examined through the following three topics: the KMT's enormous party assets; judicial neutrality and election lawsuits; and media publicness and neutrality.

14. KMT assets. Under one-party rule, the KMT amassed assets by transferring national properties to its control. This included many business enterprises and considerable holdings of land. KMT-linked businesses were often very profitable, benefitting from government contracts and easier access to finance. Although direct transfers of public property through the party-state system did not continue after democratization, the tremendous assets that the party had already amassed were not recovered. This has given the KMT a steady source of money to fund its election campaigns at all levels, rendering an unfair advantage. For example, in 2010, the KMT earned as much as NT\$2.9 billion in stock dividends alone.³⁰

²⁷ In May 2012, high school history textbooks were undergoing review ahead of their release in September. Just as the texts were being finalized, an inspection meeting at the Ministry of Education submitted a “public opinion” letter with a clearly pro-unification ideology: It said, for example, that the terms “ROC” and “Taiwan” should not be mixed up, and that the People’s Republic of China should not be called “China” for short.

²⁸ On 11 July 2012, KMT standing committee member Chiu Yi suggested at a committee meeting that certain content should be removed from the history textbooks — including the “Kominka” period of Japanese colonialism and the Taiwanese independence movement — and that Taiwanese and Chinese history should be referred together as “our nation’s history.”

²⁹ Central Daily News, 12 July 2012. “Textbooks: Ma says Taiwanese independence and Kominka should be removed,” http://www.cdnews.com.tw/cdnews_site/docDetail.jsp?coluid=106&docid=101968429 (Chinese).

³⁰ “2.9 billion in dividends in a year: the green camp criticizes Ma for not returning party assets,” *Liberty Times*, 23 July 2011 (in Chinese). According to the KMT’s asset declaration to the Ministry of the Interior, the KMT collected a total of NT\$3.53 billion in 2010 — 82% of which was stock dividends from the Central Investment Company and other sources, totaling NT\$2.9 billion; party subsidies from the government made up 7%, or NT\$250 million; party donations made up 6.8% or NT\$240 million; and party fees made up just 2.15%, or NT\$70 million. According to Taiwan Stock Exchange statistics, in 2009, the average dividend per share of domestic companies was NT\$1.44. By that calculation, the KMT holds somewhere between NT\$29 billion and NT\$58 billion in stocks.

According to DPP Legislator Chen Chi-mai, from 2006 to 2011, the KMT's party enterprises injected more than NT\$10.77 billion into party affairs, thus having a negative effect on fair elections and party politics.³¹ This has been the target of heavy criticism for many years. The Asian Network for Free Elections (ANFREL), a regional organization that monitors the development of democracy in Asia, warned that this threatens democratic processes in Taiwan. In its statement on Taiwan's 2012 presidential and legislative elections, ANFREL said although it is impossible to prove directly, there is a "widely held assumption that one party has a permanent wealth and resource advantage that provides them a built-in advantage in the process."³² ANFREL suggests in its statement that the appropriate government agencies should "accurately measure campaign spending and party wealth so as to ensure a more level campaign playing field."³³³⁴ Attempts to recover public property seized by the KMT have always met with stiff resistance from the party. Although some years ago, the KMT responded to the pressure by placing its party assets in trusts, this only means that the party is no longer directly involved in company operations and land sales; it still is able to utilize the profits from these investments to support party activities and election campaigns. Conflicts of interest between the KMT and the government regarding investments, stock exchange, and land purchases became even more difficult to monitor. Though President Ma had previously made repeated pledges to address the party assets issue, no real progress has been made since he took office. In fact, in November 2008 the Executive Yuan withdrew from the Legislative Yuan a draft "Political Party Act" that had been submitted for consideration under the

³¹ "KMT party assets inject more than NT\$10.7 billion into party affairs in six years," *Liberty Times*, 24 July 2012 (in Chinese).

³² Asian Network for Free Elections, Press Statement on Taiwan's 2012 Elections: "Credible Elections but a Tilted Playing Field," <http://anfrel.org/anfrel-election-observers-statement-on-taiwans-2012-elections/>.

³³ Ibid. The general scale of the spending can be illustrated from the reports officially submitted by the campaigns, although these are obviously underestimates. See, for example, "Watchdog posts 2012 presidential election finance reports," *China Post*, 17 July 2012: "The Control Yuan announced finance reports of the 2012 presidential election campaign fund [on 16 July 2012] ... the KMT candidates — Ma Ying-jeou and Wu Den-yih — received a total of NT\$446.4 million; The Democratic Progressive Party (DPP) candidates — Tsai Ing-wen and Su Jia-chyuan — received NT\$756.7 million ... [For the DPP], 72% of its campaign income came from private donors ... [In contrast, KMT candidates received] 20% [from private donors], 53% ... from party donations and 37% ... from for-profit companies."

DPP administration.³⁵ When the DPP tried to introduce the bill on its own, The KMT repeatedly blocked the proposal in the legislature's Procedure Committee.³⁶

15. Judicial neutrality and elections. Under martial law, the judiciary was controlled by the executive branch. For example, there was a hierarchical power structure in the prosecutorial system.³⁷ On the one hand, prosecutors and judges were a tool of the KMT government for oppressing dissidents; in the struggle for political freedom, innumerable people were imprisoned, tortured, or executed. On the other hand, pliant judicial officials protected regime officials from legal consequences of vote-buying, corruption, etc. This was especially useful in the process of fortify its control of local factions and using local elections of public officials to maintain its own legitimacy.³⁸ After martial law ended, the prosecutorial system struggled for independence, and incidences of superiors meddling with individual prosecutor's investigations were still frequent. When the political party in power changed in 2000, some pro-reform prosecutors were assigned to important positions, and prosecutorial reform moved gradually forward. A consensus gradually developed within the prosecutorial system about protecting the political neutrality of the system and respect for individual prosecutors to handle their cases.³⁹

³⁵ "Political parties' finances are back in the spotlight," *Taipei Times*, 20 June 2011: "When President Ma became KMT chairman in 2005, he promised to dispose of party assets and facilitate the passage of the Political Party Act. However, opposition parties have said that since the Ma administration came to power, not only had [sic] no progress been made on the issue of the KMT's assets, there has also been little movement on the proposed act ... When the Ma administration came to power, it withdrew the proposed political party act that was first sent to the legislature on Aug. 11, 2008. The Ministry of the Interior didn't send a draft of the act to the Executive Yuan for another review until May 19 last year."

³⁶ "Empty calls for reform: Ma government consistently blocking the Political Party Act," *Liberty Times*, 9 July 2012 (in Chinese).

³⁷ Higher ranks had the right to issue commands concerning personnel and duties to lower ranks. This restricted the prosecutors' independence in handling cases. Through the right to assign cases (in which senior prosecutors had the power to assign cases); the right to file cases (in which they had the power to decide the when, who, what, and what crime of specific cases); the right to transfer or take over cases, and other methods, senior prosecutors could influence the investigation and handling of a case until it reached court.

³⁸ Wang Chin-shou, 2006, "Taiwan's Judicial Independence Reform and the Collapse of KMT Clientelism", *Taiwan Political Science Review*, 10 (1): pp. 103-162 (in Chinese).

³⁹ Tang Ching-ping and Huang Hung-sen, 2008, "Democratization and Judicial Independence: A Political Analysis of Taiwan's Prosecutorial Reform," *Taiwan Political Science Review*, 12: pp. 2 and 67 -113 (in Chinese).

16. However, although reforms have weakened direct party control over prosecutors, but prosecutors' personal political tendencies are still obvious. Taking the 2012 presidential election as an example, at a key moment as the election neared, Council for Economic Planning and Development Minister Liu I-ju attacked DPP candidate Tsai Ing-wen with untrue or even falsified documents. While looking into the case, the Special Investigation Division (SID) leaked to the media incorrect information that Tsai might have been involved in illegal profit-taking. After the election, the SID announced that they in fact had no evidence to indict Tsai; however, prosecutors did not launch an investigation into whether Liu had committed forgery.
17. Another example is the apparent double-standards in the prosecution of suspected corruption by city mayors and county commissioners. When Yunlin County Commissioner Su Chih-fen of the DPP was suspected of accepting a bribe, the District Prosecutors' Office held her for questioning and, when she refused to post bail, detained her; she was later found innocent. When Chiayi County Commissioner Chen Ming-wen of the DPP was charged with bid-rigging, prosecutors brought in Chen for a talk as a witness, but then charged and detained him; after seven years of litigation, he was finally found innocent. In contrast, when Keelung Mayor Hsu Tsai-li of the KMT was suspected of a corrupt land purchase, he was never detained, although he was eventually sentenced to seven years' imprisonment; in the end, he passed away while appealing his case. Similarly, when KMT Hsinchu County Commissioner Cheng Yung-chin was charged with accepting a bribe, the district prosecutors' office said there wasn't enough evidence and released him without bail.⁴⁰ These cases demonstrate that prosecutors seem to apply different standards according to party affiliation, which is of particular concern when it may constitute interference of the prosecutor system in elections.
18. Publicness and independence of the media. Under martial law, print media was under strict government censorship. Before the government lifted the "Regulations Governing Publications in the Taiwan Area under Martial Law" in 1988, the newspaper industry required special permits and was tightly controlled.⁴¹ Opposition views appeared in political commentary magazines that

⁴⁰ Huang Ti-ying, 2012, "Hoping for Color-Blind Justice," issued at "Revealing Dark Secrets of the Judiciary," the third session of the Taiwan Crisis conference series held by the Taiwan Association of University Professors, 17 March 2012, Taipei (in Chinese).

⁴¹ The two papers with the biggest market share were the *China Times* and the *United Daily News* — and the head of each sat on the KMT Central Committee. Later, political control gradually eased. But at the

were repeatedly seized by the government or shut down. Since democratization, the problem with the media has evolved from being a straightforward matter of a KMT monopoly to two major concerns: “embedded marketing” by the government (in which the government pays news outlets to publish certain stories or information) and publicness of the media.

After Ma Ying-jeou won the 2008 presidential election, he signed a pledge against “political embedded marketing” stating that “the government shall not engage in embedded marketing with a political objective. It shall not issue government decrees with a political objective; the government’s advertising budget shall have a fair and reasonable mechanism for distribution and shall not favor media with a specific position.”⁴² But since Ma took office, monetary transactions between the government and the media have intensified, seriously testing the president’s political integrity and becoming a point of dispute in the 2012 presidential election.^{43,44,45} Related to this is the fact that the relationship

second meeting of the “National Democratic Alliance of Cable TV Services” in 1992, the alliance’s charter was still calling for “breaking the KMT and other media monopolies and fighting for free speech.” In 1995, there was widespread pressure on the KMT, the government and the military to withdraw from the media. At the time, there were only three terrestrial TV stations, all of them controlled by the KMT or the government.

⁴² Press release, Association of Taiwan Journalists. Apr. 30, 2008. (Chinese) <http://atj.twbbs.org/tai-wan-xin-wen-ji-zhe-xie-hui-da-shi-ji/tai-wan-xin-wen-ji-zhe-xie-hui/20080430taiwanxinwenjizhexiehuidengsituantilianhexinwengao-maxiaochengnuobuzaizuozhiruxingxingxiao>

⁴³ Control Yuan member Wu Feng-shan argues: “Central government agencies and city and county governments are engaging in unbridled embedded marketing in the media, and are seriously distorting media ethics, hindering national progress. Whether the authorities are turning a blind eye, or are not trying very hard to supervise this; it definitely constitutes misconduct.” See Control Yuan Investigation Report No. 0990800421, 11 November 2010 http://www.cy.gov.tw/sp.asp?xdUrl=/di/edoc/eDocForm_Read.asp&ctNode=910&AP_Code=eDoc&Func_Code=t01&case_id=099000524 (in Chinese).

⁴⁴ As reported in Freedom House Report, 2011: “The issue of ‘embedded marketing’ — advertising cloaked as news — came to the fore in December 2010, when veteran China Times journalist Dennis Huang resigned, reportedly to protest the proliferation of positive coverage purchased by both businesses and government entities. His resignation led to a public campaign to end the practice, which has increased sharply in recent years, according to press freedom watchdogs. Prime Minister Wu Den-yih pledged to address the issue, and at year’s end legislators from both major parties were considering restrictions on purchases of news space by government entities.” (<http://www.freedomhouse.org/report/freedom-press/2011/taiwan>)

⁴⁵ In early 2011, the legislature amended the law to outlaw embedded marketing by the government (Article 62, Clause 1 of the Budget Act), but the National Audit Office found that in 2011, the central government spent almost NT\$1.2 billion on announcing government policies, of which more than one-third violated the

between the government and the media has affected the fairness of elections. The ANFREL statement mentioned above also mentions the complains it received while observing the election, that a particular party holds a large portion of the media or has favorable relations with certain media, with much of the coverage in those media was biased in favor of that party. The statement says, “Such systemic imbalances have a negative impact on the development of the Fourth Estate and Taiwan’s democracy as a whole.”⁴⁶

The problem of media publicness includes (1) the role and functions of the National Communications Commission (NCC) being unclear; (2) excessive commercialization of media and pursuit of business interests through media;⁴⁷ and (3) the government interfering in the neutrality of the Public Television Service. (See Civil Society Shadow Report on Article 19, ICCPR) Looking at recent examples, firstly, though academics on all sides have warned against the negative effects of a single company controlling too much of the media, on 25 July 2012, four NCC members who were about to leave their posts granted permission for the Want Want China Times Group’s Tsai Eng-meng to acquire China Network System’s cable television services, albeit with some provisions and stipulations.⁴⁸ This decision would mean that the government agency charged with protecting the independent operation of media granted permission for a single corporation to control a large number of print, broadcast, and internet media, along with a number of advertising and marketing companies.⁴⁹ Since the Want Want Group

Budget Act’s prohibition of embedded marketing. “Despite amendment to institute ban, Ma government still illegally embedding news,” *Liberty Times*, 31 July 2012 (in Chinese).

⁴⁶ Asian Network for Free Elections, Press Statement on Taiwan’s 2012 Elections: “Credible Elections but a Tilted Playing Field,” <http://anfrel.org/anfrel-election-observers-statement-on-taiwans-2012-elections/>.

⁴⁷ According to a 2010 report by Freedom House: “Also of note was the influence of owners over the editorial content of media they acquire. After Tsai Eng-Meng, a businessman with significant commercial interests in the PRC purchased the China Times Group in November 2008, a series of incidents in 2009 — including Tsai’s own comments to the media — pointed to a subsequent change in editorial policy in the direction of softening criticism of the Ma administration, Beijing, or improvements in cross-strait ties. This also raised concerns over the potential direct or indirect influence of the Chinese government on free expression in Taiwan.”

⁴⁸ “Growing China clout sparks concern for Taiwan media independence,” *Washington Post*, 26 July 2012. http://www.washingtonpost.com/world/asia_pacific/growing-china-clout-sparks-concern-for-taiwan-media-independence/2012/07/26/gJQARY1MAX_story.html

“DPP blasts mega media merger deal,” *Taipei Times*, 27 July 2012. <http://www.taipeitimes.com/News/front/archives/2012/07/27/2003538735>

⁴⁹ DPP Legislator Cheng Li-chiun was quoted as saying: “Let me tell you what media monopoly is. It’s a media company with 19 TV channels, three newspapers and a magazine now adding 11 cable TV channels

strongly supported President Ma's re-election bid — and since its owner had previously made a comment about the Tiananmen Square Massacre in an interview by the *Washington Post* — the NCC's decision intensified the complex relationship between political parties, corporations, and the media, and was not favorable for democratic development.⁵⁰

19. The unaccomplished transitional justice. Generally speaking, a country's tools for carrying out transitional justice include the court trials, establishing truth commissions, amnesties, restitution for victims, and investigation of personnel from the former regime (lustration), to address the victims and perpetrators of political violence and investigate the historical facts. Taiwan has been utterly inactive on transitional justice — a rare exception among developing democratic countries.

So far, the government's handling of the 228 Incident has been relatively complete. It has offered compensation to victims through the creation of the government-funded 228 Incident Memorial Foundation, and the Executive Yuan created a research task force to put together and publish the "228 Incident Research Report." Later, the foundation commissioned experts and academics to produce a "Report on Responsibility for the 228 Incident," giving a historical assessment of the reasons the incident happened, the victims, the course of events and political responsibility. In addition, Taiwan set up a "National 228 Memorial" and every year mourns the victims and consoles family members through a central government ceremony.

But compared with this one-time massacre, the political cases that built up during the 40 years of prolonged martial law rule — commonly referred to as the White Terror — have not received proportionate attention from the government. First of all, Article 9 of the National Security Act closed the door to appealing political cases after the end of martial law.⁵¹ There's no way to either hold perpetrators responsible for their deeds, or for victims to seek restitution through the courts.

and which [has the power to] influence about a quarter of households with a TV nationwide." For a list of the media Want Want owned prior to its acquisition of the China Network System, see Wikipedia: <http://zh.wikipedia.org/wiki/%E6%97%BA%E6%97%BA%E4%B8%AD%E6%99%82%E5%AA%92%E9%AB%94%E9%9B%86%E5%9C%98> (in Chinese).

⁵⁰ Head of the Want Want Group, Tsai Eng-ming told a *Washington Post* interviewer that not too many people had died in China's crackdown on the 1989 pro-democracy student movement at Tiananmen Square in Beijing. See "Tycoon prods Taiwan closer to China", *The Washington Post*, 21 January 2012. http://www.washingtonpost.com/world/tycoon-prods-taiwan-closer-to-china/2012/01/20/gIQAhswmFQ_story.html

⁵¹ Article 9 of the National Security Act (1987) Criminal cases of civilians, who have been tried in military court in the period when martial law was in force, will be handled according to the following regulations:

Second, although the Ministry of Defense established a “Restitution Foundation for Wrongful Convictions for Insurrection or Spying during the Martial Law Era” to handle compensation, the operation is focused on providing compensation to victims. Therefore the investigating process is rather lax and centers on the victims’ experiences and files, and lacks a comprehensive effort to restore history. This makes pursuing the truth an impossible task under the existing system. Even if the victims receive compensation and the government issues a “certificate of honor restoration,” it is only political and symbolic. The guilty status under the judicial system was not altered. Conversely, none of the perpetrators was investigated.

