

Taiwan Human Rights Report

**Parallel Report on the
Implementation of the International Covenant on
Economic, Social and Cultural Rights**

In response to the initial report submitted under articles 16 and 17 of the
Covenant by the Government of the Republic of China (Taiwan)

Submitted to the International Review Committee

by

Covenants Watch



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Preface

On 20 May 2012, Covenants Watch (of which the Taiwan Association for Human Rights serves as secretariat) published the original Chinese edition of “2011 Taiwan Human Rights Report: Shadow Reports on ICCPR and ICESCR from NGOs.”¹ The Shadow Report is in response to Taiwan’s initial State Report pursuant to the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic and Social Rights (ICESCR), which the government published on 20 April 2012.²

The Shadow Report is a collective effort of a coalition of 60 civil society organizations (listed in the next section) and 57 authors from various relevant fields, who are identified at the beginning of the section on each article. It includes critiques and responses to the State Report, as well as specific examples of human rights violations that were neglected by the State Report, in order to illustrate the extent to which the official version misunderstands or neglects human rights conditions in our country.

From the beginning of the drafting of the State Report, civil society actively participated in and monitored the process. At the same time, civil society groups organized training workshops, study groups, online platforms, editorial meetings, and communication between the Covenants Watch Secretariat and various NGOs. Through these intensive discussions, the human rights issues that the Shadow Report should focus on were identified, and this foundation enabled Covenants Watch to complete the Shadow Report relatively soon after the State Report was published.

Finally, in order to enable the Shadow Report to be submitted to the International Review Committee, a team of six translators, all of whom have extensive experience in the human rights movement in Taiwan over the years, was assembled. In the process of translation, some additional information was added to enhance the clarity, and some updates were made when major developments occurred after the publication of the Chinese edition of the Shadow Report (for example, when the government announced plans to “de-link” migrant workers from the minimum wage in September 2012; see the section on Articles 6 and 7 of the ICESCR).

I. Structure of the Shadow Report

¹ The full text of the Shadow Report in Chinese is available at <http://ppt.cc/@A!G>.

² The State Report was published in 3 volumes, respectively “Implementation of the International Covenant on Civil and Political Rights”; “Implementation of the International Covenant on Economic, Social and Cultural Rights”; and “Core Document Forming Part of the Reports.” The full texts are available at <http://www.humanrights.moj.gov.tw/ct.asp?xItem=285670&ctNode=33254&mp=205>.

For the original Chinese edition of this first civil society Shadow Report, the ICCPR and ICESCR were not been treated as two separate volumes. Rather, in one document of over 300 pages, Covenants Watch and the participating advocacy groups addressed the substantive rights enumerated in both covenants. However, to facilitate the International Review Process that will take place in February 2013, the English edition of the Shadow Report has been restructured into three sections, one for each of the two covenants, as well as a Common Core Document.

Each of the rights covered has its own section, in order as they are listed in the covenants. Each section consists of four elements: first, a brief introduction; second, responses to the relevant paragraphs of the State Report; third, notable instances of issues not mentioned in the State Report; and fourth, civil society proposals for further concrete reforms.

For the ICCPR, the Shadow Report addresses the right of self-determination; non-discrimination and equality; the right to life; the prohibition of torture; the prohibition of slavery; the right to liberty and security of person; the right of all persons deprived of their liberty to be treated humanely and with dignity; freedom of movement and residence; procedures for expulsion of aliens; the right to fair trial; the prohibition of being held guilty of an act which did not constitute a criminal offense under law at the time; the right to privacy; freedoms of thought, expression, and the press, as well as freedom of information; freedoms of assembly and association; the rights of children; the right of political participation, and the rights of minorities.

For the ICESCR, the Shadow Report also addresses the rights to self-determination and non-discrimination, as well as the right to work, the right to just and favorable conditions of work, the rights to form unions and to strike, the right to an adequate standard of living, the right to health, and the right to education.

II. Problems with the Drafting of the State Report

Based on the long-term monitoring of Covenants Watch as well as the direct experience of some members in various working meetings in the process of drafting the State Report, we can see some overall issues. First, many government agencies when drafting their sections almost completely neglected to cite the General Comments issued by both the Human Rights Committee and the Committee on Economic, Social and Cultural Rights.³ Lacking these

³ The General Comments which each treaty body has promulgated over the years form the most important basis for delineating the scope of the covenants. This was recognized in Article 3 of our country's "implementation law," which reads: "In the application of the provisions of the two covenants, reference shall be made to their legislative intent and the interpretations of the relevant treaty bodies." This amply demonstrates that the government may not simply look

authoritative interpretations, their understanding of the content of the articles was insufficient. As a result, much of the State Report reads like a massive “work report” from the agencies of the government. Inspection and reflection of current human rights conditions in Taiwan is generally lacking, much less concrete measures to improve these conditions.

In contrast, in the process of drafting the civil society Shadow Report all General Comments were referred to. Moreover, the civil and political rights sections were enriched by extensive reference to the 2005 work by Professor Manfred Nowak (former U.N. Special Rapporteur on Torture), *U.N. Covenant on Civil and Political Rights, CCPR Commentary*. For the economic and social rights sections, many other international studies and data were considered.

Another issue discovered by Covenants Watch in the State Report’s drafting process was the misunderstanding of the content of U.N. reporting guidelines. For example, the Committee on Economic, Social and Cultural Rights has requested all States parties to include in their reports, under Article 11, “Whether the State party has adopted a national action plan or strategy to combat poverty... and whether specific mechanisms and procedures are in place to monitor the implementation of the plan or strategy and evaluate the progress achieved in effectively combating poverty.” However, in our government’s State Report, we see instead the “Executive Yuan Working Group on Improving Income Distribution” shoehorned in as the anti-poverty action plan mandated by the U.N. (see State Report on ICESCR, ¶ 202 (p. 106)).

During the process of the editorial review of the State Report draft, the Presidential Advisory Committee on Human Rights, all branches of government (*yuan*) as well as their subsidiary agencies were to be covered. However, alone among the branches, the Executive Yuan only submitted the reports from each of its subsidiary agencies, there is no mention in the report of the work of the Executive Yuan itself. Thus, the opportunity for a truly comprehensive examination of the human rights work of the executive branch of government was lost. This gap raises the concern of Covenants Watch as to the attitude of the Executive Yuan to the State Report and its contents. Among specific agencies, we observed the hostile attitude of the Environmental Protection Agency towards the requirement to submit its draft section, as well as in its exclusion of the suggestions put forth by civilian experts during the editorial review stage.

at the text of the articles, but must study as well the General Comments. As of January 2011, the Human Rights Committee had published 34 General Comments, and the Committee on Economic, Social and Cultural Rights had published 21. For the convenience of Taiwanese citizens, Covenants Watch has published compilations of these two sets of General Comments in Chinese on its website. See <http://covenants-watch.blogspot.com/2011/06/blog-post.html>.

III. International Review Process Key to Enable Constructive Dialogue Between Government and Civil Society

The “implementation law” enacted along with the ratification of the two covenants, Article 6, reads: “The Government shall, according to the provisions of the two covenants, establish a human rights reporting mechanism.” The basic elements of the mechanism have been gradually put in place since the completion of the State Report in April 2012. A seven-member committee has been created to oversee the “ICCPR and ICESCR Republic of China Initial State Report International Examination Secretariat,” and several distinguished international human rights experts have been invited to come to Taiwan to hold a formal examination of the State Report in February 2013.⁴

Now that this review process is beginning to get under way, the government’s publication of the State Report on 20 April will no longer just be one single day’s news. The initial State Report on the two covenants will be submitted to an external, international examination process, including procedures to ensure further implementation. Under such a process, all shadow reports, counter-reports, or alternative reports provided by national or international NGOs will be included as reference materials for the independent experts conducting the examination. This will lead to a “constructive dialogue,” not at all like earlier efforts (notably, the series of “pilot” National Human Rights Reports issued by the Executive Yuan from 2003 to 2009), when officials and civil society simply restated their positions, with no useful interaction. Indeed, the actual experience of the U.N. Treaty Bodies demonstrates that the committee members often rely heavily on materials and evidence submitted by civil society, and that this information makes it possible for a rigorous examination to take place during the formal meetings with the officials of the state parties.

IV. Our hope for “letting many flowers bloom”

Although this report is entitled “2011 Taiwan Human Rights Report: Shadow Reports on ICCPR and ICESCR from NGOs,” Covenants Watch strongly emphasizes that this report has been produced by only a portion of Taiwan’s civil society organizations. It cannot represent all the views of all of Taiwanese civil society. Instead, we hope that this first Shadow Report will stimulate other efforts, providing a precedent or a template that other groups may follow. We hope that more and more NGOs will, from their various perspectives, put forth a variety of shadow reports, counter-reports, or alternative reports. This will enhance the prospects for such human rights dialogue to become a regular, systematic practice, in order to effectively promote the improvement of human rights conditions in Taiwan.

⁴ Covenants Watch played a key role in advocating for such an international review mechanism, repeatedly proposing specific measures for how to institutionalize the process. See <http://covenants-watch.blogspot.com/2012/04/blog-post.html> (in Chinese only).

Participating Civil Society Organizations

A. Covenants Watch member organizations

Executive Committee Member Organizations:

- Taiwan Association for Human Rights 台灣人權促進會
- Judicial Reform Foundation 民間司法改革基金會
- Committee for Human Rights, Taipei Bar Association
台北律師公會人權委員會
- Taiwan Labor Front 台灣勞工陣線
- Amnesty International Taiwan 國際特赦組織台灣分會
- Taiwan International Medical Alliance 台灣國際醫學聯盟
- Environmental Jurists Association 環境法律人協會
- Taiwan Alliance to End the Death Penalty 台灣廢除死刑推動聯盟
- PeaceTime Foundation of Taiwan 台灣促進和平基金會
- Association for Taiwan Indigenous Peoples' Policies 台灣原住民族政策協會
- National Association for the Promotion of Community Universities
社區大學全國促進會
- Taiwanese Society of International Law 台灣國際法學會
- CSR Taiwan 台灣企業社會責任協會
- Millet Foundation 小米穗原住民文化基金會

Other Member Organizations:

- Taiwan Law Society 台灣法學會
- Taiwan Bar Association 中華民國律師公會全國聯合會
- Parents Association for Persons with Intellectual Disabilities, Taiwan
中華民國智障者家長總會
- League of Organizations for the Disabled, R.O.C. 中華民國殘障聯盟
- National Teachers' Association R.O.C. 中華民國全國教師會
- The National Federation of Teachers Unions 全國教師工會總聯合會
- Persons with HIV/AIDS Rights Advocacy Association Taiwan
中華民國愛滋感染者權益促進會
- The National Federation of Bank Employees Unions
中華民國銀行員工會全國聯合會
- Citizen Congress Watch 公民監督國會聯盟
- Collective of Sex Workers and Supporters 日日春關懷互助協會
- Association of Wage-Earners 台北市上班族協會
- Taipei Association for the Promotion of Women's Rights
台北市女性權益促進會

- Taiwanese Association for Pacific Ocean Development 台灣太平洋發展協會
- Taiwan Alliance for Advancement of Youth Rights and Welfare
台灣少年權益與福利促進聯盟
- Taiwan Society North 台灣北社
- Taiwan Free Burma Network 台灣自由緬甸網絡
- Gender/Sexuality Rights Association Taiwan 台灣性別人權協會
- Taiwan Indigenous Peoples NGO Alliance 台灣原住民族非政府組織聯盟
- National Alliance of Taiwan Women's Associations
台灣婦女團體全國聯合會
- Taiwan Labor and Social Policy Research Association
台灣勞動與社會政策研究協會
- Association of Taiwan Journalists 台灣新聞記者協會
- Taiwan Friends of Tibet 台灣圖博之友會
- Guts United, Taiwan 台灣青年逆轉本部
- Association of Mainlander-Taiwanese 外省台灣人協會
- Chang Fo-Chuan Center for the Study of Human Rights
東吳大學張佛泉人權研究中心
- Alliance for the Promotion of a National Human Rights Commission
國家人權委員會推動聯盟
- Grace Home Church 基督教恩友中心
- Green Formosa Front Association 綠色陣線協會
- Green Party Taiwan 綠黨
- Taipei Society 澄社
- Deng Liberty Foundation 鄭南榕自由基金會

B. Organizations not formally members of Covenants Watch which also contributed to various sections of the Shadow Report

- TransAsia Sisters Association 南洋台灣姊妹會
- Taiwan Love and Hope Association 台灣愛之希望協會
- New Immigrants Labor Rights Association 新移民勞動權益促進會
- Taiwan Association for Victims of Occupational Injuries
工作傷害受害人協會
- Green Citizens' Action Alliance 綠色公民行動聯盟
- Taiwan Association for Justice of Urban Renewal 台灣都市更新受害者聯盟
- The Humanistic Education Foundation 人本教育文教基金會
- Alliance for the Amendment of the Parade and Assembly Law
集遊惡法修法聯盟

- NTU Labor Union 台大工會
- Taiwanese Languages League 台灣母語聯盟
- Wild at Heart Legal Defense Association, Taiwan 台灣蠻野心足生態協會
- Working Poor Unite 台灣當代漂泊協會
- Citizen of the Earth, Taiwan 地球公民基金會
- Taiwan Association for Truth and Reconciliation 台灣真相與和解促進會
- Eden Social Welfare Foundation 伊甸基金會

C. Contact Information

All questions regarding this report may be addressed to the Secretariat of Covenants Watch, which is hosted by the Taiwan Association for Human Rights, at the following:

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Article 1: The Right of Self-Determination¹

I. Introduction

Due to intense urging by civil society organizations, the State report finally acknowledged in its section on Article 1 regarding the right of self-determination that there were many aspects which the government had been unable to realize. However, in general, the State report has only offered an acknowledgement of its inability to realize these rights and has not offered any substantial proposals for improvement.

Although the Taiwan government has enacted “The Indigenous Peoples Basic Law” (IPBL) to ensure the spirit of self-determination for indigenous peoples, the government has obliterated the spirit of indigenous peoples self-governance by both failing to enact related legislation and by instead enacting laws contrary to the spirit of the IPBL. A number of concrete cases also demonstrate that the IPBL has not been genuinely implemented. These examples include the following: (a) the infringement on traditional lands of indigenous people manifested in the Statute for the Development of the Hualien Region and (b) the policies adopted in the wake of the August 8 Flood Disaster of 2009 and the process of their implementation.

II. Responses to the State Report

(1) Indigenous peoples have become puppets of political parties: Response to ¶ 1 (p. 1) of the State Report

The Constitution of the Republic of China, which was enacted in Nanjing, China at the end of 1946, contains articles mandating “equality among the various racial groups” (Article 5). However, under the historical conditions of that time, the so-called “racial groups” or “nationalities” did not include Taiwan’s indigenous peoples. Therefore, Article 10 of the Additional Articles of the Constitution of the ROC (Taiwan), promulgated in 2005 added the stipulations that “the State shall, in accordance with the will of the ethnic groups, safeguard the status and political participation of the aborigines” to ensure self-governance among the indigenous peoples.² Nevertheless, in the actual operation of government administration in the past few years, it can be seen that indigenous legislators who have been nominated by political parties and elected by indigenous voters have mostly listened to the voices of the

¹ This section was authored by Chiu E-ling (邱伊翎), Chen Yu-chi (陳郁琦), Huang Fei-yueh (黃斐悅), Pasang Hsiao (拔尚), and Oto Micyang (伍杜 • 米將), and translated by Dennis Engbarth.

² Translations from the Republic of China Constitution’s main text and Additional Articles are taken from the official translation on the website of the Office of the President, available at <http://english.president.gov.tw/Default.aspx?tabid=1037#10>.

political parties which nominated them and have been unable to manifest the concepts or exercise their influence to promote indigenous peoples' autonomy.

(2) The right of referendum is stifled: Response to ¶ 3 (p. 1) of the State Report

The right of initiative and referendum is the most direct method by which the people can exercise the right of self-determination. However, since Taiwan's Referendum Act officially took effect on 2 January 2004 until the present, not even one referendum has passed. The most castigated features of the Referendum Act are undoubtedly the excessively high thresholds for the initiation and petition signatures to put a proposal on the ballot, the unclear powers and responsibility of the "Referendum Review Committee," and the excessively high turnout quorum for validation of a referendum. All of these features build barrier upon barrier in the path of the exercise of direct democracy by the people. For example, the Consumers' Foundation launched a campaign for a referendum to overturn the government's decision to import bone-in beef from the United States, which was then a danger zone for Creutzfeldt-Jakob ("mad cow") disease. However, in August 2010, the second-stage of petition-gathering failed due to various types of interference from government agencies.³ Beginning in 2009, four referendum campaigns launched by the Democratic Progressive Party or the Taiwan Solidarity Union for referendums on the Economic Cooperation Framework Agreement⁴, despite having received a total of over 4.3 million signatures,⁵ were all vetoed by the commissioners of the Referendum Review Committee.

The inability to realize the right of referendum has also affected the rights of indigenous peoples. According to the Nuclear Materials and Radioactive Waste Management Act, which regulates the final disposal of spent fuel and other radioactive waste from nuclear power plants, the operation of related installations may not harm public health, safety, or environmental ecology. Moreover, the selection of sites for nuclear waste repositories should be made based on the Act on Sites for Establishment of Low Level Radioactive Waste

³ Huang Kuo-chang (2010), "The Right of People's Political Participation in 2010: A Year of Setbacks and Reversals," in *2010 Taiwan Human Rights Report*, Taiwan Association for Human Rights, Taipei, Taiwan (in Chinese). See *Taipei Times*, "Campaign to hold poll on US beef imports fails," 11 August 2010, <http://www.taipeitimes.com/News/taiwan/archives/2010/08/11/2003480111>.

⁴ Translator's Note: The full name of the agreement is "Cross-Strait Economic Cooperation Framework Agreement," but is commonly referred to by the acronym ECFA. The Taiwan government signed this agreement with the People's Republic of China, through semi-official intermediary organizations, on 29 June 2010.

⁵ "ECFA Referendum: Referendum Review Committee Kills it Four Times in a Row", *Liberty Times*, 1 January 2011, <http://www.libertytimes.com.tw/2011/new/jan/6/today-t1.htm> (in Chinese). For an English-language report, see Loa Iok-sin, "Committee once again says no to referendum bid," *Taipei Times*, 6 January 2011, <http://www.taipeitimes.com/News/front/archives/2011/01/06/2003492788>.

Final Disposal Facility.⁶ However, this law was only promulgated in May 2006 while, three decades earlier, the government had already established a nuclear waste repository on Orchid Island (Lanyu), which is inhabited by the Tao people, without soliciting the views of the indigenous residents. In the past three decades, the Tao people have continuously protested against the location of this radioactive waste repository on Lanyu. On 30 December 2011, Tao people held a protest in Taipei City after an investigative report found that land in Lanyu had been contaminated due to leakages of barrels containing nuclear waste.⁷

Draft revisions of the Act on Sites for Establishment of Low Level Radioactive Waste Final Disposal Facility proposed in February 2011 by the Cabinet-level Atomic Energy Council revealed that the government intends to change the current requirement for a compulsory referendum to ratify a candidate repository site to a stipulation that a referendum to oppose the selection would have to be initiated by citizens in order to block such a selection.⁸ If this revision is made, local residents would have to overcome the thresholds in the two-phase proposal petition process to put a referendum on the ballot and then win over 50 percent votes against the site with at least 50 percent turnout to be valid. Moreover, based on the administrative divisions in effect for a referendum, residents in the villages physically close to nuclear power plants or facilities may be a different administrative district from the facility and therefore be unable to hold or participate in any related

⁶ Translator's Note: According to Article 9 of the Act on Sites for Establishment of Low Level Radioactive Waste Final Disposal Facility, any candidate site for a radioactive waste disposal facility must be approved by a local referendum in the county or city in which the site would be located within 30 days after the end of the period of public announcement. This stipulation exempts compulsory referendums on nuclear waste repositories from the "dual majority" requirement of Article 2 of the Referendum Act, which requires a "yes" vote from 50 percent of voters in a poll which has at least a 50 percent turnout. A similar exemption of the 50 percent turnout quorum in the Referendum Act was made for tourist casinos in Article 10-2 of the Offshore Island Development Act so that referendums on proposals to establish tourist casinos Before an Offshore Island may be approved by more than half of the valid votes but "the validity of the referendum result shall not require votes to have been cast by at least half of the eligible voters in the county or city." Thanks in part to this exemption, a referendum on a tourist casino project in the offshore island group of Matsu was approved by a 56 to 44 percent margin in July 2012. See Rich Chang and Chris Wang, "Group says Matsu Casino Referendum was Rigged," Taipei Times, 11 July 2012, <http://www.taipeitimes.com/News/taiwan/archives/2012/07/11/2003537468>.

⁷ Public Television News (PTS) Network, "After Coexisting with Nuclear Waste for 30 Years, Tao Braves Curse Government Genocide," 30 December 2011, <http://pnn.pts.org.tw/main/?p=37429> (in Chinese). See also in English, Loa Iok-sin, "Tao march against Lanyu nuclear leak," *Taipei Times*, 31 December 2011, <http://www.taipeitimes.com/News/taiwan/archives/2011/12/31/2003522065>.

⁸ Kang Chieh-hsiu, "If You Want to Say No to Nuclear Waste Being Dumped on Your Home, Please Ask for a Referendum," Taiwan Environmental Information Center, 2 February 2011, <http://e-info.org.tw/node/63556> (in Chinese).

referendum.⁹

(3) The failure to enact secondary laws has turned the Indigenous Peoples Basic Law into an empty shell: Response to ¶ 4 (p. 2) of the State Report

The government promulgated the IPBL in February 2005 and approved a number of other laws related with indigenous peoples' affairs. However, most of these laws were mainly statements of principle, and many secondary laws on substantive matters have yet to be enacted. As a result, the IPBL has not been able to be genuinely implemented and has become an empty shell.

In addition, various government agencies have failed to revise laws, regulations or measures based on the IPBL. Indeed, they have actively squeezed out rights guaranteed under the IPBL. For example, the Ministry of Interior recently ignored the requirement in the IPBL that guaranteed the right of consent of indigenous peoples to delineate reserved land of indigenous peoples as "forest zones." Instead, it used the methods of administrative meeting and public notification and demanded that local governments cooperate with the public notifications, thus sparking dispute within indigenous communities. Such cases will be discussed later in this report.

(4) The draft Indigenous Peoples Self-Governance Act violates the Indigenous Peoples Basic Law: Response to ¶ 5 (p. 2) of the State report

On 28 September 2010, the Executive Yuan submitted a draft "Indigenous Peoples Self-Governance Act" to the Legislative Yuan, but this draft bill was sharply criticized by indigenous peoples' rights organizations. The draft version that passed its first reading in the Legislative Yuan actually infringed on the right of self-determination of indigenous peoples. The draft act did not clearly grant indigenous peoples rights to traditional lands and their management, but required indigenous people to respect existing city and county administrative boundaries and the authority of central government-level state enterprises or entities over revenues from natural resources in these areas. The most controversial feature was contained in Article 24, which clearly excluded the application of the IPBL.¹⁰ According to the IPBL, the government recognizes the indigenous peoples' rights to land and natural resources (Article 20) and mandates that state authorities shall amend, make or repeal relevant regulations in accordance with the principles of this law within three years from the date it took effect (Article 34).

⁹ Saljeljeng, "The Nuclear Waste Issue Keeps Burning. Taipower: Mudan has no Right to hold a Referendum," 18 January 2011. Taiwan Indigenous Television (TITV), http://www.tipp.org.tw/formosan/news/news_detail.aspx?id=20110119000014 (in Chinese).

¹⁰ Kuan Ta-wei, "The Snares in the Executive Yuan version of the Indigenous People Self-Governance Act," Public Television Service News Network, 3 May 2011, <http://pnn.pts.org.tw/main/?p=26050> (in Chinese).

Nevertheless, the government not only has not amended, enacted, or repealed relevant regulations, but, instead, Article 21 of the Executive Yuan's draft Indigenous Peoples Self-Governance Act would require that, when indigenous people exercise their land and resource rights, their actions should be in accord with the existing Wildlife Conservation Act, Forestry Act, Mining Act, Sand and Gravel Excavation Act, Water Act, Hot Springs Act, Cultural Heritage Preservation Act, and National Park Law. In this manner, the scope of rights recognized in the IPBL will be considerably shrunk.

In addition, according to the IPBL, government agencies or private individuals should consult with indigenous peoples and obtain their consent or participation and share the benefits when engaging in land development, resource utilization, ecology conservation, and academic research on indigenous peoples' lands (Article 21). However, Article 24-3 of the Cabinet's draft Indigenous Peoples Self-Governance Act stipulates that projects "carried out by responsible agencies for enterprises with central state purpose for the sake of important national benefit with the permission of the Executive Yuan are not subject to the restriction of the regulation of the IPBL to obtain the consent of indigenous peoples." From the content of its articles, it can be seen that the Cabinet's draft Indigenous Peoples Self-Governance Act is in essence a subsequent law that hollows out a prior law and that gravely infringes on the right of self-determination of indigenous peoples.

(5) Indigenous peoples cannot utilize natural resources: Response to ¶ 6 (p. 2) of the State Report

In the IPBL, the government recognized the land and natural resource rights of indigenous peoples. However, the subsequent failure to enact secondary legislation and amend or revoke other laws has led to the occurrence of many cases in which indigenous tribes have been indicted by the state or even convicted of utilizing such natural resources (Please refer to the discussion of Article 27 of the ICCPR in this Shadow Report).

(6) Development projects in indigenous peoples regions have not respected the will of the indigenous peoples: Response to ¶ 7 (p. 3) of the State report

The IPBL mandates that government agencies or private individuals should consult with indigenous peoples when engaging in land development projects and, after securing their consent or participation, carry out the development based on the will of indigenous peoples. However, since the phrase "indigenous peoples' lands" in the IPBL is not clearly defined, and no sanctions were listed to violation of this stipulation, the government, regardless of whether utilizing land owned by individual indigenous persons or traditional lands, has rarely respected the IPBL's stipulation and consulted with

indigenous tribes or villages in advance.

The density of indigenous people in the Hualien-Taitung region is the highest in Taiwan (about one third of the residents of Hualien and Taitung counties). In the past, the traditional lands of various indigenous tribes covered virtually all of the territory in the Hualien-Taitung region, but since the implementation of the official land registration system, most of these traditional lands have been delineated as state owned land. As a result, numerous policies concerned with developing or utilizing public lands in these areas have profound linkages with indigenous peoples. For example, the draft Statute for the Development of the Hualien-Taitung Region was submitted by the Cabinet to the Legislature in February 2010. The provision in the drafts submitted by the Cabinet and KMT lawmakers for the “sale of public lands” triggered sharp controversy, resulting in their being dropped from the final version approved by the Legislative Yuan in June 2011 and promulgated on 29 June 2011. The purpose behind the attempt to enact such a policy of selling land in the “Eastern Zone Development Statute” appears to have been to encourage enterprises to make long-term investments and utilization for the sake of economic development.

This kind of large-scale development can sometimes squeeze the space for survival of the people and harm the environment, but the government often selectively guarantees the interests of investors instead of the rights of residents or the environment. The most notorious case has been the Meiliwan Resort Hotel on the coast in Fulafulangan village of the Amei people in Taitung County. The Taitung County government asserted that some residents were occupying state-owned land and then decided to allow the hotel developer to begin construction and to demand that the residents leave. Even though the Kaohsiung High Administrative Court judged that the developers had violated the Environmental Impact Assessment Act and indigenous peoples’ rights, and environmental protection organizations launched repeated protests, the Taitung County government issued an operating license to the developers. Only after the Supreme Administrative Court finally invalidated the environmental impact assessment on 19 January 2012 did the Taitung County government state that unless the EIA problem can be resolved, it would demand that the hotel cease construction and prohibit its operation. From 2008 through 2010, the Taitung County government consecutively lost suit after suit and stubbornly refused to issue an order to halt construction despite urgent calls by residents and environmental protection organizations.¹¹ During this period of time, the Meiliwan Resort Hotel added more facilities and continued to harm the environment.¹² The pattern of this case is similar to that employed by the

¹¹ Lee I-chia, “Court orders construction on Meiliwan resort stopped,” *Taipei Times*, 21 January 2012, <http://www.taipetimes.com/News/front/archives/2012/01/21/2003523735>.

¹² Taiwan Environmental Information Center, “Huang Chien-ting orders Meiliwan to Immediately Cease Construction. Indigenous People: Construction Should Have Stopped Long Ago!” 8 February 2012, <http://e-info.org.tw/node/74003> (in Chinese).

Miaoli County government, which has applied to establish an urban renewal plan for the Tai'an Hot Springs Zone to allow several hot springs hotels to legalize facilities which were illegally developed and are harming the environment in indigenous peoples' traditional lands.

(7) Indigenous peoples' lands which are being applied for as reserved land are occupied: Response to ¶ 8 (p. 3) and ¶ 219 (p. 113) of the State Report

Since the related legislation on indigenous peoples' reserved lands has yet to be implemented, traditional lands of indigenous communities have been continuously subjected to infringement by state power and, as a result, the lives and livelihoods of indigenous communities have been constantly disrupted.

One noteworthy example concerns the struggle by indigenous communities in 2011 through 2012 against the Shihti Fishing Port, which is built at Fengpin Village in Hualien County on traditional land of the Amei people. The Amei people had registered this land with the township government as "reserve land" from 1990 through 1993, but the township government never processed the registration. In 1993, the National Property Administration of the Ministry of Finance allocated this land to the East Coast National Scenic Area Management Office of the Ministry of Transportation and Communications. After protests from the Amei community, the township government issued a document in 1997 stating that "due to high turnover among the staff responsible for this case, there had been no clear transfer of responsibilities and, as a result, application materials from 1980 through 1993 cannot be found. Please accept our apologies." In other words, the early application materials did not exist, but the land was already in the hands of the ECNSA office. From 1996 through 1999, the Amei community again petitioned the MOTC, but the MOTC's response was that the land in question had already been incorporated into the Shihtiping and Siouguluan River national scenic areas and thus legally "cannot be returned."¹³

(8) Lack of respect for the will of indigenous communities in post-disaster reconstruction: Response to ¶ 9 (p. 4) and ¶ 220 (p. 114) of the State Report

Typhoon Morakot, which struck Taiwan in early August 2009, inflicted grave harm on indigenous communities in southern Taiwan. The government was subjected to widespread criticism for its slow response to the disaster and delays in rescue efforts. Therefore, the Cabinet rushed to complete within a week a draft Special Act for Post-Typhoon Morakot Reconstruction in order to calm the people's anger. However, this special act excluded entirely all other

¹³ See Lu Shu-heng, "Indigenous people struggle to regain Shihtiping Port," *Taiwan Lihpao*, 17 January 2012, <http://n.yam.com/lihpao/garden/201201/20120117825980.html> (in Chinese).

existing laws and regulations, such as the Environmental Impact Assessment Act and the Soil and water Conservation Act. Moreover, Articles 12 and 13 of the draft special act gave central government and local governments the power to compulsorily order the removal of villages without advance consultation with village assemblies or communities and without regard to laws regarding urban or rural planning, national park management, environmental impact, water or soil conservancy, or the Indigenous Peoples Basic Law. These stipulations sparked protests from environmental protection organizations and indigenous peoples' groups alike.¹⁴

Nevertheless, the Legislature hurriedly approved this special act with minor adjustments and thereby sowed the seeds for numerous post construction problems. These included the subcontracting by the government of tasks of the Cabinet-level Morakot Post-Disaster Reconstruction Council to private sector charities, thus creating a confusion of authority and accountability between the people, the State, and civic or private organizations. The government also insisted on only building so-called "permanent housing" instead of providing transitional housing for emergency settlement, and it demanded that indigenous communities must abandon their own land before they could move into "permanent housing." In fact, if the land where indigenous villages resided had already been hit by landslides and were danger zones, the indigenous communities would not insist on staying in such areas. However, the process of determining the "special delineated zones" (areas where indigenous people are not allowed to live) lacked sufficient dialogue or discussion with indigenous communities and therefore was subject to serious doubts and sparked protests from indigenous communities. For example, residents of the Laiji Community near Alishan in Jiayi County petitioned the Control Yuan in early February 2012 to investigate whether Jiayi County government officials had been negligent, given extended delays in the delineation process.¹⁵

Another example concerns Kochapongane (Haocha Village) of the Rukai people in Pingtung County, which had been destroyed during Typhoon Morakot on a site to which the community had been relocated in 1977. After suffering numerous large and small scale disasters, residents had repeatedly demanded that the government carry out river improvement projects, but were

¹⁴ For background in English see the *Taiwan News* editorial "Ma's 'shock plan' for southern Taiwan," *Taiwan News*, 26 August 2009, http://www.etaiwannews.com/etn/news_content.php?id=1040862&lang=eng_news&cate_img=logo_taiwan&cate_rss=TAIWAN_eng, and the *Taipei Times* editorial "Legislation that befits a disaster," 26 August 2009 <http://www.taipeitimes.com/News/editorials/archives/2009/08/26/2003452041>.

