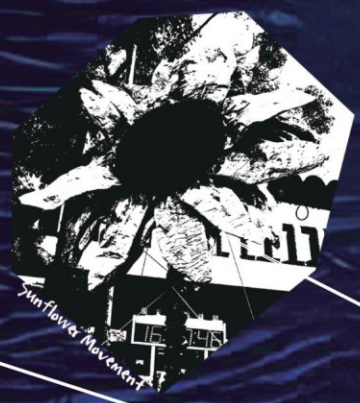
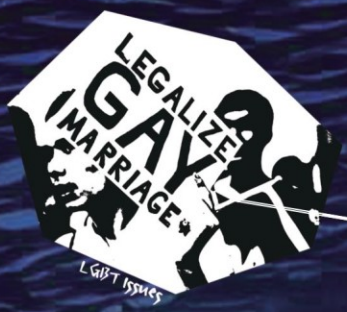
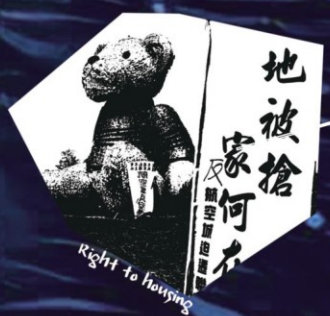
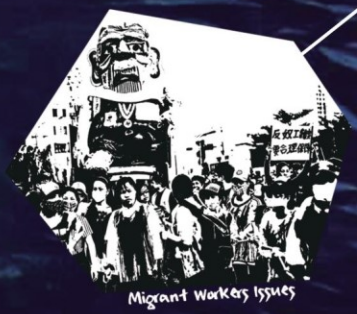




Shadow Report 2016

on the Implementation of International Covenant on Civil and Political Rights





人權公約
施行監督聯盟
Covenants Watch

2016年8月
August, 2016

Shadow Report 2016 on the Implementation of the International Covenant on Civil and Political Rights

Covenants Watch,
Taiwan September 4, 2016

About this report

The Shadow Report on the Implementation of the International Covenant on Civil and Political Rights was prepared for two reasons. First, it complements the government report for the review of the second national human rights report in January 2017 by international experts; second, it summarizes the disagreement between civil society organizations and the government with regard to human rights issues in Taiwan between 2013 and 2016.

The report is the product of scores of authors affiliated with 79 NGOs, whose names are listed below. Covenants Watch served as the platform of collaboration for this process, with the help of associate editors. The production and translation of this report will not be possible without the support of donations to the 318 Sunflower Movement (managed through the Economic Democracy Union), grants from Taiwan Foundation for Democracy and Taipei Bar Association, Taiwan Alliance to End the Death Penalty, and individual donations to the Covenants Watch.

Convener

Song-Lih Huang, Covenants Watch

Editors

Yi-Hsiang Shih, Taiwan Association for Human Rights
Yibee Huang, Covenants Watch
Yichen Hang, Covenants Watch

Associated Editors (in alphabetical order)

Chang, Feng-Yi, Taiwan Labor Front
Chen, Huimin, Prison Watch
Chou, Clarence, Judicial Reform Foundation
Hang, Yichen, Covenants Watch
He, Ming-Hsuan, Taiwan Association for Human Rights
Hsu, I-Fu, Taiwan Alliance of Anti-Forced Eviction
Hsu, Jen-Shuo, Taiwan Association for Human Rights
Huang, Yibee, Taiwan International Medical Alliance
Hung, Sue, Fairtax Taiwan
Kao, Chen-Yi, Taiwan Alliance of Anti-Forced Eviction
Liang, Tsu-Ying, TransAsia Sisters Association, Taiwan
Lin, Hsinyi, Taiwan Alliance to End the Death Penalty
Lin, Yen-Tung, Taiwan Association for Human Rights
Su, Ching-Hsuan, Taiwan Association for Truth and Reconciliation
Tuhi Martukaw, LIMA Taiwan Indigenous Working Group
Wu, Cheng-Che, Taiwan Alliance for Advancement of Youth Rights and Welfare
Yen, Shih-I, Foundation for Women's Rights Promotion and Development
Yeh, Hung-Ling, Taiwan Association for Truth and Reconciliation

Contributing Authors' Affiliations

Association for Taiwan Indigenous Peoples' Policies
Awakening Foundation
Children's Rights Alliance Taiwan
China Cooperation Cooperative societies
Citizen Media Watch
Civic and Law-Related Education Foundation
Civic LGBT Equal Rights Association
Covenants Watch
Credit Union League of the Republic of China
Economic Democracy Union
Environmental Jurists Association
Formosa Transnational
Gay & Lesbian Awakening Days
Good Toad Studio

Guishan Self-help Association against Dahu Land Consolidation
Homeless Workshop of Graduate Institute for Social Transformation Studies
Huaguang Community Concerned Group
Indigenous Youth Front
Intersex, Transgender and Transsexual people care association
Jing Chuan Child Safety Foundation
Judicial Reform Foundation
LIMA Taiwan Indigenous Working Group
Losheng Self-Help Association and Youth Alliance for Losheng
Mental Health Association in Taiwan
Mklesan Tayal Youth Union
Nameless Indigenous
National Alliance of Taiwan Women's Associations
NTPU CROSS
NTU Gender Studio
NTU Student Activist Group Shaoxing Program
Persons with HIV/AIDS Rights Advocacy Association of Taiwan
Prison Watch
RCA Self-Help Association
Saowac Community
Social Housing Advocacy Consortium
Southern Railway Youth
Tainan Association for the Promotion of Gender Equality
Taipei Bar Association
Taipei Women's Rescue Foundation
Taiwan Alliance for Advancement of Youth Rights and Welfare
Taiwan Alliance for Rights of Assembly and Parade
Taiwan Alliance for Victims of Urban Renewal
Taiwan Alliance of Anti-Forced Eviction
Taiwan Alliance to End the Death Penalty
Taiwan Alliance to Promote Civil Partnership Rights
Taiwan Association for Disability Rights
Taiwan Association for Human Rights
Taiwan Association for Innocence
Taiwan Association for Truth and Reconciliation
Taiwan Association for Victims of Occupational Injuries
Taiwan Bar Association
Taiwan Coalition Against Violence
Taiwan Forever Association
Taiwan Foundation for Rare Disorder
Taiwan Gender Equity Education Association
Taiwan Gender Queer Rights Advocacy Alliance

Taiwan Health Right Initiative
Taiwan International Medical Alliance
Taiwan International Workers' Association
Taiwan Labor and Social Policy Research Association
Taiwan Labor Front
Taiwan Occupational Safety and Health Link
Taiwan Police Union
Taiwan Rural Front
Taiwan Tongzhi (LGBT) Hotline Association
Taiwan Women's Link
Tamhai Phase II Alliance of Self-Help Groups for Anti-Expropriation
Taoyuan Aeropolis Anti-Eviction Alliance
The Airport Metro A7 stop Self-help Association
The Garden of Hope Foundation
The League for Persons with Disabilities, R.O.C.
The National Federation of Teachers Unions
TransAsia Sisters Association, Taiwan
Vietnamese Migrant Workers and Brides Office
Wen Zi Zhen Anti-Eviction Alliance
Wild at Heart Legal Defense Association, Taiwan
Working poor & Tax Policy Research Center
Working Poor Unite
Yuanli Self-Help Group