As for the right to know the truth, restrictions in recent years on accessing case files at the National Archives Administration have made it increasingly difficult to reveal the truth for victims and their families, as well as for academics who want to conduct historical research. The attitude of the government can best be illustrated by the case of Kuo Ching, a political victim who was executed in 1951. He wrote five letters on the eve of his execution, but these were only finally retrieved by his family this year. At the same time, in the process of applying to reclaim them, the family had repeatedly run into all sorts of administrative and legal obstacles from the archive administration and other bureaucracies. Particularly heart-wrenching was the fact that Kuo Ching’s wife, now 85 years old, was now senile and couldn’t understand the words her husband had left her just before his death.⁵² This incident drew a lot of public attention and compelled civil groups to advocate revising the regulations.

Finally, under significant public pressure, Taiwan converted two original sites of martial-law-era prisons into a National Human Rights Museum. However, since the government has never carried out thorough and accurate research about the White Terror, concerned parties are hung in suspension to see how the government will preserve, reconstruct, and represent this important chapter of history.

a. cases whose military trial procedure has not been completed, and cases which are under investigation, will be turned over to the prosecutors of civil courts. Cases which are currently on trial will be transferred to the civil courts.

b. cases whose military trial procedure has been completed will not be allowed to appeal or protest in the civil courts. Those who have grounds for a retrial or a special appeal may apply for a retrial or a special appeal.

c. criminal cases involving civilians, who are serving their sentences, or those who have not begun to serve their sentences, will be transferred to the jurisdiction of the prosecutors of the civil courts.

⁵² See Kuo Ching’s daughter Kuo-Su Chen’s newspaper op-ed, in which she says that relatives of victims trying to retrieve family documents have not received any apologies or courtesy from the government. On the contrary, they are caught in an administrative nightmare. An English translation of the article provided by the Taiwan Alliance to End the Death Penalty is appended to this report: “A letter 61 years too late” by Kuo Su-Chen, 13 July 2012. (Annex 1, p. 62)

VI. Economic and Social Development

20. Industrial policies, social welfare and tax justice: In order to understand Taiwan's human rights situation — in particular its economic, social and cultural rights — we have to look at Taiwan's economic situation as a whole. When the KMT government retreated to Taiwan in 1949, Taiwan was a low income country; GNI per capita was just US\$154.⁵³ To promote economic and industry development, the government turned to a planned economy in the early 1950s, fostering domestic companies, largely small and medium-sized, through tax benefits, assistance in acquiring land and suppressed labor costs. In the ensuing six decades, there formed a mutual dependence between the government and capitalists. Since the end of martial law, the major industries gained considerable influence on the government's decision making. This situation didn't change between 2000 and 2008 when the DPP took over control from the KMT. Stimulating economic growth with policies that favored capitalists did indeed produce impressive economic growth in Taiwan. But in retrospect, it has become clear that the long-term tax benefits have seriously harmed the fairness of Taiwan's tax system, creating a rapidly growing rich-poor gap and a serious depletion of the tax base, forcing the country to survive on debt — which its children and grandchildren will have to deal with. The corporatization of Taiwan's industries, along with the lax regulations of the government, has caused long-term suppression of union power and workers losing their leverage in negotiations. Meanwhile, the government has permitted and even assisted companies to procure land; this has not only seriously violated the public's land and property rights — the plight of Aborigines is particularly grave — but has also caused widespread damage to Taiwan's forests and agricultural land.

21. Tax system: As concerns tax policies, the government's main line of thinking has always been to stimulate economic growth through tax cuts. From the Regulations to Reward Investment in the 1960s to the Regulations to Promote Industry Upgrades in 1990 and the Regulations for Industrial Innovation proposed in 2010, the government has consistently attracted companies to stay and invest in Taiwan by cutting their taxes or even offering tax exemptions. In addition to these regulations, the government has also attracted steady investment from capitalists

⁵³ Lin Tsung-hung et al., 2011, *Bomb Generation: the Crisis of Corporatization, Impoverishment, and the Demographic Deficit*, Taipei: Taiwan Labor Front, p. 57 (in Chinese). In fact, taking 1949 (or 1950) as a starting point flatters the KMT government, since Taiwan experiences an economic collapse between 1945-1949 as a result of gross mismanagement and corruption, as well as hyperinflation imported from the Mainland. In other words, Taiwan was significantly better off in 1945 than in 1950.

by lowering the business income tax, the estate tax, inheritance tax, etc. Capitalists have long reaped the benefits of tax cuts that have severely impaired the fairness of the tax system. For example, property taxes that primarily target rich people (including the land and building tax and the inheritance and gift tax) made up 27% of Taiwan's total tax income in 1992 but fell to 12.5% in 2009. The percentage that came from income tax, meanwhile, (including individual composite income tax and business income tax) rose from 23% to a peak of 47% in 2008, with the contribution from wage and salary income taxes still rising.⁵⁴ And within the category of income tax there's a similar phenomenon. The individual composite income tax is a progressive tax rate that ranges up to 40%, but in reality the "integrated income tax system" allows that income from stock dividends (as a part of the Enterprise Income Tax) be deducted from individual income tax. Since capitalists make much of their earnings through stock dividends, the actual tax rate for the top 5% of earners in Taiwan is just 15%.⁵⁵ In other words, cutting taxes for capitalists meant that Taiwan's tax income from industries has dropped considerably, while the general population has borne the burden of the taxation. But salary earners can't make up for this depletion in its entirety, and the government's debts are rising. Future generations will be burdened by a huge national debt. At the same time, there isn't enough funding for government welfare and security, meaning that assistance for low-income families, people with disabilities and the elderly is grossly inadequate.

22. Labor relations: With the government's support, corporations have a distinct advantage over their workers. The power of unions has been repressed for a long time. Between 1992 and 2009, the rate of unionization in industries fell from 30 to 15%. Union power is steadily eroding, which has substantially reduced workers' negotiating power, making it difficult to defend their own rights. Take workers' income for example, between 2000 and 2010, the Taiwanese economy grew an average of 3.4% annually, while workers' average actual monthly earnings fell from NT\$43,564 in 2000 to NT\$42,122, and the purchasing power shrank by 0.6%, indicating the dissociation between Taiwan's GDP growth and workers' earnings.⁵⁶

⁵⁴ Ibid, 22.

⁵⁵ Ibid, 110.

⁵⁶ Ibid, 104-105.

23. Land use policies: In addition to attracting company investment by cutting taxes, the government's policies also help capitalists procure land. As a result, many people have lost their homes or land with very little compensation. The public's attention has mostly focused on disputes over seizures of farmland for science and industrial parks, and the resistance to forced evictions in the cities to make way for urban renewal projects. Meanwhile, starting in 2010, the government put forward a series of proposals: the Regulations for Developing the East, the Regulations for Construction in Aboriginal Areas, the Regulations for Development of the Yunlin and Chiayi Special Agricultural Area, and an amendment to the Regulations for Construction on Outlying Islands. These were all proposed in the name of development and construction, but in reality reduced regulation of land use to make it easier for corporations to acquire land.⁵⁷ For example, the regulations on Aboriginal areas expressly state that major construction projects on Aboriginal land are not only exempt from regulations governing non-city land use, but are also free from the restrictions in the Regulations on Development and Management of the Lands Reserved for Indigenous People.⁵⁸ This has a major impact on the protection of traditional Aboriginal areas. Under the other regulations, appropriation of public land and seizure of private land are not subject to the Land Act, the National Property Act or the Management of Local Public Property Act.⁵⁹ These regulations, in addition to violating land and property rights, have also triggered disputes over the preservation of traditional Aboriginal areas, the environment, and special cultures and ways of life.

VII. Discriminatory Treatment

24. Unfair special treatment of civil servants: Government benefits for civil servants far exceeds that for other people, creating financial burdens on other tax payers and worsens the national debt. Please see **section III, Issues Neglected by the State Report, of Article 2 &3 in the ICESCR Shadow Report**. An exemplary case is that, after the government turned down the proposal to raise the minimum wage for the workers (from the proposed NT 18,780 to NT 19,047), causing

⁵⁷ The Regulations for Developing the East were passed and renamed the Regulations for Developing the Hualien-Taitung Area, and the clauses that loosened land regulation were removed. However, the other three regulations have similar clauses.

⁵⁸ Hu Mu-ching, 5 January 2011, "Bullying over land: the Aboriginal area construction regulations are here," PNN Public Television News Center, <http://pnn.pts.org.tw/main/?p=18784> (in Chinese).

⁵⁹ Chu Shu-chuan, 7 March 2011, "Academics oppose the four major regulations eliminating regulation of land use," Environmental News, http://shuchuan7.blogspot.tw/2011/03/blog-post_8224.html (in Chinese).

Minister Wang Ju-hsuan of the Council of Labor Affairs to resign,⁶⁰ and the panic among retired laborers that the Labor Insurance fund is expected to report deficits in 2017 and then go into bankruptcy in 2027, it was disclosed that the government was still planning to give year-end bonuses to retired civil servants, costing an amount of NT 20.2 billion. Eventually Premier Chen announced under extreme public pressure that the will be canceled for this year, but the different treatment for civil servants and laborers continue in many other aspects.⁶¹ The financial burden caused by the “preferential savings deposits” policy for the civil servants, another unfair treatment, in the ensuing year is estimated to be NT 2 trillion. One incidence to demonstrate the government’s lack of accountability was the comment made by Mr. Chang Che-chen, the Minister of Civil Service, Examination Yuan. Amid the dispute over the year-end bonus, Chang was quoted as saying that “(the public) should know better than to envy the civil servants”.⁶² Making the situation more complex than a purely economic issue is that the status of civil servants had a root that favored sub-populations with affiliation with or allegiance to the KMT.

25. Language and cultural discrimination: As preceding segments have mentioned, from the 1950s to the 1990s, the KMT government revered China and repressed the culture of Taiwan, causing a rift in the transmission of the Taiwanese language, the Hakka language, and Aboriginal languages and cultures that cannot be repaired. Taiwanese as a daily language was effectively strangled in Taipei city. Language equality for all ethnicities should be the main goal of reinvigorating languages and cultures. The Language Equality Act was one of President Chen Shui-bian’s election promises. After he was elected, he sought the help of the Hakka Commission, the Aboriginal Commission and the Ministry of Education’s “Committee to Implement Mandarin Chinese” to draw up legislation on protecting linguistic rights. However, after the education ministry passed its draft of a Language Equality Act in 2007, it met with much opposition. Some questioned the feasibility and necessity or said it was an attempt to “de-Sinicize” Taiwan. After the Ma government took over, the legislature cancelled the funding that was needed to certify qualified teachers for Taiwanese language education.⁶³

⁶⁰ “Labor groups furious over minimum wage hike delay,” *The China Post*, 28 September 2012.
<http://www.chinapost.com.tw/taiwan/national/national-news/2012/09/28/355807/Labor-groups.htm>

⁶¹ “Premier to slash the budget for divisive bonuses,” *Taipei Times*, 24 October 2012.
<http://www.taipeitimes.com/News/front/archives/2012/10/24/2003545946>

⁶² “Debate over year-end bonus. Chang Che-chen: don’t envy,” *Liberty Times*, 23 October 2012 (in Chinese).

⁶³ In February 2009, KMT Legislator Hung Hsiu-chu put forward a proposal in the legislature to cancel the NT\$40 million budget for the Committee to Implement Mandarin Chinese’s project to certify Taiwanese

In May 2012, it established a Culture Department, but among the department's primary policies and principles of administration, however, there is no policy on linguistic or cultural equality. (See Response to State Core Document ¶ 4 below.)

26. **Discrimination based on county or city of residence:** According to data from the Directorate-General of Budgeting, Accounting and Statistics, in terms of 2012 city and county budgets, Taipei City's per capita spending of NT 69,000 is the highest in the country. At the other end, starting from the lowest per capita annual spending, Changhua County's is 29,000, Taoyuan County's is 31,000, lower than half of Taipei resident's. Since distribution has been uneven for a long time, the gap that has accumulated is reflected in each place's basic infrastructure and social welfare. This clearly violates the principle of treating the whole population equally. Please see **section III, Issues Neglected by the State Report, of Article 2 & 3 in the ICESCR Shadow Report.**
27. **Discrimination against foreign nationals:** Foreign workers are subject to more restrictions on their working conditions than nationals. Although this is understandable, unequal compensation for doing the same work, restrictions on switching employers, and restrictions on family life have created legalized discrimination. Moreover, it's hard to ensure adequate protections for the working conditions of domestic caregivers and fishermen through existing laws and safety inspection systems. Because of the system's shortcomings, working conditions for caregivers depend on the employer. Many work under uncertain contracts or are even deprived of the right to rest.⁶⁴

VIII. Responses to the Government's Report

A. Population, economic, social, and cultural characteristics

language teachers. Although administrators desperately explained to Hung that since the quality of Taiwanese teachers at elementary schools was mixed, this budget would be used to certify schoolteachers with the expertise of academics, which would improve the problem of teacher qualifications. But Hung mobilized legislators to cancel the budget. The NT\$40 million for the project had comprised 0.07 percent of that year's NT\$60 billion Ministry of Education budget. It was eliminated in its entirety. Though the ministry later said it would continue with the certification tests, starting in 2011, the National Institute for Compilation and Translation asked textbook companies to replace references to "Taiwanese" with "Minnan Dialect" before submitting them for review. This reflected language discrimination. "Blue camp cuts certification budget, Taiwanese groups protest," *Liberty Times*, 28 February 2009 (in Chinese). "Taiwanese to be called Minnan Dialect, blasted as pro-China," *Apple Daily*, 24 May 2011 (in Chinese).

⁶⁴ Chen Chen-fen, 2011, "Management or Exploitation? Survival Strategies of Employers of Foreign Family Care Workers" (Chinese), *Taiwan Society Research Quarterly*, Issue 85, Taipei.

(1) Cultural characteristics of Taiwan: Response to ¶ 2 (p. 4) of the State Report

Taiwanese history and culture have been influenced by Chinese and Austronesian cultures, as well as various colonial powers, especially Japan, which ruled the entire island of Taiwan for the 50 years from 1895 to 1945. Although under the colonial system, the status of Taiwanese was not equal to that of regular Japanese citizens, during this period, Taiwan experienced rapid modernization, including administrative systems, police, education, medicine, railways, electricity, industrialization, etc. Some Taiwanese elites were able to go abroad and study during this period. After returning to Taiwan, some formed cultural associations to disseminate modern knowledge, which was the start of Taiwanese civil society. The Taiwanese elites of the time came into contact with political philosophies including self-determination and the concepts of liberty, democracy, and human rights. Leftist ideas thrived, even including communism.

In the latter part of Japanese rule, the Japanese government implemented its Kominka policy, subjecting the Taiwanese to systematic Japanese-style education. Because of this, Taiwan was rather strongly influenced by Japan — an element of Taiwanese culture that was later diluted only under the high-pressure oppression of the authoritarian period. The massacre of Taiwanese elites during the 228 Incident also disrupted the transmission of their ideas and knowledge and ideas, significantly hindering the modernization of Taiwanese society.

Special section on indigenous peoples

(2) Current status of the indigenous peoples: Response to ¶ 3 (p. 4) of the State Report

The assimilation of indigenous peoples was influenced to a great extent by government policies. From 1950 to 1980, the government's policies toward indigenous peoples had three goals: (1) To improve the lives of indigenous peoples; (2) to promote sedentary farming and (3) to promote afforestation. These three goals would in effect destroy the indigenous peoples' traditional way of life and force them to enter Han Chinese society. The "improvement" of their lives was seen from a Han Chinese point of view, which did not take into account the specific characteristics and subjectivity of traditional indigenous cultures.⁶⁵

These policies damaged the identity of indigenous peoples. As current Council of Indigenous Peoples Minister Sun Ta-chuan once wrote, "After the 1960s, indigenous peoples lost almost all their clues to 'ethnic identity' and their cultural symbols. Their inner self completely disintegrated. In the 1970s, the indigenous population was deeply troubled, and as a result, they constantly asked themselves: 'Who am

⁶⁵ Chi Chun-chieh, 2005, "Indigenous Research and Indigenous-Han Relations: A Review of Colonial Concepts," *National Policy Quarterly*, 4, 3:5-28 (in Chinese).

I?''⁶⁶ With the rise of the indigenous movement in the 1980s, the characteristics of indigenous culture and the subjectivity of their ways of living were finally valued. The bottom-up efforts of social movements and NGOs may have played a bigger role than the government in the awakening of indigenous consciousness and the preservation of indigenous cultures.

(3) The disadvantages of the indigenous peoples: Response to ¶ 17 (p. 11) of the State Report

Indigenous areas are sparsely populated and enjoy relatively fewer resources. This affects access to education, medical treatment and other benefits, and contributes to a disadvantaged socioeconomic status. Many young and middle-aged indigenous peoples have to leave their hometowns for job opportunities, meaning both that there is no one around to take care of the elderly and that children cannot live with their parents. This impairs both quality of life and the ability to pass on their cultures.

Furthermore, activities that mainstream society wishes to avoid are often diverted to indigenous areas. Perhaps most obviously, the indigenous peoples of outlying Orchid Island, have had to live alongside Taiwan's only nuclear waste deposit site for almost 30 years. Residents suspect pollutants are leaking from the waste facility, causing a rise in cancer rates there.⁶⁷ As the situation on Orchid Island has become more widely known, and civil society and other actors have strongly advocated for the site to be closed and the nuclear waster removed. However, the government's current leading plan for an alternative site is in Taitung's Daren Township, populated largely by the Paiwan people, threatening the health rights of a different group of indigenous people. Apparently no places primarily inhabited by Han people can be considered.

The geographic distribution of indigenous peoples results in deficiencies in living resources and leads to threats from pollution. At the same time, current government policies also deprive indigenous peoples of their traditional living space. In addition to the structural disadvantages, many government actions violate indigenous rights.

(4) Names of indigenous peoples and of indigenous individuals: Response to ¶ 22 (p. 15) of the State Report

Before the 1980s, indigenous identity was disparaged. Even in government usage, the disparaging term "mountain compatriots" was used for indigenous peoples. Taiwan's indigenous peoples are not one culture and people, but rather various peoples, who have different cultures and ways of life. To correct the name became the foundation for cooperation between vulnerable groups that faced discrimination.

⁶⁶ Sun Ta-chuan, 2000, *Constructing Ethnicity between the Cracks: The Languages, Cultures and Politics of Taiwan's Aborigines*, Taipei: Linking Publishing (in Chinese).

⁶⁷ Liao Ching-hui, 2012, "Orchid Island residents demand removal after 30 years of nuclear waste", Environmental News: <http://e-info.org.tw/node/74538> (in Chinese). Last accessed on 1 May 2012.