¹⁵ Lu Shu-heng, "Indigenous People Protest to the Control Yuan over the Lack of Progress in Reconstruction," *Taiwan Lihpao*, 5 February 2012, <http://www.lihpao.com/?action-viewnews-itemid-115052> (in Chinese), and Loa Iok-sin, "Aborigines protest delay in reconstruction," *Taipei Times*, 5 February 2012, <http://www.taipeitimes.com/News/taiwan/archives/2012/02/05/2003524731>.

ignored. Therefore, since the government's negligence resulted in the Typhoon Morakot flood disaster and left the residents homeless, over 100 Haocha residents officially filed a lawsuit for national compensation in February 2012.¹⁶

The plan for permanent housing in the post-Typhoon Morakot reconstruction effort generated a lot of frictions between and among affected communities. First, the government planned to merge communities of different indigenous peoples into a single permanent settlement, citing a limited amount of available public land. Second, the differences between the religions of the indigenous peoples and a charitable organization which had been subcontracted to carry out the related construction. Third, differences of whether to accept the permanent settlement or insist on returning to the original villages.

Moreover, people in indigenous communities which had not been destroyed or severely damaged by the typhoon and subsequent floods were commonly confronted with a lack of willingness on the part of the local governments to repair or improve the existing infrastructure such as roads and water and power supply systems; therefore, they faced difficulties in returning to their homes and maintaining their livelihoods.

In addition, the Atayal community of Hagay (Fusing Village) in Taoyuan County have faced serious obstacles in the way of reconstruction after their village was destroyed after the collapse of the Baling Dam in the wake of Typhoon Aere in 2004.¹⁷

III. Conclusions and Recommendations

The Referendum Act was enacted to ensure the right of citizens for direct democracy. However, the current Referendum Act in Taiwan features numerous restrictions that severely obstruct the possibility of citizens actually exercising their right of direct democracy. Therefore, the government should immediately take remedial action in order to allow the Referendum Act to genuinely return power to the people and allow the people to exercise direct democracy and make their own decisions on major public matters.

¹⁶ Tung Shu-chia, "The Haocha village indigenous community destroyed in the August 8 disaster wants national compensation," *United Daily News*, 5 February 2012, http://tw.myblog.yahoo.com/jw!FzXNONCbERrWcmVs0bP5_w-/article?mid=363 (in Chinese).

¹⁷ Please refer to the section in this Shadow Report on Article 11 of the ICESCR regarding the right to an adequate standard of living. Also see Also see Loa Iok-sin, "Atayal protest failure to fulfil rebuilding vow," *Taipei Times*, 15 April 2011, <http://www.taipeitimes.com/News/front/archives/2011/04/15/2003500787>, and "Hagay community protests against impacts of Baling Dam," "David on Formosa" blog, <http://blog.taiwan-guide.org/2011/04/hagay-community-protests-against-impacts-of-baling-dam>.

In order to realize the right of self-determination for indigenous peoples, the government should immediately enact secondary laws related to the Indigenous Peoples Basic Law and ensure that each ministry and agency takes action to amend, draft or revoke related legislation and decrees in order to implement the IPBL. At the same time, the draft Indigenous Peoples Self-Governance Act should be re-drafted so as to prevent the enactment of a law that contravenes the spirit of the IPBL and the two Covenants.

The government and the Council of Indigenous Peoples should provide a substantial re-examination regarding the issue of the relocation of indigenous people against their will in the process of reconstruction in the wake of the August 8 flood disaster and other natural calamities. In particular, the government should provide a comprehensive investigative report regarding the cases of Kochapongane (Haocha Village) of the Rukai people in Pingtung County, which was obliterated during the August 8 disaster, and the failure to reconstruct Fuxing Village of the Atayal people in Taoyuan County over a decade after its destruction in the wake of the collapse of the Baling Dam. Moreover, the Taitung County government and the CIP should submit a re-examination regarding the 2011 decision by the Taitung County government, in defiance of court judgments, to insist on authorizing a conglomerate to develop land traditionally inhabited by indigenous peoples. The government should also revoke public orders that have incorporated indigenous peoples' reserved lands into forestry zones or allocated such lands for use in construction of reservoirs or other such projects.

Articles 2 and 3: Non-Discrimination and Equality¹⁸

I. Introduction

- (1) According to the guidelines on treaty-specific documents, state party reports should provide “disaggregated and comparative statistical data on the effectiveness of specific anti-discrimination measures and the progress achieved towards ensuring equal enjoyment of each of the Covenant rights by all, in particular the disadvantaged and marginalized individuals and groups.”¹⁹ The report should also provide information on the enjoyment of each Covenant right based on ethnic origin, gender, nationality, financial status, physical or mental disabilities, or other relevant status bound to cause discrimination in Taiwan. Data on the employment, education, and health situation of Taiwan's indigenous peoples show that the extent to which they enjoy these rights is clearly lower than that of non-indigenous persons. However, data on other vulnerable groups is lacking. If the government does not provide such data, the effects of potentially discriminatory measures cannot be understood and it will not be possible to monitor whether subsequent progress has been made.
- (2) Based on these guidelines, the government should explain the effects of concrete anti-discrimination measures. Moreover, regarding anti-discriminatory measures for groups facing adverse circumstances, including ¶ 11 (elderly persons), ¶ 12 (persons with disabilities), ¶ 13 (low-income households), ¶ 14 (single-parent and grandparent-led families), and ¶ 15 (children), the government's human rights report largely mentions only the provision of subsidies and living allowances, but entirely ignores that the government should adopt a comprehensive national action plan or strategy that integrates economic, social, and cultural rights, and that it should have concrete mechanisms and procedures to measure the effects and progress of this plan.
- (3) Regarding the nine core human rights instruments, aside from the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), ratified back in 1966, our country in 2007 ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and in 2009 also ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). In addition, enforcement

¹⁸ This section was authored by Huang Song-lih (黃嵩立), Chen Ruei-yu (陳瑞榆), Chen Kai-chun(陳凱軍), Wang Hsien-han(王顯翰), Wu Meng-zi (吳孟姿), and Cheng Shi-yin (鄭詩穎), and translated by Susanne Ganz.

¹⁹ Committee on Economic, Social and Cultural Rights, “Guidelines on Treaty-Specific Documents to be Submitted by States Parties Under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights,” E/C.12/2008/2, 24 March 2009.

laws for these last three covenants (i.e. not including CERD) have been adopted. However, we have not yet ratified two other treaties closely related to elimination of discrimination – the International Convention on the Protection of the Rights of Migrant Workers and the Members of Their Families (ICRMW) and the Convention on the Rights of Persons with Disabilities (CRPD). With regard to domestic law, Taiwan also lacks a comprehensive anti-discrimination law or a dedicated anti-discrimination court such as the Canadian Human Rights Tribunal. The establishment of a National Human Rights Commission would contribute to preventing discrimination; however, since the government is not keen on setting up such a commission, the idea is still being studied.

- (4) As just mentioned, there is no full-fledged equality law or anti-discrimination law in Taiwan. Instead, legislation regarding the prevention of discrimination is still scattered across individual laws. Presently the following laws include articles on the prevention of discrimination: (1) Employment Services Act (1992); (2) Means of Mass Transportation Announcement Languages Equality Protection Act; (3) Indigenous Peoples Right to Work Protection Act (2001);²⁰ (4) Gender Equality in Employment Act (2002, 2008); (5) Gender Equity Education Act (2004);²¹ (6) HIV Infection Control and Patient Rights Protection Act (2007);²² (7) People with Disabilities Rights Protection Act (2007, 2011);²³ (8) Regulations for Discrimination Complaints by Taiwan Area Residents (2008);²⁴ (9) Enforcement Act of the Convention on the Elimination of All

²⁰ This law does not directly use the term “discrimination,” but stipulates a proportional recruitment principle for government agencies, guidance in setting up indigenous peoples’ cooperatives, and employment promotion.

²¹ This is the translation given in the State Report, although it would be better translated as Gender Equality Education Act.

²² HIV Infection Control and Patient Rights Protection Act (2007), Article 4, states: “The dignity and the legal rights of the infected shall be protected and respected; there shall be no discrimination, no denial of education, medical care, employment, nursing home, housing, or any other unfair treatment; regulations governing the protection of their relevant rights shall be formulated by the central competent authority in consultation with various central competent enterprise authorities.

To prevent the spread of HIV to others, the central competent authority may impose certain necessary regulations on the practice of the jobs that the infected are engaged in.

“No recording, videotaping, photographing shall be made of the infected without their consent.”

²³ People with Disabilities Rights Protection Act (2007, 2011), Article 16, states: “The dignity and legal rights and interests of people with disabilities shall be respected and guaranteed. People with disabilities shall not be discriminated on the rights and interests of education, examination, participation, employment, residence/housing, migration, and medical care service.”

²⁴ Enacted pursuant to Article 62, Paragraph 3 of the Immigration Act, which states: “No one may discriminate against residents of the Taiwan Area on the basis of nationality, race, color, class, and place of birth. Any person whose rights are infringed upon due to the discrimination mentioned in the preceding Paragraph can file a complaint to the competent authorities on the basis of the infringement situation, unless regulated otherwise.

Forms of Discrimination against Women (2011); (10) Regulations Governing Preferential Admission Status for Indigenous Students and Government Scholarships for Indigenous People to Study Overseas (2011); (11) Educational Fundamental Act (2011).²⁵ The enactment of the following laws was once under consideration, but their legislative process has not been completed: (1) National Languages Equality Act, draft bill by the Ministry of Education (2007); (2) Ethnic Groups Equality Act, draft bill by the Executive Yuan (2009).

- (5) Agencies within government that have been set up to prevent discrimination include the following: (1) A Gender Equality Commission has been established under the Executive Yuan to prevent gender discrimination;²⁶ (2) The National Immigration Bureau under the Ministry of the Interior has set up a Review Panel for Discrimination Complaints from Taiwan Area Residents, which mainly handles discrimination regarding place of birth and nationality based on the guidelines for the establishment of said panel and legal assessment; (3) Pursuant to Art. 5 of the Employment Services Act, the governments of special municipalities, counties and cities are tasked to determine discrimination in employment. The local governments may invite relevant government agencies, representatives of labor and employer organizations, and scholars to form an Employment Discrimination Evaluation Committee to determine, upon receiving complaints from the public, whether an employer has violated the law which prohibits “discriminating against any job applicant or employee on the basis of race, class, language, thought, religion, political party, place

“The competent authorities shall determine requirements for filing the complaint mentioned in the preceding Paragraph, complaint procedures, the formation of a review panel, and other matters.”

²⁵ Educational Fundamental Act (2011), Article 4, states: “All people, regardless of their sex, age, abilities, geographic location, ethnic group, religious beliefs or political ideas, social or economic standings, or other conditions, have equal opportunity for receiving education. Special protection shall be provided for the education of indigenous peoples, the physically or mentally challenged, or other disadvantaged groups in consideration of their autonomy and special characteristics in accordance with relevant laws and regulations to support their development.”

²⁶ In order to promote horizontal coordination between government agencies and strengthening the overall effect of promoting women’s rights, the Executive Yuan established the task force Committee of Women’s Rights Promotion on May 6, 1997 (herein called Women’s Rights Committee). It was tasked to incorporate the proposals of women’s groups representatives, scholars, and experts into the decision-making mechanism to ensure through lawmaking and policymaking that women’s rights are guaranteed. With the organizational restructuring of the Executive Yuan on Jan. 1, 2012, a special Department of Gender Equality was established within the Executive Yuan as Taiwan’s first dedicated gender equality mechanism, while the Women’s Rights Committee was expanded into the Gender Equality Commission, Executive Yuan. The Department of Gender Equality, as the administrative arm of the Gender Equality Commission, harmonizes gender equality policies across the various cabinet agencies and monitors the implementation of gender equality and the incorporation of gender perspectives at the central and local government level.

of origin, place of birth, gender, gender orientation, age, marital status, appearance, facial features, disability, or past membership in any labor union.” While there have been occasional reports about employers being fined, the State Report does not mention the number of cases that occurred each year, which precautionary measures the government has taken, and whether the situation has gradually improved over the years.

- (6) Although the laws and organizations mentioned above exist, the cases described below show that the government still needs to make efforts with regard to preventing discrimination.

II. Responses to the State Report

- (1) Gender equality education: Response to ¶ 23(2) (p. 13), ¶ 32(1) (p. 20), and ¶ 35 (p. 27) of the State Report

Pursuant to the Gender Equity Education Act, the Ministry of Education began to integrate a new gender equality education syllabus into elementary school and junior high school curricula in 2011. Part of the syllabus includes learning about different sexual orientations, gender traits, and gender identities according to students' different learning stages, and also making LGBT education a part of gender equality education.

1. The True Love Alliance Incident

In the “2008 Grade 1-9 Curriculum Guidelines,”²⁷ the Ministry of Education clearly states the objectives of gender equality education as follows: “Through the process and methods of ‘education’ we hope to enable people of different gender or sexual orientation to develop their potential on an equal footing without being restricted by physiological, psychological, social, or cultural gender factors. Moreover we hope to use gender equality education to foster real gender equality in society among persons of different gender, so that they are able to thrive together with the nation and society as a whole as we jointly create a pluralist society that embraces gender equality.” In other words, gender equity education aspires not simply for the equality of the “two sexes,” but a gender equality that covers a more diverse spectrum of genders and sexualities.

²⁷ “2008 Grade 1-9 Curriculum Guidelines”: In the two months between October and December 2007 the Ministry of Education’s Grade 1-9 Curriculum Guidelines Review Committee established a review taskforce on the general guidelines, learning areas, life curriculum and other important issues regarding “Grade 1-9 Curriculum Guidelines.” Working in subgroups, this taskforce reviewed and adopted a slightly amended version of the Curriculum Guidelines under the name “2008 Grade 1-9 Curriculum Guidelines.” It also decided that the guidelines be implemented from 2011.

Therefore LGBT education is an important and indispensable part of gender equality education. Originally the Ministry of Education was supposed to promote LGBT education in elementary schools and junior high schools across Taiwan from August 2011 as stipulated by law. However, the conservative religious group Taiwan True Love Alliance²⁸ launched a malicious campaign, claiming that education on knowing, understanding, and respecting diverse genders and diverse families (aside from learning about same-sex marriages, such education also includes step-parent led families, single parent families and other manifestations of diverse families) would confuse the gender awareness of children and encourage and tempt elementary and junior high school students to engage in sexual behavior and develop diverse sexual desires. These claims triggered panic and misunderstanding among some sectors of society. As the media subsequently fanned these claims, several lawmakers were misled to believe the statements of the Taiwan True Love Alliance, including Chen Shu-huey, Cheng Chin-ling, Kuan Bi-ling, and Chu Fong-chi. They demanded that the Ministry of Education implement the 2008 Curriculum Guidelines and related teaching materials only after canvassing once more the opinions of people of all walks of life and after reporting to the Legislative Yuan about the matter. This move ruined the efforts of the Ministry of Education's gender equity education curriculum review panel, which had convened 10 times and held two public hearings. The Department of Elementary Education and the Student Affairs Committee under the Ministry of Education were thus forced to hold another eight public hearings in northern, central, southern, and eastern Taiwan. Although in the eight public hearings a number of participating local organizations, people working at the frontline of education, and parents voiced support for education on homosexuality, the Ministry of Education nonetheless surrendered to the false claims of the Taiwan True Love Alliance. Not only did the Department of Elementary Education begin to make minor adjustments to the competence indicators for gender equity education in the curriculum guidelines, but the Student Affairs Committee handed two of the three teacher's manuals that were originally slated for release – *Teaching Gender Well*, a reference manual

²⁸ Taiwan True Love Alliance (<http://tulv.tw/>): From the very beginning this organization appeared via an official website, but did not post on the website the name of an entity or individual to take responsibility for its statements. Since the organization maintained anonymity its motives for the establishment of an official website against education on homosexuality were strongly questioned by educators. Moreover, the website also created a fake debate: By spreading a great deal of distorted or negative news such as “We oppose the Ministry of Education encouraging sexual liberation in gender equality education in elementary and junior high schools,” it misled the public into believing that the future education about homosexuality in schools equaled the advocacy of sexual liberation. When Chi Ming, a researcher at the Human Life Ethics Center Faculty of Theology of Fu-Jen Catholic University, was subsequently exposed as the alliance's responsible person, his capacity attracted particular attention. It also led to misgivings about the meddling of religious groups in politics given that the Human Life Ethics Center, the Bread of Life Christian Church, Top Church, and other religious groups were behind the alliance.

for junior high school teachers, and *This is how Gender can be Taught*, as reference for elementary school teachers – to scholars and experts for further review. As a result, teaching material for a diverse gender equity education, scheduled to be used from August 2011, was delayed. The government has failed to look into the problem of discrimination against gender minorities, but bowed to pressure from conservative religious organizations so that all gender education curricula must be reviewed and approved by religious organizations before they are implemented. The state has failed to promote the ideas of educational professionalism, improvements in human rights, and diverse gender equality.

2. The Lujiang Junior High School Incident

In the evening of 30 October 2011, a young man surnamed Yang, a student at New Taipei Municipal Lujiang Junior High School, jumped to his death at his home because he was no longer able to put up with peer exclusion and bullying over his gender traits. Reports described Yang as an introverted person with a small and slim build who had been excluded and ridiculed as a sissy by his male classmates throughout his entire school career. Since the suicide happened just one day after Taiwan's annual gay street parade, this news immediately triggered an outcry from the gay and lesbian movement as well as gender equality activists. On 5 November they held a commemorative event outside the entrance of Lujiang Senior High School. Because education about homosexuality, which is only a small part of gender education, does not take place in elementary and junior high schools, students with different gender traits suffer from bullying, while the bullies unwittingly become victimizers because they have not received a diverse gender education. At the same time teachers and parents are at a loss as to how to face students with different gender traits because they don't have the necessary and appropriate teaching materials.

(2) Violation of privacy of people living with HIV and AIDS undermines right to work: Response to ¶ 16 of the State Report, as well as ¶ 44 of the State Report for ICCPR

With regard to the protection of the rights of people living with HIV and AIDS, the State Report merely states that Article 4 of the HIV Infection Control and Patient Rights Protection Act stipulates that the dignity and the legal rights of the infected shall be protected and respected; there shall be no discrimination, no denial of education, medical care, employment, nursing home, housing or any other unfair treatment. Yet the state report failed to give a full account of the real situations of people living with HIV.

In addition, according to this law, in the event of unfair treatment the infected individual may file a complaint within one year of the incident. In the four years between the proclamation of the amended HIV Infection Control

and Patient Rights Protection Act in July 2007 and July 2011, just seven complaints were filed over the violation of the rights of infected individuals. This exceptionally low figure reflects the big gap between legal guarantees and their actual enforcement. The law is actually vastly insufficient when it comes to finding resources and avenues for relief and protection.

Concrete cases of discrimination in employment

Mr. Huang, an HIV carrier, was invited for a job interview upon introduction by a friend and was hired. When the company subsequently arranged for a medical check-up Mr. Huang was shocked to find out that the health check items included an HIV test. Since Mr. Huang was afraid that his infected status would be exposed and also found out by his friend, he sadly left the medical check-up clinic and also gave up the job that he had just landed. He was agonizing over whether he would face the same situation at his next job, too.²⁹

Xiao Yu, who is in her twenties, is an HIV carrier. In late November 2009, she successfully applied for a cleaning personnel position and was dispatched to work at a hospital. After finishing her first day on the job, she received a medical check-up form from the cleaning services company, which included an HIV test. On the following day she told the company that she was infected with HIV. Much to her surprise the company demanded that she immediately return all work equipment. After just one and a half days on the job she found herself fired because of her HIV infection. In this case a complaint was successfully filed with the Department of Health of the Taipei City Government. The cleaning services company was eventually fined NT\$300,000 because it failed to reach an out-of-court settlement with the complainant within a given deadline.³⁰

The HIV Infection Control and Patient Rights Protection Act clearly states that the right to work of HIV infected persons is guaranteed and that they may not be discriminated against. Article 23 of the Act also stipulates that once a complaint has been substantiated individuals or institutions in violation of the Act shall be fined NT\$300,000 up to NT\$1,500,000. Art. 7 of the “Regulations Governing Protection of the Rights of HIV Patients,” a subordinate law to the Act promulgated in 2008, clearly spells out the complaint procedure and mechanism. However, when it comes to the actual handling of such cases, the yardstick for punishment is whether the complainant has agreed to an out-of-court settlement. Therefore the Department of Health will not impose a fine, even if a complaint has been substantiated, on the grounds that the two sides have reached a settlement. In the early stages of the implementation of the said Act, in some cases local authorities refused to inform the complainant of the

²⁹ Case provided by Wu Meng-tzu of the Taiwan Love and Hope Association

³⁰ “Taiwan’s First Penalty for Discrimination Based on AIDS,” *Apple Daily* report of 19 July 2010. http://tw.nextmedia.com/applenews/article/art_id/32671531/IssueID/20100719 (in Chinese).

outcome of the complaint. The original intention of the Regulations is to establish whether discrimination has occurred. If it is impossible to impose due punishment on violators, then efforts to achieve the goal of equal rights for HIV infected people are doomed.³¹ For people living with HIV/AIDS, the protection of privacy is the most fundamental and most important issue. At the workplace, people living with HIV/AIDS do not only face discrimination or are fired when their infected status is exposed. Even when a company decides not to lay off the infected person, he or she may face rumors and slander within the company and feel compelled to resign at his or her own initiative. Therefore, companies must first of all be prohibited from insisting on unnecessary medical examination items if the right to work of people living with HIV or AIDS is to be truly protected. While the Act currently in force clearly states the protection of the right to work, it remains ambiguous in terms of how to ensure such protection, and is difficult to apply. When a company demands that its employees take an HIV test and labor-management relations are severely unequal, infected persons will hardly be able to refuse testing. Their infected status is even more likely to be exposed due to inappropriate handling of medical check-up information, which in return will affect their right to work.

We do not only face the problem of how people living with HIV or AIDS, whose status has not been exposed, can protect their privacy to prevent repercussions on expanded human rights such as family unity, work, education, and medical assistance. Civic groups that assist the disadvantaged HIV patients also often encounter misunderstandings and rejection from among the general public, as becomes evident in the following incident involving the Harmony Home Association Taiwan.

**Concrete case of discrimination in right to residence –
The Harmony Home Association Taiwan Incident**

In June 2006 the Harmony Home Association Taiwan (herein called Harmony Home) rented a house in the Zaixing Community in Taipei City's Wenshan District as home for more than 20 HIV patients. Police carelessly let the news slip, which triggered protests from the community's residents. They demanded that Harmony Home move away from the community within three months on the grounds that the community bylaws stipulated that "no one may engage in the business of sheltering or settling persons with statutory communicable diseases." After Harmony Home rejected the demands, the community's management committee filed a lawsuit with the Taipei District Court in October 2006. The court ruled in the same month that the said bylaws only restricted residents from "engaging in the business of sheltering or settling" but did not restrict the HIV patients' freedom to choose a residence. Therefore, the

³¹ Monthly newsletter of the Persons with HIV/AIDS Rights Advocacy Association of Taiwan, September 2011 issue

court ruled that Harmony Home must move away from Zaixing Community in order to ensure that the physiological and psychological health of the residents was not endangered by the HIV patients, which meant that Harmony Home had lost the lawsuit in the first instance.

In 2007 the HIV Infection Control and Patient Rights Protection Act was revised. In line with the intention of this Act, the High Court recognized in the second instance that the bylaws of Zaixing Community violated the HIV patients' legally protected rights because it ruled out sheltering patients with the statutory communicable disease AIDS, thus ruling against Zaixing Community. Although Harmony Home won the lawsuit, it had already relocated the severely ill patients before the ruling was final, in order to protect their right to live in peace instead of being treated like social outcasts, and it had converted the premises into a shelter for single mothers and children living with HIV or AIDS.³²

(3) The Discrimination Complaint Review Board turning a blind eye to discrimination: Response to ¶ 19 of the State Report

Taiwan has always been a multiethnic state. Due to a policy of opening and globalization, a large number of foreign immigrants have entered Taiwan in recent years.³³ In order to protect immigrants from discrimination, in 2008 the National Immigration Bureau under the Ministry of the Interior promulgated the "Regulations Governing Discrimination Complaint Filing Procedures for Residents of the Taiwan Area" and the "Guidelines for the Establishment of the Review Panel for People Residing in the Taiwan Area Filing Complaints against Discrimination." The number of discrimination complaints accepted and reviewed stood at one case each in 2009, 2010, and 2011. In all three cases the complaints were filed over "verbal or written discrimination," but during review none of the complaints was substantiated. Two of the three discrimination complaints handled by the National Immigration Bureau were filed by the Trans Asia Sisters Association Taiwan (TASAT). Yet in both cases the review found: "The discrimination complaint was not substantiated because the rights of the complainant were not infringed upon."

Concrete cases

In 2010 a teacher at Kaohsiung Municipal Lin Yuan Senior High School, when disciplining a student whose mother hails from Indonesia, made statements

³² Chen Ching-fang: "Harmony Home Wins Lawsuit, Severely Ill Already Relocated," *The Epoch Times*, 7 August 2007, quoting the Central News Agency. Retrieved from <http://www.epochtimes.com/b5/7/8/7/n1794905.htm> (in Chinese).

³³ As of August 2012, more than 468,000 cross-border marriages were registered in Taiwan. Most of these were foreign born females married to Taiwanese men; the majority (65%) were from mainland China and the rest primarily from southeast Asian countries.

such as “Are you a barbarian? You want to go back to Indonesia with your mother during the winter break, then just get out of here and live as a barbarian in Indonesia!” The said student felt discriminated and offended. When hearing this news other female immigrants were quite enraged, feeling that the teacher’s statements would only aggravate discrimination and misunderstandings in Taiwanese society toward new immigrants and negatively affect the relationship between the girl and her mother. Therefore they filed a complaint.

In 2011 an article proliferated on the Internet that strongly discriminated Vietnamese women. Its headline read: “Vietnam – a Country that Makes Money with Female Genitals.” The article left a Vietnamese woman who read it very uncomfortable. She thought that such discourse could imperceptibly influence the Taiwanese public, thus undermining the good relationship and mutual trust between her and her Taiwanese husband. So she filed a complaint.

(4) The government openly discriminates against the mentally disabled: Response to ¶ 12 (p. 5) of the State Report

Article 28, Paragraph 1, Item 9 of the Civil Service Employment Act states: “persons proven mentally incompetent by a qualified physician” may not be employed as civil servants. This statement clearly has discriminatory connotations.

III. Issues Neglected by the State Report

(1) A civil servant welfare policy that takes from the poor and gives to the rich

1. Unfair treatment that evolved throughout history: special treatment for civil servants. The government grants civil servants welfare that is far better than what the rest of the people get. A comparison of social welfare provided for military officers, civil servants, and teachers and that for ordinary people shows that the government clearly looks after and favors these groups excessively.³⁴ The various welfare benefits for military officers, civil servants, and teachers are uniformly applied no matter whether the beneficiary holds a lower, middle, or higher level position. The following are examples of such benefits: dependent education subsidies, year-end bonuses, performance review bonuses, holiday benefits, high funeral subsidies (between three to five months pay, based on closeness of family relationship), wedding subsidies (two months pay),

³⁴ According to Examination Yuan statistics, Taiwan had a total of 488,998 public servants in 2010, including 340,106 civil servants as well as 148,892 contract employees in government agencies and public schools. According to Directorate-General of Budget, Accounting, and Statistics (DGBAS) statistics, the number of employees in the industrial and services sectors totaled 6.935 million people in May 2012.

childbirth benefits (two months pay per birth). If a military officer, civil servant, or teacher passes away, his or her spouse is entitled to draw a lifelong monthly pension worth half of the deceased's monthly salary. The pensions of retirees are adjusted upwards together with those of serving personnel. On top of that there are year-end relief payments,³⁵ and a National Travel Card subsidy of NT\$16,000 per year. All these benefits are provided to military officers, civil servants, and teachers regardless of their position within the hierarchy. The dependent education subsidy, for instance, is paid from a child's entry into elementary school until graduation from university. If the children of military officers, civil servants, or teachers study at private universities, every semester the government provides tuition subsidies of NT\$35,800 per child (for up to three children); in contrast the children of the working class are not granted such subsidies, but are forced to take out student loans. On the other hand, a relatively low ratio of working class children can successfully pass the entrance exams for public universities, because they lack the necessary family background and other competitive advantages. As a result they are forced to shoulder a greater financial burden from paying higher tuition for private universities. Aside from these differential treatments with regard to financial compensation, differential treatment is also obvious when it comes to regulations regarding leave-taking. Article 20 of the Gender Equality in Employment Act, promulgated in 2002, stipulates that all employees nationwide may take seven days of family care leave per year. Although this is one of the statutory "measures promoting equality in employment," in practice only civil servants are able to enjoy seven days of family care leave per year, since, according to Article 3 of the "Regulations of Leave-Taking of Civil Servants," for family care civil servants may take five days of paid leave and two days of unpaid leave. For all other workers, according to the "Regulations of Leave-Taking of Workers," family care leave is counted toward unpaid leave. In comparison, this clearly constitutes unfair differential treatment between workers and civil servants.