Contents

Special Chapter on Indigenous Peoples

Article 1 Right to Self-Determination

1. In response to the paragraph 2-4 of the State Report on ICCPR, *Article 1* is intended to safeguard Indigenous Peoples' right to self-determination and emphasizes all Peoples to hold the integrity of right to self-determination on political position, the freedom of economic, social and culture development and the natural resources. The State Report mentioned that the government has adopted "*the Regulations of Consult and Acquirement of the Consent and Participation from the Indigenous Peoples and Communities*"[1] and legalizing the "Tribal Council as public juristic person"[2] as the efforts they made to achieve Indigenous Peoples' self-determination. However, there are still many obstacles when implementing Indigenous Peoples' right to self-determination. For example, in the development projects of public or private sectors, Indigenous communities can only passively make the decision of accepting or rejecting the project, but cannot participate fully in the process of planning, discussion, decision-making and promotion. In addition, the operation of power of autonomy among Indigenous Peoples is to form the agent of management in different scales and to decide the rules of management, according to the issues in question; these were traditionally carried out within the system of each people. The purpose of legalizing the *Indigenous communities as public juristic person* is to promote independent development of indigenous tribe at its will, as stated in *the Indigenous Peoples Basic Law*. In other words, to recognize the Indigenous communities' public juristic person is to return the inherent rights of self-determination and autonomy to indigenous peoples through the modern legal mechanism of states.

2. We urge that：

(1) When enforcing, monitoring all the land utilization and development programs, all level of the national institution shall actively safeguard the local Indigenous Peoples' right to fully participate in all stages of project planning, execution, and assessment as to facilitate realization of the right to self-determination.

(2) When drafting the Regulation of Establishing the Public Juristic Persons of Tribal Councils, the Council of Indigenous Peoples shall make sure that there

[1] In respond to *Indigenous People Basic Law* Amendment Paragraph 4 of Article 21:" *The central Indigenous competent authority shall stipulate the regulations for delimiting the area of Indigenous land, communities and their adjoin-land which owned by governments, procedures to consult, to obtain consent by Indigenous Peoples or communities and to participate and compensation to their damage by restrictions in preceding three Paragraph.*" administrative orders and related measures.

[2] *Indigenous People Basic Law* article 2-1 section 1: *"In order to promote independent development of indigenous tribe at its will, the tribe should establish Tribal Council. The tribe which ratified by the central authority in charge of indigenous affairs shall be considered as public juristic person."*

remains flexibility and freedom in the regulation, and avoid basing its decisions on single dimension and stereotypic viewpoints which would limit the inherent autonomy of Indigenous communities.

3. In the point 35 of "Response to the Concluding Observations and Recommendations Adopted by the International Group of Independent Experts", regarding to "Implementation of the Indigenous Peoples Basic Law", the current actions are still far from the standards listed in the Concluding Observations and Recommendations, *ICCPR* article 1, and articles 3, 4, and 5 of the UN *Declaration on the Rights of Indigenous Peoples*.

4. The current regulations regarding to the right to political participation in the Constitution poses a great obstacle to Indigenous Peoples' political participation and actual self-determination and governance, especially in the legislator elections. The current system of legislator elections still follows the divisions of "Mountain Indigenous Population" and "Plain-land Indigenous Population" from Japanese colonial period and KMT totalitarian period, which undermines the differences among indigenous groups, imbalance of representativeness among indigenous groups, and inequality in the value of each vote. This is a violation of article 2 of ICCPR, the principle of equality without discrimination.

5. Because the regulations about election are based directly on the Constitution, the government should seriously consider constitutional amendment. Otherwise it would be impossible to implement Article 4 of *the Indigenous People Basic Law, "The government shall guarantee the equal status and development of self-governance of Indigenous Peoples and implement Indigenous Peoples' autonomy in accordance with the will of Indigenous Peoples."* Since the representativeness in the parliament is flawed, it is unlikely that the legislature would pass laws of governance at the local level capable of reflecting the true will of indigenous peoples.

6. In the State Report, the "Public Juristic Persons" is seen as a progress to safeguard the self-governance and self-determination of indigenous peoples, however, it remains unsolved how this would fit into the existing legal framework of local self-governing bodies. Furthermore, when it comes to delineating the actual scope and matters under the jurisdiction of self-governance, a great deal of legal regulation and accommodations need to be negotiated, so as to clarify the rights and obligations between the self-governing institutions and the central government. Thus, it seems that apart from the downward legal amendments extending to the local level, there is a need to enact a "upward" reform to the constitution level, so as to eliminate the obstacle to Indigenous Peoples' political participation and share equal ground of dialogue in political arena with other groups. By doing so, there could be a possibility to implement the Indigenous Peoples Basic Law in a concrete sense.

7. Therefore, we recommend a constitutional amendment to remove obstacles to Indigenous Peoples' full and effective political participation. To be concrete, the

government should consider putting the content of the Indigenous Peoples Basic Law's directly into the text of Constitution in the form of a special chapter. And with the mothed of Constitutional Order (Verfassungsauftrag) commanding the government branches to act promptly, to solve the problem of legislation sloth and executive procrastination. Lastly, it would be worth considering recognizing in Constitution the UN Declaration on the Rights of Indigenous Peoples or the principles therein.

Article 2 Anti-Discrimination Measures

8. In response to ICCPR State Report Paragraph 11, although there are some national laws and regulations on anti-discrimination, it still lacks a supreme principle in the legal system to prohibit all kinds of discrimination in a full picture. In particular, Taiwan is composed by multiple ethnic groups, but maintains a single-dimensioned imagination of culture, a legacy of from the totalitarian period. And it poisoned many aspects of the legal and education system, which caused the Taiwan Indigenous Peoples to suffer from severe racial discrimination both systemically and personally. Moreover, long before Taiwan withdrew from the United Nations, the government had ratified the International Convention on the Elimination of all Forms of Racial Discrimination in 1966. However, it hasn't yet been implemented as domestic law.

9. For instance, the media often highlights the Indigenous identity of crime cases, which usually leads to collective harms upon and deepens stereotype towards Indigenous Peoples. And there is not any regulation imposing restriction on this matter. It is evident that there are gaps and holes in protection against discrimination if it's provided in separate laws and regulations. The government should thoroughly examine and review the situation and amend or adopt relevant measures or laws.

10. We suggest the government to follow the pattern of adopting and integrating the ICCPR and ICESCR in domestic laws, i.e., to adopt the "Implementation Act of the International Convention on the Elimination of All Forms of Racial Discrimination" as soon as possible and establish the regular State Report mechanism. After finishing inventorying and reviewing all the regulations that conflicts with the ICERD, and then moving forward to promote much more concrete laws, such as a comprehensive Anti-Discrimination Law, or Law of Equality among all Ethnic Groups.