With the long-running “Correct the Name Movement”, in the 1990s, the government began to accept the term “indigenous peoples.” In a 1997 constitutional amendment, “mountain compatriots” was changed to “indigenous peoples.” Aside from correcting this terminology, individual tribes also sought appropriate names, seeking to be identified by their tribes. On the individual level, it was only in 1995 that indigenous peoples were allowed to use their names in their own languages in the household registration system and other official documents. Until then, they were required to adopt and use Chinese names. Whether from the individual or tribal perspective, indigenous identity has been oppressed for a long time. As a result, despite recent efforts to recover indigenous identity, there is no way to undo the harm that long-term suppression has done to tribal identity.⁶⁸ Government reports do not lay out any clear strategies for addressing indigenous peoples’ weakened cultural and economic situation.

(5) The destruction of languages: Response to ¶ 4 (p. 5) of the State Report

Mother tongue education was not launched at elementary schools until 2001, and included instruction in Taiwanese, Hakka, and indigenous languages. Before this, Mandarin Chinese had dominated education since 1945. Many adults can recall from their childhoods being punished or humiliated in school for using their mother tongues. The goal of cultural education for decades has been to “Sinicize” Taiwan. For a long time, the education system was hostile to mother tongues, leading to a rift in linguistic proficiency. According to a recent survey, only 44% of children ages 12 and under can communicate effectively in Taiwanese. In urban areas, the percentage is even lower.⁶⁹ Misguided language policies have within a single generation destroyed most people’s mother tongue proficiency in the Taiwanese, Hakka, and indigenous languages. The KMT has never officially apologized for this horrendous mistake in its language policy.

On the other hand, the number of schoolchildren with foreign-born parents is increasing day by day. The vast majority of them have a mother from a Southeast Asian country, but mother tongue education does not currently include instruction in these languages. Of course, including Southeast Asian languages may be difficult because of the limits of educational resources and qualified teachers. However, the government should at least try to express its respect to the variety of languages and cultural backgrounds that are different from the Han Chinese mainstream.

(6) Participation in international affairs: Response to ¶ 5 (p. 5) of the State Report

⁶⁸ Haisul Palalay, 2008, “Major Events in the Indigenous Movement,” Taiwan Indigenous People’s Resource Center E-letter, Issue 6: http://www.tiprc.org.tw/ePaper/06/06_movementlist.html (in Chinese). Last accessed on 28 January 2012.

⁶⁹ Huang Chien-ming, 2011. “An Analysis of the Development and Revival of Taiwanese Language Policies,” *The Journal of Public Administration*, June 2011, 71-104 (in Chinese).

Taiwan's space and participation in the international sphere remain rather restricted. Taiwan is blocked from participating in many international organizations and international affairs because of pressure from China. The current government has adopted a "diplomatic ceasefire" policy, saying that Taiwan and China should avoid malicious competition over diplomatic allies, and that this will hopefully give Taiwan more space for "substantial participation" in international organizations. Unfortunately, the government in Beijing has not shown a corresponding change in its policies. Its diplomatic system retains the same attitude of suppressing the ROC. In 2008 alone, there were at least 26 major incidences of the PRC having blocked the ROC in international contexts.⁷⁰ Add to this the fact that the Philippines has deported Taiwanese criminal suspects to China; that the ROC central bank was recently forced to change its name at SEACEN (the Southeast Asian Central Banks alliance); and that the ROC's national dignity was disparaged in WHO's internal regulations and documents concerning Taiwan. The "diplomatic ceasefire" is clearly unilateral.

For example, in 2003 during the SARS outbreak, Taiwan tried to apply for the observership at the World Health Assembly, which would have been helpful to international preparedness for epidemics and above all would have helped ensure the health rights of Taiwanese. However, Taiwan's request was rejected quickly in the face of Chinese opposition. The experts that the WHO dispatched to Taiwan also avoided meeting any government officials above the ministerial level.⁷¹ In 2009, Health Minister Yeh Chin-chuan was invited to attend the World Health Assembly as an observer. Although President Ma portrayed this as a major diplomatic breakthrough, a report by the Associated Press indicated that he had secured permission from Beijing in advance.⁷²

(7) Demographic changes and challenges: Response to ¶ 6-12 (pp. 5-7) of the State Report

The drop in Taiwan's birth rate has been exceptionally fast. Compared with Europe and North America, Taiwan has had less time to prepare for the coming of an aging society.⁷³ Aside from teachers having to cope with schools closing down, a surplus in teachers and empty classrooms, problems will also gradually spread to labor-

⁷⁰ These included boycotting the ROC's entry to or participation at international organizations, blocking contact between ROC and US officials at the federal and state government levels, blocking ROC dignitaries from visiting other countries, obstructing trips abroad by ROC trade missions, forcing ROC civic groups to change their names at international meetings, and blocking other countries from displaying the ROC flag at unofficial occasions.

⁷¹ Pu Jui-che, 2011, *Taiwan's Future* (Chinese), Taipei, Yuan-Liou Publishing, 284.

⁷² Peter Enav, "Taiwan to have observer status in UN health body," The Associated Press, April 30, 2009: <http://www.guardian.co.uk/world/feedarticle/8481898>. Last accessed on Jan. 25, 2012. "Taiwan said it had persuaded China to allow it to participate in a key U.N. body, offering a victory for President Ma Ying-jeou's campaign to win greater international recognition for the democratic island."

⁷³ Lin Tsung-hung, et al., 2011, *A Generation in Ruins* (Chinese), Taipei: Taiwan Labor Front, 168.

intensive industries. The drop in the birth rate and the aging of our society will create a shortage of labor, shrink consumption, and lower business vitality. Without proper measures taken sufficiently in advance, these trends may cause a shortfall in government pension and insurance funding, leading to subsistence problems for the elderly, and may even result in general economic decline.

(8) Rural-urban development gaps: Response to ¶ 16 (p. 9) of the State Report

Because of the gap in urban and rural development that leads to job opportunities being concentrated in the cities, the young and able-bodied have long frequently moved to these areas. Some formerly agricultural areas have tried to create jobs and draw back the population through industrial development, but these industries can bring high pollution. Plans to build the Kuokuang Petrochemical Technology Co chemical factory are one recent example of the controversies that this policy can generate. Faced with the gap in development between cities and rural areas, sometimes residents are willing to trade pollution for job opportunities. However, as in the case of the fourth-stage expansion of the Central Taiwan Science Park, in addition to pollution, there is also the problem of forced relocation of farmers. The Taipei High Administrative Court revoked the development permit of the Central Taiwan Science Park in Changhua County's Erlin Township, saying there is no decisive need for the project, which could threaten food security.⁷⁴ The incident demonstrated that the Ministry of Interior and Environmental Protection Administration did not follow the legal procedures of environmental impact assessment in this “development” project.

Although these cases are also influenced by factors such as the government's industrial policies and competition between politicians, the gap in regional development undoubtedly creates a structure that facilitates the occurrence of these kinds of controversies. In the cities, meanwhile, there are different problems. The population is too dense — especially in Taipei City. This leads to manipulation of the real-estate market in cities, pushing up prices unreasonably. Rising housing costs become an incentive for real-estate businesses to fight for land. To acquire land, they seek cooperation from the original residents to rebuild (so-called “urban renewal”). But discrepancies in information among the residents and the businesses, along with unclear legislation, have given rise to frequent disputes. In the case of the 2012 Wenlin Yuan urban renewal project, the government used police power to force the eviction of residents and demolition of private homes. The Taipei City government then stood silently aside as the residents and the construction firm went into deadlock over the construction site.

(9) The working poor: Response to ¶ 18 (p. 12) of the State Report

⁷⁴ “Court revokes Central Science Park permit”, The China Post, Oct. 12, 2012.

<http://www.chinapost.com.tw/taiwan/national/national-news/2012/10/12/357378/Court-revokes.htm>

According to a survey by the Directorate-General of Budget, Accounting and Statistics on household disposable income, the expenses of bottom 20% of households exceeded their earnings. The “working poor” work their whole lives without being able to escape poverty. According to statistics from the non-governmental Research Center for the Working Poor, real wages and salaries (i.e. adjusted for inflation) in Taiwan are lower than they were 12 years ago. Of the total working population, 7.1% (572,000 people) earn less than the minimum wage, while 44% earn less than NT\$30,000 a month. At the same time, the proportion of part-time workers and dispatched workers is increasing. These non-traditional workers make lower earnings and have worse working conditions. For example, since it is unclear who the employer is for dispatched workers, when a labor dispute arises, the workers’ contractor and their actual place of employment try to pin responsibility on each other. No one wants to resolve workers’ problems. Meanwhile, part-time workers’ average monthly earnings are just NT\$13,879 — much lower than the average income.⁷⁵ Taiwan is not only dealing with a growing rich-poor gap, but certain groups cannot earn a reasonable living even though they have jobs.

In August 2009 unemployment reached a new high of 6.13%, leaving many college graduates at a loss for what to do. The government’s short-term measures did not solve the structural problem of worsening job conditions. One of them was the “22K program”, in which the government subsidized NT\$22,000 to businesses which hired college graduates as interns. On the contrary, such policies may be making things worse. KMT Legislator Lu Hsiu-yen described the situation during an interpellation on 14 October 2009 with the following four points:⁷⁶ (1) Since the government was only paying for companies to hire students who had graduated in the previous three years, graduates of this year were excluded. (2) In the past, new graduates earned around NT\$25,000 per month, but after the government introduced this program, graduates saw their salaries drop. (3) For companies, it cost nothing to hire the interns who are still enrolled in schools, and many of the interns were being used as cheap labor. (4) There had been no improvement in the unemployment rate since the program’s start. These points were admittedly Lu’s standpoint and not an academic analysis; but it reflected concerns that some people had about this program.

- (10) The poverty line and anti-poverty strategy: Response to ¶ 19 (p. 13) of the State Report

According to a 2002 Control Yuan investigation report on the country’s social welfare system, “A critical task for social assistance is deciding the target and determining the range of assistance by setting a poverty line.” Regarding the low numbers of low-income households and individuals between 1991 and 2000, the report questioned whether the country’s poverty line actually reflected poverty and minimum living costs. At the same time, “social assistance measures are considered a transitional

⁷⁵ Hung Ching-shu, 2011, “Who are the Working Poor?” (Chinese), Research Center for the Working Poor, <https://sites.google.com/site/povertyknowledge/guan-yu-gong-zuo-pin-qiong/ren-shi-gong-zuo-pin-qiong>

⁷⁶ Legislative Yuan Bulletin 98: 53, 256-257. (Chinese)

welfare system. In addition to providing living assistance, its biggest significance lies in proposing programs against poverty. Yet the government hasn't been able to propose vigorous anti-poverty programs and related services and measures." The report also predicts that poverty problems related to single parents and new immigrants will increase over time. If government agencies don't actively respond to and resolve these problems, but just carry out individual client assessment, it will result in a generational poverty problem that is difficult to solve.⁷⁷

(11) Widening income gaps and weakened social welfare: Response to ¶ 20 (p. 14) of the State Report

The rich-poor gap and the weak social welfare system are two major concerns. As Huang Song-lih, one of the board directors of Covenants Watch, wrote in a response to the publication of the Chinese edition of the State Report: "The ratio between the top and bottom 5% of domestic households income has rocketed in 12 years from 33-fold to 93-fold. Tax reform has been slow, and income from taxation is not sufficient to cover social services. Social welfare budgets appear to be increasing, but the content of the services is shrinking. The system of social workers cannot bear the burden, and this has affected the quality of care. The government's care of its own employees versus laborers is clearly discriminatory. The Constitutional Court has ruled the practice of locking health insurance cards (of those who couldn't pay the premium) unconstitutional, yet this practice continues. All of this has led to more than 20 cases so far this year of collective family suicide. Ever more people are living on the edges of poverty, with no door to help, and only dark prospects for the future."⁷⁸

Taking social welfare spending in 2011 as an example, the League of Welfare Organizations for the Disabled says: "In 2011, the total budget for social welfare spending was NT\$346.89 billion, up NT\$22.16 billion from 2010. However, looking at the content of the expenditure, we discover that the main reason was the rise in health insurance rates. The government had to allocate NT\$15.9 billion to make up the balance in health care fees for people earning under a certain amount, accounting for 71.7% of this year's rise in spending. The actual increase in social benefits and services for vulnerable citizens was very little. The budget allocation is not keeping up with the needs of the disabled and elderly. Funding for households with persons with disabilities and community services were slashed by 60%; training and services for women were cut by a quarter; and child protection and mentoring was eliminated."⁷⁹

⁷⁷ Control Yuan, 2002, "Investigation of our Country's Social Welfare System," (Chinese) <http://www.cy.gov.tw/lp.asp?ctNode=1662&CtUnit=416>. Last accessed on Jan. 21, 2012.

⁷⁸ Huang Song-lih 2012, "The 93-fold Rich-Poor Gap: In the Human Rights Report?" *Liberty Times*, 22 April 2012, <http://www.libertytimes.com.tw/2012/new/apr/22/today-o3.htm> (in Chinese). Last accessed on 1 May 2012.

⁷⁹ The League of Welfare Organizations for the Disabled, 2010, "The ROC Centennial, Mourning for Social Welfare: Press release on a critique of the 2011 central government budget for social welfare," Coolloud.org: <http://www.coolloud.org.tw/node/55571>. Last accessed on 1 May 2012.

As for social workers, the Modern Women's Foundation reported in 2011: "Since domestic violence centers were established in the city and county level, the turnover rate for social workers has been high. ... With the structure of low salaries for social workers, more than 70% of social workers are either contracted or temporary, with even lower salaries. Under this high-stress, low-income structure, the rights of social workers who provide protective services are sacrificed. Add to this the fact that protective service social workers deal with unstable schedules and threats to their own safety, the result is that social workers at city and county domestic violence centers have been leaving for other options."⁸⁰

Compared with the inadequacies of social welfare, the generous benefits for civil servants seem even more out of proportion. According to the 2002 Control Yuan report: "The total social welfare spending for the entire population was just twice as much as spending on pensions for military, civil servants and teachers. ... The ratio between spending on pensions for these groups versus spending on social welfare is clearly too high."⁸¹

(12) Rights of teachers: Response to ¶ 32 (p. 25) of the State Report

Since the birth rate has fallen, the number of students is gradually falling and some schools have cut teaching staff. The aforementioned phenomenon is leading to a great number of teachers unable to find work. According the Ministry of Education's 2010 annual report on teacher and training statistics, there are currently 60,000 teachers in this situation. At the same time, when some schools do need to hire teachers, they don't hire them formally but use substitute teachers instead. This non-typical arrangement does admittedly lower costs for schools, but it also means worse working conditions for some teachers. There is a similar phenomenon at universities. The Higher Education Union says although adjunct professors at universities "teach the same 10 credits per week as full-time professors as well as carrying out research, adjunct professors' average monthly pay is less than minimum wage (NT\$630 per hour times 10 credits times 36 weeks divided by 12 months = a monthly income of NT\$18,900.) That is a serious discrepancy in pay for the same work that full-time professors do."⁸²

⁸⁰ Modern Women's Foundation, 2011, "Who cares about social workers' death from overwork?" <http://tw.myblog.yahoo.com/mwf38mwf38/article?mid=1034&sc=1> (in Chinese).

⁸¹ Control Yuan, 2002, "Investigation of our Country's Social Welfare System" (Chinese), <http://www.cy.gov.tw/lp.asp?ctNode=1662&CtUnit=416>. Last accessed on 21 January 2012.

⁸² Chien Li-hsin, 2012, "Critics target poor working conditions for teachers on May 1st," *Want Daily*, 2 May 2012 (in Chinese): <http://news.chinatimes.com/focus/501011061/112012050200213.html>. Last accessed on 5 May 2012. Note that adjunct professors are not on the full-time payroll of the university, but are paid per course taught.

In addition to the general limitations on workers' rights, the right of teachers to form unions is particularly suppressed. The National Federation of Teachers Unions says: "After the government passed the ICCPR and ICESCR, it removed the ban on teachers forming unions. But the Labor Union Act still restricts teachers from organizing corporate unions. Unless the Labor Union Act is amended, teachers unions won't have full rights."

(13) Underdevelopment of labor unions: Response to ¶ 35 (p. 28) of the State Report

According to Table 20 of the State Report, total union membership in Taiwan is 3,321,969 people. Of these, corporate unions have 529,685 members, industry unions 34,785 members, and craft unions 2,757,499 members. As defined in the Labor Union Act, corporate unions are "a labor union organized by employees of the same factory or workplace, of the same business entity, of enterprises with controlling and subordinate relationship between each other in accordance with the Company Act, or of a financial holding company and its subsidiaries in accordance with the Financial Holding Company Act." For this reason, this kind of union is in the best position to directly help workers at the same workplace to secure agreements with their employers. Yet company unions make up just 16% of union memberships. This is connected to the KMT government's mistrust of union activity. For example, the Labor Union Act says, "A labor union shall be organized by the signatures of no less than thirty workers." And until 2010, the Labor Union Act didn't have a regulation requiring labors to join unions.⁸³ (For more on the reasons that Taiwanese workers join unions and the factors that have prevented unions from developing smoothly, please see the discussion of Article 8 of the ICESCR in the Shadow Report.)

(14) Lack of a comprehensive plan for social spending: Response to ¶ 36 (p. 29) of the State Report

In 2007, Taiwan's government social spending was 9.6% of GDP. That's lower than the median of 20% among OECD countries. Of the 34 OECD countries, only South Korea and Mexico were lower. The social insurance system primarily consists of social security for the elderly and health insurance. In terms of social security for the elderly, benefits for civil servants are much higher than for other people, which creates discrimination. At the same time, in late 2011, the legislature passed a comprehensive raise in allowances for elderly farmers, adding NT\$1,000 per month. While this improves their livelihoods, it was proposed and passed very close to the 2012 legislative and presidential elections. It may have reflected the campaign strategies more than a thorough examination of needs in social security. It may also

⁸³ For the historical development of union movement in Taiwan, please see an article titled "The history of Taiwan Confederation of Trade Unions." (Annex 2, p. 64)

displace other expenditure in the budget, preventing other pressing needs from being met.

As for health insurance, there is currently a practice of “locking” individuals’ insurance cards. People who can’t afford to pay the health insurance premium are thus unable to use their cards, preventing them from accessing health services. This pushes impoverished people into an even worse situation. Moreover, although the Bureau of National Health Insurance says it is running at a loss, some local governments are holding onto huge debts in insurance fees owed to the agency. According to the bureau’s 2009 statistics, Taipei City owes NT\$29.2 billion in health insurance fees, primarily accumulated during President Ma Ying-jeou’s tenure as the Mayor of Taipei City. Kaohsiung City owes NT\$16 billion, and the other cities and counties owe a total of NT\$8.7 billion. In total, local governments owe NT\$53.9 billion.⁸⁴ Taipei City’s public finances are the most generous in the country. It does not make sense for it not to pay its health insurance fees. As it stands, local governments are agreeing to pay back the fees through multi-year payment plans.