2. Another extremely unfair policy is the preferential savings deposits for military officers, civil servants and teachers. These were established by the Republic of China government to grant preferential interest on pensions and civil servant insurance benefits paid into Bank of Taiwan accounts by military officers, civil servants, and teachers. The

³⁵ A total of 423,748 retired military officers, civil servants, and teachers who drew monthly pensions in 2011 also received "year-end relief payments" totaling over NT\$19 billion. This policy has no legal basis. All it takes for the payments to be made is a notice by the Ministry of Civil Service under the Examination Yuan titled "Matters Needing Attention Regarding the Distribution of Year-end Bonuses and Relief Payments to Military Officers, Civil Servants and Teachers." The measure does not even require notifying the Legislative Yuan. "Military Officers, Civil Servants and Teachers Receive Year-End Bonus Worth 1.5 Monthly Salaries For Doing Nothing," in *The Journalist*, 8 August 2012, issue (in Chinese).

“Regulations on Preferential Savings Deposits for Retired Officers and Servicemen from the Army, Air Force and Navy,” which was initiated in 1958 by executive order, was subsequently expanded and also applied to civil servants and teachers. Since the implementation of the new pension system in 1995 these preferential interest payments are not granted to newly hired personnel anymore. But based on the principle of legitimate expectation, retirees who began to serve in their jobs before the introduction of the new system may still apply for preferential savings deposits. The amount of the deposit is calculated based on the length of service and ranges between a minimum of 4 and a maximum of 36 monthly pensions. The 18% preferential interest policy has been in place for 32 years now, although the market interest rate has kept declining. With a large wave of retirees joining those that already collect 18% interest, the state's budgetary deficit continues to widen. The government's fiscal burden from the interest payments stood at NT\$39.6 billion per year in 2001, gradually increased to NT\$76.8 billion in 2008 and is expected to reach a peak in 2015 with annual payments of NT\$140 billion.³⁶ Subsequently the amount will begin to decrease and reach zero sometime between 2040 and 2050. Not only has the government failed to solve this problem, but on 15 July 2010 Kuomintang (KMT) legislators took advantage of a walkout by lawmakers of the opposition Democratic Progressive Party (DPP) in protest at the Economic Cooperation Framework Agreement (ECFA) to hold three readings, passing the preferential savings deposits regulations, which were originally only an executive order, into law. Although the previous DPP government had tried to reduce the preferential deposits, the Ministry of Civil Service under the Ma administration informed retired military officers, civil servants, and teachers across Taiwan on 2 January 2011 that the ceiling on deposits would be raised, resuming the deposit amount that had been in place before the Chen administration's reform proposal of February 2006. Since the interest rate spread is subsidized from state coffers, increasing the financial burden on taxpayers, this caused a strong public outcry. In a bid to quell the discontent, the government convened an extraordinary meeting of the Examination Yuan on 31 January 2011, which abolished the bill that had been in force for just a month and adopted a new adjustment proposal, which lowered the income replacement ratio for retired civil servants. However, the fiscal burden on the government is still higher than under the reform proposal from the Chen Shui-bian era. Nowadays, military officers, civil servants, and teachers are not disadvantaged at all, yet they enjoy higher and broader benefits than the genuinely disadvantaged. Collecting taxes from workers with comparably

³⁶ The combined estimated budget for the year-end bonus (20.2 billion) and the subsidy for the preferential interest (84 billion) for retired government employees in 2012 looms large when compared with the total budget for the local (city and county) governments, which is 1,041 billion.

lower salaries to finance special welfare for military officers, civil servants, and teachers constitutes a system that takes from the poor and gives to the rich.³⁷

3. Aside from the economic unfairness that these privileges create, civil servant status per se comes with three historical factors of discrimination. As long as the system is perpetuated, these historic mistakes will repeat themselves. (1) Discrimination over place of origin: As an example, recruitment from among the successful candidates in the Republic of China's senior and junior civil service examinations used to be based on a provincial quota – each Chinese province's share of China's total population. As a result the ratio of Taiwan-born civil servants in the civil service was lower than the ratio of Taiwan-born persons in Taiwan's total population. The provincial quota was abolished only in the year after the original Article 13 of the Civil Servants Examination Act was abolished with the amendment promulgated on 17 January 1996.(2) Discrimination based on political affiliation: In the 1970s, when Taiwan still had a party-state system, the Republic of China Public Service Association, a KMT organ, sent a confidential urgent letter to the Examination Yuan, demanding that KMT party workers (including staff of the China Youth Corps, the KMT party offices across the island, the KMT university campus offices, the Public Service Associations, the Taiwan Province Youth Service Corps, and even those who worked at the KMT's Youth Cultural Enterprise Co. Ltd. or served as reporters at the Youth News Agency) be included in the preferential savings deposits and that their years of service in the party be added to their years of service as government officials when calculating their pensions. After the DPP came to power in 2000 it set out to reform the 18% preferential interest policy. In 2006 it undertook the first reforms, setting an upper limit for the income replacement ratio and scrapping the rule that allowed adding the period spent as KMT party cadre to the length of time spent in public office. (3) Discrimination based on political ideas: Before martial law was lifted, only those who identified with the ideals of the KMT were regarded as fit to serve as civil servant. Those with socialist leanings and Taiwanese independence ideas were spied on and denounced by the "Second Office" to prevent their promotion to a higher rank.³⁸

³⁷ Compiled from "Unfair and Unjust, the People No Longer Swallow the 18% Interest Policy," article in the January 2011 issue of *Wealth Magazine* and Wikipedia (both in Chinese).

<http://zh.wikipedia.org/wiki/%E8%BB%8D%E5%85%AC%E6%95%99%E4%BA%BA%E5%93%A1%E5%AD%98%E6%AC%BE%E5%84%AA%E6%83%AO%E5%88%A9%E7%8E%87>

³⁸ During the martial law era, the Second Office of the Personnel Department was directly under the Bureau of Investigation. The KMT used the Second Office to probe the loyalty and thinking of civil servants, establishing intelligence agencies within every government agency to monitor and secretly report on their every single move, thus exercising thought control. In 1988 then Yilan County Magistrate Chen Ting-nan was the first to scrap the Second Office,

(2) Discrimination based on place of residence

1. Statistics by the Directorate-General of Budget, Accounting and Statistics (DGBAS) show that Taipei City has the largest budget of all municipalities with revenues of NT\$160.79 billion and expenditures of NT\$184.32 billion, which translates into an average per capita expenditure of NT\$69,000 per year. Leaving aside the scarcely populated offshore islands of Penghu, Kinmen (Quemoy), and Matsu, Taipei City boasts the highest per capita spending island-wide, far ahead even of the other four special municipalities. Kaohsiung City's average per capita spending stands at NT\$47,000, followed by Tainan City with NT\$46,000 and New Taipei City and Taichung City with around NT\$40,000, respectively. Trailing at the other end of the spectrum are Changhua County with an average per capita expenditure of NT\$29,000, Taoyuan County with NT\$31,000, and Pingtung County with NT\$35,000. Given that Changhua and Taoyuan counties spend less than half per capita than Taipei, there is a big gap in what residents get to enjoy in different municipalities. The regional gap resulting from the longstanding, unequal allocation of resources is reflected in the municipalities' infrastructure and welfare benefits. This misallocation clearly violates the principle of equal treatment for all citizens. Joanne Ling, director-general of the National Treasury Agency under the Ministry of Finance, has said that the special municipalities are allocated 61% of the centrally allocated tax revenue, while the counties and county-level cities get 24%, townships 9%, and special budget allocations account for 6%. Tax revenue allocations to special municipalities are calculated based on the following formula: profit-seeking enterprise revenue accounts for 50% of the total, population and area account for each 20%, and fiscal capacity for 10%. A great number of large companies have set up factories in central and southern Taiwan, but have their headquarters in Taipei, which means their revenue is considered as earned in Taipei so that Taipei gets the highest amount of centrally allocated tax revenue. As a result we have the odd situation of "tax revenue being handed to Taipei, while pollution occurs elsewhere."³⁹
2. The current Local Government Act clearly determines that social welfare, charitable enterprises, and social assistance are self-government matters. Article 16 of the Public Assistance Act (amended version of 29 December 2010) clearly states: "According to actual requirements and financial resources, the municipality and county (city) authorities may provide low-income households with the following special assistance and services...."

triggering public debate. After martial law was lifted in 1989, the Second Office was formally abolished, and in 1992 the Act of the Establishment of the Government Employee Ethics Units and Officers also clearly stipulated that, for the sake of campus democracy, schools are exempt from establishing ethics units.

³⁹ "The Gap is Big: Taipei City Per Capita Spending Twice as High as Taoyuan, Changhua," *The Liberty Times*, 12 July 2012 (in Chinese).

Therefore the fiscal situation of local governments directly affects social welfare and social assistance. An example is the child living allowance (support) for low-income families. Aside from slight differences in terms of beneficiaries (while Taipei City pays the allowances to children and youth under 18, all other municipalities pay only for children under the age of 15), there are vast discrepancies with regard to the granted amount. While Taipei City pays child living allowances of NT\$6,213 per month, the other municipalities pay only NT\$2,200. The difference between the two amounts by far exceeds the gap in living costs (living costs in Taipei City are 1.44 times higher than in other parts of Taiwan).⁴⁰

3. Education is also primarily the responsibility of local self-government. Although education is somewhat better subsidized by the central government, yet there still exists a regional gap. Data by the Council for Economic Planning and Development (CEPD), Executive Yuan, show that the government spent NT\$15,612 per student in metropolitan areas in 2005, while between NT\$9,150 and NT\$11,634 were spent per capita on students in other parts of Taiwan. The Child Welfare League Foundation found in its “Report on the Urban-Rural Gap in Taiwanese Children's Human Rights 2009” that in addition to rural elementary schools lacking resources, their students’ learning resources at home are severely deficient too. Access to educational resources is deemed insufficient by the Program for International Student Assessment (PISA) if students have access to less than six out of the following eight resources in their home: a desk, quiet place to study, computer, educational software, internet access, calculator, dictionary, and school textbooks. The foundation’s report found that, based on the PISA standards, 60% of children in remote, rural places have insufficient access to educational resources, a clearly higher percentage than the 37% registered for the average students in urban areas. The report found that 20% of rural children do not have a computer at home, 35% do not have internet access, almost 40 percent do not have a place to study, 30% have less than ten books at home that are not school books, and 10 percent do not have a desk. Since rural children lack these basic tools, they are not competing on equal footing with ordinary children from the very beginning of their school careers.⁴¹

(3) Lack of a dedicated institution at the national level handling affairs of persons with disabilities

⁴⁰ Lu Chao-hsien, Wang Te-mu: “Two Paradoxes of Taiwan’s Public Assistance Laws and Measures – Regionally Differing Benefits and the Poverty Trap,” *Community Development Quarterly Journal*, No. 133, 2011 (in Chinese).

⁴¹ Child Welfare League Foundation official website (in Chinese)
http://www.children.org.tw/old_site/news.php?id=2240.

In line with the Organic Act of the Executive Yuan, the government will implement the new organizational structure of the government in 2012. As part of the streamlining, the Department of Health and the Ministry of the Interior's Department of Social Affairs, Child Welfare Bureau, and Domestic Violence and Sexual Assault Prevention Committee will be merged into the new Ministry of Health and Welfare. Originally the Department of Social Affairs had a Welfare of Persons with Disabilities Section and an Institutions for Persons with Disabilities Section. These two sections serving disabled persons will be scrapped in the government restructuring. Their operations will be merged with the Department of Social Care and Development and the Department of Social Affairs, which means that the new organizational structure will not include any dedicated organ serving disabled persons. The "Task Force for the Protection and Promotion of the Rights of Individuals with Disabilities" established by the Ministry of the Interior (see State Report ¶ 12(2), p. 6) is mainly set up to provide policy advice and a coordinating mechanism among departments. The task force is convened once every three months, does not have its own full-time staff or funding; therefore, it does not function as a regular governmental office.

The amended People with Disabilities Rights Protection Act of 1997 already defined the authorities and responsibilities of the agencies overseeing each sector, but while it clearly distinguished among their operations, it failed to do the same for the needs of disabled persons. For many years the welfare services and welfare rights of disabled people have been hampered by a lack in policy transition, coordination, and integration across various cabinet agencies such as labor affairs, social affairs, health affairs, and education. Therefore Chen Chieh-ju, member of the Executive Yuan's Social Welfare Promotion Committee, submitted a proposal at the 12th committee meeting, suggesting that the Executive Yuan establish an inter-ministerial working group to hammer out a clear direction and objectives for policy planning with regard to whole-career and whole-person services for disabled persons. She also proposed that the current resource allocation and service delivery be increased or adjusted to meet the needs of the disabled.

Meanwhile the central and local governments have set up a liaison and response mechanism that allows governments at all levels to use the Coordinating Office for the Protection of Rights and Interests of Persons with Disabilities to coordinate and handle matters if it is impossible to reach consensus among various government agencies regarding welfare measures or if they encounter matters that need to be solved urgently. However, actual practice shows that it is difficult to effectively coordinate and integrate policy in the absence of a dedicated government organ, personnel, and budget for disabled persons' affairs.

In order to protect the principle of statutory government organization and to prevent the state from arbitrarily establishing administrative organizations without the consent of the people by using administrative action, and to achieve a clear distinction between authorities and responsibilities, Article 5 of the Basic Code Governing Central Administrative Agencies Organizations stipulates, "...[W]ith the exception of this Code and organic laws and regulations of various agencies, no other laws or regulations may be used to govern the organization of agencies." Therefore, given that the government does not make efforts to establish a coordinating or dedicated department for disabled affairs, and also that it is not possible under the current Organic Act of the Executive Yuan to use administrative action or other administrative laws and regulations to flexibly create a new body, the coordination, integration and execution of policies and resources for disabled people will yield limited results.

(4) Government discrimination against foreign carriers of the human immunodeficiency virus (HIV) and foreign laborers with diseases

When applying for a visitor visa upon arrival in Taiwan, visitors must declare in the application form whether they carry HIV or are suffering from AIDS, but they do not need to provide a health certificate. But people who apply for a residence permit (for a stay of three months and more) or people who want to convert a visitor visa into a residence visa must provide a health certificate that includes an HIV/AIDS test. In contrast to white-collar workers, "foreign workers" as defined in Article 46, Paragraph 1, Items 8 to 10 of the Employment Services Act (ESA) must provide a certificate of health examination prior to entering the country, according to Article 48 of the ESA and the Regulations Governing Management of the Health Examinations of Employed Aliens. Aside from the test before entering the country, foreign workers need to get another checkup within three days after arrival and must undergo regular medical examinations after 6, 18, and 30 months in Taiwan. Foreign nationals or Taiwanese nationals without household registration in Taiwan who test positive for HIV will have to leave the country within a specified period of time, unless one of the following conditions applies: (1) The person is able to prove that he/she was infected by his/her Taiwanese spouse, (2) the person was infected in the course of medical treatment in Taiwan, (3) the Taiwanese national without household registration has relatives within the second degree with household registration in Taiwan. For many foreign workers being deported means they will have difficulties paying back the loan that they took out to pay the manpower broker. This approach is sure to put them in a desperate situation. Actually there is no need to deport persons who carry HIV, but have not yet developed AIDS and therefore do not require treatment. Should treatment be necessary because AIDS has already developed, the government can use the surplus from the contributions of foreign workers to the Labor Insurance and the National Health Insurance to pay for their

treatment. The deportation of foreign laborers for public health reasons amounts to double discrimination based on AIDS and nationality. Moreover, in order to prove that they were infected by their husbands, women from Southeast Asia need to prove their own chastity by persuading officials that they did not come to Taiwan to work in the sex trade or engage in extramarital sexual relations. In some cases the authority has taken the initiative and filed legal charges against the husband for intentionally spreading HIV, coldly tearing the family apart and destroying its economic stability, regardless of the fact that new immigrant families usually count among the disadvantaged in society.

According to Article 48, Paragraph 3 of the ESA,⁴² foreign laborers who fail to pass one of the following tests during their routine health examinations within three days upon arrival or after 6, 18, and 30 months in Taiwan shall be deported within a specified period of time. In addition to the already mentioned HIV/AIDS there are: serological test for syphilis, chest X-ray for tuberculosis, stool examination for parasites including entameba histolytica, examination for Hansen's disease, etc. Statistics show that between 2006 and 2011 about 120-150 foreign laborers were deported every year because they failed one of these health examinations. All these diseases can be treated, and following treatment, the chance of infecting others is extremely low, meaning they won't pose a risk to the health of the Taiwanese people at all. On the contrary, foreign health caretakers who frequent hospitals and elderly care institutions over a long period are very likely to get infected by the persons they are caring for. Regardless of the source of their infection, foreign workers who are deported are not only unable to get proper medical treatment, but are also likely to immediately face huge debt from the money that they borrowed to pay the manpower broker. Therefore deportation is an inhumane act. Since foreign laborers are covered by and contribute fully to National Health Insurance and Labor Insurance, allowing them to be treated in Taiwan would not increase Taiwan's fiscal burden. Therefore such measures clearly constitute discrimination based on nationality.

IV. Conclusions and Recommendations

(1) The differential treatment of civil servants and non-civil servants in the welfare system should be completely overhauled to prevent perpetuating the current policy of workers subsidizing civil servants.

(2) The Act Governing the Allocation of Government Revenues and Expenditures which determines central government subsidies to local

⁴² Article 48, Paragraph 3, of the Employment Service Act stipulates: Should an employed foreign worker fail such health examinations and be ordered to depart from the Republic of China within a specified period, his/her employer shall immediately urge and supervise such departure.

governments should be reviewed. Priority should be given to allocating resources to counties and cities that have been underfunded for a long time.

(3) Article 3, Paragraph 3, of the Employment Services Act should be amended to scrap unnecessary health examinations. Should a foreign worker be diagnosed with a communicable disease, he/she should be granted reasonable medical treatment regardless of the source of infection.

(4) Gender equality and education about homosexuality must consist of more than the active promotion and delivery of a diverse gender equality education on school campuses and must not be limited to students who are attending school. The general public should also be given an opportunity to familiarize themselves with diverse concepts of gender equality.

1. Lawmakers and religious groups need a diverse gender equality education even more, considering the obstructive role they played against the promotion of gender equality education during the controversy over the Taiwan True Love Alliance. While the incident demonstrated that many people are still very unfamiliar with gender equality education, it also proved that such education should definitely target not just elementary and junior high school students, but should be expanded to the Legislative Yuan and religious circles to let them understand the needs of groups who are socially disadvantaged because of gender, as an important basis for the realization of gender equality.

2. Cease repeating slogans about friendly schools while failing to put diverse gender equality education into practice

Numerous suicides ranging from that of junior high school student Yeh Yung-chih in April 2000 to that of student Yang of Lujiang Junior High School in October 2011 were caused by discrimination and bullying in school due to their gender traits. The victims in these incidents were students, but the victimizers were certainly not only the peers of these youngsters. Many involved in our education system – the teachers who call into question gender-variant students, education authorities that turn a blind eye to the existence of bullying, and groups and individuals that obstruct the implementation of gender equality education - lack an environment that instills in them an awareness of gender equality. As a result, the majority of students might turn into bullies because they never have a chance to learn to respect and tolerate diverse genders, while a minority of students with diverse genders will never be able to experience a friendly school environment.

(5) Avenues for discrimination complaints by persons with HIV/AIDS should be broadened.

The objective of filing complaints and punishing persons who discriminate against people with HIV/AIDS lies in substantiating and

preventing discriminatory acts. This should be unrelated to whether the victim of discrimination and the person who engages in discriminatory actions settle out of court. Whether the two sides settle the matter in private should not interfere with the review and decision of the case. At the same time, the progress of a complaint and the way it is handled should be made transparent, so that the complainant can check its progress and the outcome of the ruling, in order to realize effective remedies. That the number of complaints is extremely small could be due to the fact that the infected persons do not understand their own rights and the complaint regulations. Therefore the competent authorities at the central and local government level should inform the public about the complaint channels and mechanisms when conducting anti-discrimination campaigns.

(6) Relaxing requirements on complaints over discrimination based on ethnic origin or nationality

Current review of discrimination complaints requires the victim of discrimination to provide documents showing that his/her "rights have been illegally infringed upon." Furnishing such proof is difficult and amounts to an excessively harsh requirement which makes it difficult to substantiate discriminatory actions in defiance of the good intentions behind Article 62 of the Immigration Act. Dedicated government institutions should have a high degree of sensitivity, they must be aware of how demeaning and damaging discrimination and spoken or written hateful language are to the human dignity of different races, ethnic cultures, and victims of discrimination. In order to provide the victims with an efficient channel for relief, it is inappropriate to require as a condition that the person suffering discrimination must furnish evidence that his "rights have been illegally infringed upon."

In recent years Taiwan has seen a massive influx of new immigrants and foreign nationals. Therefore there should be a high degree of sensitivity with regard to any discrimination based on race or ethnic origin. The Discrimination Complaint Review Board should therefore apply broader standards for identifying discrimination so that damage to the human dignity of an interested party is already viewed as an infringement of it. Then victims of discrimination would have an efficient channel for relief.

(7) A dedicated institution to eliminate discrimination against persons with disabilities should be established.

Under the ICESCR, the person is the subject of rights. Therefore the rights of each individual need to be protected, rather than treating individuals as disadvantaged persons that passively receive welfare. The government should establish a Commission for Persons with Disabilities, which should not be a subordinate unit of the Health and Welfare Ministry, in order to avoid the

conception that the government's work for disabled persons is confined to the provision of social welfare. The Commission should be granted higher status by placing it directly under the Presidential Office or the Executive Yuan. Only then can the rights of persons with disabilities be guaranteed and can the promotion of disabled people's affairs be coordinated across various government units.

Article 6: The Right to Work

and

Article 7: The Right to Just and Favorable Conditions of Work⁴³

I. Introduction

This section summarizes incidents regarding labor rights that have taken place in Taiwan during recent years and provides a review on how related regulations conflict with the spirit of the ICCPR and the ICESCR as part of a dialogue with the State Report.

II. Responses to the State Report

1. The Employment Services Act is unable to eliminate discrimination in employment and has instead become an “act for the hiring of foreign workers”: Response to ¶ 44, ¶ 45, and ¶ 46 (p. 33) of the State Report

Article 1 of the Employment Services Act (ESA) states: “The Act is enacted to promote employment of nationals with a view to enhance social and economic development.” The scope of the Employment Services Act for the employment of Taiwanese nationals mainly comprise stipulations on the free choice of occupation, equal treatment, prohibition of discrimination, public and private employment services. However, the sections on the employment and administration of foreign workers have led the act to become the object of criticism by labor organizations as a “Foreign Workers Hiring Act.”

Article 5 of the ESA clearly stipulates that employers are prohibited from discriminating against any job applicant or employee on the basis of race, class, language, thought, religion, political party affiliation, place of origin, place of birth, gender, gender orientation, age, marital status, appearance, facial features, disabilities, or past membership in labor unions. The scope of this article transcends the range of anti-discrimination provisions contained in the ICCPR, ICESCR, and related International Labor Organization (ILO) conventions.

However, since the power to implement this law is vested in local governments, the degree to which these anti-discrimination provisions genuinely ensure that workers are free from discrimination is open to question, as there exist grave gaps in the resources of the various city and county governments. A telling fact is that the labor statistics regularly collected and published by the Council for Labor Affairs (CLA) do not include data on cases of employment discrimination. Regretfully, such statistics were also not seen in the State Report.

⁴³ This section was authored by Son Yu-liam (孫友聯) and Chang Chih-cheng (張智程), and translated by Dennis Engbarth.

Any form of discrimination against the working rights of workers inflicts harm. Therefore, we can use the distribution of types of discrimination cases related to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as a basis for comparison. According to the official 2011 Yearbook of Labor Statistics, the relatively resource-abundant five metropolitan areas (Taipei City, New Taipei City, Taichung City, Tainan City, and Kaohsiung City) combined accounted for 80.4% of the 1,420 cases of appeal for gender equality in employment from March 2002 (when Taiwan's Gender Equality in Employment Act was promulgated) through December 2011.⁴⁴

From such a comparison, we can see that the gap between urban and rural areas in providing guarantees against discrimination is huge. Therefore, eliminating the geographic gaps in prohibiting discrimination should be a major benchmark in reviewing the realization of the two covenants.

In addition, the ESA is the sole source of legal grounding for the current policy of importing migrant laborers, but provides no proactive framework of guarantees for the human rights of migrant workers. Therefore, it should be comprehensively re-examined, especially given the spread of cases of abuse and exploitation against migrant workers. Besides being covered under related provisions of the Labor Standards Act and the ESA, the Human Trafficking Prevention Act (promulgated on 23 January 2009) is also intended to provide victims with necessary protection measures and imposes heavier criminal penalties on employers.

(2) An incompetent government is unwilling to face the realities of unemployment: Response to ¶ 47 (p. 34) of the State Report

During 2008 and 2009, Taiwan suffered a surge in unemployment, which in August 2009 reached a peak of 6.13%, its highest level ever. Although the official unemployment rate as reported by the Directorate General of Budget, Accounting and Statistics eased to 4.28% by November 2011 (and has risen again to 4.40% in August 2012), Taiwan's jobless rate is considerably above the level of less than 3% promised by President and ruling Chinese Nationalist Party (Kuomintang or KMT) Chairman Ma Ying-jeou during his successful campaign in the 22 March 2008 presidential election. In addition, the coverage rate of Taiwan's employment insurance system is far less than the coverage rate of the labor insurance system. As a result, many workers have no recourse

⁴⁴ See the *2011 Yearbook of Labor Statistics*, pp. 116-117, Council of Labor Affairs, Taipei, Taiwan <<http://statdb.cla.gov.tw/html/year/year00/34140.htm>>. It should also be noted that, since January 2011, the boundaries of Taichung City include the former and mainly rural Taichung County, Tainan City likewise encompasses the former Tainan County, and Kaohsiung City now includes the former Kaohsiung County.

to receiving any guarantees of secure income during their period of unemployment, thus facing severe erosion in their livelihoods and family life.

During the past three years, Taiwan workers have faced not only the impact of rising unemployment but have also confronted the new danger posed by so-called “leave without pay.” According to the Labor Standards Act, it is illegal for employers to compel employees to take “leave without pay” as the Labor Standards Act stipulates that wages for employees must be paid during all vacation time and there is therefore no such thing as “leave without pay.” The proliferation of this method of enterprise management to entirely transfer business cycle risks onto their employees has caused many workers to face difficult circumstances due to the reductions in both worktime and wages. Since workers on “leave without pay” do not qualify as “unemployed,” they cannot receive unemployment benefits even if they are covered by employment insurance. This type of “partial unemployment” also places intense physical and mental pressure on the affected workers.

In order to respond to the rise of the unemployment rate and the proliferation of “leave without pay” during the 2008-09 economic downturn, the Council of Labor Affairs (CLA) first put forward employment stabilization schemes, such as “work-study” opportunities, the “Recharge Project,” and the “Recharge and Restart Training Project.” However, under the influence of the absurd statement by then Premier (and now vice president) Wu Den-yih that this illegal behavior on the part of management “is worth a Nobel Prize,” the system of “leave without pay” has become a virtual custom as well as a nightmare for Taiwan workers.

(3) There are no employment guarantees for physically and mentally impaired persons: Response to ¶ 49 (p. 35) of the State Report

On 11 July 2009, the new employment quota system mandated by Article 38 of the People with Disabilities Rights Protection Act came into effect. The newly amended article mandates that, for any government department or public agency or organization with 34 or more employees, at least 3% of their total staff must be people with disabilities with capability to work. Furthermore, the law now mandates that, for any private sector business, school, or organization with 67 or more employees, no less than 1% of their total staff and in any case at least one person must be people with disabilities with the capability to work. Public or private employers who do not meet this quota will be fined. However, a significant proportion of enterprises still prefer to pay a fine instead of hiring people with disabilities.

As of September 2010, 1,499 enterprises had failed to meet the quota, and there were 3,131 potential posts for people with disabilities left unfilled. The State Report did not describe the situation regarding implementation of this

employment quota system or any re-examination or improvement plans. Therefore, it would appear that the admirable legislative intention of establishing an employment quota system for people with disabilities who are capable of work has yet to receive a positive response from the government.

In addition, Article 28, Paragraph 1, Item 9 of the Civil Service Employment Act stipulates: “Personnel to whom any one of the following circumstances apply may not be employed as civil servants...Persons proven mentally incompetent by a qualified physician.” Article 14, Paragraph 1, Item 8 of the Teachers’ Act contains a similar stipulation that allows an educational institution to dismiss, suspend, or deny renewed employment to a teacher who is proven to have a mental disorder by a qualified physician. This kind of regulation entirely abrogates the qualifications of persons with mental disabilities to become or remain civil service employees or teachers. Such stipulations both violate the right of equal employment for persons with disabilities and serve to exacerbate the discrimination and smearing of people with disabilities in our society. Last but not least, they contravene ICCPR Article 26 and General Comment No 18 regarding non-discrimination as well as ICESCR Article 6 and the requirement of General Comment No 5 (regarding persons with disabilities) on States Parties to ensure that persons with disabilities face no barriers in securing equal opportunities for productive and gainful employment in the labor market.

Moreover, if persons with mental disabilities are capable of passing national civil service examinations or screening processes, and thereby obtain qualifications for employment as civil service employees or teachers, such certification is equivalent to affirmation by the state of their capability to implement the associated duties and tasks without being affected by mental disabilities. At that moment, there is no need or justification to solely use their mental disability as a reason to entirely abrogate their right to work or to serve in the civil service.

If necessary, a more suitable approach would be to utilize the rules on severance delineated in Article 7, Paragraph 1, Item 3 of the Civil Service Retirement Act (“...through proof by evaluation of mental deficiency by a Department of Health certified hospital that cause him/her to be incapable of performing the duties of office.”) or Article 6, Paragraph 1, Item 4 of the Certified Public Accountant Act (“...suffers from mental illness or is in irregular physical or mental condition, two or more medical physicians of the appropriate specialty have been consulted upon request of the competent authority, and the competent authority has determined that he or she is unable to practice.”). Both of these laws set as the threshold for severance or withdraw from a profession the existence of mental disability so severe as to cause the person in question to be unable to carry out his or her duties. They do not constitute an *a priori* direct negation of the right of disabled persons to carry

out the same work as ordinary people before they even enter the labor market. Therefore, until they are amended, the above- mentioned stipulations in the Civil Service Employment Act and the Teachers' Act should be seen as constituting discrimination against the right of work of persons with disabilities and as violating the duties of a State party to the two covenants.

(4) Official statistics do not reflect the actual employment situation of indigenous peoples: Response to ¶ 54 and ¶ 55 (pp. 37-38) of the State Report

The statistics provided by official agencies in the State Report's section on guarantees for the right to work regarding the employment situation for indigenous persons only delineate the number of person-times of employment by the government and do not list the original figure for the total number of persons (or person-times) employed by the government. Therefore, the State Report has not sincerely answered the question of actually how many indigenous people it employs compared to overall government employment and therefore has not fulfilled the requirement of the Indigenous Peoples Employment Rights Protection Act that "in indigenous peoples areas and non-indigenous peoples areas, at least one third or one percent, respectively, of non-civil service employees of government agencies should be indigenous people; in addition, in indigenous peoples areas at least two percent of employees with civil service status should be indigenous people."

The same type of confusion exists in the listing of statistics on private sector employment of indigenous people, which lists only the number of person-times and not the denominator figure of total private sector employment. It is noteworthy that the State Report relates that private sector companies which have not implemented the legally mandated quota have been fined a total of NT\$3.8 billion (approximately US\$130 million), but it does not provide information on the degree of serious non-compliance in the private sector.