Regarding Indigenous Peoples' Rights to Hunt

11. According to ICCPR and ICESCR article 1, ICESCR article 15, ICCPR article 26, the anti-discrimination regulation, *UN Human Rights Committee* general comment 12, *UN Economic Social and Cultural Rights Committee* general comment 21 paragraphs 11 and 13, *Additional Articles of the Constitution of the Republic of*

China (Taiwan) article 10 section 11, *The Indigenous Peoples Basic Law* article 19, article 20 section 1, and article 23.

12. According to the statistical analysis conducted by Taiwan Legal Aid Foundation, more than 230 Indigenous persons have been prosecuted and sentenced for violation against the *Wildlife Conservation Act* since 2004 to March, 2016. Also, more than 100 Indigenous person were prosecuted for violating the *Act Governing the Control and Prohibition of Gun, Cannon, Ammunition, and Knife,* and sentenced for probation or even imprisonment. The most severe one is the case of the Bunon hunter who was sentenced to 3 years and 6 months by the Supreme Court. These has shown that the state has obviously violated the regulations mentioned above and failed to protect Indigenous cultures, and offended Indigenous natural/inherent sovereignty.

13. We recommend the government to amend the *Wildlife Conservation Act* and *Regulations Governing Indigenous Peoples Hunting and Use of Wild Animals Based on Traditional Culture and Ceremony Needs*, as well as restoring Indigenous hunting management system to the communities:

14. The current *Wildlife Conservation Act* and *Regulations Governing Indigenous Peoples Hunting and Use of Wild Animals Based on Traditional Culture and Ceremony Needs* in Taiwan both failed to define "traditional culture", which caused some law enforcement personnel who are not aware of the hunting culture of Indigenous Peoples to make discriminative verdict and administrative measures that could oppress Indigenous Peoples' hunting culture.

15. According to academic research, the Indigenous Peoples' hunting activities are not only ecologically tolerable, but also properly balance the amount of wild animals, and further promote ecological harmony.

16. We recommend legislators to consider all the facts above, and make amendments of the *Wildlife Conservation Act* article 21-1 and amend article 3 section 15 with definition of traditional culture and omitting or amending the *Regulations Governing Indigenous Peoples Hunting and Use of Wild Animals Based on Traditional Culture and Ceremony Needs* that limit the definition of Indigenous traditional culture.

Regarding Indigenous Peoples' Cultural Rights to Fishing, Hunting, and Collecting

17. According to ICCPR and ICESCR article 1, ICESCR article 15, ICCPR article 26, *Human Right Committee* general comment 12, *Economic Social and Cultural Rights Committee* general comment 21 Paragraph 11-13, Additional Articles of *Constitution* article 10 section 11, as well as *Indigenous Peoples Basic Law* article 10, article 19, article 20, article 22, and article 23.

18. The Taitung Country Government established the Fu-Shan Fishing Resource Conservation Zone according to *the Fishery Act* article 44 claiming restriction on

collecting and fishing activities. The Coast Guards penalized local Amis Peoples several times, and even requested the people to put their catch back to the water. The restriction has damaged Amis Peoples' lifestyle, the inherent sea ceremony, fishing, gathering and other traditional culture and it also influenced the heritage of ocean culture of Amis Peoples. In addition, Amis Peoples are often prosecuted for theft according to *the Forestry Act* article 52 for collecting rattan hearts, bamboo shoots, and anthodia mushrooms. So it is absolutely necessary to reassess the current laws.

19. We urge to amend *the Fishery Act* article 44, *the Fishing Port Act* Article 18, *the Commercial Port Law* article 36, *the Act for the Development of Tourism* article 36, which remove daily fishing, hunting, and collecting, ceremonies from restrictions and prohibitions. Lastly, we recommend that the *Executive Yuan* to issue an order to the *National Police Agency of the Ministry of the Interior* to minimize police interference on Indigenous People's' hunting, fishing, or using rifles in hunting for ceremonial purposes. We also recommend to review and amend the *Act of Forestry* and other laws or regulation offending Indigenous collecting rights in the forests, and exclude traditional Indigenous collecting from criminal penalization.

Indigenous Peoples' Rights to Use Advanced Technology

20. In response to Paragraph 6 of State Report on ICCPR, referencing on ICESCR article 15 section 1-B, the Indigenous People Basic Laws article 23.

21. The Act on Controlling Guns, Ammunition and Knives, *Article* 20 section 1 was amended, and the use of self-made hunting rifles for livelihood was exempted from criminal penalty and changed to administrative penalty. However, *the Regulation Governing Permits and Administration for Guns, Ammunition, Knives and Weapons* article 2 section 3 and 4 still goes beyond the authorization from the above law and limits Indigenous Peoples' rights of using technologically advanced and safer hunting rifles and fishing spears, the regulation also set stringent limits on the definition of "self-made hunting rifles". Because of these limitations, some indigenous hunters had to use unsafe rifles and several cases of severe injuries and even deaths occurred. The fact that the State Report failed to mention this situation shows that government has been ignoring Indigenous Peoples' need of safe and technologically advanced hunting rifle, thus limiting the Indigenous hunting rifles to something outdated and lacking security and technology advancement. This is has already constituted discriminations against Indigenous hunting cultures.

22. Furthermore, the *Act for Controlling Guns, Ammunition and Knives* article 5-2 section 6, which stipulates that if the owner is convicted and sentenced to a fixed term of imprisonment, the gun permit will be revoked or cancelled. It could lead to the situation in which elders with rich hunting skills and knowledge to lose the opportunity to use legal hunting guns for good and

interfere with their mandate to pass down the culture to future generations. The above act clearly violates the principle of proportionality.

23. We recommend amending the *Regulation* mentioned above. Revoking of gun license should be reserved for those with repeated and intentional offenses (Article 5-2, section 6). For article 20 of the same *Regulation* to allow use of safer and advanced hunting rifles and fishing spears not limited to the self-made rifles in accordance to the Self-defense Guns Control Act. The Ministry of Interior and Council of Indigenous Affairs should establish channels for Indigenous Peoples to obtain safe and technologically advanced hunting rifles and ammunitions. We recommend amending or removing *the Regulation Governing Permits and Administration for Guns, Ammunition, Knives and Weapons* articles 2-4, and articles 15-19 with regards to definitions and applications of self-made rifles and fishing spears.

Indigenous People's Right to Self-Determination

24. In reference to Article 1 of the Two Covenants concerning self-determination, Article 15 of the *ICESCR* concerning cultural rights, Article 26 of the *ICCPR* on anti-discrimination, HRC General Comment No.12, CESCR General Comment No. 21 Paragraphs 11 and 13, when handling affairs relating to the Indigenous Peoples, the government should respect the language, cultures, customs, and values of the Indigenous Peoples when formulating laws and regulations, administering justice and various procedures (incl., administrative remedial procedures, notarization procedures, mediation procedures, and arbitration procedures). In addition, the government shall provide interpreters fluent in the languages of Indigenous Peoples who are unfamiliar with Mandarin.