- (15) Sustainable growth still not a clearly defined goal of the state: Response to ¶ 37 (p. 29) of the State Report

A recent report by the UN once again reminded the world that the current thinking about development in terms of GDP or GNP is biased.⁸⁵ All governments should pursue sustainable growth and not simply economic growth. If sustainable growth is to be achieved, foodstuffs, energy, water, and other environmental resources must be taken into consideration. The government must also pay attention to fairness, and advance the participation of women, youth, and vulnerable groups in the economy. However, in Taiwan most of the government’s economic policies have GDP as the primary goal — to the point of pursuing controversial policies including excessive science parks, the Kuokuang chemical factory, and Formosa Plastics’ No. 6 naphtha cracker petrochemical plant. For example, even the head of the Environmental Protection Administration has recently commented that, although, the petrochemical industry does impair the public’s life expectancy, one has to take into account what GDP growth can add to life (expectancy).⁸⁶ This shows that not only economic officials but even environmental authorities think this way. The government’s main policies have no concept of “sustainable growth.”

⁸⁴ Legislative Yuan Bulletin Department, Third Session of the Seventh Legislature, Social Welfare and Environmental Hygiene Committee, Second Committee Meeting, “Legislative Yuan Bulletins,” 98:10, 235 (in Chinese).

⁸⁵ United Nations, 2012: http://www.un.org/gsp/sites/default/files/attachments/GSP_Report_web_final.pdf.

⁸⁶ Executive Yuan, Environmental Protection Administration, Minister’s Office, 2012. “A response to the Coulloud and the Environmental News Center Forum titled ‘Factory No. 6, Ten Years: Do People in Yunlin Live Longer? Chen Shih-hung’s Faulty Logic’” http://ivy5.epa.gov.tw/enews/fact_Newsdetail.asp?inputtime=0991201145507 (in Chinese).

(16) Rapidly rising government debt: Response to ¶ 38 (p. 30) of the State Report

The central government is in debt to the tune of NT\$4.6 trillion, but the government's total debts also include the NT\$0.6 trillion owed by local governments, bringing the total to NT\$5.2 trillion, or 39.2% of the country's average GDP over the past three years. The tax burden rate (total tax as percentage of GDP) is just 12%, so the national debt is actually three times the government's annual tax revenues. According to the Budget Center of the Legislative Yuan, there are also NT\$8.9 trillion in hidden debts, meaning Taiwan's public finances are already in a crisis. All kinds of public services depend on taxation; yet Taiwan's tax revenues as a proportion of GDP were 17.4% in 1991, gradually falling to a low point of 11.9% in 2002. Since then, the level has remained between 12 and 13% — much lower than the average of 27.5% among OECD countries.⁸⁷ Of Taiwan's income taxation, 75% comes from salary and wage earners, illustrating that taxes on capital gains are extremely low. The government encourages investment by cutting taxes, and has even lowered the inheritance tax to attract back capital from abroad, making taxes on profits incredibly low. In 2012, the Minister of Finance proposed a capital gains tax on stocks, but the policy was messy, and there was a lack of communication, preventing it from winning support in the legislature. The government also failed to use this opportunity to make clear the plight of public finances. In the end, the Minister of Finance resigned, demonstrating the government's lack of determination and capability in tax reform.⁸⁸

B. Report on Taiwan's Constitution, Politics and Legal Framework

(17) The constitution and the presidency: Response to ¶ 39 (p. 31) of the State Report

In 1949, the Chinese Communist Party won the Chinese Civil War. The KMT retreated to Taiwan and took with it the system of constitutional government that it had instituted on the mainland. Taiwan's current Constitution is still based on the Constitution that was drawn up in 1947 in Mainland China. However, during the period of "National Mobilization for Suppression of the Communist Rebellion," the Constitution was suspended by the "Temporary Provisions, rather than actually implemented, and elections to the National Assembly and Legislative Yuan were also suspended. After the first legislative elections in Mainland China in 1947, the next full legislative elections were not held until 1992. Likewise, the first-term members of the National Assembly — which was charged with amending the Constitution and electing the president — served from 1948 to 1991.

⁸⁷ Lin Wan-i, 2008, "Taiwan's Rich-Poor Gap and Social Insurance", *Intellectual Reflection and Dialog*, China Times Educational Society (in Chinese).

⁸⁸ "China Times: Capital gains tax plan goes awry," 30 May 2012 (Editorial abstract by the Central News Agency): http://focustaiwan.tw/ShowNews/WebNews_Detail.aspx?ID=201205300008&Type=aOPN.

In the executive branch, Chiang Kai-shek was the first president elected after the Constitution was implemented in 1948. Apart from briefly stepping down in 1949, he served five consecutive terms until he passed away in 1975. Under the Constitution, a person cannot serve more than two terms as president; but Chiang was able to do so under the “Temporary Provisions” for the period of communist rebellion. Nor, under the one-party system, was there enough resistance to challenge Chiang. After Chiang, his son Chiang Ching-kuo served the sixth and seventh presidential terms. Chiang Ching-kuo had previously served as leader of the country’s Intelligence Agency. He passed away in 1988 while still president, and his vice president Lee Teng-hui took his place. Lee was then elected in 1990 by the National Assembly to serve the country’s eighth presidential term. In 1996, he became the first president elected through direct election by the public. Taiwan finally entered its period of democratization, pulling away from the Chiang family’s rule. As of 2012, Taiwan has held five direct presidential elections, and the political party in power has switched twice.

- (18) Executive Yuan reform does not include establishing a permanent human rights body: Response to ¶ 39 and ¶ 40 (p. 31) of the State Report

In an effort to reform the Executive Yuan, the branch is undergoing a process to merge certain agencies. Yet the executive branch continues to lack a permanent agency for handling human rights matters. There needs to be an authorization mechanism so that the specialized agency has adequate power to: (1) Instruct government agencies to cooperate by providing information for examination; (2) Instruct agencies to produce special investigative reports; (3) Ask agencies to cooperate with expert committee investigations; (4) Have independent funding and staff. These functions are crucial to setting up a national human rights system. The current Executive Yuan’s human rights task force isn’t a permanent agency, doesn’t have dedicated staff, and its legal status is unclear. Although the Control Yuan has the function of supervising the Executive Yuan’s various agencies, has investigative powers over the agencies and government employees, and has created a Human Rights Protection Committee. The Control Yuan mainly exercise its functions by investigation and censuring the misconducts of government employees, but its function in protecting human rights has rarely been significant.

- (19) The Human Rights Advisory Committee under the Office of the President: Response to ¶ 50 (p. 34) of the State Report

The Human Rights Advisory Committee under the Office of the President is an advisory body within the Presidential Office, and does not comply with the Paris Principles regarding national human rights institutions. Moreover, though the Advisory Committee was first established under President Chen Shui-bian, it was later disbanded by the KMT majority in the legislature for partisan political reasons, before being reestablished by President Ma Ying-jeou. It is therefore still necessary

to create a national human rights agency that is established by the law and will offer stable, long-term protection for human rights. This agency should comply with the spirit of the Paris Principles.

(20) The Central Election Commission: Response to ¶ 51 (p. 34) of the State Report

Before the Organization Act for the Central Election Commission was passed in 2009, the commission had already existed for 29 years in the absence of a law to govern the agency and its structure. During the law's passage, however, a major controversy arose. The version of the law proposed by the KMT required that the commission's members be appointed according to the proportion of seats in the legislature occupied by each political party. Appointing committee members in this way would have seriously impaired this agency's neutrality. In the end, the version that passed did not include this provision, but the controversy delayed the law's passage for a long time.

(21) Presidential elections unfair for independent candidates: Response to ¶ 52 (p. 35) of the State Report

Under regulations that set a high threshold of signatures for presidential candidacy, it is extremely difficult for small parties and independent candidates to participate. Collecting signatures, the number of which must exceed 1.5% of the total electors in the latest election of the members of the Legislative Yuan, takes a lot of manpower and resources, and restricts small parties and independent candidates from participating in politics.⁸⁹ For the 2012 presidential election, the threshold was 258,000 voters. Presidential candidates must also put down a deposit of NT\$15 million, which the candidate forfeits if he or she fails to win 5% of the vote.⁹⁰ On the other hand, if a candidate wins more than one-third of the vote, he or she gets an election stipend of NT\$30 per vote. Candidates from major parties have a clear advantage under this system.

(22) High thresholds for candidates in legislative elections: Response to ¶ 53 (p. 35) of the State Report

The threshold is also a problem in legislative elections. Candidates for the legislature must put down a NT\$200,000 deposit. Unless they have backing from businesses, this is a huge burden for small party and independent candidates. For big parties or candidates backed by companies, however, this is not a significant problem.

⁸⁹ Article 23, Presidential and Vice Presidential Election and Recall Act, 2009.

⁹⁰ Ibid, Article 31.

Aside from this, subsidies for political parties increase the gap in strength between the big and small parties. Under the Civil Servants Election and Recall Act (as amended in 2011), a political party must get more than 5% of the party vote in a legislative election in order to qualify for the political party subsidy of NT\$50 per vote. Following the 2012 combined legislative and presidential elections, the KMT and the DPP will get annual subsidies of NT\$27 billion and NT\$18 billion, respectively, over the next four years. Political parties that won less than 5% — for example the New Party and the Green Party — will not receive any subsidies. By subsidizing major parties but not small parties, the government makes it difficult for fledgling parties to develop, which also makes it hard for new topics and concepts to gain attention.

(23) Local factions and politics: Response to ¶ 54 (p. 36) of the State Report

During the authoritarian period, the KMT established a patronage relationship with local factions. With each successive election, the local factions grew stronger. After Taiwan's democratization, these factions didn't disappear, though some of them shifted political allegiance. In many places, the factions still dominate local politics through long-established personal networks. These factions are also linked to the financial system. The local financial structures that were set up under the one-party system — Farmers' Associations and Credit Cooperatives — are largely controlled by faction members. In other words, these factions control the local social and financial capital at the same time. (Please see Figure 2, p. 61, for the relationship between KMT and local factions)

The existence of such personal networks isn't necessarily negative, of course. The problem is the potential to use their influence to seek inappropriate personal gain — for example, by manipulating land use. Politicians influence land policies and city planning, financial structures provide capital, and construction companies run by local factions carry out the projects — in this way they jointly benefit.⁹¹ This system of operating has led to corrupt land seizures, urban renewal projects, and public construction.

(24) Local councils deficient in openness of information: Response to ¶ 55 and ¶ 59 (pp. 36 and 38) of the State Report

Currently, there are major differences in the degree of openness of information at local city and county councils. This makes it impossible for many voters to demand adequate accountability of local elected bodies. Inadequate accountability can affect the function of these councils. Moreover, vote-buying is even more common in local elections, as illustrated in Table 25 of the State Report. This undoubtedly influences the operation of democratic politics at the local level.

⁹¹ Chen Tung-sheng, 1995, *The City of Corporate Influence: A Sociological Analysis of Local Factions, Corporations and Taipei Urban Development*, Taipei: Chuliu Publishers (in Chinese).

In non-urban areas, the personal networks become a route for vote-buying. Documents published by the Examination Yuan discuss the traditional method of buying votes: The candidates, “through their faction, Farmers’ Association, Fishermen’s Association, or Irrigation Association, pass cash to voters one by one, from top to bottom, and on the day of the election, the lowest-level campaigners follow up votes from each person who has accepted a bribe.”⁹² Today, this traditional method has changed somewhat. To avoid coming under criminal investigation, cash for votes has mostly been replaced with gifts, services, and other options. Sometimes politicians bribe voters with government resources.⁹³ Such methods are employed for both local and national elections. Of the 113 lawmakers of the country’s seventh Legislative Yuan members, five have already lost their seats because of election fraud.⁹⁴

(25) Many inactive political parties: Response to ¶ 56 (p. 36) of the State Report

Although there are a large number of political parties officially registered, the vast majority of them have never truly participated in politics. The current electoral system is also adverse to small parties, making it hard for them to be active.

(26) Local factions and politics: Response to ¶ 65 (p. 42) of the State Report

On 14 January 2012, Taiwan’s legislative and presidential elections were held in conjunction for the first time, as part of a gradual consolidation of Taiwan’s electoral calendar, and reflecting the constitutional amendment in 2005 that changed the Legislative Yuan term from three years to four years. According to past practice, the legislative election would have been in December 2011 and the presidential election in March 2012. In April 2011, the Central Election Commission decided the elections would be held together. The extension in the time between the election and the presidential inauguration became a point of contention (the election was held in January but the inauguration was still held in May). The specific date chosen in January also caused a controversy by suppressing the right to vote for some voters (the earlier date excluded some voters who would have been old enough to vote in March), as well as falling in the week of university final exams, deterring college students from voting. Moreover, the Central Election Commission only decided to

⁹² Examination Yuan, 2011, “Traditional methods of vote-buying,” *The Examination Yuan: A Garden for Honest Politics*, <http://www.exam.gov.tw/cp.asp?xItem=3373&ctNode=517&mp=1> (in Chinese). Last accessed on 19 February 2012.

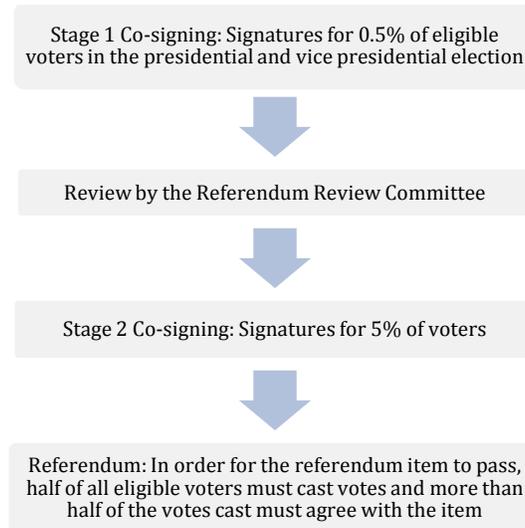
⁹³ Huang Chui-chuan, 2010, “How to prevent interference of elections by money and violence”, in “2010 Supplementary teaching materials for farming and irrigation associations.” <http://www.exam.gov.tw/cp.asp?xItem=3373&ctNode=517&mp=1> (in Chinese). Last accessed on 19 February 2012.

⁹⁴ Four were KMT legislators and one belonged to the People First Party.

hold the 13th presidential and 8th legislative elections on the same day. No firm decision has been made whether future elections will also be held in conjunction. This practice of changing the election date for a single election is rather dubious.

(27) High thresholds for citizen-initiated referendums: Response to ¶ 66 (p. 43) of the State Report

The requirements for a referendum is very high in Taiwan, attracting criticism that it is designed to prevent one.⁹⁵



Referendums must pass two signing stages, plus review by the Referendum Review Committee. Looking at the 2012 presidential election, in which there were 18,086,455 eligible voters, the first petition threshold for a national referendum was 90,000 signatures. In other words, only after collecting the signatures of 90,000 people would one qualify to send the referendum proposal to the review committee. For civic groups, collecting 90,000 signatures takes a fair amount of resources.

The threshold for the second-stage petition is 5% of eligible voters. Based on the 2012 election, for example, that would mean more than 900,000 people. Moreover, the Referendum Act states that more than half of the eligible voting population must participate in a referendum. Table 32 in the government’s Core Document shows that the results of six national referendums have been negative because “less than half of eligible voters cast votes” In other words, no proposal for a national referendum has ever met the conditions in the Referendum Act, even though in all six cases a majority of voters who cast their votes supported the measure. Precisely for this

⁹⁵ Translator’s note: In Taiwan, a generic term is used which literally means “popular vote.” This is usually translated as “referendum,” but to be precise it in fact includes referendums, initiatives, and plebiscites. The issues raised in this section, as well as the related section of the State Report, only apply to initiatives, i.e. measures put on the ballot directly by citizens.

reason, the current act has been criticized as having a threshold that is too high and therefore prevents the public from truly exercising its will.

In addition, there has been considerable controversy about the role of the Referendum Review Committee. In one high-profile case, in 2010, the Taiwan Solidarity Union sponsored a proposal for a referendum on the Economic Cooperation Framework Agreement (ECFA) with China. However, after the TSU successfully collected 110,000 signatures to pass the first threshold, the review committee rejected the proposal. The chair of the committee at the time, Chao Yung-mao said: “The proposer of this referendum opposes [the ECFA], yet is using a positive formulation of its proposition for the people to agree or disagree by a vote. Even if the vote passes, it won’t change the situation at all and the responsible agencies won’t need to take any action to change the situation. The proposed referendum therefore is not a decision concerning major policy as required by Article 2, Clause 2:3 of the Referendum Act.”⁹⁶ Yet Article 34 of the Referendum Act states that “The Executive Yuan shall create a national referendum review committee to review the following matters: 1. To determine the matters subject to national referendum. 2. To determine whether a proposal of national referendum is raised for the same matter as prescribed in Article 33” (which prescribes that after a referendum has been voted on, no more proposals may be raised for the same matter within 3 years). It is doubtful that the review committee’s reason for rejecting the proposal fits this Article.

Thus, a dispute arose over whether the committee was within its authority. The academic group *Taipei Society* said: “The Referendum Review Committee has its own reasons and position. But what exactly is the scope of the committee’s authority? Is it a procedural review or a substantive review? Can it act as a gatekeeper based on any article in the Referendum Act or can it reject proposals based only on specific articles? The limits of its authority are not at all clear, causing a dispute. It is likely that there will only be more disputes.”⁹⁷ If the conditions for committee review aren’t clear enough, without doubt it will affect the public’s right to propose referendums.

(28) Local referendums: Response to ¶ 68 (p. 46) of the State Report

Local referenda fall under the authority of the local governments. However, academic Huang Kuo-chang says: “In addition to not following the autonomous regulations of the Referendum Act, there are even some county and city governments that haven’t even set up a referendum review committee. This means local cities and counties

⁹⁶ Lu Hsin-hui, 2010, “12:4 Review committee rejects TSU’s ECFA referendum” (Chinese), Central News Agency, 3 June 2010, http://news.rti.org.tw/index_newsContent.aspx?nid=245193. Last accessed on 19 February 2012.