Finally, it is impossible to distinguish between short-term and stable employment in the employment data provided in the State Report. Hence, we can only wonder how many of the reported employed indigenous persons are temporary or short-term laborers that do not hold stable jobs and how many really have regular employment in regular full-time positions. With regard to employment guidance and training, the State Report similarly only lists the numbers of person-times in vocational training programs and reports neither the number of such persons who were employed after vocational training nor figures on how many were able to secure employment and how many remained unemployed. Data from official reports indicate that unemployment rate among indigenous people continues to be higher than the rate of jobless among

ordinary people.⁴⁵ Therefore, considerable doubt remains as to whether the government's policy to promote indigenous peoples employment has any significant effect in ensuring the employment rights of Taiwan's indigenous peoples.

(5) Evasions or abuse of the Labor Standards Act: Response to ¶ 72 (p. 48) of the State Report

Since its enactment in 1984, the Labor Standards Act (LSA) has regulated the minimum standards for labor conditions in order to protect labor rights in Taiwan. Beginning with revisions promulgated on 6 December 1996, the scope of coverage of the LSA has expanded to include various types of service sector employment. Nevertheless, numerous sectors, including doctors and home or household workers, remain outside its scope of protection and have become LSA orphans. In addition, the LSA's scope of regulation includes labor contracts, wages and working hours, child workers and female workers, compensation for occupational accidents, retirement, apprentices, work rules and other matters. In the section below, this Shadow Report will highlight major issues in the LSA that erode the guarantees for labor rights:

1. Article 2 of the LSA defines a worker as "a person who is hired by an employer to work for wages," but such a definition excludes several hundred thousands of persons such as home workers, doctors and lawyers from the LSA's protection.
2. Article 6 of the LSA mandates that "(n)o one shall interfere in the labor contract of other persons and obtain illegal benefits thereby," but the current proliferation of the practice of dispatched labor frequently involves interference and improper exploitation in labor relations by a third party (e.g., dispatch labor agencies and brokers).
3. There exist grave abuses by employers of "fixed term contracts," such the illegal requirement imposed by virtually all major hospitals that nurses must sign fixed term labor contracts.
4. The LSA's chapter on labor contracts includes regulation of "legal reasons for discharge," but its stipulations are too loose. For example, the stipulation in Article 11, Item 5 that permits an employer to dismiss a worker when "a particular worker is clearly not able to perform satisfactorily the duties required

⁴⁵ For example, the unemployment rate among indigenous peoples was 5.02 percent compared to 4.21 percent in Taiwan generally in June 2012. See Council for Indigenous Peoples, "Survey of the Employment Situation among Indigenous People in the Second Quarter of 2012," June 2012 p.4.

<http://www.apc.gov.tw/portal/docDetail.html?CID=19F6DD25969C101D&DID=0C3331F0EBD318C2B6AF4E758B30B83D> (in Chinese).

of the position held.” According to 2011 data, contract disputes account for nearly 7 percent of the total number of labor-management disputes. Despite the principle that “dismissal should be the last recourse,” the fact that many new types of “atypical work” have not been included in the scope of the LSA means that the work rights of many dispatched workers and other atypical workers are not protected.

5. The “basic wage” is not clearly defined. The government should use as a fundamental reference the requirement of Article 7 of the ICESCR that all workers receive remuneration which at a minimum provides “a decent living for themselves and their families in accordance with the provisions of the present Covenant.” However, recent policy decisions by the government contravene the spirit of the ICESCR, such as: the freezing of the monthly basic wage in 2009; the adjustment in 2010 from NT\$17,280 (approx. US\$546) a month to NT\$17,880 a month; the adjustment in 2011 from NT\$17,880 to NT\$18,780 (approx. US\$634); and the reimposition of a freeze in October 2012.

6. Disputes over wages accounted for nearly 39 percent of the total number of labor-management disputes in 2010 and over 41 percent of such disputes in 2011. Most disputes involved illegal refusal of employers to pay wages to their employees.

7. Abnormal work time systems proliferate in Taiwan that erode the rights of workers for overtime pay and rest. According to Taiwan media reports in March 2012, 3,499 cases of labor law violations were found among the 11,413 inspections carried out, for a violation rate of 30.7%.⁴⁶ “Extending overtime beyond the legal ceiling” was the most common violation, found in 27% of the cases, followed by “failure to pay overtime,” found in 26.6% of the cases. These findings show that cheating of workers’ wages and work time by enterprises is extremely prevalent in Taiwan. In addition, The New Taipei City Department of Labor Affairs announced on 10 August 2011 that its report on its second wave of inspections of work conditions in high technology and electronic manufacturing factories showed that 14 of the 20 companies inspected were in violation of the LSA, especially with regards to excessive overtime and failure to pay for overtime as required by the law.⁴⁷

8. The degree of implementation of protections for night shift work by female

⁴⁶ “3,499 Enterprises Found in Violation of Labor Standards in 2011 Inspections,” Commercial Times, March 30, 2012 (in Chinese) <http://reader.chinatimes.com/forum_114534.html>. See also China Post, Excessive overtime tops list of labor law violations, March 30, 2012 <<http://www.chinapost.com.tw/taiwan/national/national-news/2012/03/30/336204/Excessive-overtime.htm>>

⁴⁷ See <http://www.labor.ntpc.gov.tw/web/News?command=showDetail&postId=228740> (in Chinese).

workers and maternity vacation rights needs improvement.

9. Article 84-1 of the LSA, which permits “responsibility systems” for “supervisory or administrative workers and professional workers with designated responsibility,” in which they are exempt from the LSA’s restrictions on working hours, overtime, regular vacation time, national holidays, and limits on night work for female workers is gravely abused. Reports of workers dying of fatigue (a phenomenon often known in English under its Japanese term of *karoshi*) are rife. Recently reported cases included the death of an engineer for the Nan Ya Technology Corp of the Formosa Plastics Group and the death from fatigue of a security guard for Chien Hsiang Security Service Co., Ltd.⁴⁸

An investigation by the Kaohsiung Confederation of Trade Unions into working conditions for security companies found that security guards worked an average of 248 hours a month, including 364 hours a month in schools and 254 hours in high-rise buildings, far in excess of the average of 179 hours a month for ordinary workers. In fact, if the wages of such workers are calculated based on work hours instead of monthly wages, their average hourly wages would even fall below the CLA’s regulation for minimum hourly wages.

(6) The use of atypical employment and dispatched workers is becoming increasingly severe: Response to ¶ 73 and ¶ 74 (p. 49) of the State Report

Government agencies have already become the largest employers of dispatch workers in our country. This phenomenon has not only created problems of unequal pay for equal work within government agencies, but has even more gravely influenced administrative quality. Nevertheless, in recent years, government agencies at all levels and state-owned enterprises have adopted the method of “subcontracting to individuals” in order to avoid all of the responsibilities of the employer mandated by labor laws, a method that creates a situation in which workers are deprived of all guarantees for their labor rights. For example, since the Chunghwa Post Co. Ltd has adopted individual subcontracting, workers must themselves take on the role of “employers” and are trapped into a situation with no social insurance guarantees. If they suffer occupational injuries or are affected by natural disasters, they must bear all resulting costs. The adoption by government agencies or state-owned enterprises of this type of personnel system signifies both that the government is taking the lead in infringing on the rights of labor under the law, and that it is setting an example for private sector enterprises

⁴⁸ See Cindy Sui, “Deaths spotlight Taiwan’s ‘overwork’ culture,” BBC News Asia, 20 March 2012 <http://www.bbc.co.uk/news/world-asia-16834258>. For the Nan Ya case, see <http://www.appledaily.com.tw/appledaily/article/headline/20110315/33248412/> (in Chinese), and for the Chien Hsiang case, see <http://www.libertytimes.com.tw/2011/new/mar/2/today-life3.htm> (in Chinese).

and thus promoting the collapse of the labor law system.

(7) Everything is rising except the basic wage: Response to ¶ 81 (p. 55) of the State Report⁴⁹

Article 7 of the ICESCR mandates that “States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work” including reasonable wages, equal remuneration for work of equal value, substantial equality in workplaces, guarantees for the right for rest and leisure, and the provision of safe and healthy work environments.

With regard to the question of the basic wage, the State Report only briefly mentions the existence of the basic wage system in our country and of a deliberation system and noted that the basic wage had been adjusted on 1 January 2012 to NT\$18,780 a month (approximately US\$634) or NT\$103 (US\$3.48) per hour. However, even the State Report acknowledges that, “It remains impossible to ensure that this level of wages is sufficient for workers and their families to maintain an adequate standard of living at this time.” The State Report thereby admits a transparent, systematic contravention of the intention of the ICESCR. Moreover, it does not offer any plan for re-examination and improvement or even a single sentence in defence of the government’s policy. It should be self-evident that the carelessness of the State Report reflects the cavalier nature of the government’s policy making and its lack of any substantive democratic deliberative process.

With regard to the process of deliberation and adjustment of the basic wage in recent years, the basic wage was increased from NT\$17,280 a month to NT\$17,880 in 2010. This increase of only NT\$600 (about US\$20) a month sparked intense dissatisfaction among labor unions and other labor organizations, who joined in a petition to the Control Yuan to demand that the watchdog branch of government investigate whether the Council of Labor Affairs had violated the principle of providing “a decent living for themselves and their families” contained in the two covenants and the implementation law for the two covenants. In the Basic Wage Commission’s deliberations in 2011, the government and business organizations also sparked dissatisfaction among labor groups by declining to offer any proposal for adjustment and by rejecting the proposal by labor organizations for an increase to NT\$23,459 (approximately US\$800) a month. In particular, while the government at that time had widely cited statistics to show that the economy had displayed a high rate of growth in 2010 due to the joint efforts of labor and capital, over one million of Taiwan’s 8.1 million employed workers were being paid less than

⁴⁹ Translator’s note: In Taiwan, “basic wage” is the direct translation of the term used in Taiwan’s law. In practice, it is essentially equivalent in meaning to “minimum wage.”

NT\$20,000 (US\$632 based on the average exchange rate of NT\$31.6420 in 2010) a month or just barely over the level of the basic wage. Besides the fact that these workers were clearly unable to share in the fruits of economic growth, this situation showed that the phenomenon of “working poverty” has already become a serious social problem.

If full-time workers who receive the basic wage are unable to maintain an adequate standard of living for themselves and their families, their families will therefore fall below the poverty line and become defined as “absolute poor.” “Work” will lose its significance for these workers. Therefore, in order to improve the problem of working poverty, the level of the basic wage obviously must be raised to a degree that it can ensure that a working family can maintain a basic adequate standard of living and ensure that workers can secure a dignified life through employment.

The government has forcefully guided the recent deliberations over basic wage adjustments and has bowed to pressure from capital and has almost entirely only considered the sole factor of price inflation as the basis for adjustments in the basic wage. This policy orientation has abandoned the principles of definition of the basic wage and its adjustment and has led wage levels in our country to be far lower than their just and proper levels.

Taiwan’s basic wage has never had a clear definition from its legislative beginning to the present. During the nearly three decades of its implementation, its content has already become identified with the concept of “minimum wage” as defined by the International Labor Organization. The ILO defined minimum wages as “the minimum sum payable to a worker for work performed or services rendered ... which may be fixed in such a way as to cover the minimum needs of the worker and his or her family, in the light of national economic and social conditions.”⁵⁰

Therefore, this report believes that adjustments in the basic wage must consider the requirements needed by a worker for his or her basic living needs and to support his or her family. Based on this principle, we believe that the basic wage level should be set at NT\$23,459 a month (approximately US\$630 at current exchange rates) or NT\$130 (about US\$4.40) an hour. Hence, an upward adjustment of 24.9 percent would be required from the current level of NT\$18,780 to meet this standard. Civil society organizations have offered the following justifications for such an adjustment:

1. The poverty line has been raised.

Based on amendments to the Public Assistance Act promulgated in

⁵⁰ See <http://www.ilo.org/public/english/support/lib/resource/subject/salary.htm>.

December 2010, from 1 July 2011, the “minimum expenditure for sustenance” (the poverty line) is to be calculated as 60% of the median rate of per capita disposable income in the past year in the household’s local area, but not to exceed 70% of the national median per capita disposable income. Since the legal definition of the poverty line has been adjusted based on socio-economic trends, the formula for adjustment of the basic wage should be consistent with the ILO definition of the minimum wage and consider the basic living requirements of a worker and his or her dependents in order to allow a worker receiving the basic wage to support his or her family. The fact that, at present, the income from work of full-time workers who receive the basic wage brings their families below the poverty line manifests the need for a major upward adjustment in the basic wage. Otherwise, the concept of “work” will lose its significance for workers on the margins of the poverty line who could end up being better off by relying on public assistance.

2. Increases in labor productivity are not reasonably reflected in increases in wages.

According to the DGBAS, Taiwan’s economic growth rate (in terms of inflation-adjusted gross domestic product) reached 10.88% in 2010, and 2011 and 2012 also showed positive rates of economic growth. Due to the diligence and hard work of Taiwan’s labor force, the labor productivity index in both the industrial and service sector has soared as unit labor costs have nosedived.

According to the United States Bureau of Labor Statistics’s International Labor Comparison database, from 2002 through 2010, Taiwan’s unit labor costs index in US dollar terms plunged by 23%. Only the United States, whose unit labor costs eroded by 10.8% during this period, posted a similar decline. In terms of local currency, Taiwan’s unit labor cost index fell 29.8% during the same period, while unit labor costs in Taiwan’s main export competitor South Korea, rose 8.3% in local currency and 17.1% in US dollar terms. During the past 10 years, the growth in Taiwan’s manufacturing productivity has far outpaced the rate of increases in wages and its gap is by far the largest among the countries compared by the US Bureau of Labor Statistics.⁵¹

Economic growth has come from the common efforts of labor who should share in the resulting fruits. In the decade from 1986 to 1996, the Taiwan economy grew by an annual average of 7.5% and average real wages also expanded by 6.0%, thus allowing all of Taiwan’s people to share these gains. However, from 2000 through 2009, Taiwan’s real GDP rose by 3.4% annually, but real wages contracted by an average annual rate of 0.6% during this period,

⁵¹ See United States Bureau of Labor Statistics, Unit labor costs in manufacturing, U.S. dollar basis, 19 countries, 1950-2010, <<ftp://ftp.bls.gov/pub/suppl/prod4.prodsuppt10.txt>>.

based on DGBAS data, to the lowest levels in 14 years even though labor productivity has soared.

The government cannot simply cooperate with capital and demand labor to bear the burden and suffering of unemployment when economic expansion slows and, when the economy grows, stand by and watch business monopolize the enjoyment of all the fruits of economic growth.

3. Minimum wages are rising every year in international society

Despite the outbreak of the world financial crisis, many countries have continued to make upward adjustments in minimum wages and have thus indicated that it was even more necessary to take care of the livelihood of persons on the margin of the poverty line in the midst of financial and economic crises. A comparison of minimum wage levels between 2007 and 2010 shows that many countries have made major or minor adjustments in minimum wages. Both the United States and Canada have increased their minimum wages by over 20%, while Japan has also made a smaller increase.⁵²

Despite generally robust rates of economic expansion since the 1990s, structural unemployment has become progressively serious and growth in real wages has stagnated. Thus, the sense of economic insecurity among Taiwan's people has deepened. From 1995 to 2009, nominal per capita average monthly wages rose 19.18%, but if consumer price inflation is considered, average per capita monthly wages have risen by only 2.19% in real terms during this period. However, during this same period, monthly wages in South Korea rose by 114.55% and by 74.52% in Singapore. Moreover, wages in China also rose sharply during this period, with increases of 494.84% in Beijing, 584.87% in Shanghai and 2,481.84% in Guangdong Province. Furthermore, China raised its basic wages this year by rates between 17-20 %, and the wage cost per employee in Shenzhen is now close to the basic wage in Taiwan.

4. The consumer price index should not be the only basis for adjusting the basic wage.

During the past 14 years, there has been little adjustment in the basic wage, due to the exercise of pressure by industry and business interests. In the rare cases in which adjustments have taken place, under the guidance of the government the sole factor considered as the basis for such adjustment has been the consumer price index (CPI). In cases when the Basic Wage Commission has not employed the existing formula, it has not put forward any

⁵² Data on changes in the minimum wage can be found in Chart 5-7 of the international labor statistics section of the Council for Labor Affairs website <http://statdb.cla.gov.tw/html/nat/natehidx05.htm>.

alternative formulae, and its deliberations have deteriorated into auctions that have entirely contravened the spirit of the basic wage.

For example, the CPI in 2010 showed a moderate rise of 0.96%, but the wholesale price index (WPI) jumped by 5.46% due to rising commodity prices. Since the WPI is a major leading indicator for the CPI, such a sizable hike in the WPI can portend a major wave of increases in consumer prices. Considering only the previous year's changes in the CPI will make it impossible to genuinely reflect the requirements of grassroots workers who will have difficulty in maintaining a basic degree of purchasing power.

In the wake of the "Labor Day Against Poverty March" held 1 May 2011 in Taipei City,⁵³ the statement issued by the government in response clearly stated that: "In order to improve the domestic business environment, the government from last year (2010) reduced the business income tax from 25% to 17% and cut the inheritance tax from 50% to 10% and raised the standard deductions in income tax. The government has made its best effort to assist business in terms of taxation and also hopes that enterprises will do give more help to their own workers." "This year, domestic economic conditions will continue to improve and the labor market will become more vibrant and we can anticipate that Taiwan's wage levels will gradually rise and allow the fruits of economic growth to be enjoyed by all the people and allow everyone to tangibly feel the results of economic recovery."

In the past 15 years, adjustments in the basic wage have at most considered a portion of the increase in consumer price inflation and have entirely lost the function of a "basic wage." Ensuring that the fruits of economic growth are no longer missed out by grassroots workers who receive the basic wage in the past has today become a task to be shared by all.

On September 26, 2012, Premier Sean Chen rejected a proposal by the Basic Wage Commission to increase the basic wage to NT\$19,047 a month (or NT\$109 per hour). He explained that whether the proposed hike can be implemented by mid-2013 will depend on whether Taiwan's real GDP can maintain two consecutive quarters of growth of at least 3% on an annual basis or the unemployment rate falls below 4% for two straight months. Labor rights organizations stated that the imposition of such a threshold marked a "death sentence" for the basic wage. Council for Labor Affairs Minister Wang Ju-hsuan resigned in protest of this decision.⁵⁴

(8) Amendments to Labor Safety and Health Act are blocked due to business

⁵³ See <<http://www.taipeitimes.com/News/front/archives/2011/05/02/2003502193>>.

⁵⁴ See Shih Hsiu-chuan and Loa Iok-sin, "Chen nixes wage hike; minister resigns," Taipei Times, September 27, 2012

<<http://www.taipeitimes.com/News/front/archives/2012/09/27/2003543755>>

opposition: Response to ¶ 87, ¶ 88, ¶ 89, and ¶ 90 (pp. 57-59) of the State Report

After its promulgation in April 1974, the scope of coverage of the Labor Safety and Health Act (LSHA) has gradually been expanded; nevertheless, approximately four million workers are still outside the scope of its protection. In recent years, major work safety incidents have proliferated, and it has become apparent that the guarantees initially manifested in the LSHA have slackened. Likewise, its stipulations regarding the obligation of employers to bear responsibility for labor safety and health and the mechanisms for monitoring have long been in need of re-examination and revision. On 6 December 2011, the Legislative Yuan was expected to give final third reading approval to a package of revisions to the LSHA that would have mandated greater responsibility on the part of employers and other proactive and preventative measures in order to ensure the safety and health of workers. However, the ruling Chinese Nationalist Party (Kuomintang or KMT) and the so-called Non-Partisan Solidarity Union (NPSU) filed a motion for a reconsideration and returned the draft revisions to the legislative Social Welfare and Environmental Hygiene Committee. However, during consultations among the legislative caucuses of all the parties, the NPSU continued to refuse to sign any agreement until the seventh term of the Legislative Yuan ended in January 2012 (all pending legislation automatically lapses at the end of each legislative term). Thus, the effort to revamp the LSHA failed.⁵⁵

III. Issues Neglected by the State Report

(1) The responsibility system worsens the problem of *karoshi*.

As far as many workers in Taiwan are concerned, Article 84-1 of the Labor Standards Act (LSA) is nothing more or less than a working time “back door” clause that in its actual implementation has caused numerous workers to become victims of *karoshi* or death from overwork. According to the article in question, the workers designated by the CLA as involved in “monitoring or intermittent jobs” and “supervisory, administrative workers, and professional workers with designated responsibility” are all excluded from the restrictions on work time set down in the LSA. Instead, Article 84-1 states that the work time for such employees can be decided in a written agreement between the employer and employee that uses the basic standards contained in the LSA as

⁵⁵ Translator’s Note: In late 2011, the ruling Chinese Nationalist Party had 72 of 109 seats in the Legislative Yuan while the allied Non-Partisan Solidarity Union had four seats compared with 32 for the opposition Democratic Progressive Party and one independent lawmaker. In the eighth Legislative Yuan elected on 14 January 2012, the ruling KMT has 64 seats and NPSU has three seats. Among the opposition parties, the DPP has 40 seats, and the People First Party and the Taiwan Solidarity Union each have three seats.

reference and is sent to the CLA for approval. Although the application of this article is supposed to be limited to workers in 38 occupations designated by the CLA, the abuse of the so-called “responsibility system” is widespread and grave in Taiwan. Illegal abuse of the responsibility system is especially serious in Taiwan’s high-flying high technology manufacturing industry which is rife with reports of cases of *karoshi* caused by the responsibility system. According to labor working condition inspections carried out by the Taipei City and New Taipei City governments and the CLA, illegalities in violations of work time regulations are especially severe in high tech manufacturing.⁵⁶

In recent years, cases of *karoshi* in security services, social work, medicine and health and high technology manufacturing have sparked wider attention in our society to the problem of *karoshi*. Besides revising related guidelines for classification, in the wake of pressure from legislators and labor organizations, the CLA has initiated a review of the problems with the application of this article. Regretfully, the results of the CLA’s re-examination announced in 2011 fell far short of the expectations of labor organizations that this article be abrogated.⁵⁷

(2) The coverage of the unemployment insurance mandated in the Employment Services Act is inadequate.

When the thoroughly revamped ESA (originally enacted in May 1992) was promulgated in January 2002, its legislative purpose was to offer protection for workers facing unemployment by providing unemployment benefits, prompt employment assistance and training scholarships, vocational training, parental leave benefits, and subsidizing health insurance fees for dependents of unemployed persons.

Nevertheless, data from the Monthly Bulletin of Labor Statistics indicate that, at the end of 2009, the number of persons covered by unemployment insurance was about 5.58 million, whereas 9.6 million were covered by the

⁵⁶ For example, the Broadcasting Corp. of China (BCC) radio network reported on 20 January 2011 that the Taipei City Department of Labor Affairs had found that nine of 30 high - technology electronic manufacturing factories inspected had committed major infractions of the LSA and that employees were working excessive hours at three other factories and had imposed fines and demands for improvement. Among the nine guilty factories were units owned by prominent electronic firms such as Asus and Siemens. A similar result was found in inspections in New Taipei City in the first quarter of 2012. See <http://www.labor.ntpc.gov.tw/web66/_file/1075/upload/epaper/10105/pages/index-03-02.html>.

⁵⁷ See “Unions urge outlawing overtime without pay,” China Post, 8 August 2011 <<http://www.chinapost.com.tw/taiwan/2011/08/08/312618/Unions-urge.htm>>.

main labor insurance system.⁵⁸ Therefore, millions of workers are not able to benefit from the protection of the ESA. For example, employees in companies with less than four workers and professional workers are unable to access income security and other protections if they become unemployed.

In May 2009, the Legislative Yuan approved the third reading of revisions to Article 16-3 of the ESA, which granted the CLA the authority to extend the period of unemployed benefits in order to respond to trends in employment markets, but the CLA did not officially announce the Regulations on the Extension of Unemployment Benefits until 9 September 2010. Based on this set of regulations, if an unemployment rate of over 3.3% among persons covered by employment insurance persists for at least four consecutive months and does not decline during this four-month period, the CLA can announce an extension of payment of unemployment benefits to a maximum of nine months. If the employment insurance unemployment rate continues to be 3.3% or over for eight consecutive months and the unemployment rate does not decline during this period, the CLA can again announce an extension of unemployment benefits for a maximum of 12 months.

Nevertheless, domestic and international labor organizations believe that this threshold is too high and is obviously designed to ensure that the mechanism to extend unemployment benefits is never started, thus undermining the admirable intention of the Legislative Yuan. Based on past experience in Taiwan, the rate of unemployment among those enrolled employment insurance program significantly lags behind the overall national unemployment rate. For example, if the overall national unemployment rate is around 6%, the unemployment rate of those under employment insurance will be approximately 2.5%. Therefore, the overall unemployment rate would have to approach 10% before the employment insurance unemployment rate would top 3.3%, by which time an extension of unemployment benefits would be too late to have any appreciable ameliorative effect. In addition, since small enterprises with less than five persons are not required to join the labor insurance program, there are an estimated 200,000 workers who are “labor insurance orphans.” Although some of these workers are able to enrol in regular labor insurance through trade unions, they are still unable to join the unemployment insurance scheme, and thus will be unable to receive unemployment benefits even if they become unemployed from their enterprise.

Moreover, the ranks of the unemployed also include workers who have been compelled to “voluntarily” leave their jobs or take extended periods of leave without pay but, as their labor contracts have not been terminated, are not

⁵⁸ Translator’s note: The main program of labor insurance does not cover unemployment benefits. These are covered under a separate insurance scheme, officially called “employment insurance,” which has its own enrollment procedures and premiums. Notably for this discussion, the eligibility criteria differ for the two programs.

eligible to collect unemployment benefits. As a result, the amount of unemployment benefits that are actually collected by workers is not a reliable index of the actual gravity of unemployment and the use of this statistic as an index to determine whether unemployment benefits should be extended also undermines the legislative intent of the revision to Article 16-3 of the ESA.

(3) Part-time graduate assistants and trainees

In Taiwan's labor law system, part-time graduate assistants and trainees are workers who are not only excluded from coverage under the LSA but are virtually entirely excluded from the legal category of "worker." At present, Taiwanese academic institutions employ large numbers of part-time graduate assistants to engage in instruction, research, and administrative work. However, graduate assistants are not considered to be involved in employer-employee relationships and are therefore not acknowledged to be "workers"; naturally they do not receive the legal guarantees of the LSA. Overdue or irregular payment of wages, unlimited work time and overtime (under the guise of "responsibility systems"), average remuneration below the level of the basic wage, lack of labor insurance or national health insurance coverage, lack of eligibility for occupational accident compensation, arbitrary dismissal, and other forms of substandard treatment are rife. Academic institutions frequently treat such workers as "individual subcontractors" (e.g., the Academia Sinica), consider their labor services as "part of pluralistic study" and term their remuneration as "scholarships unrelated to labor services" (commonplace in numerous universities and colleges) in order to evade coverage by existing labor laws. However, in substance, all graduate assistants must be present in assigned offices or laboratories, and they have no freedom to decide whether to accept work or guidance or monitoring by their employer. As their labor services actually are remunerated, there should be no doubt that they are employed workers. It is sufficient to examine the character of their work which is in content the same as full time graduate assistants, who are seen as employed workers and covered by the LSA, to demonstrate the absurdity of the claim that part-time graduate assistants are "not workers."

Another group which is excluded from the category of "worker" are "trainees" in the entire range of occupations. Trainees and apprentices are different since apprentices are covered under the LSA while trainees are not covered by the LSA since they are usually considered to be engaging in "study" and not "labor" or "work." Therefore, even though trainees perform labor services for an employer and the content of their work is often indistinguishable from regular employees, they are not protected by labor legislation and are often subjected to excessively long hours, substandard wages and poor working conditions. There have even been cases of death from overwork (e.g., among trainee doctors or nurses). Furthermore, there have been cases of trainees who were unable to receive any remuneration at all and who

even had to pay fees for working (such as trainee teachers after 2007). Trainees may have little or even no prior working experience, but they are actually engaged in the provision of labor services to the agency or company in which they are being trained and under whose direction and monitoring they are providing labor services and therefore should receive appropriate guarantees in terms of working conditions and wages. It is worth noting that “training” or “internships” or “trial employment” are proliferating beyond the required internships for teachers in the educational system to encompass initial periods of service in other occupations which are actually nothing more or less than exploitation of “cheap labor” or even “free labor.” The two aforementioned types of atypical employment of “non-workers” clearly violate the stipulations of Article 7.

IV. Conclusions and recommendations

(1) Return to the substantive definition of labor and the guarantees of the Labor Standards Act and curb atypical employment.

All persons who are substantively employed as labor, no matter whether they are partially exempted from the protections of the LSA (such as those in responsibility systems) or workers who are acknowledged as being in a relationship of employment but are excluded from the LSA (such as doctors) or whom are essentially excluded from the concept of “labor” (such as graduate assistants or trainees), should not be treated in atypical employment outside of the law. Instead, their treatment should be based on spirit of the guarantees of labor work rights and working conditions of the covenant, and they deserve the full complement of labor rights guarantees.

(2) Adjustment of the basic wage

Adjustments of the basic wage should consider the average standard of living and the number of dependents to be supported by a worker. Since it was authorized in 1984 when the LSA was enacted, Taiwan’s basic wage has never been clearly defined. The ILO mandates that the level of the minimum wage should be at least sufficient to allow a worker to support the minimum needs of the worker and his or her family. Therefore, the Shadow Report believes that the adjustment of the basic wage should consider the basic living requirements of the worker and his or her dependents.

(i) Average minimum living needs per person: According an announcement issued by the Department of Social Affairs of the Ministry of the Interior on 30 September 2011, the average monthly minimum living expenses in Taiwan Province in 2012 is NT\$10,244 (about US\$350), and any income below this

level would be considered below the poverty line.⁵⁹ Since the basic wage should be set at a level to allow a dignified life for a worker, it must be set at a level higher than this figure.

(ii) Number of dependents: According to the official DGBAS statistics, the average size of a household in 2009 was 3.34 persons and each household had on an average 1.46 persons employed.⁶⁰ Therefore, each worker needs to support an average of 2.29 persons.

From these figures, we can calculate in principle that the level of the monthly basic wage should be NT\$23,459 (or NT\$130 in hourly terms) in 2012, which would represent a 24.9 percent increase over the current level of NT\$18,780.

(3) Resolutely oppose de-linking of wages for foreign and domestic workers

In March 2011, then Minister of Economic Affairs Shih Yen-hsiang proposed amending the law to “de-link” the wages of foreign laborers in Taiwan from the basic wage. Although the CLA opposed this plan, in September 2012, Premier Sean Chen openly supported such a proposal. De-linking has long been advocated by Taiwan’s leading industry and business groups.⁶¹ This latest incarnation is associated with a government plan to set up “Free Economics Demonstration Zones,” perhaps as early as mid-2013, to attract the relocation of production lines of Taiwanese companies operating in China to Taiwan, in the face of rising labor and environmental costs in China. Taiwan’s leading industrial and business organizations are strongly lobbying that the new zones should feature “a business friendly environment” including expanded quotas for foreign labor and the delinking of their earnings from the basic wage.