25. In some verdicts of the courts regarding Indigenous hunting, the text read that hunting culture was "an anachronistic and archaic culture" and furthermore expressed the inclination to eliminate Indigenous hunting altogether or confine hunting to specific temporal and spatial boundaries. This clearly shows that the government's misuse of the judicial system to violate the cultural rights of Indigenous Peoples.

26. We suggest that the Judicial Yuan should intervene and oversee court organization and judicial reform. Not every case concerning Indigenous Peoples (e.g., drunk and driving and drug-related offenses) has to be tried in the Special Court of Indigenous Peoples. To enhance the quality of rulings produced by the Special Court of Indigenous Peoples and maintain the reasonable utilization of judicial resources, we suggest that only cases concerning the protection or impact of Indigenous culture be tried in the Special Unit of Indigenous Peoples or Special Court of Indigenous Peoples. We also recommend that the government reinforce the training of legal enforcement personnel regarding to indigenous cultures.

27. We suggest that the government incorporate a traditional jury system comprising jurors who are familiar with the cultures of the parties concerned into the Special Court(Unit) of Indigenous Peoples. The existing Special Court(Unit) of Indigenous Peoples can be reinforced by inviting two or more jurors who are familiar with the cultures of the parties concerned when reviewing the cases regarding indigenous traditional or cultural affairs and using the jurors' suggestions as references in ruling. Prior to the implementation of the aforementioned system, judges shall conduct field surveys or appoint impartial experts to facilitate their understanding of the cultural practices of the parties concerned. Verdicts formulated without tangible evidence or survey data and based on the a cultural understanding out of imagination are unlawful.

Article 7 Consensus Concerning the Human Studies on Indigenous Peoples

28. Paragraph 104 of the *State Report on ICCPR* indicates that consent must be acquired from Indigenous Peoples through consultation for research involving human subjects. Although Article 15 of the *Human Subjects Research Act* clearly stipulates that when the research involves Indigenous Peoples, additional consultation to obtain the consent of the indigenous group is required. However, a number of academic researchers failed to fully understand the definition of indigenous peoples' collective consent, leading to the illegal establishment of databases using the biological specimens of Indigenous groups without proper collective consent. For example, the Taiwan Biobank Ethics Committee approved the recruitment of Indigenous Peoples in the third meeting in 2014 and commenced the collection of samples from Indigenous Peoples and communities in 2015.

29. The Council of Indigenous Peoples and the Ministry of Health and Welfare jointly announced *the Regulations on the Consultation and Approval and Engagement Business Benefit of Human Subject Study Involving Indigenous Peoples* on 31st December 2015, taking effect on 1st January 2016. However, scholars' lack of understanding concerning the collective consent of Indigenous Peoples renders the effectiveness of this regulation questionable.

Article 10 Human Rights of Indigenous People in Prison

30. Response to Paragraphs 160, 161, and 164 of *the State Report on the ICCPR*: In December 2014, an Atayal inmate with bipolar disorder, Mr. Wei-Hsiao Lin, was sexually assaulted and tortured to death in prison.[3] This incident not only highlighted the management and care issues for mental patients in prisons but also exposed the illegal use of constraints. Relevant supervisors involved in this incident were impeached by the Control Yuan. The human rights of Indigenous Peoples in prisons remain a grave concern, yet no data is currently available. Therefore, we request that the Agency of Correction, Ministry of Justice,

[3] Mr. Wei-Hsiao Lin, an inmate with mental disorder, was placed in solitary confinement for extended periods and subjected to the illegal use of constraints 49 times. He eventually died of asphyxiation after being bound and handcuffed to a corridor railing in a sitting position for five hours.

investigate and release the report on human rights conditions of Indigenous Peoples (incl., juveniles) in prison. Data should include the number of Indigenous inmates, ethnic, genders, and offense. Moreover, the Agency of Correction should make additional efforts looking into whether the appeals of Indigenous inmates are related to racial discrimination.

31. Response to Paragraphs 143, 187 to 190 and 350 of the *State Report on ICCPR*: The government has established employment counseling and vocational training systems to facilitate the reintegration of inmates and juvenile delinquents into society. However, these systems do not take into account the specificities of Indigenous Peoples' social structures. The underlying social backgrounds of Indigenous inmates and juvenile delinquents are typically ignored by the rehabilitation and protection system. Therefore, the existing rehabilitation and protection system is ineffective in helping reintegration into schools, general society, or Indigenous communities is extremely difficult for former Indigenous inmates and juvenile delinquents. Instead, they are prone to both ethnic and socioeconomic discrimination, leading to a vicious cycle. We suggest that the Ministry of Justice establish a rehabilitation and protection system that are culturally sensitive and takes into account the Indigenous Peoples, communities, and groups, thereby fulfilling restorative justice.

Article 12 Post-Disaster Community Relocation of Indigenous Peoples

32. The First State Report on ICESCR (para. 9) stated "during post-disaster reconstruction of Indigenous Peoples, when implementing 'special zone demarcation' for disaster-ridden areas (also known as the 'dangerous zone') or utilizing land involving the traditional territories of Indigenous Peoples…, informed consent made by Tribal Council or community-based decision-making progress must be required, as to respect diversified and different voices in the communities." However, this principle was not adhered to in the regulations of disaster prevention and relief, organization establishment and mechanisms in village relocation, neither in the National regulations and Disaster Prevention and Relief System. The mechanism of participation, indigenous peoples' traditional knowledge on disasters referring to the site, decision-making, and consultation was not comprehensively understood by the government; neither was it based on survey data of tribal disaster prevention options. The prevention and relief system, therefore, is unable to meet the essential demand of indigenous peoples without embracing indigenous viewpoints in existing process of disaster prevention and relief plan and the establishment of the organization.

33. Article 7 and 9 of *Disaster Prevention and Protection Act* which was amended in April 2016 directly restricts Indigenous Peoples' right to participating in critical decision-making process. Moreover, *The Indigenous People Basic Law* article 25 indicates that "*The government shall establish a natural disaster prevention and relief system in indigenous peoples' regions and natural disaster prevention priority zones to protect physical and property safety of indigenous peoples.*" This shows that the

national laws neither lack a mechanism for direct engagement of Indigenous experts and representatives of Indigenous Peoples nor propose post disaster reconstruction mechanism with Indigenous Peoples' consensus. Besides, the government invited only the authorities on level of central government, such as National Science and Technology Center for Disaster Reduction and Council of Indigenous Peoples, to participate in the making of natural protection zones, yet without Indigenous experts and representatives of Indigenous Peoples.

34. The restrictions above mentioned have not only affected Support network and relocation decision-making mechanism of indigenous peoples, but also lead to the invasion of culture right of indigenous peoples. For example, Typhoon Morakot in 2009 forced the numerous indigenous communities to relocate from the original sites, which makes the indigenous peoples face serious challenges in adapting new environment and cultural heritage. The fundamental problem is that Indigenous knowledge is not entirely respected, heard, and included in communities' relocation decision-making process. The government even ignored Indigenous traditional decision-making mechanisms, including site selection, decision-making, and consultation, which resulted in severe communities' disruption and vulnerability of physical and spiritual recovery. However, the National Science and Technology Center for Disaster Reduction hasn't showed any regret in this regard. Yet even after amending the laws for so many times, the indigenous knowledge of disasters and traditional decision-making are not yet included in the policy whatsoever, and even the basic research work has not been started.