⁹⁷ Taipei Society, 2010. “Taipei Society open letter to the Referendum Review Committee,” <http://www.taipeisociety.org/node/250> (in Chinese). Last accessed on 8 May 2012.

can't adopt direct, democratic propositions by holding a vote according to the referendum procedural law.”⁹⁸ Most local governments have not corrected the situation since the adoption of the ICCPR and ICESCR.

The State Report mentions the referendum on whether Penghu County wanted an international resort area with casinos — which the public called the “gambling referendum.”⁹⁹ Under the Criminal Code, gambling is illegal. But Article 10, Clause 2 of the Regulations for Construction on Outlying Islands states that “specially operated tourism casinos, as well as engaging in gambling, are not subject to the provisions in the Criminal Code that outlaw gambling.”

What was controversial was that Article 10, Clause 2 of the Regulations also set different standards for referendums on outlying islands: “Opening the outlying islands to tourist casinos should first pass a local referendum in accordance with the Referendum Act. More than half of the referendum votes must agree [with the proposition]; the number of voters is not subject to the rule that more than half of all eligible voters in a city or county [must cast ballots].” In other words, when deciding whether the outlying islands should build casinos, the standard is no longer more than one half of all eligible voters. Yet if one wanted to hold a referendum on the outlying islands about a topic other than casinos, the threshold of more than one half of all eligible voters would still apply. The conditions for the casino referendum were laxer than for any other referendum, and so this law became known as “the gambling clause.”

According to the data in Tables 32 and 34 of the State Report, the Penghu referendum on gambling is the only referendum that has ever failed because the opposing votes were more than half. All the other national and local referenda have been thrown out because not enough people had cast votes. But the Penghu referendum was held based on special regulations drawn up to open a gambling industry. In terms of civil and political rights, this can hardly be considered an achievement.

(29) Limits on freedom of expression: Response to ¶ 69 (p. 46) of the State Report

Assemblies and demonstrations are an essential aspect of freedom of expression.

However, in Taiwan, a permit is needed before assembling and demonstrating, and the police authority in charge of handling applications for assembly and demonstration can reject an application, including on the basis of the gathering's

⁹⁸ Tu Chu-min, 2011. Legal experts say overly restrictive Referendum Act violates UN covenants,” Covenants Watch, <http://covenants-watch.blogspot.com/2011/10/2.html> (in Chinese). Last accessed on 8 May 2012.

⁹⁹ Translator's note: This was an actual referendum, and not a citizens' initiative, since the law specifically requires proposals for casino developments to be approved by local residents via referendum, as described below.

goal and subject. The police may forcefully break up any assembly that has not applied for a permit. The Assembly and Parade Act therefore restricts free speech.

In Miaoli County, police precinct chief Wu Mei-hua showed flexibility in responding to a demonstration, and did not forcefully break it up, because there were only five or six demonstrators who were all around the age of 70. In terms of protecting human rights, this was an appropriate course of action. However, Wu is believed to have been removed from her position as a result by Miaoli County Government under Commissioner Liu Cheng-hung. This case illustrates that even if an individual official has a relatively good concept of human rights and takes appropriate actions, he or she risks being punished for doing so. This is a serious obstacle to making progress on human rights in Taiwan.¹⁰⁰

- (30) The media environment and disputes surrounding the National Communications Commission: Response to ¶ 70-76 (pp. 46-48) of the State Report

Due to many late-breaking developments in this area, please see discussion of Article 19 of ICCPR in the Shadow Report.

- (31) Limitations on freedom of association: Response to ¶ 77 (p. 48) of the State Report

The Civil Associations Act, the Assembly and Parade Act and the National Security Act are known together as “the three national security laws.” During martial law, assembly, demonstration, and civic groups were all controlled by the government. But once martial law was lifted in 1987, the government could no longer cite the regulations that had been in place under martial law to control the public’s assemblies and creation of groups. It therefore passed these three national security laws to ensure control.

The current regulations for establishing a regular civic group are even stricter than those for establishing a political party. Establishing a political party only requires registration. Forming other kinds of civic groups requires a permit from the authorities. There are also restrictions on the number of founding members and their qualifications, and maximum limits on the number of people on the board of directors and the supervisory board, as well as how long they can serve. If the organization violates its charter, the authorities may impose a punishment. Punishments include forcefully disbanding the organization, removing persons from elected positions in the organization, or imposing administrative and financial measures against staff members. This puts the independently decided affairs of many

¹⁰⁰ Lee Hsin-hung, et al. “Called for by Liu Cheng-hung: Female precinct chief in Miaoli removed,” *Liberty Times*, <http://www.libertytimes.com.tw/2012/new/feb/18/today-so3.htm> (in Chinese). Last accessed on 8 May 2012.

civic groups under the government's jurisdiction. Though the Civic Associations Act was amended after the ICCPR and ICESCR were adopted, the only changes were to lift the provision barring civic groups from advocating communism or splitting the national territory. The problems mentioned here were not amended.

(32) Disputes surrounding the Legal Aid Foundation: Response to ¶ 87 (pp. 54) of the State Report

The Legal Aid Foundation has undoubtedly helped many vulnerable people. Yet some legislators have questioned the foundation's function and said it turns down too many cases, thereby reducing its help for the vulnerable. The foundation has responded by saying that it handles cases according to the law.¹⁰¹

(33) Extension of detention periods: Response to ¶ 89 (p. 56) of the State Report

In April 2012 the Executive Yuan passed a draft amendment to the Code of Criminal Procedure, in order to bring the code in line with the ICCPR. This amendment, however, has not yet been adopted by the Legislative Yuan.

The key points for amendment included the fact that current regulations for detention in cases of serious crimes and detention for preventative purposes were not sufficiently clear. Under the current system, the standards for detention are not at all clear. For this reason, the draft would stipulate that: "prosecutors must appear in person and state the factual basis for the reasons for detention and present the necessary evidence," to address some shortfalls under the current system.

The draft would also stipulate: "If detention is revoked, the defendant shall be released; detention may not continue because the defendant is unable to post bail, cannot be placed in the custody of another person, or cannot be placed under residential restrictions."

Under Article 108 of the current Code of Criminal Procedure: "If detention is revoked, before the defendant is released, the prosecutor may during the investigation stage ask the court to set bail or place the defendant in the custody of another person or under residential restrictions. If the court says it cannot set bail or place the defendant in the custody of another or under residential restrictions, if necessary, the prosecutor may append specific reasons and ask the court to continue detention after the interrogation based on Article 101 or Article 101 (1)." In other words, under the current system, a person whose detention has been revoked can continue to be detained.

¹⁰¹ Central News Agency, 2012. "Legal Aid turning down lots of cases, Legal Aid says it's the law," *United Daily News* website: <http://udn.com/NEWS/SOCIETY/SOC7/7031072.shtml> (in Chinese). Last accessed on 8 May 2012.

(34) The death penalty: Response to ¶ 91 (p. 56) of the State Report

From 2006 to 2009, Taiwan maintained a moratorium on executions. In 2010, Minister of Justice Wang Ching-feng announced that she wasn't willing to carry out executions. This sparked a strong public backlash. Legislator Wu Yu-sheng then questioned in a legislative session why the 44 people on death row were not being executed. Wu said: "We have to talk about political conscience. Otherwise it's the good people who will be wronged and the evil people who will laugh."¹⁰² Legislators across party lines were unanimous in criticizing Wang. On the Central Standing Committee of the ruling KMT, committee member Huang Chao-shun (who became the KMT's candidate for Mayor of Kaoshiung later that year) also expressed strong criticism.¹⁰³ Under such pressure, Wang stepped down, and Tseng Yung-fu became the new Minister. On 30 April 2010, he signed a group of execution orders. Looking at the course of events, restarting executions in Taiwan was to some extent politically motivated.

Because of the intense controversy, the Ministry of Justice held four public hearings on the death penalty. It hoped to take public opinion into consideration in deciding this policy. However, the hearings had barely ended on 28 April when the ministry restarted executions on 30 April. The public hearings do not seem to have factored into the government's policy. Admittedly, based on Ministry of Justice surveys, there is high public support for the death penalty in Taiwan. However, support for replacing the death penalty with life in prison without parole is also more than 50%.¹⁰⁴ This shows that there is the potential to discuss abolition. But the government simply replaced Wang Ching-feng and restarted executions, and hasn't made an effort to promote life in prison rather than capital punishment and win over public opinion. If the public understood that there was an alternative, the resistance to abolishing the death penalty would undoubtedly fall. But from President Ma Ying-jeou to Minister Tseng, the government has only said that abolition is its "ultimate goal," and hasn't put any emphasis on explaining alternatives or educating the public about them.¹⁰⁵ Additionally, the Ministry of Justice insists that executions do not violate Article 6 of the ICCPR. But Taiwan hadn't executed anyone in four years, and the government had publicly proposed a policy of "gradually abolishing the death penalty." It had also said that abolition was its ultimate goal. Thus, the resumption of executions in fact violates the spirit of Article 6, Clause 6, which says "Nothing in this article shall be invoked to delay or to prevent the abolition of capital

¹⁰² Legislative Yuan Bulletin Department, 2010. "Legislative Yuan Bulletins", 99, 9: 359 (in Chinese).

¹⁰³ Peng Hsein-chun, et al., 2010. "Sharp criticism from Central Standing Committee, Presidential Office stays quiet," *United Daily News*, 23 March 2010, page A3 (in Chinese).

¹⁰⁴ An Chi-hsien, 2010. "Ministry of Justice releases opinion poll, opinion divided on whether to keep death penalty," CTS online news: <http://news.cts.com.tw/cna/society/201002/201002010402072.html> (in Chinese). Last accessed on 8 May 2012.

¹⁰⁵ Yan Ming-chiang, et al., 2012. "Ma admits government violating human rights," *Apple Daily*, <http://www.appledaily.com.tw/appledaily/article/headline/20120421/34175339> (in Chinese).

punishment by any State Party to the present Covenant.” It also violates the UN Human Rights Committee’s General Comment No. 6, which says “The article also refers generally to abolition in terms which strongly suggest (paras. 2 (2) and (6)) that abolition is desirable.” On these points, the Ministry of Justice has not offered any answer of substance. The government’s impassive attitude inhibits a proper public dialogue about the death penalty, and has led to serious backsliding on the death penalty issue.

(35) Adoption of other international human rights standards: Response to ¶ 97 (p. 58) of the State Report

There are still a number of international human rights conventions that Taiwan hasn’t signed. Although the matter of UN membership is unavoidable, there’s no reason that the government cannot use the same approach it has used for the ICCPR, ICESCR, and CEDAW — namely, passing “implementation acts” rather than depositing the ratifications with the United Nations. This would advance domestic human rights protections. In terms of banning torture and protecting children, persons with disabilities, and migrant workers and their families, Taiwan could inspect its domestic laws for deficiencies based on these conventions.

IX. Mechanisms for protecting human rights

In March 2009, the legislature ratified the ICESCR and the ICCPR (hereafter “the two covenants”) and at the same time passed the Act to Implement the Two Covenants (hereafter “the Implementation Act”). The president promulgated the Act in April, and in May signed the ratified covenants. The Act took effect on 10 December 2009, International Human Rights Day. From ratification to the Act’s implementation, the government’s preparation work was rushed. In the first and second years of implementation, there was some criticism from the public.^{106,107} This report will focus on what the government needs to do in this initial phase to lay the foundation for thorough implementation of the two covenants, such as the teams that the government should create to implement the covenants, along with their structure, division of labor, coordination, and efficiency. It is also vital to examine how the government has lived up to its promises in the Implementation Act. Important aspects include the timetable for reviewing legislation and enacting, amending, or repealing any laws incompatible with the two covenants (as set by Article 8 of the Implementation Act); the allocation of

¹⁰⁶ Peter Huang, 2010. “Taiwan’s Implementation of the Covenants: A Progress Report.” (Annex 3, p.68)

¹⁰⁷ Chen Chun-Hung, 2011. “Rhetoric or Reality: A Preliminary Report on Taiwan’s Implementation of the Covenants.” (Annex 4, p.73)

human rights budgets (Article 7 of the Act); and the related training government employees, which is closely linked to effective implementation.¹⁰⁸

1. As early as 1967, when the ROC was still a member of the UN, it signed the two covenants (as well as the First Optional Protocol to the ICCPR). But it didn't carry out the ratification procedures over the next four years. Then, in 1971, ROC lost its representation at the UN and pulled out of the international human rights system. For thirty years, without international participation and the international pressure and supervision it brings, the two covenants and the history of our country's early participation in the international human rights system lay forgotten by both the government and the public. In the late 1990s, domestic human rights organizations brought this circumstance to light, and under the pressure of their lobbying, in 2002 the government finally proposed to the legislature to ratify the covenants, and proposed an implementation act for it in 2007. Unfortunately, these efforts did not succeed. However, in 2009, the Ma government, with the same party in control of both the executive and legislative branches, was finally able to secure passage for the ratification together with the Implementation Act.
2. The ROC Constitution was established in 1947. It did not expressly stipulate the domestic effect of treaties and other international sources of law. Since the 1990s, the Constitution has been amended seven times, yet not a single amendment touched on the basic bill of rights, nor did the amendments add a mechanism to incorporate the international human rights laws into the Constitution. A 1995 ruling by the Council of Grand Justices (Constitutional Interpretation No. 329) mandates that all treaties for which the ratification process has been completed shall be considered directly binding within Taiwan. Based on this ruling, then the past treaties that our country has signed and ratified, regardless of whether our country was or was not a member of the UN at the time, should be considered legally binding as a matter of domestic law. These would include several important international human rights conventions — including the UN Charter, the ICCPR, the ICESCR, the International Convention on the Elimination of All Forms of Racial Discrimination, and CEDAW. Yet whether international conventions enjoy a semi-constitutional rank, or are considered ordinary laws, remains to be authoritatively decided. According to research by the academic Chang Wen-chen, as of 2007, the Council of Grand Justices had cited

¹⁰⁸ Excerpt from Covenants Watch, “2011 Review of the Government’s Implementation of the Two Covenants and their Implementation Act,” 9 December 2011, press release, Taipei (in Chinese).

international human rights conventions and related documents in seven rulings.¹⁰⁹ If the text of justices' citations and discussion of international human rights law in their individual opinions are also included, there are 16 instances. These largely fall into three types: 1) due process and the ICCPR; 2) the basic rights of children and the Convention on the Rights of the Child; and 3) the basic rights of workers and international labor conventions. But considering that whenever the Constitutional Court has cited international human rights law, it has always first cited our own Constitution, most justices are still rather hesitant about international human rights treaties or standards as a legal source.

3. Aside from rulings by the Constitutional Court, Article 4 of the Implementation Act stipulates that: "Whenever exercising their functions, all levels of governmental institutions and agencies should conform to human rights protection provisions in the two Covenants." Thus, concretely examining whether agencies at all levels are complying with the covenants should be central to judicial review by our courts at all levels. The human rights protections in the covenants should rank at least as high in our legal system as primary laws (i.e. clearly higher than other regulations, etc.). Consequently, whether the actions of government agencies (for example executive orders, punishments, and contracts) comply with the covenants should also factor into judicial review, and courts at all levels should have the jurisdiction for this.¹¹⁰
4. The following paragraphs discuss deficiencies in the government's preparations and implementation of the covenants since 2009, including deficiencies in training government employees, educating the public, amending laws, government structure, budget allocations, and establishing a national human rights commission.
5. Education and training of government employees is clearly still insufficient: For 2009 to 2011, the Ministry of Justice offered training for its employees. The instructors for the training courses were academics and lawyers from civil society.

¹⁰⁹ Chang Wen-chen, 2009. "The Constitution and International Human Rights: A Discussion of Implementing Constitutional Rulings in Taiwan," *Constitutional Rulings: Theory and Practice*, sixth compilation, edited by Liao Fu-te. Taipei, Academia Sinica, Institutum Iurisprudentiae Preparatory Office.

¹¹⁰ Chang Wen-chen, 2009. "International Human Rights Law and the ROC Constitution: After Taiwan's Implementation of the Two Main Human Rights Covenants," presented at "Taiwan Law Society 2009 Conference," Taiwan Law Society, 19 December 2009, Taipei (in Chinese).

The classes took the form of lectures, with many students in a class. The teaching materials used were academic articles that the lecturers had written themselves about the two covenants. There was very little real-life application. Some of the lecturers added illustrated presentations. According to a press release from the Ministry of Justice, 2,550 civil servants and teachers attended the six training sessions, and the series of six lessons was just 300 minutes in total. Compared with the total number of government employees, this number is truly very small. As for advanced training on the covenants and the necessary conditions and steps for this level of training, the government has not yet put forward any plans. Moreover, after more than two years, there has not yet been any evaluation of training outcomes.

6. The Ministry of Justice's "Step Forward to Human Rights" website is supposed to function as a site to promote the implementation of the covenants. It should act as a knowledge and information platform (for example, by introducing a number of UN human rights documents). But aside from including links to the General Comments related to the two covenants, the website doesn't take on the work of introducing or translating documents.
7. Article 8 of the Implementation Act clearly states: "All levels of governmental institutions and agencies should review laws, regulations, directions, and administrative measures within their functions according to the two Covenants. All laws, regulations, directions, and administrative measures incompatible to the two covenants should be amended within two years after the Act enters into force by new laws, law amendments, law abolitions and improved administrative measures." The deadline was 10 December 2011. After reviewing laws and executive measures for non-compliance, the Executive Yuan listed only 219 items that conflicted with the covenants. From 24 December 2010 to 18 May 2011, the Executive Yuan's "Task force on protection and promotion of human rights" held 21 review meetings, inviting human rights academics and experts to review the laws, decrees, and administrative measures in question, along with 44 laws, orders, and regulations that were submitted by civic groups. However, when we examine the final results, by the legal deadline draft revisions were finished for 14 laws, 8 orders, and 30 administrative measures that were in violation of the covenants. Another 80 laws, 38 orders, and two measures were yet to be revised as of December 2011]. The pace of review is clearly lagging behind, for which the executive and the legislature should bear joint responsibility. Since the government carried out its first wave of review, it has not continued the process.

And aside from the executive branch, the Legislative Yuan agencies have not been checking for laws or administrative measures that violate the covenants.

8. The Human Rights Advisory Committee under the Office of the President, created (in fact, re-established) on 10 October 2010, has 18 committee members: four government representatives (including the vice president, the vice premier, the Judicial Yuan vice president, and the Control Yuan vice president) and 14 non-governmental representatives from all spheres. The committee has the following functions, according to the points set out when it was established: (1) promoting and advising on human rights policy; (2) producing national human rights reports; (3) researching the international human rights system and legislation; (4) proposing international human rights exchanges; (5) advising the president on other human rights matters. The committee members are all non-full time staff (indeed, they all have full-time duties elsewhere). Moreover, lacking its own budget and manpower, the way the committee operates makes the above tasks difficult to achieve in practice.