On 26 September, Council for Labor Affairs Wang Ju-hsuan resigned her post in protest both against the Cabinet’s refusal to approve a modest proposed hike in the basic wage to NT\$19,047 and against its plans to delink foreign and domestic wages and to expand the quota for the use of foreign labor in manufacturing. Wang’s successor, CLA Minister Pan Shih-wei, has so far continued her opposition to these moves.

However, statements by government economic policy makers have fuelled concerns that the government will persist on this course, including expanding

⁵⁹ See <http://sowf.moi.gov.tw/10/news/doc20111006105229.pdf> (in Chinese). Translator’s note: Taiwan Province covers cities and counties other than the five municipalities of Taipei City, New Taipei City, Taichung City, Tainan City, and Kaohsiung City, or the Kinmen and Matsu island groups.

⁶⁰ Directorate-General of Budget, Accounting and Statistics, “Report on the Survey of Family Income and Expenditure, 2009,” p. 15 <<http://win.dgbas.gov.tw/fies/doc/result/98.pdf>>.

⁶¹ See “De-link wages: Investors,” China Post, June 10, 2010 <<http://www.chinapost.com.tw/business/asia-taiwan/2010/06/10/260098/De-link-wages.htm>>.

quotas for foreign workers to up to 520,000 from the current level (a record peak) of 440,000.⁶² Moreover, State Ministers (i.e. Ministers without Portfolio) Kuan Chung-min and James Hsueh Cheng-tai have justified plans to delink wages for foreign workers from the basic wage by claiming that foreign laborers are not “migrant workers” but should be considered short-term “guest workers” whose wages should be decided on the basis of “market mechanisms” and not restricted by Taiwan’s basic wage system or international labor conventions.⁶³

Such statements fly in the face of numerous ILO conventions (such as Convention 100, which mandates that each country ensure the application to all workers of the principle of equal remuneration for work of equal value, and Convention 111, which prohibits discrimination in employment for any factor, including “national extraction or social origin”) and Taiwan’s own legal code. After all, Article 26 of the ICCPR, which was incorporated into our country’s law in December 2009 together with the ICESCR, stipulates: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” Article 7 of the ICESCR stipulates that State parties to the covenant must “at a minimum” ensure “fair wages and equal remuneration for work of equal value without distinction of any kind...with equal pay for equal work.”

Regarding claims by some government ministers that such delinking would be permissible since foreign laborers are not citizens and will be returning to their home country, it should also be noted that the United Nations Human Rights Commission, in its General Comment No. 15 on the position of aliens under the ICCPR (1986), citing Article 2, has stressed that “each State party must ensure the rights in the Covenant to ‘all individuals within its territory and subject to its jurisdiction’... irrespective of nationality or statelessness (and)... without discrimination between citizens and aliens.” There should be no room for doubt that if wages for foreign laborers are delinked from the basic wage within or without “Free Economic Demonstration Zones,” the government of Taiwan will be breaking its own solemn international commitments and trust with the international community and openly violating Taiwan’s own legal code.

Only political parties which are aligned with the most short-sighted of capitalists and which do not understand labor policy could so ignore human rights and advocate the de-linking of wages for foreign workers from the basic wage. Moreover, such a de-linking must be opposed for the sake of protecting

⁶² See Shih Hsiu-chuan, “New rules on foreign workers agreed,” Taipei Times, October 10, 2012 <<http://www.taipeitimes.com/News/front/archives/2012/10/10/2003544809>>.

⁶³ See Yang Yi, “Kuan Chung-min: De-linking Domestic and Foreign Worker Wages can be Discussed,” China Times, September 28, 2012 (in Chinese) <<http://news.chinatimes.com/focus/501012014/112012092800076.html>>.

the work rights of Taiwanese workers by preventing employers from only attempting to boost profits by using cheap foreign labor and lowering the standard of working conditions in Taiwan instead of upgrading product quality. The delinking of the wages of foreign labor from the basic wage combined with an expansion of supply of foreign workers will inevitably spur a new wave of cutthroat competition among domestic enterprises to slice labor costs and thus further drag down the overall level of wages for all Taiwanese workers and exacerbate the already serious problem of “working poverty. As the working conditions of foreign workers in Taiwan are already onerous, the negative reactions in the international community if their wages are de-linked from the basic wage, are likely to have a degree of severity beyond the imagination of the government officials who advocate such a retrograde step. For example, de-linking wages for foreign labor from Taiwan’s basic wage could trigger trade sanctions against Taiwan-made exports. As a result, Taiwan enterprises could suffer losses that would far outweigh any gains from such a de-linking.

The content of the two international human rights covenants may appear to be only norms in principle, but they have already become an important foundation for demands for fundamental rights and interests by Taiwanese workers. For example, in the deliberations by the Basic Wage Commission for 2010 and 2011, labor organizations have cited Article 7 that all workers should receive remuneration which at a minimum provides a decent living for themselves and their families to bolster the content of the definition of the basic wage contained in Article 21 of the LSA, They also emphasized in a petition to the Control Yuan that the government’s inadequate adjustment of the basic wage had contravened the relevant stipulations of the ICESCR.

Moreover, during the process of deliberating revision of the Labor Union Act in January 2010, the government itself cited these international standards. The CLA stated, “The key point of the freedom to join unions is to guarantee the right of free choice of workers whether to join a union or to become union members. The ICCPR and the ICESCR and ILO conventions all have similar guarantees. This revision of the Labor Union Act is based on this spirit and clearly states that labor union operations and other matters shall be entirely explained in the union by-laws and autonomously decided through internal democratic mechanisms and will not be a freedom to be subject to selective decision by the government.”⁶⁴

Therefore, we hope that the above civil society discussion on Article 6 and

⁶⁴ This quotation is taken from a response by the Council for Labor Affairs to a question on the issue of freedom of membership raised by the Taiwan Confederation of Trade Unions. See “Allowing each worker to have more stable employment, safer work and a more secure livelihood,” 1 January 2010, http://www.cla.gov.tw/cgi-bin/Message/MM_msg_control?mode=viewnews&ts=4b4b11bc:51d&theme= (in Chinese).

Article 7 of the ICESCR can remind the government to allow the covenants to genuinely realize guarantees for human rights through its enactment or revision of laws and the formulation of policies.

Article 8: The Rights of Labor⁶⁵

I. Introduction

Article 8 of the ICESCR stipulates that States Parties should ensure the right of all workers to organize. Taiwan’s existing “three major labor laws,” namely the Labor Union Act, the Collective Agreement Act, and the Act for Settlement of Labor-Management Disputes, provide the regulatory framework for the people to exercise the three rights of labor (the right of solidarity; the right of collective bargaining; and the right to engage in collective action, including the right to strike). These laws were initially enacted in the 1930s, when the Chinese Nationalist (Kuomintang or KMT) government ruled mainland China. For example, the Labor Union Act was enacted in 1929 and, despite revisions in 1947, 1949, and 1975, the law has retained the same fundamental framework of “the compulsory organization of unions,” “compulsory membership,” the “single union system,” and “factory unions” (later referred to as “enterprise unions”).⁶⁶

These were features of a union legal institutional system in which most unions were either propped up or controlled from above and played little or no positive role in improving labor rights or the healthy development of labor unions. In other words, during this authoritarian period, the government actively intervened in the sphere of collective bargaining and labor-management relations. On one hand, the government monopolized the responsibility for resolving or easing labor-management disputes. On the other hand, the government deliberately suppressed labor unions and virtually squeezed out any power or space for labor unions to engage in collective bargaining.

From 2008 through 2010, the Legislative Yuan finally approved major revisions to our country’s three major labor laws. A new era in labor regulation thus opened when the updated laws took effect simultaneously on 1 May 2011. Nevertheless, numerous problems exist both in the legislation itself and its actual implementation.

II. Responses to the State Report

(1) The twisted and constrained development of labor unions: Response to ¶ 109 (p. 70) of the State Report

⁶⁵ This section of the Shadow Report on Article 8 of the ICESCR was drafted by Chiu Yu-pin (邱毓斌) and Chang Chih-cheng (張智程), and translated by Dennis Engbarth.

⁶⁶ Translator’s note: Prior to May 2000, the KMT-dominated Chinese Federation of Labor (CFL) was the sole legal labor union federation. At that time, following the change of government, the Taiwan Confederation of Trade Unions, which had been established in 1997, was formally acknowledged.

The State Report (in the Common Core Document ¶ 35 (p. 28)) stated that Taiwan's unionization rate is 37.6 percent and that the total number of union members was 3,321,969 in 5,042 unions at the end of 2011, according to the *Yearbook of Labor Statistics*.

This Shadow Report must point out that the calculation method behind these statistics does not match international practice and cannot be used for purposes of international comparison. These figures not only cannot be used to support claims that the right of association of workers in Taiwan is respected, but in fact they show the shortcomings in the right of association for workers in Taiwan. This system continues the union system practiced under the KMT authoritarian regime, which has caused the current twisted and restricted development of union organizations in Taiwan.

Among the 3.21 million union members in Taiwan, members of professional or craft unions account for over 2.75 million.⁶⁷ The current function of most of these unions is sharply different from the critical role played by craft unions or guilds in the history of struggle for labor rights in other countries. In contrast, most professional or craft unions in Taiwan act mainly as alternate institutional providers of national insurance programs (notably labor insurance and national health insurance). Workers without a regular employer, laborers hired by small enterprises, and self-employed workers must join professional unions in order to obtain eligibility for labor insurance and health insurance. This fact is the reason why professional unions have so many members.

The state grants professional unions a certain share of administrative fees for acting as agents for labor insurance and national health insurance. Given that they have no shortage of members and can acquire considerable income through agency fees, many professional unions are actually established and operated by employers.

Therefore, professional or craft unions were almost completely absent from the autonomous struggle of workers for labor rights during the past two decades and have generally adopted conservative political positions. Even

⁶⁷ This discussion in the Shadow Report is based on the following definitions of unions in Article 6 of the revised Labor Union Law, which took effect in May 2011: "(1) corporate unions [often known as "enterprise unions"]: labor unions 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; (2) industrial unions: labor unions organized by workers in the industry [i.e. across a sector of industry], and, (3) professional [or craft] unions: labor unions organized by workers with the same professional skills.

more importantly, the Labor Union Act's stipulation that there can be only one union for each craft has allowed the existing professional unions to monopolize the right to represent relatively disadvantaged workers in their professions and compel disadvantaged workers to fairly high insurance fees (compared to workers in enterprises which by law are required to cover most of the labor and national health insurance fees of their employees) as well as membership fees. Even after the revisions to the Labor Union Act took effect on 1 May 2011, most members of professional unions have not abandoned these unions to organize or participate in alternative industrial unions, since industrial unions are not allowed to provide labor or national health insurance. In other words, this union system forces these 2.7 million workers to join conservative unions in order to secure a platform for their labor and health insurance coverage.

Besides professional unions, there is the alternative of organizing "enterprise unions" based on a corporation or factory or work site. These types of unions are more inclined to pay attention to the collective labor rights and the rationalization of labor systems and conditions and therefore have a greater capability to protect labor rights.

Nevertheless, since martial law was lifted in July 1987 after over 38 years, membership in enterprise unions has steadily declined. Generally speaking, the reasons for this decline include factory closures due to industrial transformation or migration to China and other cheap labor environments; suppression by management; the minimum threshold of 30 employees to organize a union, a threshold which is high considering the predominance of small and medium enterprises in Taiwan's economy; and the legal prohibition (before May 2011) of the organization of industrial sector unions. As a result, membership in enterprise unions has shrunk from over 703,500 at the end of 1987 to 530,000 at the end of 2011, and the number of enterprise unions declined from 1,160 to 889 during the same period. Besides a small number of state enterprises or recently privatized enterprises, such as public utilities, in which stable mechanisms for labor-management bargaining and consultation have already developed, employees in most enterprises do not have the power or capability to engage in negotiations over working conditions.

If we use ILO standards to calculate union membership, and thus deduct the membership in professional or craft unions and then divide the number of enterprise or factory union members by the total number of employees and self-employed workers, we arrive at a figure of 6.2 percent as Taiwan's comprehensive trade union density, compared to the official figure of 37.3 percent.⁶⁸ In enterprises with over five employees, only 0.37 percent have

⁶⁸ Regarding the definition of trade union density, see Susan Hayter and Valentina Stoevska, "Social Dialogue Indicators: International Statistical Inquiry 2008-09 - Technical Brief," Department of Statistics and Industrial and Employment Relations Department, International

unions, and only 44 among the over 240,000 such enterprises in Taiwan had collective bargaining agreements.

To summarize, this trade union system with multilayer control mechanisms has caused the vast majority of workers employed in enterprises in Taiwan to lack union representation and therefore be deprived of the power to bargain, while disadvantaged craft or professional workers have been forced to accept representation by conservative professional craft unions. This state of affairs is one of the most important reasons underlying the stagnation of wages in Taiwan for the past decade.

(2) Abrogation of the Right to Organize Unions: Response to ¶ 111 and ¶ 112 (p. 71) of the State Report.

1. Before May 2011, the old Labor Union Act only permitted the organization of “enterprise unions” and “professional unions” and did not allow the establishment of trade unions based on industrial sectors, much less those that transcended industrial sectors. Thus, for decades the right of association for most of the workers in Taiwan was denied. After May 2011, Article 5 of the revised Labor Union Act has finally permitted workers in the same industrial sector to organize “industrial unions.” However, the revised law has still not liberalized the formation of cross-sectoral or general unions, and it is thus still in conflict with international trends.

2. The minimum threshold of the signatures of at least 30 employees to form a union is still too high, especially when compared to the minimum requirement of seven workers in Hong Kong and two employees in South Korea. The design of the revised Labor Union Act is therefore still unfavorable to the organization of unions by workers in Taiwan.

3. The continued prohibition on the organization of unions by civil service employees directly and openly abrogates the rights of solidarity and collective bargaining and the right to strike of workers who have the status of civil service employees. Employees in armament enterprises belonging to or supervised by the Ministry of National Defence are also deprived of their right to organize.

4. Teachers and professors and instructors are not permitted to organize corporate unions in the institutions, such as schools or universities, in which they work, in violation of the principle of the right of free association.

(3) The formation of federations among unions is still not fully liberalized: Response to ¶ 113 (p. 72) of the State Report.

The revised Labor Union Act continues to impose restrictions on the formation of national union federations, which must receive the signatures of at least one third of the unions in the same sector before they can be legally established. Such a high threshold undoubtedly aims to guarantee the superior position of existing national union federations and enterprise union federations and discourage the formation of new union federations.

(4) The revised three labor laws remain characterized by administrative concepts that aim to control unions: In response to ¶ 111 and ¶ 112 (p. 71) of the State Report.

The revised Labor Union Act retains numerous restrictions on the name, functions, and organization of unions, as well as on the method of the election of union leadership and their terms. Moreover, the discretionary power of government agencies supervising labor affairs is excessive, and their operation remains characterized by the attitude of controlling unions instead of guaranteeing the rights of unions. They are therefore incapable of respecting the principle of labor union autonomy.

For example, the method of elections within labor unions is subject to regulation by the Regulations on Election and Recall in Civil Associations, which has numerous rigid and anti-democratic features (such as the method of consecutive record ballots)⁶⁹ that restrict the degree of union democracy and encourage factionalization within unions.

(5) Inhibiting collective bargaining between labor and management: In response to ¶ 114, ¶ 115, and ¶ 116 (pp. 72-73) of the State Report

1. Civil service employees and employees of arms manufacturers who are not in active military service are deprived of their rights to organize unions and thereby lose their right to engage in bargaining on working conditions in their workplaces. In addition, teachers are not allowed to organize school-level unions and are thus deprived from their right to engage in bargaining in their workplaces.

2. The Labor Union Act defines three types of unions, namely industrial, enterprise, and professional (or craft) unions. Although all these types of unions possess legal status in labor-management bargaining, Article 6 of the

⁶⁹ Translator's note: in this case, one votes for as many candidates as the number of seats to be elected (e.g., if 8 seats on an organization's board are to be filled, each member can vote for up to 8 candidates).

Collective Agreement Act stipulates that an industrial union must have at least 50% membership among the employees of a company or workplace before it can be qualified to engage in collective bargaining on their behalf. Likewise, it stipulates that a professional union must have been joined by at least half of employees with the same professional skills before it may engage in collective bargaining.

This high 50% threshold will transform the role of bargaining by enterprise or professional unions into a virtual empty shell. Assuming that industrial union “A” wants to request to bargain with the management of Company “X” on behalf of Company X’s 500 employees, but only has 100 members among the total employees of Company X, its qualifications to engage in collective bargaining will not be established. In that case, the workers in Company X will have only two alternatives: (i) work to boost the membership of Industrial Union A in Company X to at least 250, or, (ii) persuade the 100 members of Industrial Union A to set up an independent Corporation X enterprise union and thereby secure collective bargaining rights. The first option is difficult to attain under the current conditions, in which unions are weak and have difficulty in attracting very many members. With regard to the second option, newly-established enterprise unions are easily restricted to operation within the grounds of the enterprise. This allows management to portray any assistance by industrial unions as coming from “outside” or as allowing the entry of an “external force.” The result will not only be to create a weak splinter enterprise union but also to weaken the strength of the original industrial union.

(5) Restricting the right to strike: Response to ¶ 117 and ¶ 118 (pp. 73-74) of the State Report

1. Taiwan’s labor laws cite “national security” and “the right of education of students” as pretexts to entirely abrogate the right to strike of civil service employees and teachers; thus, it continues to manifest the mentality of clamping down on collective labor actions of the authoritarian period. In addition, Article 54 of the Act for Settlement of Labor-Management Disputes contains certain other restrictions on strikes. Workers in water, power, and gas utilities; hospitals; financial institutions providing services such as settlement, etc; and basic telecommunication services can only engage in strikes under the condition of agreements with management that the minimum necessary level of services will not be affected. The restrictions justified by such an exaggeration of the concept of “essential public interest” undoubtedly abrogate any possibility that workers in the above sectors can engage in strike actions. Likely consequences include a suppression of the bargaining power of labor and the possibility of compelling workers to engage in wildcat strikes (which take place without authorization by the union).

2. The Act for Settlement of Labor-Management Disputes defines labor-

management disputes into two types, namely “rights disputes” or “interests disputes.”⁷⁰ Article 53, paragraph 1 states, “... (f) or rights disputes, strikes are not allowed.” In other words, only for “interests disputes,” involving changes in labor conditions (such as wage rates, working time, or vacations) can employees strike. If the dispute involves failure to pay wages, violations or abrogation of employer-employee agreements, or other matters considered as “rights disputes,” the act denies workers the right to strike, instead mandating the use of arbitration or other legal means for resolution. For many years, many Taiwanese workers have been unable to sustain the costs of drawn-out litigation and have abandoned their legal rights. For the newly revised labor laws to expressly exclude the right to strike in cases of “rights disputes” marks a major retrograde action (previously, the only basis for this exclusion was an administrative order).

III. Conclusions and Recommendations

In summary, we believe that the Labor Union Act, the Act for the Settlement of Labor-Management Disputes and the Collective Agreement Act require major revisions in order to both bring these laws in line with the stipulations of the two covenants regarding the freedom of association and the rights of labor unions. Such a relaxation of institutional constraints is even more urgent in order to resolve our country’s serious problems of chronic stagnation of wages and worsening poverty. Future changes in these laws should include the following principles:

- (i) Remove restrictions on the classification of permitted unions to fully liberalize the organization character of labor unions;
- (ii) Reduce the membership threshold for the formation of labor unions to no more than 10 persons;
- (iii) Permit civil service employees and non-military employees in armaments industries to organize labor unions, and allow teachers to organize corporate unions;
- (iv) Lift restrictions on the names and objectives of labor unions and on the election and recall methods of union officers;
- (v) Eliminate restrictions on the formation of national labor union federations;

⁷⁰ According to Article 5 of the Act for Settlement of Labor-Management Disputes, “rights disputes” denote “disputes over the rights and obligations under the laws, regulations, collective agreements, or labor contracts between employers and workers” while “interest disputes” denote “disputes between employers and workers with respect to maintaining or changing the terms and conditions of employment.” See the official translation of the law at <http://law.moj.gov.tw/eng/LawClass/LawAll.aspx?PCode=N0020007>.

(vi) Lift restrictions on the right to strike and drop the stipulation that unions and workers cannot carry out strike in disputes over labor rights; and,

(vii) Eliminate the membership thresholds on industrial or craft unions who wish to represent employees of a corporation in collective bargaining.

Article 11: Adequate Living Standards⁷¹

I. Introduction

The first United Nations Special Rapporteur on Adequate Housing, Mr Miloon Kothari, pointed out in the inaugural annual report of this mandate in 2001 that “with the current setting of globalization and free market economics, the trend is for greater marginalization of the poor and this can be seen in the following aspects: More and more people are not only facing land speculation, the commodification of housing, the practice of ‘the occupant pays’ for the use of water, sanitation and electricity services, but there is also the discarding and revision of laws governing maximum prices for land and rents.”⁷²

In the same way, Taiwan finds itself in this setting, wherein human right issues continually occur, such as the forced migration of people and a worsening of poverty, including the forced seizure of farm land for the expansion of the science park, insufficient water for farming, soil pollution, and other violations of villagers’ rights. In the urban areas, due to the fact that the government has permitted unconscionable property investment, some of the urban renewal plans have caused incidents in which the government has used its authority to aid construction companies in forcing people off their property and out of their homes.

Politicians and local residents look down on the homeless and have even attempted to revise the laws to increase the centralized management of them or drive them out. The villages of many aboriginal people have suffered from natural disasters (typhoons and flooding, etc), forcing them to move far from their homes, and it is a long and rather slow road to re-establishing those communities. Not only are there serious questions of forced migration and poverty in this country, Taiwan’s multi-national companies have persecuted disadvantaged farmers in other countries. The above issues all have relevance to Article 11 of the ICESR and will be discussed below in detail.

II. Responses to the State Report

(1) Ever-widening wealth gap: Response to ¶ 202 (p. 106) of the State Report

The State Report refers to the establishment by the Executive Yuan in 2010 of a “task force to improve distribution of income,” which attempted

⁷¹ The authors of the ICESCR Article 11: Adequate Living Standards Shadow Report are Chen Hong-ying (陳虹穎), Echo Lin (林仁惠), Lin San-jia (林三加), Lu Shi-wei (陸詩薇), Guo Ying-jing (郭盈靖), Tseng Chao-ming (曾昭明), Chen Si-ying (陳思穎), Shih Yi-hsiang (施逸翔), and Chen Yi-jun (陳怡君), and translated by Kathy Kearney.

⁷² E/CN.4/2001/51.

several measures aimed at addressing the issue of the wealth gap, then optimistically proclaimed that in the same year the size of the income gap had already been reduced by 1.53 times. However, if we compare the numbers in the Table 38 of the State Report and the change in the magnitude of the gap over the years, the actual gap in 2010 was 6.19 times, which is still higher than the 6.01 times recorded in 2006 and the 6.05 times recorded in 2008. If we look back further to 1999, the latest figure is much higher than the gap of 4.97 times recorded 11 years ago, an increase of more than 1.25.⁷³ Moreover, the government's explanation completely ignores the gap between household incomes in the lowest 5 percent bracket and those in the top 5 percent bracket, which rose from 33 times to 93 times over the past 12 years.

The measures used to reduce the gap between the rich and the poor mentioned in the State Report, such as the revision of the Public Assistance Act which expands coverage of assistance to disadvantaged groups and provides employment counseling, adjustments to the tax system reducing the land levies and other tax burdens of the middle and lower income brackets, and raising the land tax and other levies on the higher income brackets, are all small-scale adjustments to the social security net and measures of last resort to re-distribute resources. The government still lacks measures to solve the structural gap between the rich and the poor. The government has no answer to the demand of the guidelines for drafting state reports which asks, "Are all signatories to the treaty not countries already employing comprehensive consolidated economic, social and cultural rights with activities, plans and a strategy to combat poverty? And do these countries not have specific mechanisms and systems, supervisory plans and strategies with which to assess whether they are effective in making progress toward eradicating poverty?"⁷⁴

The expansion of the wealth gap is due to the impact of neo-liberalism and that includes an inability to stem the rapid outflow of capital and the continued deterioration in the position of labor in society. These issues reflect the plight of labor in Taiwan over the past 10 years. In addition to the new challenges of a worsening employment situation, with unstable employment, job losses, overwork, and the working poor, labor also faces the threats of excessive liberalization and the commercialization of every aspect of daily life. Rather than improving, the situation is getting more difficult.⁷⁵

⁷³ See *2010 Family Income and Expenditure Survey Report*, Department of Budget, Accounting and Statistics, Executive Yuan (in Chinese).

⁷⁴ Committee on Economic, Social and Cultural Rights, "Guidelines on Treaty-Specific Documents to be Submitted by States Parties Under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights," E/C.12/2008/2, 24 March 2009.

⁷⁵ See Lin Tsung-hung, Hung Ching-shu, Lee Chien-hung, Wang Chao-ching, and Chang Fung-yi, *Bomb Generation – The Dangers of Corporatization, Impoverishment, and the Demographic Deficit*. Taipei: Taiwan Labor Front, 2011, pp v-vii (in Chinese).

Moreover, with the government unable or unwilling to pressure enterprises to raise wages and salaries, the only recourse has been to use property taxes and public assistance programs to narrow the gap between the rich and the poor. From the table below, it can be seen that the impact of using public assistance to reduce the gap has resulted in a rise from 0.24 to 1.42. However, using the property tax has produced almost no change in the past 10 years. This shows that the taxation system has completely lost its teeth in terms of income re-distribution, due to the long-term policy of tax cuts for favored companies or sectors.⁷⁶

Table: Impact of public assistance and land tax schemes on income distribution

Year	Income gap prior to government transfers (times)	Income gap following transfers of income (times)		Income gap following transfer of expenses (times)		Combined efficacy in reducing the gap (times)
	A	B	Impact of social assistance C=A-B	D	Impact of taxes E=B-D	F=C+E
1999	5.31	5.07	0.24	4.97	0.10	0.34
2000	6.17	5.49	0.68	5.38	0.11	0.79
2001	7.67	6.54	1.13	6.39	0.13	1.28
2002	7.47	6.29	1.18	6.16	0.12	1.31
2003	7.32	6.20	1.12	6.07	0.15	1.24
2004	7.41	6.17	1.24	6.03	0.15	1.39
2005	7.45	6.18	1.26	6.04	0.15	1.41
2006	7.45	6.16	1.29	6.01	0.15	1.45
2007	7.52	6.12	1.40	5.98	0.14	1.54
2008	7.73	6.20	1.53	6.05	0.16	1.69
2009	8.22	6.47	1.75	6.34	0.13	1.88
2010	7.72	6.30	1.42	6.19	0.11	1.53

Source: *2010 Family Income and Expenditure Survey Report*, Directorate General of Budget, Accounting and Statistics

If we again observe the present gap between the rich and the poor using a division into twenty income brackets, it can be seen from the data on the consolidated income tax reports for 2009 that the lowest five percent of Taiwanese taxpayers paid only an average total tax of NT\$51,000, and the average total tax payment of the top five percent of taxpayers reached

⁷⁶ Ibid., p. 106.

NT\$3.822 million for a gap of 75 times. Note that this is a low estimate, since it does not include capital gains from equities, property transactions, etc.⁷⁷

According to data from the Directorate General of Budget, Accounting and Statistics (DGBAS), there are about 910,000 persons with a monthly income of less than NT\$20,000 and more than 3.55 million whose monthly income does not exceed NT\$30,000. The number of unemployed is 482,000 persons and there are an additional 80,000 long-term unemployed, as well as several million who have fallen into the category of the working poor.

At the start of the 1990s, dividing Taiwanese households into five income brackets, households in the lowest 20 percent bracket had net savings of NT\$25,000 each year. However, by 2010, households in the lowest 20 percent bracket had debts of an average of NT\$20,000 to NT\$30,000. A similar trend of impoverishment can also be seen in the next lowest 20 percent of households. To put it simply, for 40 percent of households and individuals, earned income is only sufficient to support the very basic livelihood needs. If one day they should meet with long-term unemployment or a serious accident or illness, this would seal their fate and they would find themselves falling into the abyss of poverty.

(2) Government lacks the means to handle frontline food sanitation control and management and even covers up epidemics: Response to ¶ 206 (p. 108) of State Report

The section on food sanitation and safety management in the State Report mentions the so-called inter-departmental “Food Sanitation Response Committee” set up by the Executive Yuan which is to meet regularly with the goal “to strengthen management over food sources and ensure that foods and their raw materials are effectively controlled from production to manufacturing and transport.”⁷⁸ The State Report acknowledges that the “the 2011 DEHP incident created panic and uneasiness among the public. The government should continue to reflect on the efficacy of related meetings.”⁷⁹ Nonetheless, even as the State Report was being written, it was revealed that some imported pork products and processed meat products available in the market were found to contain illegal beta agonists (a relaxant used in the treatment of asthma). Yet more recently, the H5N2 Avian flu has been found on chicken farms in the country. These and other food safety incidents show that it is obvious that the

⁷⁷ Ibid., p. 108.

⁷⁸ Translator’s note: The English translation of the State Report does not give the name of this committee, making it appear as a general category of “food safety presentations and meetings,” whereas it is in fact a specific standing mechanism.

⁷⁹ Translator’s note: This incident is commonly known as the “plasticizer incident.” It was a major issue of food safety that emerged in 2011, when it was discovered that a widely used food additive contained a hazardous plasticizer chemical known as DEHP.

government does not know how to take the lead role in food sanitation, to set up systems and mechanisms for the control, management, and realization of protection in this area. In fact, food safety crises in Taiwan have occurred quite frequently, from 2004 when dioxin was found in milk and also in duck eggs, to the ractopamine issue in 2007, to the melamine in milk incident in 2008. Only after each incident has erupted, and people have already begun consuming these dangerous food products, does the Food Sanitation Response Committee convene an emergency action committee to try to solve the crisis.

Taiwan's Act Governing Food Sanitation clearly lists 17 main categories (including preservatives, bactericides, and others), totaling about 600 types of additives. However, the standards of management and control are clearly more lax than international standards. Take, for example, one of the fragrance additives, hydrocyanic acid, which is legal for use in Taiwan has been prohibited by the joint FAO/WHO Expert Committee on Food Additives (JECFA) of the World Health Organization and United Nations Food and Agriculture Organization (FAO). Another example is sodium sorbate (used in the preparation of fish meat, meat products, and sea urchins, for example), which is legal in Taiwan, although it has been banned from use in Japan. In addition to having controls and regulations that are more lax than international standards, those organizations related to health matters are often less strict. Professor Chan Chang-chuan of the Department of Professional Medicine and Industrial Hygiene (Research) at National Taiwan University has pointed out that when the health departments conduct spot checks and inspections, they usually only target three types of preservative products, sorbic acid, benzoic acid, and dehydroacetic acid, and in terms of food safety this leaves huge loopholes.⁸⁰

In addition to the failure of its frontline control and management mechanisms, the government has even suppressed for long periods the eruption of food safety crises when they occurred. It was only with the release of "Secrets We Can't Reveal", a documentary by independent director and freelance journalist Lee Hui-ren, which took him six years to produce, that our nation's citizens discovered that the Council of Agriculture (COA) had hidden information about the existence of a highly pathogenic strain of H5N2 avian flu in the country for 70 days.⁸¹ The film showed that the reason there was an outbreak of avian flu in Taiwan was due to someone taking a subtype of the virus and secretly producing an avian flu vaccine. While the original intention was to aid chickens in the production of resistance to the flu virus, because the production of this vaccine was so sloppy, the result was a large spread of the virus. The documentary also revealed that while the COA was covering up the

⁸⁰ "From the plasticizer crisis one can search out Taiwan's food safety issues" by Cheng Shao-fan, at <http://www.watchinese.com/article/2011/3223> (in Chinese).