35. In sum, we suggest that the government to look into the indigenous knowledge of disasters, site selection, traditional decision-making mechanism, and Free Prior Informed Consent of Indigenous Peoples. Meanwhile, we recommend the government to establish the indigenous community-based support network of disasters; to facilitate the implementation of the traditional decision-making mechanism in indigenous communities, and to respect the will of Indigenous Peoples in planning and make sure the indigenous peoples being included in the research projects of National Disaster Prevention and Relief Center. Also, we suggest the government to work together with Indigenous Peoples to amend the article 7, 9, 10, 11, 20, 22, and 36 of Disaster *Prevention and Protection Act* as well as article 25 of *the Indigenous Peoples Basic Law*. And we recommend the government to establish the regulations to empower indigenous peoples of disaster prevention and relief and climate change research focus on indigenous regions and make them the central rules in National Disaster Prevention and Relief Center.

Article 14 Judicial and Human Rights of Indigenous People

36. In response to Paragraph 242 of the *State Report on the ICCPR* concerning the mandatory defense statistics of legal aid cases, Article 31, Paragraph 5 of the *Code of Criminal Procedure* states, "*Prosecutors, judicial officers, or judicial police shall notify legal aid of accused or suspected parties with Indigenous status who are unable to*

appoint a defender during their ruling, and a legal representative shall be appointed to them." The law clearly states that Indigenous Peoples have the right to request legal aid. However, past data show that the majority of Indigenous defendants forfeited this right, and mostly took place during the police investigation stage.

37. According to the data released by the Taiwan Legal Aid Foundation, the *First Criminal Interrogation Accompanied by Legal Aid Attorney Program* was launched on 15 July 2012. Up to 31st December 2015, There are 25,113 cases qualified for legal aid program. However, only 3,401 cases were provided with legal aid attorneys, and 21,060 forfeited their right to legal aid during interrogation, which makes up the rate of 83.86%. We request the authorities investigate the reasons for the high forfeit rate and ensure that improvements are made.

38. Article 31 of the *Code of Criminal Procedure* clearly states that Indigenous Peoples have the right to mandatory defense. However, in reality, there are some prosecutors adopting the summary trial proceeding[4] to evade legal defense for the defendants. There are 2,495 summary judgments and ruling were made in the Hualien and Taitung regions in 2015. We recommend that the authorities investigate the appropriateness of Indigenous Peoples prosecuted by the police on account of practicing the traditional customs and being ruled using summary trial proceeding, even though they may be ruled innocent in the court. And we further require to ensure the improvements are made.

Regulations on the Control and Approval of Fire Arms, Ammunition, and Harmful Knives and Rights to Hunt.

39. In reference to Paragraph 247 of the *State Report on the ICCPR* concerning the amendment to the *Act Governing the Control and Prohibition of Gun, Cannon, Ammunition, and Knife*, this amendment was based on The Supreme Court Judgment No. 5093 in 2013, which clearly stated, "*Constituents of criminalization or decriminalization shall not be further specified or explained by administrative institutions or orders.*" Nonetheless, administration authorities defined self-made hunting rifles as critically dangerous and outdated for the convenience of management and security considerations, which is a complete disregard of the constitution, the Two Covenants, *Indigenous Peoples Basic Law*, and even the provisions that safeguards the Indigenous Peoples' right to hunt in the *Act Governing the Control and Prohibition of Gun, Cannon, Ammunition, and Knife.*

40. The *Act Governing the Control and Prohibition of Gun, Cannon, Ammunition, and Knife* was amended in 2014, but only the provisions concerning self-made rifles as above mentioned in The Supreme Court Judgment No.5093 in 2013.

[4] Summary judgement and ruling refers a simple judgement procedure claimed by the prosecutor or exercised by a court judge for cases in which the accused confessed to petty crimes or the court deems the evidence sufficient to rule against the accused, and the sentence is probable, detainable, or six months or less and commutable by a fine. Such procedures do not require oral arguments, which bar legal representatives from providing a defense, even if the case is a conflict of Indigenous customs and rule of law, such as firearms and hunting rights of Indigenous Peoples.

Amendments failed to address "*To respect cultural diversity, self-modifications that are safe and enhance usability are permitted*," which was also mentioned in judgment No. 5093. To fulfill the provisions specified in Articles 10 and 11 of the *Additional Articles of the Constitution of the Republic of China (Taiwan)*, the fundamental rights of Indigenous Peoples to hunt wild animals with self-made rifles as stipulated in Articles 10, 30, and 19 of the *Indigenous Peoples Basic Law*. With respect to the cultures of Indigenous Peoples as stipulated in Article 20, Paragraph 1 of the *Act Governing the Control and Prohibition of Gun, Cannon, Ammunition, and Knife* have gradually become administrative penalty. Since the law doesn't restrict the methods for loading gunpowder or ammunition into self-made rifles, therefore, both muzzle-loading and rear-loading rifles should be both equally regarded as "self-made" rifles.

Article 23 Indigenous People, Diverse Family Formation, and Transgender Issues

41. The multi-gender perspective of Taiwan Indigenous Peoples can be seen in their oral stories. For example, the co-existence of male and female demonstrates on the most revered clay pot of the Paiwan Peoples. Interviews with several elders of the Amis Peoples show that homosexuals had once emerged among the Indigenous Peoples. They had strong personal characteristics and abided by Indigenous regulations. They were unable to marry, but they were accepted by the Indigenous Peoples for carrying the important roles of the cultural bearer and promoter.

42. Affected by western religion and traditional Confucian ideologies, the social gap between men and women are becoming increasingly apparent. In the Amis society, the custom of men moving in with their wives after marriage is gradually changing into male-dominant marriages, weakening the traditional gender and cultural ideologies of the Amis Peoples. Marriage is a key concern of Taiwanese people. Therefore, the legalization of same-sex marriage has sparked heated discussions in Taiwan. At present, only a number of counties and cities have permitted the registration of same-sex marriage. However, registration does not include the legal protection of marriage, such as co-declaration of assets or acting as the primary medical decision-maker. For the classed societies of the Paiwan and Rukai Peoples, marriage is a crucial issue because it entails the promotion and demotion of family and social status and even the continuity of the household. Homosexual people in these cultural contexts would be forced to marry the opposite sex to abide by cultural traditions and customs. Moreover, people's freedom to love is also compromised with the restrictions on marriage. With the ratification of marriage equality, homosexuals will be free to marry the people they love, raise children through adoption or surrogate mothers, and under the premise that traditional cultures remain unaffected and ensure their basic human rights.