9. According to information on the advisory committee's website, in addition to discussing the preparation of the State Reports under the two Covenants, in the meetings it held between 10 December 2010 and 30 June 2011, seven conclusions were adopted on the following topics: have been announced¹¹¹,
 - a. Some ethnic Chinese from the Philippines had difficulty obtaining Taiwanese national ID cards even though they hold ROC passports, becoming part of the "unregistered population," and when they entered Taiwan, they had to apply for entry permits. The committee's decided that this does not violate their human rights.
 - b. The committee considered whether the Amnesty Act violates the ICCPR Article 6(4), and decided that, since defendants have the opportunity to seek amnesty and death row inmates are not barred from seeking amnesty, there is no conflict with the ICCPR.
 - c. The Alliance for Protecting Indigenous Rights in Municipality Mergers expressed to the committee its concern that upgrading and merging several counties into a system of five municipalities would impact the rights of Indigenous peoples, and asked that the local systems be amended. The committee decided that, until the Indigenous Autonomy Act is passed and

¹¹¹ Website of the Presidential Office: <http://www.president.gov.tw/Default.aspx?tabid=1421>. Last visited on 1 August 2012.

provides a legal basis for autonomous Indigenous areas and a basis for handling autonomous Indigenous matters, the government should strengthen communication and guidance and actively push for the Act's passage.

- d. After 10 December 2011, the deadline set by Article 8 of the Implementation Act by which laws, orders, and measures that did not comply with the covenants were to be amended, the committee discussed the fact that (at the time of that meeting) 72 laws that violate the covenants had not not been amended. The committee responded to public demands that the committee members and each government agency actively consult with legislators across party lines to complete the amendment process as quickly as possible with the decision to urge the Executive Yuan to finish as quickly as possible the amendment of those for decrees that can be issued by the Executive Yuan or various ministries.
- e. The committee considered the situation of the elimination of the unit in charge of children and youth, the Child Welfare Bureau, in the 2012 draft law for restructuring of the Executive Yuan, and the draft law did not include any unit in charge of planning and implementing policy related to children and youth. In order to actively and effectively deal with affairs related to children's rights, and avoid impacting the rights of nearly 5 million children and youth, the committee urged the Executive Yuan to adjust the structure and create such a unit.
- f. Considering that the legislature has already passed the Act to Implement the CEDAW, the committee requested the legislature, the Judicial Yuan, the Examination Yuan, and the Control Yuan to create mechanisms for supervising the elimination of all forms of discrimination against women.
- g. The committee resolved to form a research and planning task force for the establishment of a national human rights institution, with the secretariat to be assigned by the Executive Yuan.

In addition, the committee considered a number of proposals from individual members, and assigned various relevant agencies to deliberate on the following: the shelter system for foreigners and persons from China, the progress on passing the Ethnic Equality Act, the scope of free speech for civil servants, amending the Civil Servant Disciplinary Act, national decrees and their implementation concerning people's property rights, the Mental Health Act procedures for handling forceful committal of persons with serious mental illnesses, and the rights of prison inmates.

- 10. In 2009, the 17th resolution of the Executive Yuan's human rights task force required 10 agencies under the Executive Yuan to create task forces for human rights work. In January 2011, under instruction from the Executive Yuan, the Ministry of Finance also created such a task force, making it the eleventh

executive agency to do so. These task forces do not have dedicated staff, and on the whole, have not shown the capacity to actively implement the two covenants.

11. According to Article 7 of the Implementation Act, “All levels of governmental institutions and agencies should prioritize allocating funds to implement human rights protection provisions in the two Covenants according to their financial status, and take steps to enforce.” The Directorate-General of Budget, Accounting and Statistics has summarized each department and commission’s human rights budget and created tables for 2010 and 2011 on national agencies’ budget allocations for implementing the covenants. But these tables show that there are no clear criteria for agencies to categorize their human rights budgets in response to the two covenants. For example, for the right to health in Article 12 of the ICESCR, the tables include the total budget of the Department of Health, plus total spending on the entire population’s health insurance — more than NT\$500 billion — meaning there is no way for the reader to know how the government defines “human rights budgets.” Unless agencies have clear standards, it is impossible to assess the content and purpose of such funding, much less whether it is adequate for the progressive realization of human rights goals.

12. As for establishing mechanisms to protect human rights, Covenants Watch suggests that in the long-term, a National Human Rights Commission is needed. The proposal to create a National Human Rights Commission can be traced back at least to 1997.¹¹² Yet neither the executive branch nor the legislature has adequately discussed this issue. As described above, the Presidential Human Rights Advisory Committee only in June 2012 proposed creating a task force for researching and planning a national human rights institution, and this task force has not yet made substantial progress.

13. Until a National Human Rights Commission is established, the following items should be completed in the short term: (1) Strengthen the policy implementing functions of the Executive Yuan’s human rights task force; (2) Establish a task force for human rights cases under the Control Yuan’s human rights committee. Its main duty would be to investigate and supervise the country’s implementation of the two covenants, and to issue necessary suggestions or corrective measures to agencies in the executive branch. (3) Create a human rights committee in the Legislative Yuan; (4) Create a human rights committee in the Examination Yuan

¹¹² Mab Huang, 2000. “Drafting a Bill for a National Human Rights Commission: Taiwan.”

- to foster and monitor human rights awareness among government employees. (5) Establish a human rights research committee in the Judicial Yuan to systematically research and collect information about applying international human rights law in the Taiwanese legal system.
14. As for reviewing laws and statutes, Covenants Watch suggests that (1) the Executive Yuan create a legislative review task force to continue urging agencies to review whether the decrees and administrative measures under their jurisdiction comply with the covenants. (2) The executive branch should incorporate proper administrative procedures to proposed bills. In the future, a “human rights checklist” should be included for all proposals that the executive branch makes, or any bill or amendment that it draws up.
 15. Regarding education and training, Covenants Watch makes the following suggestions: (1) Consult related UN guidelines and training materials and re-examine the current methods of training. (2) Invite international organizations to Taiwan to carry out training plans tailored for the needs of major sectors such as police, the National Immigration Agency, prison employees, teachers, national security personnel, etc. (3) Promote cooperation with non-governmental organizations on human rights education activities and training. (4) As soon as possible, reinforce human rights education and training for new and currently employed judges about the two covenants. (5) Subsidize legal aid or bar associations to carry out human rights training for lawyers. Since judicial rulings based on the covenants are a key force leading to realizing domestic implementation of the covenants, not only judges but also prosecutors and lawyers should all be familiar with the content of the covenants. In addition to the unprecedented role of the courts at every level in judicial review related to human rights, how lawyers understand and cite the two covenants will also be key to their implementation. Subsidizing the Legal Aid Foundation and bar associations to hold human rights education and on-the-job training for lawyers is recommended.
 16. The government should create a national human rights resources and training center. Covenants Watch suggests considering the feasibility of a robust national training mechanism that would systematize human rights training and establish a mechanism for evaluating the effects of training. We suggest the government also consider creating a human rights resources center at the National Academy for Education Research or that it learn from the example of the National Health Research Institutes and establish the center as a foundation. These centers would

be responsible for the following tasks: (1) human rights research; (2) compiling human rights teaching materials and translating them as needed; (3) compiling international human rights documents; (4) human rights training; (5) assisting training involving international cooperation projects; (6) providing services to promote human rights education.

17. Finally, and in order to realize all of the above recommendations, Covenants Watch calls upon the government to draw up immediately a “National Action Plan for Promoting and Protecting Human Rights.” Based on the current situation of the Implementation Act, a comprehensive human rights plan is urgently needed to effectively handle the above-mentioned problems concerning structure, budget, legislative review, preparing human rights reports, and education and training. For this reason, Covenants Watch suggests that the Presidential Human Rights Advisory Committee follow the Vienna Declaration and Programme of Action and the UN’s 2002 “Handbook on National Human Rights Plans of Action” to draft a national human rights plan of action on the human rights safeguards and items that need to be addressed. The plan should set a clear order of priorities; a list of steps; and a timetable with short, medium, and long-term targets that must be accomplished, as well as strategic plans and definite sources of funding. This is needed to effectively implement the covenants going forward. The action plan may recommend research on the need and feasibility of a “Basic Human Rights Act” that would incorporate international human rights law into domestic law, if that is deemed necessary to resolve the problem associated with legal ranking of the covenants and to coordinate the human rights activities among various government agencies. By launching a national human rights plan of action, the government should also deliberate, ratify, and incorporate other important international human rights conventions into domestic law.

Table 1: Major events in cross-strait relations

1940s Civil War	<p>1945: Chiang Kai-shek represents the Allies as leader of the ROC military in accepting Japan's surrender under General Order No. 1 (issued by General MacArthur). Oct. 25, Chiang declares Taiwan has been "recovered."</p> <p>1947: Taiwan enters the "period of communist rebellion", was in special status for civil war.</p> <p>1949: The ROC loses the Chinese Civil War and retreats to Taiwan. The communist party establishes the People's Republic of China (PRC).</p>
1950s Crises in the Taiwan Strait	<p>1950: US decides to defend Taiwan because of the Korean War.</p> <p>1954-55, 1958: Military crises in the Taiwan Strait bring the ROC and PRC to the brink of war.</p>
1960s Cold War	
1970s China-US relations warm up International isolation of Taiwan	<p>1971: ROC withdraws from the United Nations; PRC takes over the China seat at the UN.</p> <p>1972: Nixon visits China, meets Premier Zhou Enlai and signs the Shanghai Communique, thus starting the normalization of US relations with China. Countries begin to cut off ties with the ROC in favor of the PRC. Taiwan has only 20-some diplomatic allies left.</p> <p>1979: US cuts ties with ROC in favor of PRC. US Congress passes Taiwan Relations Act, legally promising to support Taiwan.</p>
1980s Returning to the way things were	<p>1979: China moves to a goal of "peaceful reunification," but doesn't rule out using military force.</p> <p>1980s: "One country, two systems" concept arises and becomes the crux of PRC policy toward Taiwan.</p> <p>Late 1980s: Taiwanese companies start investing in Mainland China.</p> <p>1987: Elderly, former soldiers who fled to Taiwan from China are allowed to visit their families on the Mainland. Cross-strait exchanges allowed.</p>
1990s Dialog and resistance	<p>1991: Guidelines for National Unification enacted under President Lee Teng-hui, including the concept that the two sides of the Strait are "two reciprocal political entities." Period of communist rebellion is formally ended, marking an end to the civil war.</p> <p>1993: The first Koo-Wang talks. The two sides start formal discussions.</p> <p>1996: Lee visits the US, sparking the third military crisis in the Taiwan Strait. The Chinese army carries out missile tests in the Strait. US sends Seventh Fleet to defend Taiwan.</p> <p>1998: Second round of Koo-Wang talks. Tensions ease again.</p> <p>1999: Lee uses the concept of two countries to describe cross-strait relations with the term "special state-to-state relations," prompting the PRC to launch a public opinion attack against Lee.</p>
2000s-today	<p>2000: Chen Shui-bian elected president, proposes the "Four no's and one</p>

Chen: From warm to cold
Ma: An unprecedented situation and warming

without” policy, announcing that if China did not intend to use military force, he wouldn’t promote independence. China in turn demands that Chen abide by the principle of “one China,” or the “1992 Consensus” (a concept put forth by KMT figure Su Chi).

2002: Chen proposes the concept of “one China one Taiwan” and pulls back from the warmer Four No’s.

2004: Chen re-elected. China passes the Anti-Secession Act as a legal basis for using military force against Taiwan.

2005: PRC leaders meet former KMT chairman Lien Chan. At the same time, the Chen government is unable to open formal talks with China.

2000-2008: Relations with China did not improve under Chen, but according to statistics from the Mainland Affairs Council, trade increased.

2008: Ma Ying-jeou of the KMT elected president and pursues warmer relations with China. The ROC and PRC hold repeated talks and pass a number of pacts.

2010: The ROC and PRC sign the ECFA and may later develop some kind of free-trade agreement or common economic entity.

2012: Ma re-elected. On the eve of the election, Taiwanese millionaire Kuo Tai-ming and HTC’s Wang Hsueh-hung announce their support for the “1992 Consensus” and say Taiwanese should vote for Ma to keep up warm relations with China.

Table 2: Key political events of Taiwan (1947 - 2012)

		Chinese Civil War	Heads of state:
White Terror	1947: ROC Constitution enacted. In Taiwan, 228 Incident takes place.		
	1948: The National Assembly elects Chiang Kai-shek as the first president of the ROC. First legislature elected the same year. Because of the civil war, the legislators continue in their positions without further elections. Special regulations are put in place for the "period of communist rebellion" that take precedence over the Constitution.	1949: Taiwan enters the longest period of martial law in world history. The ROC loses the Chinese Civil War and retreats to Taiwan.	Chiang Kai-shek, president
	1975: Chiang Kai-shek passes away, ending his five-term presidency.		Yen Chia-kan, interim president
	1979: Formosa Incident 1980: Lin Yi-hsiung's family murdered 1981: Chen Wen-cheng incident	Martial Law Era 1970s and 1980s: Opposition to the KMT starts to grow and forms the Tangwai Movement, with the goal of challenging KMT rule. Supplementary elections for public representatives are an important stage for the Tangwai figures. Many opposition magazines also appear. A variety of social movements start to develop in the 1980s.	Chiang Ching-kuo, president
	1986: DPP founded despite ban on opposition parties 1987: Chiang Ching-kuo lifts martial law. 1988: Chiang Ching-kuo passes away. Vice President Lee Teng-hui takes over.		
	1989: Cheng Nan-jung immolates himself for freedom of speech.		
	1990: Lee formally elected president.		
	1991: Article 100 of the Criminal Code is removed, the period of communist rebellion is formally ended and the Constitution is amended.		Lee Teng-hui, president
	1992: Second legislative elections held. KMT wins majority, 95:161.		
	1995: Third legislative elections held. KMT wins majority, 85: 164.		
	1996: First direct, democratic presidential election. Lee is re-elected and there is a military crisis in the Taiwan Strait.		first election
	1998: Fourth legislative elections held. KMT wins majority, 133:225.		
	2000: DPP candidate Chen Shui-bian elected president, marking the first change of power.		
	2001: Fifth legislative elections held. DPP wins majority, 87:225.		Chen Shui-bian, president
	2004: Chen re-elected.		
	2005: Sixth legislative elections held. DPP wins majority, 89: 225.		
	2008: KMT candidate Ma Ying-jeou elected president, marking the second change in power. Seventh legislative elections held. KMT wins majority, 81:113.		Ma Ying-jeou, president
	2012: Ma re-elected. Eighth legislative elections held. KMT wins majority, 64:113.		

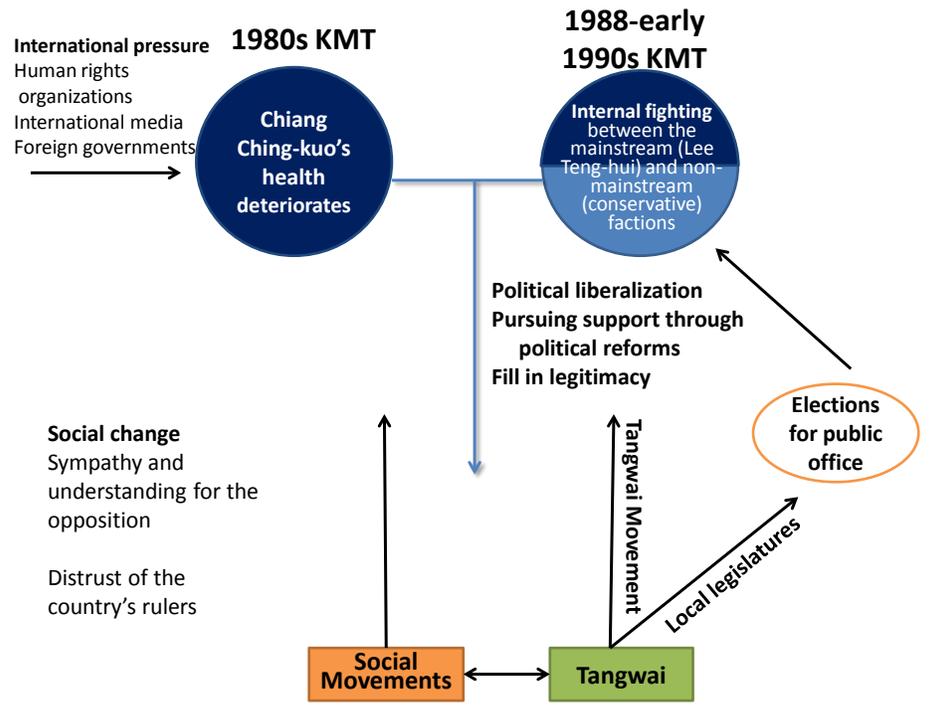
Table 3: Political party affiliation of presidents and the legislature of Taiwan

	President			Legislature		
	Term	Party affiliation	Name	Term	Majority party	Percentage of seats
Before 1992	Before 1996, the National Assembly elected the president. The Assembly members were elected on Mainland China and no elections were held to choose new members in Taiwan. Presidents of the ROC: Terms 1-6 Chiang Kai-shek (KMT); Terms 6-7 Chiang Ching-kuo (KMT); Term 8 Lee Teng-hui (KMT)			1948-1992: First legislature. The majority were elected in China, though a few slots were filled in Taiwan to replace seats as they became empty over the years.		
1992	Terms 9, first direct election	KMT	Lee	Second legislature	KMT	59%
1993				Third legislature	KMT	51.8%
1994						
1995						
1996	Terms 10	DPP	Chen Shui-bian, with 39.3% of the vote	Fourth legislature	KMT	54.6%
1997				Fifth legislature	DPP	38.6% (People First Party split from KMT. Together they made up the Blue Camp; control 59% of seats)
1998						
1999						
2000	Terms 11	DPP	Chen Shui-bian	Sixth legislature	DPP	39.6% (Blue Camp control 54.7% of seats)
2001				Seventh legislature	KMT	71.7%
2002						
2003						
2004	Term 12	KMT	Ma Ying-jeou	Eighth legislature	KMT	56.6%
2005						
2006						
2007						
2008	Term 13	KMT	Ma Ying-jeou	KMT	KMT	56.6%
2009						
2010						
2011						
2012						

Source: 1. Presidential Office website: <http://www.president.gov.tw>; 2. Website of the Parliamentary Library of the Legislative Yuan: <http://npl.ly.gov.tw/do/www/homePage>; 3. Huang Hsiu-duan, Chen Hung-chun, 2006, "The Size of Party Caucuses in the Legislature and the Effect on Interaction: Analysis of The Third through the Fifth Legislatures," *The Journal of Social Sciences and Philosophy*, 18: 3, 385-415.