⁸¹ The complete video (in Chinese) can be accessed at <http://www.youtube.com/watch?v=Jcs7hA5iwZE>.

situation regarding this highly virulent avian flu strain, it also found experts and academics to endorse a relaxation of confirmation standards.

The frequent occurrence of these food safety and sanitation incidents, such as mad cow disease, avian flu, melamine in milk, plasticizer, meat products with ractopamine and others, have created a lot of unease in a large section of society. The nongovernmental Consumers Foundation has conducted its own random testing, and the rate at which the products failed these tests remains high. This shows that food sanitation and safety has become a major public health issue. In today's world the production of food products is a global business. From the production of the ingredients to the manufacture and processing of the final products, the process is broken up and carried out in many different places. Can the government truly proclaim, as it does in this report, that it can guarantee the control and management of food production at every stage? This is questionable. It is a very important sanitation project to determine how to set up a comprehensive, cost-effective system of food safety inspection. Separately, many victims who have been harmed by unsafe food products find it difficult to receive compensation, especially when the manufacturer has closed down operations or has no means to pay compensation, or if the victims are overseas consumers. For these victims, the government should face the issues squarely and study the feasibility of relevant remedial measures. Although food product issues directly impact people's health, the government arbitrarily treats them as issues only suitable for specialists; thus the public lacks the channels and opportunities to participate in related decision-making. Moreover, the government itself should try to sustain communications to facilitate this decision-making, explain the administrative responsibilities, and bear the political responsibility of the success or failure of the policies. However, it seems that at the pivotal moment they again put the responsibility on specialists and academics, such that the policies and the political process lack transparency and accountability.

(3) Grain supply is becoming a national security crisis: Response to ¶ 210 (p. 110) of the State Report

The State Report very briefly describes the issue of the rate of grain self-sufficiency in a single paragraph, citing the conclusions of the 2011 National Food Security Conference.⁸² It listed the conclusions of the conference as the

⁸² This conference was organized by the "Inter-departmental Sub-committee on Food Security" set up by the Council of Agriculture. The main topics of this conference were: 1) Increasing production and consumption of domestically grown grain in order to raise self-sufficiency; 2) Managing the sources of grain imports and strengthening international investment and cooperation in agriculture; 3) Establishing a risk management system to guarantee balanced grain supply and demand; 4) Improving the formation and management of agricultural land to protect the best quality grain-growing areas; 5) Improving water quality and water management in the agriculture industry to supply safe, reliable sources of water for irrigation.

government's measures to address this issue, including setting a target for the degree of grain self-sufficiency, adjusting the structure of domestic production, and making the most efficient use of agricultural land and water resources. It even set a target of 40 percent grain self-sufficiency in the next eight years, i.e., by the year 2020.

However, if we look at many of the policies begun since the current government took office, the government seems to be proceeding in the opposite direction from a target of 40 percent self-sufficiency in grain. For example, during the National Food Security Conference Chen Wu-hsiung, the then Minister of the COA, said that in order to meet this target, he promised to bring 140,000 hectares of fallow land back into cultivation.

However, in the "Report on the Key Issues of the Grain Crisis: A review of the situation in Taiwan" author Peng Ming-hui questioned this proposal. Peng cited public remarks by then Public Construction Commission Minister Lee Hong-yuan that the amount of water needed to bring back this land was more than what was available, and in future it would be necessary to reduce the amount of water used in agriculture. Thus, Peng stated, "On the one hand we say that we will increase production, and on the other hand we say that we must reduce the water used in irrigation. Can it be that Taiwan has developed some new agricultural techniques?" In addition to the government asking the agriculture industry to use less water, there are many other structural factors that will severely limit a resurgence of agriculture production, including Taiwan's long-term undervaluing of agriculture and the suppression of agricultural prices, resulting in hardship for the farmers and depressing population growth in the agricultural sector. Since subsidies for leaving land fallow remain high, anyone who wants to rent such land to expand or begin production will need to pay too high a rental price. These factors are significant barriers to entry for farmers.

Lastly, the fierce competition for water has also reduced the water available for the agriculture sector. Despite the fact that annual rainfall in Taiwan is one of the highest in the world, the topography and population density mean that the proportion of rainfall used by each person on average is much lower than that in other countries. At present, of the 18 billion tons of water used each year in Taiwan, 13.5 billion tons are used by the agriculture sector, 2.9 billion tons are used by households, and the remaining 1.6 billion tones are used by industry. The Water Resources Agency estimates that by 2021, households and industry will need a total of 6.5 billion tons. Thus, if there is no increase in the supply of water, the supply of an additional 2 billion

tons of water will have to be re-directed from that supplied to agriculture, and thus, in a different way this will act to depress agriculture production.⁸³

In the State Report, the government has not been truthful with us. Factors such as population growth in Taiwan and the overall results of raising the quantity of meat in people's diets (i.e., raising the ratio of meat to other foods in the diet) and the changes in our export markets, has lead to the current situation where Taiwan's grain self-sufficiency has fallen to between 30.5 percent and 32.4 percent.

The rapid growth in Taiwan's population and the increase in meat in the diet have caused a rapid increase in the consumption of grains in Taiwan. However, at the same time, more agriculture land in Taiwan has been left fallow, causing a sharp decline in grain production. Thus, when demand for grains exploded, production continued to decline, resulting in a rapid slide in grain self sufficiency.

In 1976, there were about 520,000 hectares of cultivated (wet) rice paddies in Taiwan, but by 2008, about 100,000 hectares of rice paddy fields had been lost, leaving just 420,000 hectares for rice cultivation. However, half of that area has been left fallow. In addition, in the 1980s, the Taiwan government agreed to a demand from the United States that the country reduce the amount of its rice exports,⁸⁴ and thus the government carried out a plan to reduce the production of rice. According to this plan, the government provided subsidies to farmers who agreed to let their fields lie fallow as the means of reducing the rice growing area. As of 1997, the area devoted to rice production had fallen to 364,000 hectares. Later, in order to enter the World Trade Organization, the area devoted to rice production quickly decreased further to 237,000 hectares. As of today, the total area of fallow land has risen to as high as 240,000 hectares.

The government's fallow land policy began with the passage of the Agricultural Development Act in 1973. A revision of the law in 2000 opened up the free trading of agricultural land (i.e., land that was previously restricted to agricultural purposes). Then, in 2010, the enactment of the Rural Rejuvenation Act further allowed those buying and selling agricultural land to change the use of the land without undergoing a review of the transaction. With this history, Taiwan's agricultural land could now be facing an even greater crisis.

⁸³ See "Grain security and sustainable development possibilities", by Lu Yi-rong; last accessed here: <http://zoovey0723.pixnet.net/blog/post/30660474-%E7%B3%A7%E9%A3%9F%E5%AE%89%E5%85%A8%E8%88%87%E6%B0%B8%E7%BA%8C%E7%99%BC%E5%B1%95%E7%9A%84%E5%8F%AF%E8%83%BD%E6%80%A7> (in Chinese).

⁸⁴ From the government's "six-year plan on rice production and conversion of rice fields".

This fall in grain self-sufficiency has implications for national security and in particular could seriously harm Taiwan's political autonomy. If future international shipping costs continue to rise too high and Taiwan's fallow land policy does not change, then after 2023, Taiwan could become reliant on mainland China for as much as 75 percent of grain imports. When that time comes, would it not be the case that the other side would be able to control the development of China-Taiwan cross-strait relations, since Taiwan will then be left completely without any bargaining room?⁸⁵

(4) The Environmental Protection Administration disregards a decision made by the administrative court, which is non-interference in the matter of water pollution created by the continued expansion of a science park: Response to ¶ 211 and ¶ 212 (p. 110-111) of the State Report

The two sections on water pollution in the State Report raise the issue of the data on soil and underground water pollution from tests done by the Environment Protection Administration (EPA) under the Executive Yuan as well as the issue of revocation of the environmental impact assessment (EIA) of the Third Stage Expansion of the Central Taiwan Science Park (CTSP), a case which has grabbed the public's attention.⁸⁶ However, the EPA and the Executive Yuan have disregarded the decision taken by the Administrative Court.

It has been six years since the lawsuit against the EIA of the Third Stage Expansion of the CTSP was launched in 2006. In 2010, the Supreme Administrative Court determined that the EIA was invalid and issued an injunction to stop construction and operation. However, various government departments took the lead in abusing this judicial decision, pointing the finger of blame at the court, saying that its decision, without meaning or effectiveness, was destroying the environmental protection system. These departments (including the EPA and the National Science Council, which supervises the CTSP administration) then carelessly, within 141 days and using supplementary documents, approved a new version of the EIA, ignoring the fact that the Houli area was already subject to a high degree of pollution. Moreover, they permitted construction to continue while the new version was being prepared. As for the injunction, they then defied the court by asserting "a

⁸⁵ *Report on the Key Issues of the Grain Crisis: A Review of the Taiwan situation* by Peng Ming-hui was very helpful in preparing this response to the section on grain issues.

⁸⁶ Translator's Note: The Central Taiwan Science Park (CTSP), established in 2002, is an administrative organ that develops and operates a group of so-called "science-based industrial parks" (i.e. industrial zones specifically intended for high-technology industries) in Taichung City and the surrounding counties of Changhua, Yunlin, and Nantou. The parks have been developed in several stages, and the controversy discussed here involves the third stage, which includes the park in Houli District, Taichung City.

work stoppage but not a production halt.” This behavior made a mockery of the basic precautionary principle underlying the EIA process.

ICESCR General Comment 15 emphasizes that water is indispensable to the realization of the right to life and the right to health, and it is also a prerequisite for food production.⁸⁷ However, in the development of the Houli science park, in addition to acquiring farmland, the EIA permitted the re-allocation of water resources for use by factories in the park and permitted the photovoltaics industry to discharge their waste water, which has a high level of electricity conductivity (a measure of pollution), directly into irrigation channels. This caused a loss of agriculture land. In addition, the water resources were not evenly distributed, and this has damaged food security. Some farmers were forced to give up farming.

The waste water discharged by the science park was not just an attack on the agriculture and fish farming industries, but it also impacted on food security. It can be seen that the government in its decision to develop the third and fourth phases of the science park has seriously failed to consider basic human rights.

Article 12 of the ICESCR guarantees people’s right to health, but the health risk assessment skills and standards of Taiwan’s EPA are such that they did not look into the background of this environment (including existing risks in the local environment) and include those in the entire assessment and consideration. Again, take the Houli section of the science park as an example. The dioxin level in the blood of Houli District residents is much higher than anywhere else in the country. There are also many existing sources of pollution in Houli. Houli residents and academic experts have several times called into question the EPA’s assessments on health risks, believing they have not yet truthfully presented the health risks that the residents are facing; however, their concerns have been brushed aside or treated with indifference.

(5) Government permits industry’s seizure of water designated for agricultural use: Response to ¶ 213 (p.) of the State Report

In water usage, Taiwan’s agriculture sector has priority over industry. Article 18 of the Water Act stipulates:

“The priorities of water usage are as follows: 1) Household and public water supply use; 2) agricultural use; 3) hydropower; 4) industrial use; 5) navigation; 6) other uses.

⁸⁷ E/C.12/2002/11, available at: [http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

This order or priority may be changed by the supervising authority for a particular waterway or government-designated industrial zone in consideration of the actual circumstances, subject to approval by the central supervising authority.”

The first section of Article 20 of the same law also stipulates: “When a dispute arises among registered water right holders due to under-supply of water, the holder who has a higher priority of usage shall be given the preemption.” For a specific local example, Article 46(2) of the by-laws of the Changhua Irrigation Association stipulates that only when the agriculture industry has surplus water may this surplus water be allotted for other purposes: “Our organization should strengthen management of irrigation and upgrade old irrigation channels, such that any water surplus to irrigation needs can be allocated for other uses, in order to fully utilize water resources and increase income from charges for the use of the surplus water.”

However, the development of the Erlin Zone of CTSP Fourth Stage Expansion (located in Changhua County) over the past several years has created a predicament for those requiring water for irrigation in that area, such that there is “water for four days and then none for six.” The EIA for the Fourth Stage Expansion breached the law by permitting the park to divert 66,500 tons of water originally designated for agricultural use. The Changhua Irrigation Association, which is supposed to protect the irrigation rights and benefits of its members, unexpectedly decided to cooperate actively with this plan, charging the Fourth Stage Expansion of CTSP for its daily consumption of 66,500 tons of water at a below-market rate of NT\$3.30 per unit.

According to the 2009 document “Planning for construction works for the diversion of water for agriculture use to the Fourth Stage Expansion of CTSP,” in the initial phase approximately 4,800 tons of water is to be provided daily by a private water company; in the middle phase of development (2012-2015) the daily water needs of 66,500 tons of water are to be provided by Cizaipijun (the main irrigation system in southern Changhua County); and for the long term, after 2016, it is planned that water will be supplied from the Tadulan River weir in Taichung.

Lu Shih-wei, legal counsel for Wild at Heart Legal Defense Association Taiwan, said the water usage plans for CTSP Fourth Stage Expansion breach the law in two ways. Firstly, construction was begun before the EIA was conducted and continued in violation of the EIA after it was completed. This also resulted in the injury of person (s) and damage to vehicles, clearly in violation of Article 22 of the Law on Environmental Impact Assessment. According to the law, the governing authorities should have ordered the developer to halt work, or at least should have charged the developer with a fine or prison sentence. Secondly, the final EIA permitted the diversion of

water designated for agriculture and the sale of water by the (local) water conservancy organization, both of which are in violation of Article 18 of the Water Act which states that the agriculture industry has priority in water use. Lu Shih-wei stated that the intention of water use rights is that the needs of the one which has priority in water use should be met in full and only after these needs are met in full can water be diverted to other uses. For example, the second item of Article 46 of the constitution of the Changhua Irrigation Association states that only “surplus” water can be sold.

In addition to the debate which has erupted around the seizure of water resources by the CTSP Fourth Stage Expansion, a dispute has arisen between the Meinung and Kao-Ping areas of Kaohsiung County and the Water Resources Agency (WRA) of the Ministry of Economic Affairs (MOEA) and claims made of the waste of water resources. The dispute arises from the construction of the Meinung Reservoir and the Jiyang (manmade) Lake. Civil society groups such as the Meinung People’s Association and the the Meinung Village & Lands Association have also questioned the government’s secretive methods in budgeting for the first phase of the man-made lake at Jiyang. Huang Sen-lan, head of the self help group protesting the construction of the lake, has said this man-made lake at Jiyang is not really a lake at all. The government plans to put up a wall around the lake, thus this is a surface reservoir, and it does not have a flood relief channel. The day the wall breaks, it will create a “flooded city” in Meinung. In addition, the position of Jiyang Lake is in an area that has a lot of underground water, and the WRA wants to bring up this water and let the sun burn it off. This is like killing the goose that laid the golden egg!

(6) On the right to build homes, high home prices, and social housing: Response to ¶ 215-218 (pp. 112-113) of the State Report

It is acknowledged in these paragraphs of the State Report that the price of housing in the Greater Taipei Area⁸⁸ has remained high, and that there has been no attempt to make a national survey of the housing situation for the disadvantaged. The State Report also reflects on issues such as the continuing sales of land held by various government departments and other problems related to public housing, and it gives a brief description of related assistance measures that the government is offering to help who are unable to buy their own homes.⁸⁹

⁸⁸ Translator’s note: The Greater Taipei Area includes Taipei City, New Taipei City, and Keelung City.

⁸⁹ Translator’s note: The terms “home” and “house” are here used interchangeably, following the fact that the equivalent terms in Chinese often do not distinguish between free-standing homes and apartments. In Taiwan, the vast majority of households live in apartments.

However, in their founding statement issued in 2010, the Social Housing Advocacy Consortium (SHAC) stated that, for most people in Taiwan, the most basic right to housing with an adequate living standard is already endangered. The phenomenon of high house prices has become a source of agony for all citizens, and it is at the top of the people's list of grievances. According to the "Method of calculation of house price affordability and comparison with international norms" put out by the Construction and Planning Agency of the Ministry of the Interior (CPAMI), in more than two-thirds of the counties and cities in Taiwan, house prices are six times household income, and according to international standards this represents a very heavy burden on homeowners. In that group of cities are New Taipei City where prices are 9.5 times (giving a loan service ratio of 39 percent of income) and Taipei City with 14.1 times (for a loan service ratio of 58 percent of income), showing that the situation has already reached an extremely serious level.

Looking at all the various sources, including the past housing surveys of the CPAMI, surveys of citizens' intentions conducted by the Academia Sinica, and the telephone surveys on housing demand done by the Institute for Physical Planning & Information, it is estimated that about 30 percent of households in Taiwan do not own their own homes. In addition to that 30 percent group who do not own their own home, there are those suffering from the high housing prices, including the high number of "housing slaves" who will be carrying the burden of their home mortgage for their entire lives, as well as those who do not dare change their housing situation because of the high prices.

In addition, despite the government's oft repeated policy of "all residents shall own their home," in fact most people cannot afford to buy a home, especially those with low incomes, elderly singles, those with disabilities, victims of domestic violence, HIV/AIDS victims, urbanized indigenous people, the homeless, and other disadvantaged groups. SHAC estimates that the total number of households in these groups is equal to 16.5 percent of all households. (This figure is conservative, since it does not include other disadvantaged persons such as single persons living alone, disaster victims, low and middle income persons, the unemployed, students living away from home, young persons who are employed outside their hometown, and newly married couples, as well as other hidden disadvantaged persons who have not been registered on any list.)

The State Report points out that on 30 December 2012 the newly-enacted "Housing Law" will come into force, and expresses the government's hope that the so-called "social housing" will enable the disadvantaged to rent an "appropriate house" at reasonable rates. It also announced at least 10 percent of units should be reserved as rental units. But according to information collected

by SHAC, as of October 2010, the total government-owned rental housing that can be classified as social housing amounted to 0.08 percent of all housing; in Taipei City it was 0.64 percent of all housing, in New Taipei City 0.02 percent and in Kaohsiung City 0.03 percent. In comparison, public housing in other countries is as follows: the Netherlands, 34 percent; the United Kingdom, 20 percent; Denmark, 19 percent; Finland, 18 percent; Sweden, 18 percent; European Union as a whole, an average 14 percent; the United States, 6.2 percent; Japan, 6.06 percent; Hong Kong, 29 percent; and Singapore, 8.7 percent. Thus, it is clear Taiwan lags far behind the world standard.

(7) Vewong Corporation's investment in Cambodia: Response to ¶ 221 (p. 114) of the State Report

The section in the State Report on “Cambodian Investment” does not give any details on why this event occurred. The investment case involves a Taiwanese company, Vewong Corporation, and its overseas investment in Koh Kong Sugar Industry Company in Cambodia.⁹⁰ The anti-human rights behavior of this company violates Article 6 of the “Measures Governing Overseas Investment” of the Investment Commission of the Ministry of Economic Affairs, which states “Violation of international treaties or responsibilities under the agreement, or damaging the national image, will not be permitted”. At the same time, as revealed in a report published by the United Nations, the company's actions also violate several basic rights guaranteed under the Universal Declaration of Human Rights, including Articles 1 and 11 of the ICESCR.⁹¹

Case Study – Investment of Vewong Corp in Cambodia

In 2006, Vewong launched its investment in Koh Kong Sugar Industry
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⁹⁰ Vewong Corporation Ltd (Vewong Corp) is a Taiwanese company set up by Japanese investment in 1959. In order to consolidate access to raw materials for its products such as monosodium glutamate, the company began collaborating with Thai business partners. In 2008, the Investment Commission of the Ministry of Economic Affairs approved US\$7.2 million investment in Koh Kong Sugar Company Ltd in Cambodia, which gave the Taiwan company a 30% share in Koh Kong Sugar Company Ltd. In 2006, Koh Kong Sugar Company Ltd (Koh Kong Sugar) had received from Cambodia's Ministry of Agriculture, Forestry and Fisheries economic land concessions (ECL) for land in Sre Ambel District in Koh Kong province according to local laws and regulations, for the business of cultivation and production of sugar cane and refining of sugar and production of sugar products. The ECLs were for an area of 9,700 hectares and a period of 99 years, and permitted foreign investment agreements of 70 years. Mr. Chamroon Chinthammit, a director of the Thai company holding 70% of Koh Kong Sugar was named chairman of Koh Kong Sugar. Vewong Corp did not assign anyone to serve as a director on the board.

⁹¹ “Economic land concessions in Cambodia: A human rights perspective” published by the Special Representative of the Secretary-General for human rights in Cambodia in June 2007. Available at http://cambodia.ohchr.org/WebDOCs/DocReports/2-Thematic-Reports/Thematic_CMB12062007E.pdf.

Company and Koh Kong Plantation Company in Koh Kong province in Cambodia. The former company had 9,600 hectares of land and the latter 9,400 hectares for the growing and processing of sugar cane. This land was being used by a total of 456 households of local residents who were then forced to leave the land as the investment project took it over.

These two companies were set up with investment from three parties, Vewong of Taiwan which holds 30 percent, Khon Kaen Sugar Co Ltd of Thailand and Ly Yong Phat, a member of the Cambodian Senate. In 2006, this company brought in excavators to Koh Kong province and began forcibly to clear the land. The residents of the area had no knowledge of this before it happened and the villagers who relied on this land for their livelihood were tragically removed. As a result they have encountered serious difficulties and this started a protest. The company's security guards, who also held positions in the military, opened fire and killed women from the village as well as severely beating other villagers. The villagers filed petitions with the Cambodian Parliament and the prime minister's office, and the case was sent for judicial review. In May 2011, Member of the European Parliament Cecilia Wikström condemned the Koh Kong Sugar Industry Company and the Koh Kong Plantation Company, referring to "Bloody Sugarcane" which has seriously damaged human rights.

According to the report "Economic land concessions in Cambodia – A Human Rights Perspective", published in 2007 by the Special Representative for the Secretary-General for Human Rights in Cambodia, before the Cambodian government issued the economic land concessions (ECLs) in August 2006, there were no public hearings carried out, nor was there any public discussion with the people. Additionally, there were even no consultations with local government officials to seek their ideas and opinions. This development project seized the land that the residents depend on for their livelihood, and the company's security guards have repeatedly seized or shot the cattle that intruded onto the land area used by the company, adding to the livelihood pressures of the local residents.

III. Issues Neglected by the State Report

(1) The Urban Renewal Act is vicious legislation destroying people's homes and violating their right to housing

According to some urban residents whose families have lived in the city for several generations, it is a tough road taking nearly a lifetime to be able to finally buy one's own home in the main metropolitan areas. Then one day one is notified that one's home is in an area of the city set for redevelopment, or

one's land is forcibly taken and sold to a construction company to build luxury housing. The reason behind these developments is that in recent years, local governments have been hanging out the banner of "public good", encouraging people to assist developers in promoting urban redevelopment policies.

Case Study

On 28 March 2012, the Wang family in the Shilin District of Taipei City were pressured by the Le Young Construction and the Taipei municipal government to move from their home. The proceedings of this case focused the attention of Taiwanese society on these evil redevelopment laws which transgress people's rights. The redevelopment project, the Wenlin Yuan (Wenlin Garden) in Shilin, was approved by the city government in June 2009 and Le Young Construction was put in charge. However, two Wang households in the area refused to participate in the plan. A series of five public mediation sessions were held but no agreement was reached. Taipei City Councilman Hung Chien-yi and others in city council meetings demanded that the city government demonstrate its administration's boldness and let this case become the norm in the redevelopment program; Mayor Hau Lung-bin said in November 2011 that the city government would exercise its powers and remove the Wang family within one year. Finally, at 5 am on the morning of 28 March 2012, and despite support from people in every sector of society, more than 1,000 riot police from 10 districts of the city, along with road sprinkler trucks and workmen from the construction company, encircled the residences and holding off city residents, students and members of the two Wang family, proceeded to demolish their homes. By the afternoon the two Wang homes were nothing but rubble.

According to Article 22 of the Urban Renewal Act, when the residents themselves apply to be considered as part of an urban redevelopment area, if more than two-thirds of property holders within the site to be redeveloped, holding at least three-fourths of the floor area of the buildings on the site, agree, then redevelopment may proceed. Article 25-1 is a new regulation added in 2007 governing "joint construction agreements." Whereas previously all households (100% of the owners) had to agree to a redevelopment of a particular building, the new rules are less demanding, requiring only 80 percent agreement. Supporters of the redevelopment with the majority on their side determine the outcome, exploiting the rights of the 20 percent who do not agree, and "the implementer [the construction company] can ... apply to competent authorities for purchasing the land and buildings after those have been expropriated." This statute can be used to facilitate most urban redevelopment agreements (wherein most of the owners together agree to redevelop) in that the construction company only needs to get 80 percent of the

property holders to agree, then it can apply to the government to forcibly take over the remaining 20% and then sell the building to the developers.⁹²

Article 36 of the law takes this a step further, giving the government increased powers toward owners who do not demolish or remove their houses within the time limit: “The implementer [developer] can request the municipal, county (city) authority to do it on their behalf. The municipal, county (city) authority has the obligation to do the removing on behalf of the owners.”

For this reason, when there is a big gulf between the interests of the construction company and the public, the current Urban Renewal Act and its related review systems have no means to evaluate and balance the conflicting interests. If there are any “under the table” agreements between the developer and some of the residents, the only recourse for those in the minority group opposed to the redevelopment is to individually file a civil suit against the developer. The government not only has no responsibility to enter the case as an arbitrator, but under the law, the government is given improper power to use its authority to act on behalf of developers in tearing down the residences and homes of those who are not in agreement, forcing the residents out of their homes whether on a temporary or a permanent basis. Thus, in recent years, when a minority of residents that do not want to leave their homes for these urban redevelopment projects, even mild cases involve various protests or a morass of litigation. In more serious cases, dissenting residents have been threatened with violence.⁹³ These people have suffered inappropriate and violent attacks on their right to residence; they have no guarantee of freedom to change residence (should they choose to); and their property rights, and sometimes even their personal safety, have been grievously threatened.

(2) Hagay Community residents waiting more than 10 years for housing

⁹² The entire text of Article 25-1 of the law is as follows: “When using the method of joint construction agreement to implement urban renewal business, if the implementation plan is not agreed by all the owners of the lands and legal buildings, but the agreement is over 80% of private land area and private floor area of legal buildings, joint construction agreement can be carried out partially in that part in which owners agreed to participate. In another part, for those land and legal buildings whose owners did not agree to participate in the joint construction agreement, the rights transformation can be applied. Otherwise, implementers can also try to negotiate with owners and purchase the land or buildings by themselves. If they cannot reach an agreement on price, the implementer can collect the conditions of joint construction, the price of bargain and record documents of negotiation. Then implementer can pay the price of expropriation compensation in advance and apply to competent authorities for purchasing the land and buildings after those have been expropriated.

⁹³ *Apple Daily*, 22 April 2011 “Hooligans burn house down, Woman takes Urban Redevelopment to court.” Last accessed at http://tw.nextmedia.com/applenews/article/art_id/33336243/IssueID/20110422 (in Chinese).

The Hagay Community is a village of the Atayal Aboriginal people in Fuxing Township, Taoyuan County. Originally this tribe lived deep in the mountains at the upper reaches of the river above the Shihmen Reservoir, but in 1966, as access in and out of that area was difficult for both school and work, the elders of the community pooled their resources, bought a piece of land at the side of the Baling Bridge and built homes there.

In 1977 in order to control the build-up of sediment in the Shihmen Reservoir, the government constructed the Baling Dam above the community. However, they did not maintain the structure well and in 2002 the Water Resources Agency learned that some of the structures had been damaged. Measures taken at that time were also not effective, leading to water scouring away at the river bank situated at the base of the community.

Finally, following several years of typhoons, after Typhoon Aere struck in August 2004 the base of the Hagay village completely collapsed, and the area became uninhabitable. In all, 17 households moved into government-built prefabricated housing, and the government agreed that it would provide permanent housing within three years. However, the construction of new homes was delayed due to various problems in the construction process, including the amount of budget and insufficient funds from some members of the community. In the end the community spent 10 years in the government's pre-fab houses. Finally, in April 2011, they broke their silence on this issue and took to the street, protesting against the delay in front of the Executive Yuan. They still did not get a response and later in the year on 20 October they submitted a letter to the Control Yuan. In November 2011, the Control Yuan acknowledged acceptance of the letter and launched an investigation.

Over the past 10 years, these 17 households have grown to 21 households with a total of 59 people, and they are still living in the pre-fab houses. The size of the planned houses that they have waited so long for have also shrunk. In the first plan each household was to have a two-story home. That has now become a one-story flat of just one room of 17 *ping* (one *ping* is equal to 3.3057 sq meters or 36 square feet). This is not only much smaller than their original homes, but it also does not take into consideration whether it is suitable living space for those with large families. Moreover, throughout the entire process the government has never satisfactorily communicated with the community.

The issue with the Hagay Community is not an isolated case. In the cases where typhoons and other natural disasters as well as public construction works have forced communities to move from their villages, the authorities in charge have usually simplified the issues in the construction of new homes for these communities and never considered indigenous peoples' culture, customs, and practical needs, which are very different from Chinese people. This is not only

overlooking their rights to residence, but also shows a lack of respect for the cultural rights and the right to self determination of indigenous peoples.

(3) When a cold spell threatens, the homeless are hit by councilors ordering civil servants to drive them out with cold water

Paragraphs 202 through 204 of Article 11 of the State Report address the issue of “protecting the basic livelihood of the poor and other disadvantaged persons,” but nowhere in these paragraphs is there reference to the issue of the homeless, the lowest class and the most marginalized group in society. On 24 December 2011, the groups Working Poor Unite and Homeless of Taiwan (HOT) put out a video in which it shows the Taipei municipal employees spraying cold water to drive away homeless people living rough in the Wanhua District of the city during a cold spell.⁹⁴

As early as 15 August 2011, Taipei City Mayor Hau Lung-bin decided that with the coordination of the local police stations, members of the Department of Environmental Protection, the Department of Social Welfare, the Parks and Street Lights Office, the police, and other government departments would be organized into a special unit to “straighten out” the area around the Bangka Park. In fact the intent was to drive the homeless from that area. The Wanhua District Office agreed to coordinate the operation and planned to have the area cleaned by spraying water over the paved areas twice a day, at 11 pm in the evening and six o’clock in the morning.⁹⁵ However, at the end of 2011 when the news of Councilor Ying Hsiao-wei’s directive to spray the street sleepers with water by the cleaners exploded, Mayor Hau quickly changed his tune, saying “These homeless people are not criminals. We must respect their basic human rights.” In addition, then Minister of the Interior Jiang Yi-huah also stated that just before this incident occurred, the ministry had sent a letter to all city and county government offices saying that with the temperature dropping, the governments should find ways to take care of the homeless.⁹⁶ If spraying cold water was the actual method used in this case, that “was not very appropriate”, Jiang Yi-huah said.