43. Current regulations in Taiwan concerning the change of gender on citizen identity cards require individuals to undergo gender reassignment surgery. This is a cruel punishment for transgender people desiring bear to children, a

deprivation of the freedom of identity, and hazard to physical and mental health. We recommend amending these provisions so that gender identity can be altered through the consultation of a psychiatrist to confirm that the individual shows symptoms of gender identity insecurity. These amendments would not only resolve the issue of childbirth but also ensure the identity and childbirth rights of transgender people.

Article 25 Civil Service Special Examinations for the Indigenous Peoples and Examination Subjects

44. In reference to Paragraph 388 of the *State Report on the ICCPR*, Article 25 of the *ICCPR* states that the governments are obligated to eliminate all obstacles and provide equal opportunity for citizens to participate in civil service examinations and secure government employment. The *Second State Report on the ICCPR* responded to the provisions concerning civil service examination conditions for Indigenous Peoples and the number of admissions. However, the report failed to address the correlation between the objectives and effectiveness of civil service examinations[5].

45. The government's organization of the Civil Service Special Examinations for the Indigenous Peoples should not only guarantee the employment rights of Indigenous Peoples [6] but also aim to encourage Indigenous Peoples to participate in their civil affairs in the attempt to restore their special political status. Since the ratification of the *Indigenous Peoples Basic Law* in 2005, numerous rights of Indigenous Peoples have been regulated or amended, and the civil affairs of Indigenous Peoples within the Taiwan's administration system have become more sophisticated and detailed. Civil servants tasked with the administrative affairs of Indigenous Peoples (e.g., Forestry Bureau) should be proficient in Indigenous cultures and knowledge systems. Ministry of Examination, Examination Yuan, should consider the changes in Taiwan's legal system when selecting Indigenous candidates for civil services and comprehensively review the subjects tested in the current Civil Service Special Examinations for the Indigenous Peoples, including essential subjects or revising extant content[7], thereby ensuring the political involvement rights of Indigenous Peoples.

---

[5] Please refer to Item 397 of the *Second State Report on the ICCPR.*

[6] Article 6, Paragraph 2 of the *Civil Service Examinations Act* states, "*In order to meet staffing needs of institutions of a special nature, as well as to provide for the employment rights of Indigenous Peoples and the disabled, Special Examinations are held at grades 1 through 5 in accordance with the above said levels and grades. Except where this Act stipulates otherwise, persons qualifying under Special Examinations are not permitted to transfer outside the originally allocated agencies for a period of six years. Regulations regarding this six year restriction vary by the nature and scope of the examining organization and are stipulated in the respective examination regulations.*"

[7] For example, after the ratification of the *Patent Act* in 2008, intellectual property administration was separated into an independent subject in the civil services examination to meet the growing requirement of relevant administration tasks.

Right to Political Involvement of Indigenous Peoples

46. The Constitution of the Republic of China (Taiwan) reserves 6 legislator seats for Indigenous Peoples. However, numerous unreasonable limitation existing the election system that severely constitutes the inequality of political involvement and violates Article 25, Paragraphs 1 and 2 of the *ICCPR* concerning the prevention of unreasonable limitations and inequality. Several of these items are discussed in the following section.

47. Concerns arising from the division of mountain and plain areas based on identity rather than space or ethnic: The current division of mountain and plain areas is based on the geographical division adopted by the Japanese government during their occupation for the convenience of management. These divisions neither have anthropology or ethnology bases nor acknowledged by Taiwan's Indigenous communities. After the Taiwanese government had assumed governance, it followed the divisions set by the Japanese but changed their original spatial orientation into identity orientation. In other words, the Taiwanese government previously conducted a demographic survey and categorized the residents in the mountain regions of Taiwan as Taiwan's Indigenous population. This identity does not change with relocation, and it is inherited by future generations. The outcome is that the Indigenous Peoples and their descendants that have moved to the city are still categorized in the "mountain" Indigenous population. Nevertheless, this "identity" contains no tangible ethnical value.

48. Electoral districts for Indigenous legislators are larger than their actual jurisdiction: Currently, the electoral districts of the six Indigenous legislator seats encompass the entire country. By comparison, the only other candidates that have nationwide electoral districts are the presidency and vice presidency candidates. In terms of election costs, that for Indigenous legislator campaigns far exceeds that of non-Indigenous legislator campaigns, creating an invisible election threshold and benefits strong political parties from monopolizing legislator seats. Another distinct difference between the election of president/vice president and that of Indigenous legislators is that the citizens nationwide are potential voters for the presidency and vice presidency campaigns. Indigenous legislator campaigns only target Indigenous Peoples, which are further split into Indigenous Peoples residing in mountain and plain areas. The consequence of this system is that the current legislators have a considerable advantage in both media coverage and control over voter lists. Opponents almost never stand a chance. Therefore, even with an election system, legislators are almost always reelected. The following table shows the latest legislator election results (2016).

Name	District	Party	Terms
Wen-Gi Kong	Mountain	KMT	4
Dong-Ming Chien	Mountain	KMT	3
Su-Mei Kou Jing	Mountain	No Affiliation	5

Kou-Dong Liao	Plain	KMT	5
Tien-Tsai Zheng	Plain	KMT	2
Ying Chen[8]	Plain	DPP	

49. Deprivation of Indigenous voters' citizenship rights: Although Indigenous legislator seats are protected by the Continuation in Taiwan's current legislator election. The regulations also stipulate that only indigenous citizens are permitted to vote for Indigenous legislators, which is synonymous to isolation policies. These regulations allow non-Indigenous legislators to completely ignore Indigenous affairs, creating an irreducible gap between ethnics. Overall, these regulations have marginalized Indigenous affairs and rights from mainstream society.

50. Concerns of disclosed voting: Indigenous legislator candidates are responsible for a nationwide electoral district. However, the Indigenous population accounts for a mere 2% of the total population in Taiwan. Beside a comparatively denser Indigenous groups residing in a small number of urban areas in their home districts, votes in other districts are largely in the single digits. Some areas even accumulate as little as a single vote. Therefore, candidates are able to easily estimate the number of votes in each area, leading to doubts in anonymity. This situation is in clear violation of Article 25, Paragraph 2 of the *ICCPR*, which states that votes should be conducted in the form of a secret ballot to ensure the freedom of expression rights of all voters.

51. In retrospect of the preceding discussion, we strongly recommend that the government redefine the election system of Indigenous legislators to conform with the requirements of the Two Covenants, thereby reinforcing the representability (ethnically and regionally) of the electorates and eliminating implicit thresholds and limitations created from unfavorable system designs. As a resolve, Indigenous legislator candidates can first engage in postal voting to ensure the anonymity of the voters, as well as the rights of the Indigenous Peoples and Taiwanese citizens in general.