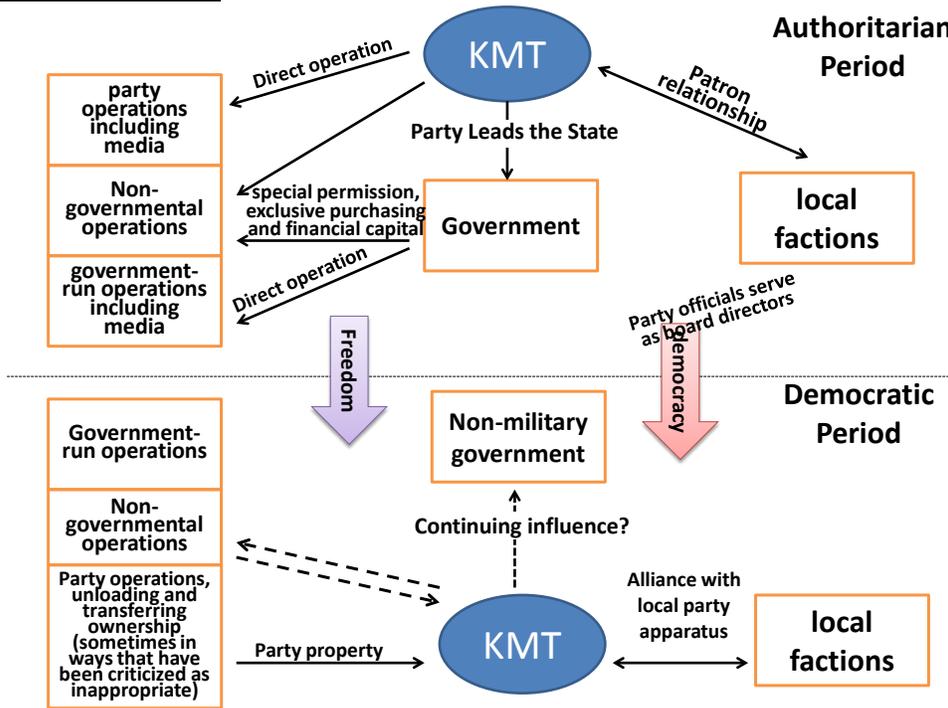
*Note: Number of seats are counted according to the percentages directly after each election.

Fig.1: The challenge to KMT rule in the 1980s and early 1990s



Source: author (CN Chen)

Fig.2: KMT: interplay of political and economic control before and after democratization



Source: Author (CN Chen)

Annex 1.

A letter 61 years too late

By Kuo Su-chen

July 13, 2012

My dear wife,

First, for a husband and wife to separate in this way — I'm sorry. Please forgive me.

Second, if it's possible, I want you to marry again. Third, Chi-yuan and Su-chen's futures are in your hands. It's up to you to try and see that they get an education.

My dad was executed 61 years ago. He wrote these words the evening before his death. This year, I finally got the five letters he wrote before dying. But my mother is 85 now, and in her state, she can't understand the last words her beloved husband left her.

By chance, a friend of mine who does historical research found out this year that the National Archives were holding onto the personal letters and parting messages of more than 100 political prisoners who were executed under martial law. Among them were my father's.

Looking through the news, it's clear that without the persistent efforts of civic groups and the relatives of those who were executed, these private documents would have remained stashed away in a filing cabinet.

What's ludicrous is that these parting messages were intended precisely for the loved ones that the prisoners were parting from. Each handwritten note conveys the endless longing and affection they felt for their families, and reveals the feelings of failure and helplessness that they felt, having tried to pursue both their ideals and their responsibilities to their families. With each stroke of the pen, they hoped to offer some small measure of solace, so that after they died, their families would still have that feeling. The prisoners believed their words of comfort would soon be in the hands of their loved ones. But we had to wait 60 years.

The government was indifferent to the prisoners' beautiful thoughts of leaving farewell messages and words of hope to the families that would survive them. In writing these words before their deaths, the prisoners showed their last bit of faith in the government and made one last request of it. Despite the terrible injustice done to them, they still had hope that their letters would be delivered. But the government again failed them.

Was it playing a trick on the prisoners? Or was it punishing their families? Taiwan is a democracy now, yet this wrong hasn't been righted. To get back documents that belonged to us all along but were seized and held by the government six decades ago, we have to go through a complex application process at the National Archives. Every heir, each son and daughter to the victim, needs to present identification and sign a release form

allowing one of them to represent them. For families that don't all live in one place, the only option is to send around the release forms by mail. As I contacted the others in my family, I couldn't help but feel anger. Shouldn't the government be taking care of this? They're the ones with Dad's letters!

Refusing to play along

When it came time to apply, I'm usually busy taking care of my mom, but I found a chance to drop by the National Archives and apply for my father's files, including his confession. It turned out that aside from documents to prove my identity, I also had to provide a copy of my father's death certificate. My dad was executed by the government. His execution was published in the newspaper. We've received compensation from a government fund for wrongful convictions. Can't the National Archives look any of this up?

Government agencies often cooperate on official matters, yet they make the relatives of those who died run around in the scorching heat gathering paperwork? Is this an appropriate way for public servants in a democracy to serve the victims of political oppression, and their families? One person whose father was executed felt disrespected and was so angry that he gave up applying for his father's files.

So when I stood in the National Archives and finished reading my father's letter with the tears running down my face, and an employee said to me, if I would just attend a ceremony to mark the 25th anniversary of the end of martial law on July 15, President Ma Ying-jeou himself would hand me the letter, I immediately said no. It seemed ridiculous. If the government had just shown some respect for the victims, their bereaved families and what had happened, this letter wouldn't have reached its destination so late. It wouldn't have been this hurtful and this angering.

I hope that by telling my experience, it might make the process a little smoother and a little kinder for other families applying to get files. And as for commemorating the end of martial law or Human Rights Day, no matter how noble and solemn our messages are, we need to carry them out in our most basic, daily reality. For me, that would have meant knowing a little earlier the concern that my father felt before leaving us; finding him again in his letters, and understanding his hopes for my life and his pain in losing me.

The author's father, Kuo Ching, was executed in 1952.

Annex 2.

The History of Taiwan Confederation of Trade Unions (TCTU) [May 2000]

After years of labor movement struggle, the Taiwan Confederation of Trade Unions (TCTU), Taiwan's first legal and autonomous national trade union, was recognized by the government on May 1, 2000. Although TCTU is young, it is the most active labor organization in Taiwan. TCTU is rooted in the long history of working class struggle on our island. We believe this history is vital to the continuing development of the labor movement and its role in building a democratic society in Taiwan.

Pioneers of the Labor Movement in Taiwan

In the last two decades of the 19th century, the Chinese empire tried to establish modern enterprises on the island. However, the modernization of Taiwan began primarily under Japanese colonial rule. After annexing Taiwan in 1895, the Japanese, with bloody repression of the local population, began to develop agricultural capitalism on the island. The anti-colonial movement started during the 1920s. Some left-wing leaders of the movement organized a few unions and tried to operate a socialist party. In the 1930s, the Japanese colonial state repressed the political and social movements, including those pioneer socialists and union organizers. The colonial governors disbanded most of the unions and imprisoned or exiled the socialist leaders. These exiles were not able to return until after the Japanese colonial government ended in 1945.

Workers Under the KMT Dictatorship

As soon as the KMT government arrived in Taiwan, it focused the island's resources on fighting the civil war on the mainland. As the Korean War broke out in 1950, Taiwan was drawn into the anti-Communist camp by the KMT. The KMT government declared martial law, and severely limited the rights of free speech and assembly, including the right to freely organize unions. The bloody White Terror killed tens of thousands and repressed the social movements that had been growing over the past decades. More than three thousand people accused of playing a part in socialist organizations were killed or imprisoned.

Worried about spies from Mainland China, the KMT police state clamped down on all independent union organizations. It only legalized one national union organization - the Chinese Federation of Labor (CFL), which was tightly controlled by party cadre. Furthermore, because labor activists had been a strong part of the pro-democracy movement in Taiwan, local industrial and craft unions were infiltrated by police informers. Under the CFL ban on strikes, unions were unable to protect the rights of their members. However, most employees of small-scale enterprises were allowed to join CFL and receive some benefits under the newly established labor insurance system. Through these mechanisms, the KMT was successful in lowering workers' resistance and distorting the development of unions in Taiwan.

During the post-war period, the economic development of Taiwan became dependent on the US and Japan. Taiwan's industrial structure diverged into two parts. First, the state-

owned enterprises, the party-owned enterprises and other politically connected corporate groups that controlled key industries and finance. These corporations, and the unions serving their employees were completely controlled by the KMT. Second, a large number of small enterprises, dependent on foreign markets, became a powerful engine of economic development. However, the labor conditions of these sweatshop factories were terrible. With low wages, long working hours, high pollution and no union, these sweatshops made their profits at the workers' expense.

Revival of the Workers' Movement

The anti-dictatorship movement resurfaced in the late 1970s. Labeled the Tang-wai (outside the Party) democratic movement, it was a mass-based movement including workers, employers of small-scale enterprises, and professionals, and rose rapidly over a few years. Although the KMT accused those leaders of 'tang-wai' and tried to arrest some of them, the peoples' power movement continued to grow. In September 1986, the Democratic Progressive Party (DPP) was formed, and the KMT was later forced to lift Martial Law, including limits on political parties, and restrictions on free speech, publications, etc.

Because of political liberalization, popular movements including labor, student, farmer and environmental movements flourished. Several influential strikes and labor disputes, joined by more than one hundred thousand workers, occurred during this period. Workers' political class-consciousness was awakened. Workers fought to reclaim their unions from KMT's party cadre or to constitute new unions. They demanded autonomous unions free from KMT and employer domination. However, the government attempted to repress the growing labor movement and lowered labor standards and protections. In May 1989, when a strike by the union at the Far East Fibers Company - Taiwan's most militant union at the time - was broken, the movement felled into a downturn.

Taiwan's economy changed after late 1980s. The KMT began pursuing a neoliberal economic policies and privatizing state-owned enterprises. Capital began to flow out of the country, and unemployment increased in the 1990s. The labor movement began to demand that the state impose restrictions on factory closures, establish unemployment insurance, and ensure job security. In the mid-1990s, the government began to push for a nationalized health insurance plan. The design and payment scheme of the health care system became contested terrain between capitalists and workers. Additionally, unions began to demand gender equality, agitating against gender discrimination and sexual harassment on the job. They also led campaigns against Taiwan's high occupational injury rate, demanding that the government draft an occupational injury law, and strengthen workplace inspections.

Struggle to Establish an Independent Trade Union Confederation

As the labor movement pressed forward, workers began to realize that they would only be able to win fights against the state and capitalists if they were united in a strong confederation. Unions all over Taiwan attempted to form links with each other, and established a series of autonomous unions federations. However, due to limits set in Taiwan's outdated Union Law, the government did not recognize these federations.

Taiwan's first state-recognized county-level trade union federation was formed in Taipei City in 1994, and was followed by the creation of trade union federations in other counties. Nationally, there are now 12 county-level trade union confederations which have a great influence on local labor affairs. With the establishment of autonomous trade union federations at the local level and the increasing autonomy within unions of state-owned enterprises, workers considered the formation of a national confederation of trade unions. By the end of 1997, county-level trade union federations and unions in the state-owned enterprises began to preparatory work for the creation of the Taiwan Confederation of Trade Unions (TCTU).

On May 1 1998, the TCTU Preparatory Committee held a large-scale rally in Taipei and announced the goals to formally establish the TCTU. 30,000 workers took to the streets in Taipei. They protested unemployment, government and private enterprise collusion and corruption, unsafe working conditions, privatization, and restrictions on union organizations. The TCTU Preparatory Committee held a National Labor Conference in Kao-hsiung City later in 1999, inviting delegates from Japan, South Korea, the Philippines and Hong Kong. Later, TCTU delegates visited the Korean Confederation of Trade Unions (KCTU) in South Korea, for an experience sharing bilateral.

Throughout this time, the government refused to acknowledge TCTU, claiming that it was an illegal organization. Regardless, officials in the TCTU believed that workers had the freedom to join any labor organizations they choose and remained committed to the establishment of TCTU.

By the first few months of the year 2000, 18 large national unions had decided to join TCTU, bringing the total number of represented workers up to 280,000. Work to formally establish TCTU was almost complete. On February 29, Taiwan presidential candidates including Chen Swi-pein were invited to a forum to hear the announcement of TCTU's labor platform and to listen to workers' demands. The historic election on March 18 2000, put an end to 55 years of KMT rule, and signaled the consolidation of democratic regime in Taiwan. The DPP government officially recognized TCTU on May 1, 2000.

The Birth of TCTU and Future Tasks

TCTU currently includes 21 member unions, including telecommunication, petroleum, tobacco, alcohol, railway, bus, and banking industries and 9 local trade union federations. Local unions in un-represented counties are also actively working towards the formation of county federations, and plan to affiliate with TCTU.

To deal with the changing environment in Taiwan, TCTU has established several committees. First, the Organizing Drive Committee promotes the formation of union federations among industries or regions, and raises the union participation rate in Taiwan. Second, the Labor Law Policy Committee fights for reforms of the present system of labor regulations, and prepares for future attacks on workers' interests by the government national pension plan. TCTU has set up a Committee on Privatization to critique and monitor the government's privatization schemes. To deal with the crisis of unemployment and plant closures, we have established an Unemployment and Employment Committee.

Under the globalized capitalist economy, we know that the situations, conditions and struggles of Taiwan's workers are shared by the working class around the world. Therefore, TCTU also tries to communicate and cooperate with international labor organizations, participating in conferences, and international campaigns through our International Department.

The Taiwanese labor movement has fought towards the creation of TCTU for more than a decade, but our mission has just begun. There are more and more challenges ahead of us now and we look forward to continuing our struggle and contributions towards a just and equitable society for workers in Taiwan and around the world.

Taiwan Confederation of Trade Unions, TCTU

Address : 2F No.168 Nan-Chang Road Section 2, Taipei, 100, Taiwan

Telephone : 886-2-83693522 Fax : 886-2-23659390

Annex 3.

Taiwan's Implementation of the Covenants: A Progress Report

Speaking note of W.S. "Peter" Huang, Convener, Covenants Watch, Taiwan
International Conference on Propagation and Implementation of the Idea of Human
Rights
Soochow University, Taiwan, December 3rd, 2010

My short talk will be a briefing on Taiwan's recent efforts to ratify and implement the Covenants.

Taiwan, otherwise known as the Republic of China, signed the ICESCR, the ICCR and the ICCPR's first optional protocol in 1967. That was when Taiwan was still a member of the United Nations, and a permanent member of the Security Council even. Aside from the covenants, Taiwan also signed and/or ratified some 20 other international human rights and humanitarian treaties between 1945 and 1971. But that was back in the Cold War years when the UN human rights regime was still in its difficult early phase. Like many other one-party authoritarian states, back then Taiwan's signing and ratifying of these treaties was more a ceremonial international PR act than anything else, an affair for diplomats alone. Back in the country there was no opposition party or NGO to make it otherwise. In fact, the very idea of human rights itself was taboo.

Then in 1971, Taiwan was excluded from the U.N. human rights regime at the same time as it was expelled from the U.N.. That was 39 years ago. Without international participation and under no international pressure, four decades was enough time to erase Taiwan's memory of its ceremonial participation in the U.N. human rights regime, not only on the part of the state but also of the society at large. I still remember one call I made to the Ministry of Foreign Affairs in 1998 when I was Chair of Taiwan Association for Human Rights. I asked for a list of human rights treaties Taiwan has signed and /or ratified. Just as a test, for we all know that it is a matter of public record. The clerk's answer was: It's a state secret. I then asked to speak to his superior, and got pretty much the same answer. This was no surprise to me because I already knew that the treaties signed and/or ratified were buried in file cabinets before the ink on them was dry, just in case use as made of them by "undesirable elements." Please note that the call was made in 1998, about eight years after the beginning of Taiwan's democratization.

Why did I take this brief look at the past 65 years – the 25 years before and the 39 years after the Taiwan's diplomatic isolation? Because this past has great bearing on Taiwan's efforts to ratify and implement international human rights treaties in the last decade. The main point to make is that this past has grave consequences for Taiwan's stock of knowledge, expertise and experience in terms of international human rights. For the state, the few diplomats who were more or less familiar with international human rights had long faded away. More important is the fact that Taiwan's expulsion from the UN in 1971 occurred just when the UN human rights regime was getting into much better shape, with much more exacting demands that a few diplomats alone could not handle on their

own. It's not hard to imagine what effect this would have had on the growth of Taiwan's stock of knowledge and experience had Taiwan continued its UN participation. Just look at China's growing stock since 1971, then at this sad but telling indicator of Taiwan: the only two compilations of international human rights instruments in Taiwan today are both NGO products. In a word, the state's stock of knowledge and experience is practically close to nil.

With the government's such a poor state of knowledge and experience, civil society as a whole cannot hope to do any better. One small exception is some NGOs and individual scholars. But, given the general context above, they too suffer great limitations, too. To give an example about the NGOs since their emergence after demonstration began: Taiwan's NGOs have been forbidden to take advantage of article 71 of the U.N. Charter for participating in international human rights activities; only a few managed to attached themselves to U.N. – accredited international organizations. As for individual scholars, the lack of state need for backup has its effect: only a few can be said to specialize in international human rights law. As a result, civil society's stock of knowledge and experience, though somewhat better than that of the state, is also very limited.