⁹⁴ To view this video (in Chinese), go to the Working Poor Unite website: <http://homelessoftaiwan.pixnet.net/blog/post/40535111>.

⁹⁵ The original cleaning times of the Taipei city department responsible for street cleaning were 7 am and 8 pm. However, one civil society group photographed the cleaners spraying water at 11 pm. In addition, it is very clearly stated in the notices sent to city councilors that the councilor requested that the time be changed from 8 pm to 11 pm in the evening and from 7 am to 6 am in the morning.

⁹⁶ The Ministry of the Interior invited officials from every city and county government to discuss the problem on 13 December 2011 and to plan and coordinate measures to care for the disadvantaged during the cold months and the Spring Festival. Then on 19 December, the ministry sent a letter to all city and county governments, stating that when the Central Weather Bureau announced that the temperature would fall below 10 degrees Celsius, a cold weather

In fact, it was not only in Taipei that this method of dealing with the homeless was used. Similar incidents occurred in Taichung. There the city government sent in the cleaners when these “street friends” went to work, and the cleaners would sweep up everything, including medicines and personal documents, leaving nothing behind, and what had been their homes was treated as rubbish and dumped.

2. Management of the homeless in Taiwan

Looking back over the methods and systems that previous governments have used toward the homeless, in 1973 the Taipei City Government promulgated the “Measures to Clamp Down on the Homeless.” From the title, it is clear the homeless were not a group that is accepted by the system. They were viewed as lazy good-for-nothings, persons who destroy social order and who should be driven out, banned, and forced to enter shelters. Taipei set up its first homeless shelter under the administration of the Department of Social Welfare on 1 October 1991. The initial “Measures to Clamp Down on the Homeless” were abolished in 1994, and the “Measures on Guidance and Assistance for the Homeless” were adopted, which was in fact just a change of title only. During the administration of former Taipei Mayor Ma Ying-jeou, the government tried to legislate “Regulations on Guidance and Assistance for the Homeless,” but these new regulations were never adopted.⁹⁷ For this reason, the Department of Social Welfare continues to base its duties on the 1994 “Measures on Guidance and Assistance for the Homeless.”

3. Current situation and structural factors of Taiwan’s homeless

According to statistics from the Ministry of Interior, over the past ten years the number of homeless people in Taiwan has risen by an alarming 67 percent and by 2010 the actual number had risen to 3,913 persons. However, there appears to be a very large gap between the ministry’s statistics and the actual situation. Using an international rule of thumb, sociologists estimate that the real number is between 5 and 10 times the ministry’s figure. The Research, Development and Evaluation Commission of the Executive Yuan, in its 1995

warning, then the governments should activate its cold weather care program, arrange shelters for those homeless willing to use them, and provide sleeping bags and hot meals.

⁹⁷The first time that former Taipei city Mayor Ma Ying-jeou sent his draft “Regulations on Guidance and Assistance for the Homeless” to the Taipei City Council was in 1999. However, since the bill contained nothing on how to deal with those homeless people who had no identification documents, the City Council sent it back for revision. In 2007 when Mayor Hau Lung-bin took office, he tried to have it reviewed again by the Council. But because the regulations looked like old wine in a new bottle, a new form but no new content, the problems remained unsolved. When the Council was re-elected in 2010, the bill automatically died due to the rule that legislation not acted on in the previous term cannot be carried over to the new term. For this reason, these regulations have never been adopted.

“Analysis of a Survey on the Homeless Issue” revealed that the reasons for homelessness begins with the break-up of the family unit or the lack of a family to rely on. Other factors identified were poor family relations, an accident or occupational injury, loss of employment, an individual’s personal problems of adjustment, and other issues. Due to the climbing unemployment rate, and because of the short-term nature of unemployment problems, the number of middle-aged homeless persons has risen much higher than previously. Moreover, with the growing gap between the rich and the poor in recent years, a recent phenomenon has been the rise in the number of homeless teenagers and young adults. The breakdown in the government’s policy on social assistance has also been a factor in the rise in the number of homeless. According to a survey undertaken at the Taipei Railway Station in 2010 by the civil society group Working Poor Unite, more than 90% of the homeless interviewed said they had previously had jobs, including 63% with formal employment and at least 11% as self-employed bosses. Even during the period of living on the street, a large majority (71%) had work, but most of these jobs (69%) were only part-time or temporary ones. As for the types of work, these included carrying advertising placards (47%), working as parade extras (e.g. for temple festivals, etc.) (40%), odd jobs on construction sites (27 percent), sanitation work (17%), and kitchen work (9%). Regardless of whether it was before or after the person became homeless, most of the jobs were mainly manual labor jobs. For as many as 82% of the homeless, their monthly income from their employment was less than NT\$5,000 a month, and for 68% of the homeless their monthly income was less than NT\$3,000 a month. Middle-aged and older homeless persons (aged between 46 and 65 years old) made up more than 60.5% of the interviewees; at the same time, when asked the reasons for changing jobs or for not continuing to work at a particular job, the main reason given (42.9%) was that they physically could not handle the amount of work demanded. Other reasons given were that the temporary work was not steady (41.4%) or they were viewed as too old for the job (39.3%).

The problem of the homeless and homelessness is related to the question of how the structure of the national economy creates these migrants, and to how the social assistance system can provide resources to help them break out of homelessness. It is a very complicated problem, and before a solution can be found, the problem of the homeless are very much with us. It is a problem that the entire society certainly should face with a perspective of justice, and never by using expulsion and stigmatization.

4. Homeless shelters

At present there are 10 publicly established homeless shelters in Taiwan (including seven which are government funded and privately run). According to figures compiled by Working Poor Unite, there are a total of about 500 beds in these 10 shelters. If we compare the number of homeless and the number of

beds available in all the shelters, it is clear there is a serious shortage of homeless shelters. In 2008 the Taipei City Government planned to set up “a single-night type homeless hostel and service center” in the Wanhua District, and all the facilities had been completed; however, just as it was ready to open, there was violent opposition to it from the Wanhua community, and for this reason it never started operations.

The survey of the homeless living around the Taipei Railway Station done by the Working Poor Unite group uncovered that 81.4% of them did not want to use or stay at the homeless shelters. Their reasons included the following: too much management (36.4%); time restrictions (24.3%); complicated environment (24.3%); chance of catching an infectious disease (20.7%); too remote a location (12.1%); and unhygienic facilities (9.3%). Many of the homeless said, “Living in the shelter is like living in a prison. I am not a criminal, so why should I go there?”⁹⁸

In these shelters offering just short-term accommodation, the homeless person does not have any freedom, and there are many restrictions on who may take a place in them. The Working Poor Unite group took their analysis one step further and looked at why the short-term shelters could not solve the problem of providing a space to the homeless with no fixed abode and found that most of the homeless could only get a place for three to six months. While they were in the shelter, many of them found steady work, with enough income to provide them with money to rent their own place and thus could stop roaming. However, if they lost their job, they would then have to live on the street again. Kuo Ying-ching of Working Poor Unite estimated that between 40-50% of those surveyed returned to live on the street. Thus, she believes that in addition to setting up shelters, the government should also provide the

⁹⁸ As regards the current management system of the shelters, many of the homeless have the same reaction: There is too much inference by the management, too many rules. Ah Cheng said “The shelter (management) is bothered about everything. Even ordinary matters have to be reported; they act like they are taking care of children. You have to report when you are going out, and tell them when you are coming back. If you don’t come back, you have to tell them. If you don’t take the meal, you have to tell them. That is not to say that that is bad, but you don’t feel like you can relax. Whatever you do, you feel like you are being watched, like you are being monitored, and this gives you a kind of stress.” Ah Ming said, “There is no flexibility in the management of the shelters. Even ordinary things have to be done according to the rules. I just don’t understand why they have these rules. You are not allowed to bring food back to eat. The shelter forbids us bringing back food from outside to eat. They think that the food they provide is enough to satisfy us and we eat very well. But I still want to eat what I want to eat. Just like you at home. Even though you can cook at home, you’ll still want to eat other things, won’t you? You’ll want to buy something to bring home to eat?” In addition, Ah Guan said, “Hanging around in the shelter is really boring. If you want to watch television, well, the remote control is the management’s remote control, so everyday we watch the same channel, and that is always the same kind of thing and watching it all the time makes you fed up, or you watch it, and watch it, and watch it.”

homeless with a rent subsidy, so that they can have a permanent place to live and not find themselves out on the street again.

IV. Conclusions and Recommendations

(1) Recommendations regarding food supply issues

Taiwan must develop industries which are low energy and energy efficient, low water consumption and water efficient, and at the same time with high value added. In addition, with reform of the taxation system and reasonable water and electricity prices, when Taiwan is faced again with a period of high oil prices, the country will have some room to maneuver. Moreover, the country should increase its land usage rate and yield on the space used, limit and recover water used by industry and the people, increase the use of rice in order to replace wheat, expand the fishery industry and fish consumption to replace a portion of meat and poultry consumption, and cautiously control the overall level of the population to avoid another period of population expansion.

(2) Recommendations regarding food product safety and sanitation

Dr. Chang-Chuan Chan, professor in the College of Public Health at National Taiwan University has said “From the production of chemicals to their sale to wholesalers, to their use by businesses, and again to the producers of food products supplied to consumers, these chemical products should have a history recorded at every stage of the process. This history should include who these chemicals are being sold to and who this should be reported to, so that the originating producer can know who is downstream (the purchaser), and what uses these products are being put to. In that way, each one who handles these products would know that the upstream providers and downstream purchasers are correct, and in this way there will be transparency! How much do I produce each month, how much do I put out each month, whom am I selling it to, only then will we know the circulation of these chemical products in our society, and it will not be a case of making an investigation only after an accident has occurred.” In addition, study could be made of the regulations of the European Union’s Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) which would require the set up of an agency similar to the European Chemicals Agency (ECHA). This would involve manpower, resources, and the re-organization of related bureaucracies. Without the determination of the most senior policymakers to make a big push for this, it will be difficult to accomplish.

(3) Recommendations regarding corporate social responsibility

According to “Protect, Respect and Remedy: a Framework for Business and Human Rights” and the “Guiding Principles on Business and Human Rights” adopted by the United Nations, corporate enterprises all have the responsibility to respect universally recognized human rights, and at the core of this responsibility are the various international covenants on human rights. As regards Vewong Corporation and the incidences of violation of human rights by the company pointed out by civil society groups and international organizations, the company should issue a statement and acknowledgement as follows:

1. Issue a corporate statement: the board of directors of the company should carry out its responsibilities as regards those whose rights have been impacted by the company and the company should decide what is its responsibility as regards acknowledging and respecting the relevant human rights, and finally make a formal policy statement as regards this issue.
2. Conduct due diligence as regards the company’s impact on human rights: As regards corporate responsibility to respect human rights, the company should establish and carry out due diligence as regards the related corporate impact on human rights, investigating and estimating the actual and potential human rights impact, take corrective action, seek specific outcomes of the reforms, and explain in detail to those that have been harmed by the company’s actions the reform measures and actual management efforts to be taken.
3. Set up relief procedures for those whose human rights have been violated: In connection with the company’s new policy and responding to the negative impact resulting from the human rights violations, set up relief procedures providing assistance and remedies to those affected.

Financial institutions in Taiwan which have provided funds for this project of Vewong should review the “Sustainability Framework” of the International Financial Corporation (IFC) and consider that the land in this case came from those who were unwillingly driven out. This kind of consideration should be viewed as a fundamental tenet of corporate social responsibility as regards financial institutions respecting human rights.

As for the duty of government institutions and organizations to protect human rights, including actively promoting the realization of all categories of human rights, especially the promotion of commercial operations of a business group which will have a potentially positive impact on the human rights’ protection, they should at the same time seek to reduce the negative influences. To do this, we propose that government institutions adopt the following national human rights actions:

1. The Legislative Yuan should hold public hearings to illustrate the reality of corporate social responsibility respecting human rights and call on our country's enterprises to respect and adhere to the "Framework on Business and Human Rights" as their core duty towards the universally acknowledged international human rights standards.

2. The Ministry of Economic Affairs and the Council of Labor Affairs of the Executive Affairs should assist business enterprises in bringing the "Framework on Business and Human Rights" into their corporate management regulations and systems. The MOEA, when providing assistance and incentives to businesses, should consider their performance as regards their responsibility to respect human rights. The Bureau of Labor Insurance should focus on the human rights record of businesses when setting up investment criteria, excluding those business enterprises that have been involved in serious violations of human rights from the list of acceptable investment targets of public investment funds.

3. Attention should be paid to how government policies on business organizations impact on business enterprises' duty to protect human rights. The human rights obligations of state organizations will probably impact on the commercial activities of Taiwan's business enterprises, and as such these commercial activities of Taiwan corporations may also impact on the ability of state organizations to adhere to their duty of protecting human rights. The national policies of the government as regards commerce and human rights should have as their foundation the "Guiding Principles on Business and Human Rights for implementing the UN "Protect, Respect and Remedy" Framework." They should fulfill the government's responsibility as regards protecting human rights, supporting Taiwanese enterprises in their adherence to corporate social responsibility which respects human rights, regardless of whether their operations are located in Taiwan or overseas.

4. The State Report on Human Rights should clearly express to the business world, consumers, and the society at large its expectations as regards the duties and responsibilities of Taiwan's business enterprises concerning commerce and human rights. Taiwan's international human rights responsibilities and the Taiwanese government's human rights policies should form the policy foundation of the domestic and international operations and behavior of Taiwan's enterprises. As Taiwan gains the status of a developed nation, the commercial activities of Taiwanese enterprises can have a positive or negative impact on the government's ability to adhere to its responsibilities to protect human rights. This should be a basic tenet of the State Report.

(4) Recommendations regarding the Urban Renewal Act

1.The president and the premier should instruct the Construction and Planning Agency of the Ministry of the Interior (CPAMI) to revise the Urban Renewal Act by removing Article 25-1 and the whole of Article 36.

2.After the case of the forced eviction of Wang family for the Wenlin Yuan (Wenlin Garden) development in Shilin District, Taipei City, the local government should have immediately halted other similar forced evictions in Yongchun Community in Taipei and the East Gate (Dongmen) Market in Taoyuan.

3.The Taipei City Government should immediately abolish the supplementary regulations to Article 36 of the Urban Renewal Act which have been tailor-made for construction companies and which allow companies to request from the municipal authorities responsible for handling the change of property rights under the Urban Renewal Act the permission to demolish or evict persons for land improvement.

4. The CPAMI should sit down with the Taipei City Government and jointly inspect and discuss the concrete points of dissent of the communities protesting against urban renewal, as well as the policies and the omissions of the laws to prevent the development of another situation wherein there is no way to recover the demolished original homes in those communities, and to protect people and their homes.

5. The CPAMI should investigate, take into account, and plan accordingly regarding the rebuilding of homes in the communities where there are dispute regarding urban renewal.

(5) Recommendations regarding the Hagay Community case

When the government is considering similar redevelopment issues in the future, it should carefully consider the cultural rights and the right to self-determination of the indigenous peoples, and it should ensure that the residents of these communities can fully participate in the discussion of the redevelopment process.

(6) Recommendations from the Social Housing Advocacy Consortium on housing rights

1. Social housing should be brought within the government's housing policy, and the initial target should be raised to 5.0 percent of the total housing stock.

As a result of government's long-term indifference to the housing problems of the disadvantaged, Taiwan at present does not have an official

survey, statistics, or any information about the present living conditions and circumstances of each different disadvantaged group, let alone accurate estimates of the number of social housing units needed. However, seeing that Taiwan's present social housing units only account for 0.08 percent of total housing stock, this is without question far below actual needs and without a doubt more such units must be built.

Thus the government should make these "rent only" social housing units as a mandatory, important item in the next housing policy, and in order to emphasize this goal and put some unambiguous pressure, we suggest a target of 5.0 percent of total national housing stock as the goal for the initial stage.

2. Preferential use for public land is the most important bargaining chip in the initial stage of promoting social housing.

Since land in the urban areas is expensive and difficult to obtain, public land (including that held by the central government, local governments, and the military) should be seen as the most important bargaining chip in the first stage of the government's promotion of social housing construction. For this reason, all unsuitable sales by tender and build-operate-transfer (BOT) policies regarding public land should be stopped and priority given to freeing up suitable land for the purpose of social housing construction while at the same time coordinating these building projects with changes in urban planning, urban rezoning, urban renewal. By applying the method of unifying development demands to provide social housing, the goal of social housing may be thereby accomplished.

Using Taipei as an example, according to research commissioned by the municipal government, the public land (and assets) held by the city alone would be sufficient to build 9,000 new public housing units over the next eight years, bringing the city's stock of public housing units from 0.6 percent to 1.53 percent of all housing stock. If state-owned (central government) land and land held by state-owned companies in the city were included in the estimate, it is obvious that the number of social housing units that could be built would be even higher, and yield further progress. Following this method, New Taipei, Kaohsiung, Taichung and other cities should also find land to build social housing.

3. Diverse "social models" should be evaluated and applied to promote social housing and establish a model social housing community.

Social housing should be viewed as a public investment in social assistance, and we should not make the return on the investment the main consideration: The government must accept the responsibility of leading the promotion of these buildings, but this does not mean that the government need

take up all the building, management, and maintenance work. Based on overseas experiences, a diverse “social model” could be adopted, to build, operate and manage social housing. This would include:

(1) Housing strategy: Following a selection process and assessment, build mixed residential communities with three types of housing units: the usual housing structures on the market; rental housing for young adults and newlywed couples; and lower-end economical units for long-term rental by the disadvantaged. In this way the areas would avoid being labeled in a negative way and would benefit the financial leverage strategy.

(2) Market strategy: Factors which would encourage the purchase of normal housing units built alongside social housing in these mixed housing communities could include a 10-20% discount on the normal market price, checks on the quality of materials used in construction by the non-commercial organizations, environmentally friendly building materials, more social facilities and equipment, more “green” features, and more comprehensive community management. Such measures would benefit the buyer of a normal unit in the community and thus benefit the evolution of this mixed community.

(3) Property rights strategy: If mixed housing communities are to be built by commercial construction companies, a profit margin must be included in the planning, since this is the core of the capitalist/commercial market and is difficult to avoid. If a not-for-profit organization were to build communities foregoing such a profit margin, the property rights of the social housing could then be entirely held by the government. Would a government that holds all the property rights to social housing be afraid to face the needs of the disaster victims and the poor?

(4) Strategy for non-commercial social enterprises: Following the initial period in which financial support is needed, the government could either create new public foundations, or support existing civil society nonprofit organizations to launch Taiwan’s first financially self-supporting, self-governing social housing enterprises. Such nonprofit organizations would enhance credibility by their transparency, thus benefitting both the government and society.

4. To aid the disadvantaged, it is important to establish criteria for users of social housing and standards for rental rates, to clarify the rights of the tenants, and to combine the social services and social assistance systems.

In ensure that “social housing” can truly satisfy the housing needs of the disadvantaged, guiding principles should be established, defining the end-users of the program, the standards for setting the rental rates, the rights of tenants, and the social services and social assistance systems to be combined with the program. Such measures would include:

- (1) Expanding services to a greater number of disadvantaged households;
- (2) Providing rental subsidies at a reasonable level and standard;
- (3) Protecting the rights and benefits of the household renting the unit by setting up a leasing protection/contract system;
- (4) Providing an absolute guarantee of the long-term right of residence for the disadvantaged;
- (5) Unifying social assistance and subsidy systems to provide social services;
- (6) Establishing an anti-discriminatory housing management organization and system.

5. Full use should be made of the more than one million surplus housing units in the market.

According to the CPAMI’s census on housing for the year 2000 (in which the vacancy rate reached 17.6 percent) and estimates of the Taiwan Power Company on electricity use in 2011, Taiwan probably has more than one million vacant housing units which are not being used. In order to aid the implementation of the social housing policy, the surplus housing in the market should be used to the fullest extent. The government could influence the rental housing market through taxes (e.g., a tax on vacant units), subsidies (e.g., rent subsidy for the disadvantaged), and bonuses. It could set up a platform to promote the use and efficient trading in these units, allowing those vacant units that have a good market position and are of good quality to be released to be used for the purpose of rental housing for the disadvantaged in the social housing program.

(7) Recommendations regarding problems of the homeless

If one could have a shelter from the wind and the rain, who would want to live on the street? Nearly 90% (87.8%) of homeless people hope to leave behind the life of roaming on the streets. We believe that the government’s plan to set up a “short-term homeless shelter” will have limited success in solving the difficulties of the homeless with no fixed abode. The government should look for a multi-faceted, active way to solve the problems.

1. Conduct a complete review of the current homeless shelter policy; expand the range of mandated target recipients; and find methods which are more comprehensive, respectful, and humane.

2. Provide more bathing facilities which are convenient to use and provide space where the homeless frequently seeking shelter in a certain facility can keep and have access to their belongings.

3. Stop persecuting the homeless and the working poor, and stop taking ineffective and cruel action to drive them out.

4. Provide rent subsidies for those middle-aged and older persons living on the street who do not have the ability to work or whose income is insufficient to secure their basic housing needs. In this way, empty units would become rental units. Participate in the mediation over empty units which were involved in real estate speculation, and let them become housing which urban citizens need.

5. Eliminate discrimination in government policy, by letting those who have no fixed abode rent and live in public housing which they can afford.

Article 12: Right to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health⁹⁹

I. Introduction

Health is the most fundamental and most important asset for everyone regardless of age, gender, socio-economic, or ethnic background. Only healthy people can go to school or to work, take care of their family members, or participate in the activities of their community. The preamble of the 1946 Constitution of the World Health Organization (WHO) states “health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” The preamble further states that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.”¹⁰⁰ Article 12 of the ICESCR mentions governments’ responsibilities for promoting national health. But our understanding of the right to health should not be limited to the provision of medical services and basic public health facilities. Economic factors that affect the right to health are also the concern of this Article.

In fact the right to health covers several key aspects: (1) The right to health is an inclusive right. Realizing the right to health is more than just the provision of medical services, it also includes safe food and safe water, a healthy living and working environment, adequate nutrition and housing, health-related education and information, and gender equality. (2) The right to health contains freedoms. These freedoms include the right to be free from non-consensual medical treatment or medical experiments, and to be free from cruel and inhuman treatment. (3) The right to health contains entitlements, including the participation of the population in health-related decision-making, access to basic health services and the provision of health-related education and information.¹⁰¹

Our Constitution states in Article 157 (Section 4 Social Security) “the State, in order to improve national health, shall establish extensive services for sanitation and health protection and a system of public medical service.”¹⁰² But it does not expressly state the right to health in Chapter II on the Rights and

⁹⁹This section was authored by Huang Song-lih (黃嵩立), Huang Yi-bee (黃怡碧), Su Fang-ying (蘇芳瑩), Lin Yueh-te (林岳德), Hsu Shih-ya (徐詩雅), Hou Hsi-ting (侯希婷), the League of Welfare Organizations for the Disabled (殘障聯盟), and the Eden Social Welfare Foundation (伊甸基金會), and translated by Susanne Ganz.

¹⁰⁰ WHO Constitution, available at <http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf>.

¹⁰¹ UNOHCHR and WHO, “Fact Sheet #31: The Right to Health,” available at <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>

¹⁰² Republic of China Constitution, “Fundamental National Policies,” available at <http://english.president.gov.tw/Default.aspx?tabid=1118>.

Duties of the People. Article 10 of the Additional Articles of the Constitution also merely states “the state shall promote universal health insurance and promote the research and development of both modern and traditional medicines.”¹⁰³ Article 12 of the ICESCR and related documents help make up the Constitution’s deficiencies with regard to the protection of the right to health. In order to clarify the scope of the state’s obligations under Article 12, we took as reference General Comment No. 14 (2000) by the U.N. Committee on Economic, Social and Cultural Rights (UNCESCR) and Fact Sheet No. 31, jointly published by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and WHO, titled “The Right to Health.”

The State Report was written based on the “Guidelines on Treaty-Specific Documents to be Submitted by States Parties Under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights.” This is certainly a correct approach. However, if the State Report merely rigidly responds point by point based on the guidelines without probing more deeply into the Covenant’s spirit, the essential ideas behind its articles, related documents and interpretations, as well as the more fundamental problems – without understanding the goals and functions of the State Report – then it is clearly unable to provide crucial information and does not contribute to understanding the actual implementation of each of the rights contained in the Covenant. Although the reporting guidelines have been issued to guide states parties in preparing their reports, the states parties still need to also reference underlying interpretations of the Covenant such as general comments (published by the CESCR). Based on the national situation, they are also required to voluntarily submit relevant information without being asked to do so. Regarding the right to health in Article 12 of the ICESCR, both the Guidelines and General Comment No. 14 repeatedly state that states must highlight the health situation of disadvantaged groups. States can choose themselves which groups they consider disadvantaged groups on top of those that have been clearly identified. This approach allows for underlining each state’s population characteristics as well as their governments’ policy foci or ambitions.

For example, in Taiwan the average citizen enjoys the basic right to health care and therefore generally enjoys good health. But once we distinguish among citizens based on different criteria such as persons with disabilities, indigenous people, income bracket, urbanization, older persons, or nationality, then inequalities in health become easily visible. That is precisely where the State Report ought to pay particular attention, yet it makes no mention of it. Moreover, inequalities in health caused by the wealth gap are a human rights issue that deserves the attention of the developed nations, yet this issue is not

¹⁰³ Republic of China Constitution, “Additional Articles,” available at <http://english.president.gov.tw/Default.aspx?tabid=1037#10>.

mentioned in the Guidelines mentioned above. Therefore, the government should not only accurately answer the questions posted in the Guidelines, but also include (1) issues that the government deems important and (2) the government's overall assessment of the right to health, to demonstrate a comprehensive viewpoint that encompasses self-reflection. It should also incorporate a number of actual cases to illustrate deficits in current human rights guarantees.

II. Responses to the State Report

Overall Assessment

With regard to Article 12 of the ICESCR, the Guidelines ask states to indicate whether they have “adopted a national health policy” and to provide information on how health measures taken ensure public participation. In 2007-2008 the Department of Health (DOH) once commissioned the National Health Research Institutes (NHRI) to compile a “2020 White Paper on National Health,” but since it is difficult to ascertain how that white paper has been related to subsequent specific health policies, and thus whether it is in fact an authoritative guide to national health policy

According to the Guidelines, statistical data on the enjoyment of each Covenant right should be compiled based on gender, ethnic origin, nationality, particular age group (e.g. persons under 18), etc., in order to facilitate judgment on whether health inequalities exist for different groups and communities.

The State Report has failed to make an appropriate response with regard to social community-related inequalities in health: There are differences in the state of health of different classes of society that reflect unequal economic status. We may take the life expectancy of different groups as example. Statistics by the Ministry of the Interior show that in 2010 the average life expectancy of Taitung County residents was eight years shorter than for Taipei City residents. The average life expectancy for indigenous people is almost nine years shorter than for the average citizen and 12 years shorter than for Taipei City residents. We can say with near certainty that such inequalities in health are the ill effects of long-term systematic discrimination and the unequal distribution of social and economic resources. Likewise, due to an adverse work environment, blue-collar workers are more likely to develop physical and mental diseases, leading to another inequality in health. The government does not attach importance to the phenomenon of health inequalities and does not have a comprehensive policy to address them. Government assistance for socially disadvantaged groups, including older people living alone in the countryside without family support as well as middle- and lower-income households above the poverty line, is extremely limited.

Specific Responses

(1) Suspension of National Health Insurance (NHI) card undermines disadvantaged persons' right to seek medical attention: Response to ¶ 223 (p. 115) of the State Report

The State Report's section on Medical Care Services and Distribution of Resources does not mention the Bureau of National Health Insurance's (BNHI) measure of freezing National Health Insurance (NHI) cards. As of mid-April 2012 the NHI cards of nearly 200,000 insured persons were suspended.¹⁰⁴

If the state refuses to provide basic payments for medical care because an insured person has not paid his/her health insurance premiums, it violates "the principle of prohibition against non-payment" implicitly contained in the constitutionally guaranteed right to survival. It also runs counter to the international trend of protecting the basic right to medical care. In 1999 the Council of Grand Justices stated in Constitutional Interpretation No. 472 "To those who cannot afford to pay the premium, the State shall give appropriate assistance and relief and shall not refuse to pay benefits, in order to fulfill the constitutional purposes of promoting national health insurance, protecting senior citizens, the infirm and the financially disadvantaged."¹⁰⁵ Still, in 2010 almost 600,000 people had their NHI cards frozen. Under pressure from civic groups, the BNHI eventually came up with its "Medical Treatment Program for the Underprivileged," which allowed for the unfreezing of NHI cards of 370,000 disadvantaged persons with outstanding insurance premiums.¹⁰⁶

In preliminary deliberations of the draft bill for the so-called "second-generation" NHI, the card suspension procedure was changed into "first investigating the situation, then suspending the card based on the circumstances." However, there has been a shortage of social workers at the local government level for a long time. The BNHI shifts responsibility for investigating payment defaults onto the shoulders of grassroots social workers and neighborhood chiefs who already have their hands full. Past examples have shown that relying on checks at the grassroots level often makes it impossible to help disadvantaged people get timely medical attention. Checking the financial status of an insured person cannot be equated with determining his/her ability to pay insurance premiums. Given that family income serves as criterion for determining economically disadvantaged status, it is extremely difficult to decide whether a person qualifies for such status.

Card suspension hurts the disadvantaged: Among indigenous people, NHI coverage is particularly low, and the NHI card suspension ratio is particularly

¹⁰⁴ See <http://www.appledaily.com.tw/realtimenews/article/life/20120416/118743/1> (in Chinese).

¹⁰⁵ Available at http://www.judicial.gov.tw/constitutionalcourt/EN/p03_01.asp?expno=472.

¹⁰⁶ <http://www.nownews.com/2010/11/08/91-2662160.htm>

high. At least 60,000 members of indigenous communities do not get to enjoy health insurance resources. Nationwide, 99.5 percent of the population are covered by NHI, but among indigenous people health insurance coverage stands at just 93.6 percent, which means that more than 30,000 indigenous people are not covered by the NHI. On top of that, indigenous persons account for 13 percent of the 200,000 insured whose NHI cards have been suspended.¹⁰⁷ We support the BNHI's imposing penalties or overdue fines on insured persons who deliberately fail to pay their premiums, so that overdue premiums can be collected efficiently and the fairness and justice of the NHI system can be upheld. However, we staunchly oppose that insured persons who owe premiums are deprived of their right to medical attention (card suspension) in order to punish them or to collect the outstanding premiums. All card suspensions should be lifted immediately.

(2) NHI premium calculation system results in an unequal burden: Response to ¶ 223 (p. 115), of the State Report

After the amendment of the National Health Insurance Act, also known as “second-generation” NHI, it is still not possible to achieve a fair distribution of premium burdens. Moreover, the financial structure of the new system is inadequate for supporting the insurance system's sustained development. It will therefore be impossible to improve the dire situation caused by the NHI's financial straits, such as sweatshop hospitals, doctors shunning the four basic medical disciplines – internal medicine, general surgery, pediatrics, obstetrics and gynecology – and a deteriorating quality of medical care.