Article 27 Taiwan Indigenous Television

52. In response to Paragraph 402 of the *State Report on the ICCPR*, the government announced the commencement of the era of high definition television in 2012. Despite considerable advancements in digital television, Taiwan Indigenous Television still cannot be viewed on digital TV channel. It can only be viewed through cable or through designated set top boxes. Ironically, digital television channels include numerous public broadcasting channels, such as the Public Television Channel and Hakka TV. Only Taiwan Indigenous Television is

[8] In the 2012 Indigenous legislator elections, plain area legislator, Mr. Zheng-Er Lin (4-term reelectorate) was disqualified on suspicion of accepting bribes, resulting in only five legislators elected in 2012. Besides a new legislator, Ms. Ying Chen, elected in 2016, the five remaining legislators were all reelectorates.

unavailable. This situation not only deprives the viewing rights of the public but also obstructs the development of multiculturalism and public media.

Article 2, Article 3, and Article 26 Equality and Anti-Discrimination

The Dismissal of a Male Police Officer with Long Hair Highlights a Discrepancy between the Laws and Regulations of the Public Sector and the Enforcement of these Laws and Regulations

53. In response to Paragraph 8 on pages 1 and 2, and Paragraph 20 on page 3 of the State Report (anti-discrimination measures), although the State Report states that "Article 7 to Article 11 of the Act of Gender Equality in Employment prohibit discrimination based on gender, many regulations in the public sector remain to violate the principles of quality and anti-discrimination. For example, Article 1 in the Regulations Governing Police Officers' Grooming, Etiquette, and Environmental Maintenance states that "male police officers shall not perm their hair, grow sideburns, or grow bangs. Male police officers shall thin their hair upwards with an angle from the base of the back of the neck at a length of no more than one centimeter. Female police officers shall not wear braids or allow hair to fall past shoulders when wearing the police uniform. Female police officers who have hair that falls past shoulders shall wear a bun and use black hair pins or elastics." These regulations discriminate according to gender, which is an obvious violation of the anti-discriminatory ideology of the Act of Gender Equality in Employment.

54. Chi-Yuan Yeh, a police officer of the National Police Agency's (NPA) Second Special Police Corps, was fired for growing long hair during his seven-year career as a police officer. During this period, Yeh was reprimanded 58 times for his hair. In 2014, the NPA's Second Special Police Corps gave Yeh a "C" rating for his yearly performance for receiving reprimands for his hair, and further fired Yeh in 2015 for the same cause, depriving Yeh of his right to work.

55. For seven years, Yeh repeatedly reported how the previously mentioned regulations violate his rights and lead to gender discrimination to the NPA of the Ministry of the Interior, the Gender Equality Committee of the Executive Yuan, and the Ministry of Labor of the Executive Yuan, yet Yeh's efforts were in vain. [9]After Yeh filed internal appeals against his reprimands, the Civil Service Protection and Training Commission failed to abide by Act of Gender Equality in Employment and even further argued that "the regulations specify different

[9]The NPA insists that "due to the special nature of police duty, officers on duty should have an appearance that matches the perception of the general public; thus, regulations on clothing and grooming are not based on gender discrimination." The Gender Equality Committee of the Executive Yuan and Ministry of Labor repeatedly referred the complaints to the NPA, the Ministry of the Interior, and indicated that this was a case of gender discrimination against civil servants and complaints should thus be filed according to the channels provided by the agency in question. The Executive Yuan and Ministry of Labor are competent authorities; however, both were unable to resolve the gender discrimination inflicted on the police officer, which was caused by the gender stereotypes in the NPA's grooming regulations.

rules for the grooming of both male and female officers and do not only have special requests of one gender; thus, the regulations do not violate Article 7 of the Act of Gender Equality in Employment."[10] Furthermore, the commission intentionally dismissed the statement in Article 7 of the Act of Gender Equality in Employment, which states that employers shall not discriminate against applicants or employees because of their gender or sexual orientation in the course of placement, evaluation, and promotion.

56. In 2014, the Gender Equality Committee's Project Review Team for Laws Related to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) reached a resolution[11] and determined that the regulations did not restrict the hair length of female police officers. From CEDAW's perspective, which predominately protects women's rights, restricting hair styles for male police officers does not violate CEDAW's regulations.

57. We request the government to abolish or amend the Regulations Governing Police Officers' Grooming, Etiquette, and Environmental Maintenance as soon as possible, as well as regulations in government departments that violate the Act of Gender Equality in Employment, CEDAW, and the Two Covenants. In addition, the interpretation of human rights should not be restricted to a single covenant; thus, aside from referencing CEDAW to protect women's rights, cross-covenant references should be made in cases where a person's rights are violated due to gender stereotypes.

The State Report's Misinterpretation of Consent and Sexual Autonomy

58. Regarding regulations on sexual offenses in the Criminal Code of the R.O.C. and future amendments, Paragraph 38 to Paragraph 40 on page 9 of the State Report mentioned a resolution reached in the 7th Criminal Court Conference by the Supreme Court held in 2010. This resolution[12] states that considering intercourse with children as aggravated sexual assault was a product of public pressure and that the use of the Criminal Code is excessive. The resolution failed to differentiate the difference between the "use of force" and "a violation of consent," among which the latter is considered as statutory rape[13].

[10] *Gong-Shen-Jue-Zi-Di* No. 0267 of the Civil Service Protection and Training Commission.

[11] Meeting minutes of the 19th meeting of the Project Review Team for Laws Related to CEDAW, The Gender Equality Committee of the Executive Yuan, July 17, 2014 (Link: http://www.gec.ey.gov.tw/Upload/RelFile/3211/723167/2350c087-13b2-408c-bc87-1eb44d1c58ca.pdf)

[12] The 7th Criminal Court Conference by the Supreme Court held in 2010 reached a resolution that persons engaging in intercourse with victims younger than seven years of age shall be charged with aggravated violation of consent under Item 2, Paragraph 1, Article 222 of the Criminal Code.

[13] Y. C. Cheng, (2010). *The Application of the Criminal Code to Cases Involving Sexual Contact with a Minor Under 16 Years of Age – An Analysis of the Criminal Court Judgment in Tai-Shang-Zi-Di No. 4894 and the 7th Criminal Court Conference by the Supreme Court held in 2010*. The Law Monthly, Vo. 61, Ed. 12.

59. According to statistics proposed by the Ministry of Health and Welfare[14], there are hundreds of cases involving consensual underage sex every year. The Garden of Hope Foundation's research[15] indicates that the Criminal Code's chapter on sexual offenses does not comply with the Criminal Code's ideology of restraint and principle of justice. As a result, relevant cases consume law enforcement-, social and political, and education resources, which is neither economical nor effective in suppressing minors from engaging in intercourse.

60. The MOJ's draft to amend the Criminal Code may include deleting elements that constitute "a violation of consent." This indicates a major misinterpretation of the meaning of consent. The chapter on sexual offenses is centered on whether a victim's consent is violated or whether a victim's sexual autonomy is deprived and he/she hence cannot practice sexual autonomy by freewill. Thus, determining whether a victim objectively perceived a violation of consent is critical. A violation of consent causes severe psychological harm to victims, and forced measures such as rape or coercion inflict even greater damage. Certain cases involve overly young or mentally challenged victims who are unaware of how to or cannot reject, in which case elements that constitute aggravated sexual assault are not applicable. However, exceptional regulations can be made for exceptions. Thus, elements that constitute "a violation of interest" do not need to be deleted.