Hoping to break out this stagnation, a few NGOs began pursuing a twin-goal strategy in the late 90s. One goal has to do with norm-setting: urging the state to ratify the Covenants, as a start. The other has to do with institution-building: the establishment of a national human rights commission with both promotion and protection functions. A break soon came with the 2000 presidential election when the DPP defeated the KMT, the first party rotation in Taiwan's history. The victorious DPP administration adopted the NGO program. In 2002, a bill was sent to the national legislature asking for ratification of the covenants without reservations. The bill was passed, but with the reservation of three articles and a declaration attached to the common article 1 on the right of people to self-determination. The majority party, the KMT, insisted on the declaration, curiously fearful that the common article 1 would be somehow misused for the pursuit of an independent Taiwan. The DPP minority government opposed it. The bill went dead on that score. As for the bill for the establishment of a national human rights commission, it did not even pass the national legislature's procedure committee. Neither was a second attempt in October 2007 at ratifying the covenants, this time with an implementation act in a fashion similar to U.K.'s 1998 Human Rights Act vis-à-vis the European Convention on Human Rights. This went nowhere either. The only piece of good news was that CEDAW, pushed by women's NGOs, did get ratified in February that year, but without an implementation act, because the idea of an implementation act did not come up until a few months later.

Fortunately, this is not the end of good news. The following year, 2008, was a presidential election year. The NGOs again pursued their twin-goal strategy. Mr. Ma, the KMT candidate, didn't take to the idea of a national human rights commission, but he did place ratification of the covenants among his campaign pledges. He won a landslide victory, with a three-quarters majority in the national legislature. He carried out his pledge. On March 31 last year, the ratification bill was passed by the national legislature along with another bill on an Implementation Act. The Implementation Act was

promulgated on April 22nd and the ratification instrument signed on May 14th. An attempt was then made to deposit the instrument with the U.N. It suffered the same fate of the 2007 attempt to deposit CEDAW: rejected by the U.N. But at least we have the Implementation Act which gives the force of domestic law to the covenants, and it entered into force on International Human Rights Day last year.

With the President and both main parties backing it, the process went like a breeze. But one year and nine months have passed. How has Taiwan done since last March? I am sorry I have to say: not well at all. There are grave problems and difficulties in planning, preparation and implementation. I shall take them up in turn.

The first problem has to do with planning. The NGO wish-list has several major components. The first is a solution to the stock-of-knowledge-and-experience problem I sketched earlier when reviewing that 65-year history earlier. It should take the form of at least one center on international human rights law with both research and training functions. The second is a national human rights commission to go with the ratification and implementation of the covenants. Third, a step-by-step plan to “domesticate” the more important international human rights conventions besides the covenants in a similar ratification-plus-implementation- law manner because even the effective implementation of the covenants alone requires it. No country relies on the covenants alone. Unfortunately, the two administrations adopted only some of our suggestions. The lack of a master plan well thought out is bound to have consequences, as we shall see.

The second problem has to do with pre-ratification preparations. Here a comparison with the U.K. Human Rights Act of 1998 would be instructive. We all know that long years of discussion and debate preceded the Act between and within both state and civil society. You will not be surprised to hear that there was nothing remotely like it in Taiwan. For long years there was only the agitation and lobbying of some NGOs. The only heated debate was the one over the common article 1 on the right of peoples to self-determination I mentioned earlier on. But how about preparations closer to March last year? Here are some telling indicators. For example, the ratified official text of the ICESCR left out the right to strike. Only after the Covenants Watch, an NGO alliance, pointed it out that it was legislatively corrected, and only 2 days before the Implementation Act entered into force on December 10. Or this one: Article 9 of the Implementation Act authorized the Cabinet to determine the date of its coming into force. This was announced only eight days before the Act took effect, on December 2nd. Or this one: there was no consultation with NGO’s whatsoever.

The third problem has to do with the official period of preparation. The U.K. example is again instructive. We all know that although the Human Rights Act received royal assent in 1998, it did not enter into force until 2000, allowing two full years of preparation. This is how seriously the U.K., with its decades of experience in implementing international human rights law not only under the U.N regime but also under the more exacting European regime, take the business of preparation. How did the government of Taiwan do it? The Implementation Law was promulgated on May 14th last year, and entered into force on December 12, allowing an official preparation period of only seven months and

18 days. Why was it made so short? Doesn't article 9 of the Implementation give the Cabinet full discretion for determining its length?

Some people suspect that the official period of preparation was shortened so that the government could announce the taking effect of the Implementation Act on the great occasion of the International Human Rights Day for political PR effect. I believe that even if the suspicion was correct, the stock of knowledge and experience problem I stressed at the beginning of my briefing, and the government's inadequate awareness of it nevertheless played its part. In any case, the short period of preparation is bound to have consequences. I shall give you some examples when we examine the next problem.

The fourth problem has to do with implementation. To understand it we have to take a close look at article 8 of the Implementation Act: "All levels of government institutions and agencies should review laws, directions and administration measures within their functions according to the two covenants. All laws, regulations, directions and administrative measures incompatible with the two Covenants should be amended within two years after the Act enters into force by new laws, law amendments and improved administrative measures." Note the phrase "Within two years," which means the legal deadline is the International Human Rights Day next year. This two-year stipulation is very stringent for any government, all the more so for our government with its poor stock of expertise and experience. The government did not seem to have thought through the practical implantation of this piece of legislation. The puzzling and disturbingly short period of preparation of only seven months and 18 days confirms this. Worse still, there are signs that the government did not, and still does not, take article 8 seriously, although we are only a week away for the mid-point of the two-year period of implementation.

...

I could go on, but I think I have said enough to show that the problems are grave and the signs inauspicious. The most serious last s is the most the lack of an adequate plan, which in turn led to the other problems I identified: poor preparatory work before ratification, the overly ambitious legislative design behind article 8 of the Implementation Act, the shockingly short official period of preparation, and its disastrous effects on the quality of preparation and of subsequent implementation once the project moved into the legally prescribed period of implementation. Underlying all of these is the stock-of -knowledge-and-experience problem I have already stressed several times, and the government's inadequate awareness of what serious consequences this problem could bring.

Faced with a situation like this, what could NGOs do? At the time of preparing this briefing, mid-November, the debate is still going and no conclusion has been reached yet. Personally I would propose the following.

First, the government should show greater respect for the law, the Implementation Act, by redoubling its effects in the remaining year of the two-year implementation period.

Second, meanwhile, it is almost a certainty that the government will not be able to fulfill its obligations under article 8 of the Implementation Act. The government should face this problem squarely, and seriously the amendment of article 8 of the Implementation Act, by extending the two-year prescription to, say, five.

Third, the law amendment should be accompanied by a forward-looking plan with at least the following components:

- A. The appointment of a task force or special commission, with a budget and a staff, to direct, supervise and assist the review of all existent laws, regulations, directions and administrative measures incompatible with the Covenants, and the making of new laws, law amendments and improvement in administration to follow, as prescribed by article 8 of the Implementation Act.
- B. A national human rights reporting system, in accordance with the 2008 Report on Indicators for promoting and Monitoring the Implementation of Human Rights by the Office of the UN High Commissioner for Human Rights, to facilitate a more systematic dialogues between the government and NGOs.
- C. Of the six international human rights covenants and conventions with independent monitoring committees, Taiwan has so far ratified four: ICESCR(2009), ICCPR(2009), CEDAW(2007), CRD(1970). Taiwan should at the very least accede to the other two, CAT and CRC. CEDAW, CRD, CAT and CRC should be provided with an implementation act similar to that for the Covenants.
- D. A national human rights commission with both promotion and protection functions, as an institutional complement to the norm-setting efforts.
- E. The establishment of a center on international human rights, with both research and training functions, as, a solution to the stock-of-knowledge-expertise-and-experience problem I have stressed several times in this briefing.

With a plan like this, maybe we shall be in better shape when we re-start the engine.

Taiwan's first ever attempt at implementing international human rights conventions has had a slow, disorganized and inauspicious start. Governments rarely put much effort into practicing international human rights without international participation and the pressure and assistance that accompany it. Aside from the government's half-hearted performance, Taiwan's 39-year exclusion from the international human rights regime obviously also has something to do with this inauspicious start. We Taiwan's NGOs are particularly aware of how inadequate pressure from civil society alone is. That's why an international conference like this one is so precious and welcome: Taiwan desperately needs international assistance and input. With my time running out, I shall end my briefing on this note of appreciation. Thank you all.

Annex 4.

Rhetoric or Reality: A Preliminary Report on Taiwan's Implementation of the Covenants

Speaking notes of Chun-Hung Chen

Department of Political Sciences, Soochow University

Soochow University, Taipei, November 11, 2011

Madam Chairman, Professor Nowak, Mr.Kao, Ladies and Gentlemen, it is a great honor for me to be here to present an overview of Taiwan's human rights conditions. My talk will first brief on Taiwan's recent efforts to ratify and implement the Covenants. A short assessment of the implementation will be followed. My assessment is based on the in-depth interviews I conducted with some civil servants. Furthermore, I will point out a difficulty in improving human rights conditions in Taiwan. The difficulty is the long isolation from the international human rights regime. I will show how the international isolation may prove to be a significant obstacle to the effective implementation of international human rights norms, even if Taiwan has started its democratic transition for two decades.

Like most Asian countries, Taiwan had long been under the yoke of colonial and authoritarian regimes hostile to democracy and human rights. From 1947 to 1987, Taiwan was under the Martial Law rule of Nationalist party (KMT thereafter) for 38 years. There has never been a country as long under martial law as Taiwan in modern history. The very term "human rights" was viewed as a taboo during the period of authoritarian rule. International human rights standards were plainly a luxury that the authoritarian regime did not feel it could afford. Under such conditions, there was little room for a human rights culture or tradition to grow.

In addition, Taiwan faces a unique situation, that is, her isolation from the international human rights system. By 1971, Taiwan had signed and ratified 7 human rights conventions, including the two Covenants. Yet before the ratification, Taiwan was excluded from the global human rights regime as the result of the UN Resolution 2758. Resolution 2758 withdrew UN's recognition of the Republic of China as the legitimate representative of the whole Chinese state. Thus, although Taiwan had actively participated in drafting 'the Universal Declaration of Human Rights', and signed the ICCPR, the ICESCR and a few other human rights treaties, after 1971, its connection with the UN human rights mechanisms was shut off. Since then, Taiwan was deprived of the international interactions that normally accompany a state's adoption of international human rights law and the potential positive effects that normally come with such interactions.

Since the lifting of the martial law in 1987, Taiwan began to experience liberalization and democratization. In 1996, with the holding of the first presidential election, Taiwan completed its transition to a formally open democratic system. In the year of 2000, the victory of the oppositional party, Democratic Progressive Party (DPP thereafter), in the presidential election marked the first transfer of political power in Taiwan's history. The DPP government made several proclamations of human rights policies, including launching official human rights programs, and addressing several civil rights cases. In 2000, President Chen Shui-bian announced that Taiwan will abide by international human rights law and requested the legislature to approve the ratification of the two covenants. However, his ratification efforts did not succeed because the legislature was under KMT's control while KMT disagreed on the right to self-determination. Only until the KMT regained the presidency, in April 2009, president Ma Ying-jeou honored his presidential campaign pledge by approving the long-awaited ratification of the two covenants.

The ratification, however, was refused by the depositary, that is the UN Secretary-General. Furthermore, to avoid any doubts about the binding domestic effects of these two covenants, the ROC legislature rapidly passed an implementation Act to incorporate them into domestic laws. The implementation Act requires all of Taiwan's laws and regulations to be brought in line with the two covenants. The Act also requires that the international legislative purposes underlying the covenants and the interpretations made by the treaty bodies be referred to when the two covenants are applied. The Implementation Act came into effect on December 10, 2009.

Undoubtedly, the ratification of the two covenants is a milestone in the development of human rights in Taiwan, and brings the nation more into line with the international human rights standards. The governmental agency in charge of implementation is the Ministry of Justice. Its responsibilities include coordinate proposed amendments to the laws and regulations, compile human rights training materials, organize training sessions for governmental officials, and conduct research projects and other activities.

More than one year and ten months have passed since the implementation, how has Taiwanese government done? Do international human rights treaties make a difference in state's behavior?

A detailed investigative report published by Covenants Watch in December 2010, concluded that the government has far "failed the test". My colleagues, professor Mab Huang, professor Show-Dwang Huang and me have done a study on the enforcement of the implementation act which was commissioned by Research, Development and Evaluation Commission (from September 2010 to July 2011). We also found that there

are serious problems and difficulties in implementation. With the time limit, I shall point out three main problems.

First of all, the training of trainers program has got some serious problems.

In principle, human rights values and norms, no matter when they have been legally codified or not, should be an important basis for judgment when civil servants perform their duties. However, this phenomenon is all too rare in Taiwan. This poor awareness of human rights has its roots in a long-term lack of human rights education. Our civil servants, police, military and intelligence officials did not learn about human rights in school or in on-job training. Seen in this light, the Ministry of Justice published educational materials and conducted training program for officials in 2010. It provides a very good opportunity to train all levels of governmental officials by this training program. This program has trained 2400 public servants from all levels of government. All lecturers were recruited from outside the government. The teaching material was only a 85-page introductory essay. Surely, this is hardly suitable for training novices. According to our in-depth interviews with trainees, the teaching materials and lectures are too abstract and abstruse to understand. Furthermore, the trainees were given only four three-hour lectures, yet they were expected to help train others and help review all problematic laws, regulations, directions and administrative measures back in the government institutions or agencies they work. It is not difficult to imagine how poor the performance of their training program for their colleagues would be.

Cultivating human rights values from poor soil is very difficult. Fortunately, international human rights regime provides helpful fertilizers. For instance, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has been involved for many years in training persons working in various professions in fields of human rights which touch on their particular field of competence. It also has published a lot of teaching materials and lesson plans which appropriately adapted and modified for each target group. Moreover, the United Nations High Commissioner for Human Rights initiated the plan of action for the second phase (2010-2014) of the World Program for Human Rights Education. In this plan of action, it provides very useful guidelines on key components of training programs for civil servants, law enforcement officials and the military. It is pity that the training program didn't make full use of these materials during the training process. It is not hard at all to imagine the size of the gap in human rights education between our country and the international community.

Second, according to article 8 of the Implementation Act: "All levels of government institutions and agencies should review laws, directions and administration measures within their functions according to the two covenants. All laws, regulations, directions and administrative measures incompatible with the two Covenants should be amended

within two years.” In 2009, units of all levels of government were asked to submit reviews in their respective jurisdictions. According to the progress report published by the Ministry of Justice, only a total of 219 items were found problematic by 17 government units, I think the small number apparently would surprise everyone. But if we realize its insufficient preparation and the poor stock of expertise and experience, it is not difficult to imagine it. Some laws have been revised, such as the Criminal Procedural Law’s guarantee of the lawyer’s right to meet with detained clients in the course of interrogation. As of April 2011, 80 laws and regulations remained to be revised. The provision stipulates that such review and revision process should be completed within two years, which means by December 10, 2011. Let me remind you that a legislative election will be held in January 2012, and normally legislators would have a recess before the election. This would mean that the government only has very short time from now to complete the task. What will happen if the legislators fail to complete the review and revision required by the law? What will happen if the government not able to fulfill its obligations under article 8 of the Implementation Act? It seems to me that, the authorities, in their rush to pass the implementation Act, does not take article 8 seriously.

Moreover, according to Article 3 of the implementation act, applications of the two Covenants should make reference to their legislative purposes and interpretations by the Human Rights Committee. However, as I mentioned earlier, in virtue of our government with its poor stock of expertise and experience, it is very difficult for civil servants to review all problematic laws, regulations, directions and administrative measures. According to our interviews with civil servants in charge of this issue, most of them did not understand the spirit and meaning of the two covenants, not to mention the general comments of the ICCPR and ICESCR would be the reference during the review process of laws and regulation.

Thirdly, According to Article 6, “The government should set up human rights reports system in accordance with the two Covenants.” It means that the Implementation Act requires that a domestic reporting system be established along lines similar to that prescribed by the two covenants, although Taiwan cannot submit the reports to the UN treaty bodies or participate in the Universal Periodic Review at the UN Human Rights Council. Therefore, a Human Rights Advisory Committee was established under the Presidential Office in December 2010, and one of its responsibilities is to work with all level of government units in preparing national human rights reports and reviewing them. The President Ma said that the initial report to be published in early next year will be based on the standards of the United Nations.

Despite the government’s efforts, many problems need to be solved. For instance, how to establish a national human rights reporting system based on the standards of the UN to regularly monitor the implementation of covenants? What does the international panel of

experts look like? It is only a pie in the sky so far, I have to say. Actually, many civic groups have argued that the reporting system should be in line with the spirit of the covenants and that prestigious experts from the international human rights community should be invited to review the reports. They also have argued that a national human rights reporting system should be in accordance with the Report on Indicators for Promoting and Monitoring the Implementation of Human Rights by the Office of the UN High Commissioner for Human Rights, to facilitate a more systematic dialogues between the government and NGOs. We are informed that this issue will be on the agenda of the meeting of Human Rights Advisory Committee at November 17. We look forward to hearing the good news, although it is a bit too late for me.

These developments described above demonstrate that, thus far, efforts to the implementation are insufficient.

If my assessment of the implementation is correct, we can surely realize that, although the profile of Taiwan's human rights conditions has improved greatly since 1990s, but the effect of international isolation still had an inevitable impact on the Taiwan human rights condition in the future. Plainly, the long isolation denies it access to international mechanisms, resources and stimulation, such as those that derive from the official treaty reporting process and reduces the chances for other states to interact with and influence Taiwan. Such international interaction often provides platforms and leverage for concerned groups of citizens to mobilize public awareness and political will at home. It also provides incentives for the state, academia, the legal profession and NGOs to develop local expertise and technical capacity for implementing human rights treaties. However, Taiwan's long-term international isolation has created a lack of international participation, exchanges, stimulation, and pressure. Accordingly, return to international society and positively participates international human rights affairs, is a key issue for the protection and promotion of international human rights.

Last but not least, Taiwan's experience over the past twenty years shows that democratization does not necessarily bring a deepening or expansion of human rights values and norms. On the contrary, democracy needs to be grounded in human rights, otherwise democracy will become a mere power game. Apart from making fine-sounding promises and announcements, Taiwanese government didn't focus on the important tasks of constructing the basic human rights infrastructure, so that "governing on the basis of human rights" has become a mere slogan. Since human rights are the most important elements in the process of democratic rule, overlooking the importance of human rights guarantees will seriously affect the quality and progress of Taiwan's democracy and rule of law. This is a serious issue that both the government and the public must face together.

Since 2009, the NGOs in Taiwan have made all possible efforts to bring into the attention of government with regard to ratifying the two Covenants. But there are still lacking the pressure to the government. We Taiwan's NGOs are particularly aware of how inadequate pressure from civil society alone is. Thus, Taiwan desperately needs international assistance and input. That's why today's workshop is so precious. With my time running out, I shall end my briefing on this note of appreciation. Thank you very much for your attention.