Although the second-generation NHI includes certain improvements with regard to reforms on the spending side and to information transparency, the system still has several major shortcomings on the revenue side. First, the expansion of the premium base remains limited, since the hard-earned income of workers still serves as the major fiscal pillar of the NHI. Second, the original six categories for calculating insurance premiums remain unchanged, so that the goal of calculating premiums based on total household income was not achieved, which runs counter to the principle of premium payment based on ability to pay.

Therefore civic groups suggest that premiums should be calculated based on household income to reform the current distortion of the insurance system caused by the categorization of the insured, namely that insured persons with the same income pay different premiums, and that premiums are calculated based on category and not based on ability to pay.

(3) Relevant remedies: Response to ¶ 225 (p. 115) of the State Report

¹⁰⁷ Same as footnote 4

The government's assertion that victims whose right to health is infringed upon can claim tort damages in accordance with the Civil Code shows that the government has a seriously incorrect understanding of what this Article considers violations of the obligations of States parties (violations of the right to health), mistakenly narrowing down violations of the right to health to medical disputes. We suggest that the government take as reference the explanations given in Paragraphs 46-52 of General Comment No. 14 regarding violations of obligations and revise the State Report accordingly.

(4) Shortcomings of long-term care policy planning: Response to ¶ 230 (p. 118) of the State Report

The State Report does not mention at all the current dilemma of long-term care. Due to the lack of any policy, the heavy burden of long-term care rests virtually completely on the shoulders of the family. This has caused the following problems:

1. Caregivers essentially work for a long period without sufficient rest, which leads to physical and mental diseases.
2. The income of such families declines, while spending increases, which often causes them slip into poverty.
3. Since families and foreign workers are left to shoulder the burden of caring for severely disabled family members all by themselves, such care is arranged by violating relevant labor laws and regulations and by exploiting foreign caregivers.
4. Current government regulations stipulate that families with foreign caregivers are not eligible for government-subsidized long-term care services. As a result, a dual-track system has evolved that forces people to choose between foreign caregivers and domestic long-term care.

(5) Insufficiently trained medical personnel: Response to ¶ 237 (p. 120) of the State Report

The State Report does not mention human rights education for healthcare professionals. In recent years relations between healthcare professionals and patients have been strained. The recent case of a transplantation of organs from a donor with HIV/AIDS, for instance, triggered debate whether an HIV/AIDS infection should be marked on NHI cards to protect the safety of medical professionals, which again caused confrontation between medical professionals and AIDS activists. Then there are incidents of doctors discriminating against patients with particular diseases (such as victims of PCB poisoning) or medical institutions and healthcare professionals using defensive medicine and vaguely formulated informed consent forms to counter patient's autonomy and privacy. In addition, there have been disputes with regard to human experiments and the rights of participating patients. All these controversies highlight that the

government has not yet done enough to promote the ethics and human rights education of healthcare professionals, be it in formal courses in schools or in on-the-job training. The government needs to come up with a set of regulations to ensure that human rights and ethics courses are not just taken to obtain credits, but that their content is applied in clinical settings and professional practice.

(6) Discrimination against people with HIV/AIDS: Response to ¶ 247 (p. 123) and ¶ 251 (p. 125) of the State Report

The State Report declares “Regarding the protection of employment rights, medical institutions should organize physical examinations for their staff in accordance with applicable labor laws and regulations but shall not include HIV testing as a routine examination item. In addition, when blood is collected for HIV testing, related education and the informed consent procedure should be completed. The result shall not be included in the individual person's overall or the company's overall report or made known to a third party.” However, there have been frequent reports of companies and medical institutions violating the law in that regard.

Moreover, Taiwan adopts strict and quite discriminatory requirements for health examinations of foreign nationals. Once a foreign national tests positive for HIV/AIDS, he/she will be deported. Foreign spouses need to furnish proof that they have been infected by their Taiwanese spouse to be allowed to stay and enjoy the right to medical treatment. This merely increases the burden on disadvantaged families and likely leads to their breakup. Furthermore, it has happened that people with disabilities who are also HIV/AIDS patients applied for home care in accordance with the People with Disabilities Rights Protection Act. But after their applications were approved by the local government, no home care attendant was ready to provide services. Officials also refused to visit the applicants for fear of being infected with HIV. The various cases mentioned above illustrate the gap between the law and its implementation. More importantly, these incidents reveal that knowledge about HIV/AIDS is severely insufficient among the general public and officials and that the law is still quite discriminating against persons living with HIV/AIDS.

With regard to treatment of patients with HIV/AIDS, the State Report claims “Anti-retroviral drugs are covered in the public budget of the government. Patients need not pay out of their pockets.” But given that the Department of Health (DOH) is currently deliberating a partial co-payment scheme, it is doubtful that AIDS patients will continue to enjoy such guarantees in the future. The WHO once noted that free medical care greatly contributes to fighting diseases. We urge the government to earnestly include in its considerations the demographic characteristics of HIV/AIDS patients (including their social class) before changing the system for the provision of

AIDS drugs. Should a partial co-payment system put people with HIV and AIDS under enormous economic stress so that they miss out on taking drugs on time, AIDS prevention efforts would be severely undermined.

(7) Severely insufficient prevention of occupational accidents: Response to ¶ 252-253 (p. 126) of the State Report

At present, the labor inspection organizations of governments at various levels have a total of 321 labor inspector positions, of which only 282 are filled. While Taiwan has laws and regulations on labor safety, labor safety checks are difficult to carry out due to the severe shortage of labor inspection personnel. As a result the population's right to work and right to health are severely threatened.

The actual situation shows that more than 50,000 persons in Taiwan collect occupational accident benefits through the labor insurance every year. These include more than 800 deaths resulting from occupational accidents. Such a high number of occupational accidents indicates that the severe shortage of labor inspectors is behind this problem.

Every working day five workers in Taiwan die from occupational diseases or accidents and more than 20 others are likely be disabled for the rest of their lives as a result of such diseases. However, the Occupational Safety and Health Act, eagerly awaited by workers, is still pending adoption by the Legislative Yuan. In last April last year (2011), the Council of Labor Affairs (CLA) submitted a draft bill that would amend the Labor Safety and Health Act, which has remained largely unchanged over the past 20 years. In the CLA's bill, the name of the law would be changed to Occupational Safety and Health Act to broaden its application to a wider range of occupations, the occupational disease prevention system would be strengthened, and a source control mechanism for machinery and chemical products would be established. The draft bill also includes a regulation popularly known as the "sixth naphtha cracker clause," which adds a risk assessment mechanism and relevant penalties for high risk labor safety incidents. However, until today the amendment has not passed the Legislative Yuan. Fu Huan-jan, head of the Department of Labor Safety and Health at the Council of Labor Affairs, has said the focus of this amendment and its biggest reform lies in expanding legal protection, previously limited to "employed workers," to "all working persons." At the same time, relatively low-risk industries previously not covered by the Act – bookstores, flower shops, social workers, manpower brokers, fruit sellers, clothing stores, etc. – will also be included. "The number of people covered by the Act will increase from the current 6.7 million people to 10.67 million people. Quite important is the addition of 1.7 million self-employed persons. And then there are volunteers who engage in work or interns and trainees," Fu

explained at the time. However, given that the amendment has not been passed, it is evident that all these workers currently lack legal protection.

III. Issues Neglected by the State Report

(1) Opening up imports of U.S. beef pertains to food security, yet the government made the decision arbitrarily

In its policy on U.S. beef imports the Executive Yuan opted for a “conditional lifting of the import ban,” allowing U.S. beef containing the leanness-enhancing drug ractopamine to be imported. On 6 March 2012, Premier Sean Chen said the government has proposed four principles for meat imports – allowing a safe residue tolerance, separate permits for the import of beef and pork, compulsory labeling and excluding offal – in consideration of the population’s health. But after the fact, the U.S. government declared it does not approve of the principle of separating import permits for beef and pork.

Leaving health issues aside, this incident reflects that the government’s policy-making process lacks democratic participation. Three expert meetings were held over whether the ban on meat imports should be lifted. Since no consensus was reached in these meetings over the extent of the risk and measures to control it, the population could not be persuaded to accept the risk. The government also completely overlooked the need to communicate the risk to the public. Before public opinion had been articulated, the government already made a decision. It entirely ignored the fact that some experts had voiced misgivings because the risk assessment procedure did not fully take into account WHO data. It also defied appeals by consumer organizations. The incident reflects the government’s autocratic attitude.

(2) The government fails to consider that the health of persons with disabilities requires appropriate medical resources

The NHI coverage of persons with disabilities has reached 99.31 percent. But according to the technical report for “2020 White Paper on National Health,” persons with disabilities tend to enjoy more unfavorable health than the average person, because their main health problem often triggers functional decline and other diseases, yet they are not able to receive sufficient and appropriate health care. The medical treatment and health care that persons with disabilities need at various stages is often considered “non-essential” and therefore ignored’ moreover, no relevant research and statistical data can be found in Taiwan. The health authorities at the local government level conduct medical examinations and offer health services for persons with disabilities in line with government regulations. However, the Bureau of Health Promotion under the DOH does not integrate and statistically evaluate relevant data. Therefore, it is impossible to determine the service execution ratio of each

local government and know the actual health situation of persons with disabilities.

Concrete cases
News report of March 16, 2010, headlined “More than 50% of Yang Ming Home inmates suffer from aging bones.” In cooperation with the Taipei City Hospital's Yangming Branch, the Taipei Municipal Yang Ming Home for the Disabled conducted bone density exams on all its disabled residents. The tests found that 39.4 % or 71 of the 180 examined persons had osteopenia, while 13.8% were diagnosed with more severe osteoporosis. Doctors declared that persons with disabilities usually suffer from bone loss earlier than the average person because long-term drug use in addition to compromised bodily functions or mobility leads to insufficient physical activity and unbalanced nutritional intake.
News report of March 19, 2010, headlined “Lack of physical activity in disabled persons can easily lead to brittle bones.” An 18-year-old disabled person sustained a fracture of the hip joint without apparent impact. Following surgery the patient remains bedridden for life.
News report of Aug. 27, 2011, headlined "High incidence of abnormal blood sugar levels among disabled people.” The Bureau of Health of the Chiayi City Government found in its report on “complete health checks for persons with disabilities” that 31.7 percent of examined disabled persons had abnormal blood sugar levels, while this ratio stands at just 15 percent for the average person. The report attributed this to the fact that disabled persons lack exercise due to their physical limitations and that they are unaware of their own health condition because they have never before taken a complete physical examination.
News report of May 24, 2010, headlined “Bureaucrat blocks survival of muscular atrophy patient.” After being discharged from hospital, a patient suffering from muscular atrophy refused to undergo tracheostomy to insert a tube to assist breathing, because he preferred to use a ventilator round-the-clock. The doctor twice wrote an application asking the NHI to fund a non-invasive ventilator, but both applications were turned down.
News of June 24, 2010, headlined “Patient worries because NHI does not fund ventilator.” A female patient in Pingtung suffering from scoliosis needed to rely on a ventilator during sleep because of a consolidated lung. Originally the NHI had paid for respiratory care at home, but after a four-month investigation the payments were stopped on the grounds that no tube had been inserted to assist breathing. The decision caused the woman great distress.

News of Sept. 15, 2010, headlined “League of Welfare Organizations for the Disabled criticizes NHI for paying for ventilators only after tube insertion.” Sufferers of rare diseases and polio, who also face this problem, urged the BNHI to pay for ventilators in home care based on actual need and expert assessment by the patient’s physician.

(3) Medical services are provided without considering the needs of persons with disabilities.

Based on the technical report for “2020 White Paper on National Health,” more than half of all disabled persons are not able to see the doctor or visit the hospital on their own. As many as 25,074 medical institutions nationwide have signed contracts with the NHI. However, since these institutions usually lack a support system, the environment for seeking medical attention and the accessibility of medical care for persons with disabilities has not improved. Presently just 6 of the 25 district hospitals under the DOH (Shuang Ho Hospital, Taichung Hospital, Potz General Hospital, Tainan Hospital, and Pingtung Hospital as well as the Taoyuan Mental Hospital) offer sign language interpretation services. One hospital (Changhua Hospital) provides medicine dispensing bags that enable visually impaired patients to identify their medications. Twelve hospitals provide disabled door-to-door transportation services. Many disabled persons become reluctant to see the doctor and have their right to health compromised because they encounter indirect obstacles to seeking medical attention.

Concrete cases

In 2007 the DOH commissioned the Taiwan Society of Health-system Pharmacists to design a program for the promotion of medicine dispensing bags with a combination of Braille lettering, visual cues and text. Adhesive Braille lettering and pictogram labels are attached to each dispensing bag. Following further oral instruction by the pharmacist patients, should be able to understand how to take their medicine by touching or looking at the labels. However, so far the DOH has not continued to promote this scheme. As a result, it has been impossible to improve the medication safety of visually impaired patients at home as well as their ability to take care of themselves. When the League of Welfare Organizations for the Disabled took over the “2009 Medication Safety Promotion Program for Special Population Groups,” it conducted a survey on the medication safety of the visually impaired. The survey found that 27.38 percent of visually impaired persons still need the assistance of others to identify their medicine, or how to use it.

The Hueiming Kindergarten for the Blind in Taichung serves visually impaired children with multiple disabilities. According to kindergarten staff, once a visually impaired child who is also mentally retarded was taken to the China Medical University Hospital for assessment. But the hospital did not have appropriate assessment tools for visually impaired children, and did not have a Braille board for the mental ability test. The examining doctor said he didn't have time to read the test items to the child and also refused that someone else read them out loud. As a result the assessment could not be carried out.

(4) The people's health pays the price for nuclear power generation

1. Nuclear power plant workers

Nuclear power plants constitute a highly dangerous work environment that severely threatens workers' health. Dr. Paul Jobin, a longtime researcher of occupational accidents and pollution and the head of the Taipei Office of the French Center for Research on Contemporary China (CEFC), once interviewed contract workers at the 1st and 2nd nuclear power plant, only to find that the professional expertise of Taiwan's nuclear power plant technicians is insufficient and that maintenance times are getting shorter. Rushed to finish their projects quickly, workers are forced to leave their nuclear radiation meters in places without radiation, pretending that radioactivity inside the body is still within the standard value. As a result work there involves high risks and the danger of developing cancer. This means that workers' health is sacrificed for the sake of producing cheap electricity.

2. Nuclear waste:

Nuclear power generation generates low-level and medium-level radioactive waste and highly radioactive spent nuclear fuel. Presently Taiwan stores low- and medium-level nuclear waste on Orchid Island (an indigenous settlement). In 2008 it was discovered that the nuclear waste barrels could not withstand the adverse environment on Orchid Island, which is characterized by high temperatures, high humidity, and high salinity. More than 4,000 barrels were found to be completely rusted with some barrels even having cracked open. About 5 percent of the nearly 100,000 barrels of nuclear waste stored on the island have burst open. High-level nuclear waste from spent fuel rods is still stored at its original site, each of the three existing nuclear power plants. There is great concern over its safety in the event of a major earthquake, typhoon, or other natural disaster.

When selecting sites for the nuclear waste producing power plants, the government always only emphasized the high compensation amount that would be paid to local residents after plant construction. But it failed to clearly explain the dangerousness of nuclear waste and violated the indigenous communities' right to health. General Comment No. 14 by the UNCESCR

states: “The right to health is not to be understood as a right to be *healthy*,” and “The Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.”

IV. Conclusions and Recommendations

Our government is quite committed to looking after the population’s health and has had some considerable successes. Our national health insurance system and the population’s state of health can be called superior in international comparison. However, various parts of the State Report are not satisfying, for instance its lack of understanding for or misunderstanding of various provisions in the Covenant and related General Comments. It lacks self-criticism with regard to systemic shortcomings, remains silent on policy transparency and popular participation, hardly mentions health issues relating to disadvantaged and indigenous groups, and does not discuss the equality aspects of national health (employment, income, place of birth, nationality etc.). Therefore, we are unable to judge from the State Report how committed the government is to achieving the following goal of the right to health: “The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.” Does the government understand the current predicaments? How does it plan to solve them? We hope to get these doubts clarified in the future.

General recommendations:

1. Nationwide policies should be hammered out for poverty eradication and health care to eliminate health inequalities based on social class, geographic location, and different ethnicities. The health of indigenous peoples requires particularly earnest consideration to come up with a destigmatizing, non-discriminatory health policy.
2. Manpower and funding for social welfare and community health care at the county and city level need to be reviewed to ensure proper health care for disadvantaged groups, and to end discriminatory treatment based on geographic location.

Long-term care recommendations:

1. The planned Long-term Care Services Act should not rule out the use of foreign caregivers in home care and should become the beginning of the end of our dual-track long-term care system.
2. The management, training and working conditions of foreign caregivers should gradually be brought in line with those of Taiwanese home care

service personnel, including the implementation of a one-day rest work week, meaning one day off for every six days worked.

3. Manpower agencies should be regulated so that their business is restricted to acting as a broker for hiring of foreign caregivers. Once a foreign caregiver lives with a family, their management and guidance should be taken over by home care service agencies that are familiar with care work in the said family.
4. We suggest that the recruitment of foreign caregivers is gradually changed from the current practice of recruitment by individuals to recruitment by home care services institutions.

Occupational accident prevention recommendations:

1. The number of labor inspectors should be increased to two inspectors per 10,000 people in the working population (at least five times the current number).
2. Labor safety inspections must be realized in practice, and the government should conduct such checks proactively.

Recommendations regarding the U.S. beef imports controversy

1. A new decision-making mechanism should be set up that allows for full public participation.
2. Imports should not be opened up hastily as long as safety standards have not been set internationally.

Recommendations regarding medical resources for persons with disabilities:

1. The DOH should establish statistics on the health and medical research of persons with disabilities.
2. The DOH should determine short-, medium- and long-term health policy guidelines to promote whole person health, medical treatment and care service for persons with disabilities.
3. The budgets of the DOH and the Ministry of the Interior should pay for the necessary home respiratory care of persons with disabilities.

Recommendations regarding medical support services needed for persons with disabilities:

1. The Bureau of Medical Affairs under the DOH should promote medicine dispensing bags with Braille lettering and pictograms, and also set up a comprehensive pictogram data base that local hospitals and clinics could reference.
2. The DOH should require hospitals and clinics at the district level (especially in remote areas) and above to provide support services that enable persons with disabilities to go to the doctor independently, and should gradually include all NHI-contracted medical institutions in the scheme, in order to improve the medical care environment and to enable

persons with disabilities to enjoy the same medical services as society at large.

3. The Bureau of Medical Affairs and the Taiwan Joint Commission on Hospital Accreditation should determine what kind of medical services should be provided to enable persons with disabilities to independently seek medical attention, and include these in the “hospital assessment” indicators.

Recommendations regarding nuclear power generation and storage of nuclear waste, which constitute a national health hazard:

1. The government should revisit its entire industrial structure and energy policy to face up to the fact that “it is impossible to satisfactorily solve the nuclear power controversy and nuclear waste problem.” This would be a pragmatic approach instead of regarding costly, high-risk nuclear power as the favored energy solution.
2. The barrels storing low-level nuclear waste hold all kinds of radioactive substances. Standing near the barrels for just a few minutes results in a higher radiation exposure than the worldwide average dose of natural background radiation for human beings. Aside from temporary nuclear waste storage facilities at the three existing nuclear power plants, all other nuclear waste is stored on Orchid Island. The government began in 2002 to study a relocation of the temporary storage sites and planned to move all the nuclear waste on Orchid Island to the permanent storage site once a location had been found. However, in selecting a new site, the government was still guided by the idea that the nuclear waste should be stored in a remote, disadvantaged indigenous settlement or on an offshore isle. We ask: Why must nuclear waste be stored in remote, disadvantaged areas? Supposing we follow the government’s highly touted “user pays” principle, then the right thing to do, we believe, is to make all electricity consumers take responsibility for taking in the nuclear waste and bear the corresponding environmental costs! After all, electricity consumption in the metropolitan areas is higher than in disadvantaged areas. Given that the government and the Taiwan Power Company (Taipower) keep propagandizing the safety of nuclear waste, why don’t we allow it to be stored in cities or industrial areas?¹⁰⁸

¹⁰⁸ Retrieved from the official website of the Green Citizens’ Action Alliance: <http://gcaa.drupalgardens.com/content/%E4%BD%A0%E4%B8%8D%E8%83%BD%E4%B8%8D%E7%9F%A5%E9%81%93-%E9%97%9C%E6%96%BC%E6%A0%B8%E5%BB%A2%E6%96%99%E7%9A%845%E5%80%8B%E5%95%8F%E9%A1%8C-0> (in Chinese).

Article 13: Right to Education¹⁰⁹

I. Introduction

With regard to the content of Article 13 of the ICESCR, this Shadow Report responds to the State Report over three issues: the commercialization of higher education, minority languages and local dialect teaching, as well as student loans.

II. Responses to the State Report

(1) Higher education has become a commercial product that only advantaged families can afford: Response to ¶ 265 (p. 133) of the State Report

Article 13 of the ICESCR states “higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.” In order to enjoy academic freedom, the autonomy of higher education institutions must be realized. Autonomy means higher education (note: often referred to in the State Report as “advanced education”) institutions enjoy autonomy with regard to their academic work. Such autonomy must be interlinked with a public accountability system, so that an appropriate balance can be struck between institutional autonomy, control, and accountability. However, the trend in recent years shows that higher education in Taiwan is increasingly turning into a right that only the rich enjoy. Espousing neoliberal ideas, the government has markedly reduced funding to the higher education sector (and subsidies to private universities in particular), instead demanding that all public and private universities raise funds themselves. The present commercialization of Taiwan’s higher education is reflected in various phenomena, such as an unequal allocation of education subsidies, rising tuition at private universities, the push for the corporatization (privatization) of public universities,¹¹⁰ and a widening tuition gap between public and private universities. Moreover, well-off families can afford to send their children to after-school tutoring programs, providing them with a comparably better educational environment. In a society in which academic degrees and getting into a prestigious university means everything, such children will eventually make it into top-ranked national universities (with lower tuition and better facilities and faculty). In contrast, economically disadvantaged children are at a disadvantage in the competition for entry into a good university, because they cannot afford the cost of after-school tutoring

¹⁰⁹This section was authored by Chen Yu-chi (陳郁琦) and Hsu Li-hsun (許麗荀), and translated by Susanne Ganz.

¹¹⁰ “Will National Cheng Kung University Become a ‘Private’ University? The MOE and NCKU Should Make Themselves Clear”, press release by Anti-Cou issued 13 September 2011, retrieved from <http://www.cooloud.org.tw/node/63806> (in Chinese).

programs or a private tutor. In the end, they have no other choice but to attend a private university that charges higher tuition and offers fewer benefits, or give up on university studies altogether. This means that they do not have an equal opportunity to receive higher education. The gap between public and private universities has already gotten so wide that it obstructs class mobility and violates the principle, emphasized in the ICESCR, that “the right to education is a fundamental human right.” Against the backdrop of such a grim situation, the State Report, nonetheless states: “Advanced education is not compulsory in the Republic of China. To avoid undermined schooling opportunities, however, various subsidies are now available for financially disadvantaged students.” Yet when it comes to the more severe issues that have caused the economic gap, such as the privatization of education, unequal schooling opportunities, and discriminatory subsidy policies, the State Report turns a blind eye to the real situation. We believe that higher education must not be allowed to degrade into a commercial product. Everyone has the basic right to education. Therefore the state should make higher education genuinely public¹¹¹, provide a better schooling environment, and lower tuition fees to prevent higher education from becoming a privilege of the rich.

(2) Heavy burden of student loans: Response to ¶ 268 (p. 134) of the State Report

Presently tuition fees are rising in Taiwan,¹¹² and student loans have reached a new high. Student loan applications increased by almost 35,000 applications in the first semester of the 2009 academic year, according to media reports from 2009. At the time, it was estimated that nearly 840,000 persons would be saddled with a student loan by 2010, and that the total of these loans would top NT\$34 billion, a historic high.¹¹³ Many young people cannot study at college or university because they would be forced to take out a student loan to pay high tuition fees. Those who attend university either need to shoulder huge debts upon graduation or are forced to work while studying to supplement their living expenses, which severely affects the quality of their studies.

Regarding student loans, the State Report again merely mentions how the current system operates. But it does not elaborate on the approved loan categories, credit lines, and systematized loan repayment regulations. Not only

¹¹¹ Translator’s note: The concept of “public education” advocated here is distinct from mere public ownership, which is already prevalent in Taiwan. Public higher education involves a package of concepts including autonomous, democratic governance of universities; public responsibility for the costs of education; as well as preventing higher education from being treated as an ordinary product in the marketplace, and universities as ordinary businesses.

¹¹² “Premier Wu: University Tuition Fee Hikes Can be Considered,” *United Evening News*, 19 September 2011 (in Chinese).

¹¹³ “Student Loans hit new High, 840,000 Applications,” *Liberty Times*, 13 October 2009 (in Chinese).

does the government fail to truly provide financial assistance to young students to pay relevant tuition and miscellaneous fees, it also puts great pressure on disadvantaged students to repay their loans. The “2011 Taiwanese Youth Student Loan Survey Report”¹¹⁴ states the following: “Student loan applications are mainly filed by students from disadvantaged families, because they are not able to pay tuition fees. Almost 80 percent of student loan applicants need to work during their studies to cover living costs, although the average living costs of these students are much lower than the living costs of the typical university student. Nearly half of the students participating in the survey think that the approved loan amount for accommodation or living expenses is insufficient, while more than 60 percent think that the book allowances are insufficient. Almost 70 percent of the respondents believe that interest payments on the student loans will become a big burden once they begin to pay back their loans. At the same time the survey shows that existing programs such as scholarships, tuition waivers, and rebates are in sufficient.”

(3) Local dialects and minority languages are still being marginalized: Response to ¶ 272 and ¶ 273 (pp. 136-137) of the State Report

The State Report only mentions that local languages have been included in the language learning section of the “Grade 1-9 Curriculum for Elementary and Junior High School Education.”¹¹⁵ But presently the structure of language education in local or minority languages in schools is still dominated by Mandarin Chinese. The language use ratio clearly shows that the government continues to discriminate against mother tongue dialects and indigenous languages as before. Taking as example sixth grade language classes in Taipei City elementary schools, the number of periods taught per week in the subjects Mandarin Chinese, English, and local languages stands at 8:3:1, respectively.

Furthermore, the 2010 central government budget earmarked NT\$7.25 billion for the Council of Indigenous Peoples and NT\$2.7 billion for the Hakka Affairs Council. Of the total, the Hakka Affairs Council earmarked NT\$170 million for the promotion of the Hakka language, NT\$700 million to subsidize Hakka broadcasting media, which means a total of NT\$870 million were used for promoting the Hakka language. These budgets do not include funds earmarked by the National Languages Committee of the Ministry of Education.

¹¹⁴ Quoted from the “2011 Taiwanese Youth Student Loan Survey Report” issued on 17 July 2011 by a Taiwanese NGO called Youthoya, available at <http://antipoverty.pixnet.net/blog/post/68163459> (in Chinese).

¹¹⁵ The English translation of the State Report in several places incorrectly uses the term “dialect” to describe local languages. This term is widely used to disparage and belittle all members of the Sinitic language family other than Mandarin. The Chinese original of the State Report does not use the Chinese equivalent of this term (方言, fangyan), but rather “local languages” (本土語言, bentu yuyan).

The budget for Taiwanese,¹¹⁶ however, amounts only to several dozen million New Taiwan dollars from the Taiwanese language section of the National Languages Committee. In the 2011 budget, NT\$130 billion were allocated to the Veterans Affairs Commission, NT\$1.5 billion to the Overseas Chinese Affairs Council, NT\$150 million to the Mongolian and Tibetan Affairs Commission (all these primarily look after the interests of mainlander groups that came to Taiwan with the Republic of China government around 1949), NT\$7.278 billion for the Council of Indigenous Affairs, and NT\$3.295 billion for the Hakka Affairs Council. Funds for indigenous peoples and Hakka may be used to subsidize cultural events and language research to safeguard the interests of these groups. Only the budget for Taiwanese (or Minnan language) – the language spoken by 75 percent of Taiwan’s population – stands at zero, which demonstrates the fact that the rights of the Taiwanese/Minnan language speakers are deliberately discriminated against and marginalized. Due to the various forms of discriminatory treatment between Mandarin Chinese and mother tongue languages and the discrimination against local languages described above, Taiwanese children are deprived of their right to local language education.

III. Conclusions and Recommendations

(1) Actively promoting genuinely public higher education

Universities as such should be public institutions that are autonomously managed, democratically make decisions, and allow for the joint, active participation of all stakeholders directly involved in their functioning (such as students, teachers, and administrative staff). Corporatization or other major policy decisions must not exclude the right to participate in decision-making of all faculty members and students on campus. Second, universities are one sector of society at large. Since the fruits of university education are shared by society, the major costs of running universities should be shouldered by the entire society. Moreover, the gap between public and private universities should be bridged. Educational funds should be distributed equitably, without favoring national universities.

(2) Designing an income-based repayment system for student loans

Aside from moving toward the most basic goal of genuine public education, the government should aggressively amend the law to implement an income-based repayment scheme. Legal amendments must ensure that students are given the choice to repay their loans to the issuing bank either under a

¹¹⁶ Also known as Minnan, Hoklo, or Hokkien, this is the language of those who immigrated to Taiwan from various parts of Southern Fujian Province in China, who are the majority ethnic group in Taiwan today.

regular fixed amount scheme or an income-based repayment plan. Under income-based repayment schemes, borrowers whose annual income exceeds 60 percent of the average salary in the industrial and service sectors, should pay at least half of the excess salary. On the other hand, borrowers whose annual income does not exceed 60 percent of the average salary in the industrial and service sectors or who qualify as low-income households should be exempt from making minimum repayments for that year.

(3) Increasing instructional time in schools for local languages and minority languages, and other suggestions

At present, language education in schools still focuses on Mandarin Chinese. The government should increase instructional time for the teaching of local and minority languages. Furthermore, teaching materials and teacher manuals for minority languages should be revised and completed as soon as possible.

Other suggestions include: 1. compiling budgets for each ethnic group without any discriminatory treatment 2. establishing a Taiwan Minnan Affairs Council modeled after the Council of Indigenous Peoples and the Hakka Affairs Council 3. setting up a Taiwan Minnan language television station modeled after Taiwan Indigenous TV (TITV) and the Hakka Television Service (Hakka TV) 4. Local language education should start in kindergarten and serve as an extension of a community's mother tongue culture. The medium of instruction in early childhood education should be the local language, and instruction time in Mandarin Chinese should not be longer than for the local language. 5. Elementary schools should offer at least three periods per week in local language education to rectify the longtime stigmatization of local languages by a one-sided education policy that respected nothing but Mandarin Chinese, and to highlight the right to speak local languages. 6. Taiwan Minnan language culture institutes should be established at several national universities, similar to the existing Hakka studies institutes. 7. Instructors teaching mother tongue languages should pass certification by the Ministry of Education for local language course teachers. 8. Just as for English language teachers, teacher education programs should be offered to let mother tongue teachers gain formal teacher status. 9. The Taiwan Minnan language should be renamed "Taiwanese" so that its users are entitled to call their language by its common name.