61. Cases of consensual underage sex and the underage party should be exempt from charges of having intercourse with minors. We suggest that the 7th Criminal Court Conference by the Supreme Court include "people above 18 years of age" as an element and clearly state this element in the law.

62. Intercourse or obscene acts between minors based on mutual affection should be decriminalized, thereby correcting social perceptions and reallocating the costs of incarceration and legal proceedings to promoting effective counseling and education, sex education, and sentimental education to provide true protection for minors.

---

[14] In 2011, a total of 1,260 people were involved in sexual offenses where the victim was younger than 16 years of age and the offender was younger than 18 years of age (all sexual assault cases, including forced sexual intercourse) were reported to relevant authorities, with 50.79% of cases where both parties were under 16 years of age. In 2012, a total of 1,464 people were involved in sexual offenses where the victim was younger than 16 years of age and the offender was younger than 18 years of age (all sexual assault cases, including forced sexual intercourse) were reported to relevant authorities, with 51.98% of cases where both parties were under 16 years of age. For further details, please refer to the meeting minutes (part I) of the Meeting on Relevant Issues Derived from the Process of Managing Sexual Assault Cases (October 7, 2013), Department of Protective Services, Ministry of Health and Welfare (Link: http://www2.ksa.nkfust.edu.tw/guidance/pdf/gender/102110703.pdf).

[15] M. L. Liao, S. F. Wang, J. J. Xu, J. P. Chen, (2014). *A Review of Policies on Victims of Sexual Assault and the Promotion of an Extended Project – Using the Law of Consensual Underage Sex to Discuss the Effective of Preventing Sexual Assault Among Minors*. The Garden of Hope Foundation, Taipei City.
S. F. Wang, J. J. Xu, J. P. Chen, (2015). *Using the Law of Consensual Underage Sex to Examine Analyses on the Economics of Law for Sexual Assault Prevention*. The Garden of Hope Foundation, Taipei City.

63. We recommend stratifying and classifying sexual offenses in the Criminal Code. "A violation of consent" could be added as a minor crime to address cases where means of rape cannot be proven or were not used, thereby offering judges more options.

Media Reports Lack Gender Awareness and Intensify Gender Discrimination

64. In response to Paragraph 41 to Paragraph 45 on page 9 to page 11 of the State Report, which addresses the broadcast media's actions in promoting gender equality, Taiwan's broadcast media often shows content that involves gender discrimination. For example, when reporting cases of sexual violence, the media often highlights the victim's gender qualities, such as clothing and appearance. In recent years, many news stories have been exaggerated, such as cases involving parent-child conflicts in restructured families, religious abuse, murders by caregivers, or NEETs killing their parents. However, the State Report indicates that cases that were processed according to the Radio and Television Act were in the single digit (Table 7). The "Cases that Did Not Comply with the Guiding Principles of Broadcast Media Producing and Broadcasting Gender-Related Content in 2015"[16] indicates that for both television shows and advertisements, violations were only penalized with warnings, administrative guidance, or discussions between professionals and broadcast/media personnel. This does not inhibit the media from attracting the audience through explicit content, much less facilitate broadcast media to promote gender equality.

65. On April 4, 2014, CTi News's News Tornado reported on women who participated in the Sunflower Movement. The show intentionally objectified, slandered, and belittled the women, and discriminated against women who participate in civil and political activities. After the show was aired, the Awakening Foundation received more than 80,000 complaints, and the Garden of Hope Foundation received over 50,000 complaints. However, the National Communications Commission (NCC) didn't take action and only claimed that a review mechanism had been launched. The public became infuriated and began calling CTi News and the NCC to protest, after which the NCC claimed that it had received 551 complaints, a drastic difference compared to the statistics mentioned above. This indicates the NCC's incompetence in responding to news stories with major gender controversies in a timely manner. This case violated the Constitution of the R.O.C. and CEDAW's principles on gender equality. However, the NCC only administered a fine of NTD $500,000 to CTi News based on Item 3, Article 17 of the Satellite Broadcasting Act, which is an insignificant amount for a television station.

66. Aside from satellite and television broadcasts, gender discrimination is also common in paper media. In May 2015, the Liberty Times falsified that journalist

[16] Cases that Did Not Comply with the Guiding Principles of Broadcast Media Producing and Broadcasting Gender-Related Content in 2015, NCC (Link: http://www.ncc.gov.tw/Chinese/news_detail.aspx?site_content_sn=2986&is_history=0&pages=0&sn_f=34874)

Yen-Chiu Lee was the protagonist of a pornographic novel. Lee responded, stating that "the age when the media followed principles, were professional, and respected boundaries is now gone, and there is no going back. I feel pessimistic as I see that this is the media trend for the future."

67. The government should request the media to receive comprehensive gender equality education and training, and establish a self-disciplinary committee: The Media Reform Alliance urged newspaper unions to establish a self-disciplinary mechanism but was not valued. Thus, government agencies should be responsible for requesting newspaper unions to include gender discrimination as an item of self-discipline.

68. We recommend that the NCC invite experts, scholars, and representatives of public interest groups that specialize in gender equality issues to participate in regular workshops or forums to facilitate television media providers to assess their perspectives, thus preventing them from intensifying social stigma and discrimination.

Significantly Insufficient Gender Equality Awareness in Teachers and Education in Classes

69. In response to Paragraph 188 on page 59 of the State Report, although the Ministry of Education has offered many in-service training courses and events to elevate educator's awareness of gender equality education, many teachers continue to express sexist comments in public[17], which indicates that Taiwan's educators have a poor understanding of gender equality education.

70. The cause of the problem is insufficient and ineffective gender equality education for educators. For example, the Ministry of Education subsidized courses on teaching sentimental education and gender quality education for 60 universities in 2015; however, Taiwan has more than 160 universities, which clearly indicates an insignificant amount of subsidies. Moreover, the Ministry of Education did not mention the subsequent development and effectiveness of the subsidized courses. The State Report also failed to mention the development, planning, and effectiveness of relevant courses in preschools, elementary schools, junior high schools, high schools, and vocational high schools. As these courses are not compulsory for all educators, a high proportion of participants regularly participated in different courses. For certain school departments, only

[17] A professor at the College of Medicine, Nation al Taiwan University once said during a lecture "why should girls study so hard? You're going to be married off one day anyway." During National Taiwan University's orientation, a teacher who taught gender equality stated that "boys should be outgoing, healthy, and masculine, whereas girls should listen to boys. That's how you'll be able to get a girlfriend or boyfriend." The Department of Mechanical Engineering, National Taiwan University directly quoted the Bible in this year's university entrance exam in an attempt to convince students that monogamy is the only natural form of marital relationships, and further describe other types of families as "exceptions that will not be further discussed." For further details, please refer to National Taiwan University Student Association's statement on the controversial question in the 2016 university entrance exam for the Department of Mechanical Engineering: https://goo.gl/G9mNmr

a few employees were assigned to regularly take part in these courses. As a result, many teachers continue to lack any concept of gender quality education. Finally, the Ministry of Education also exhibits a lack of the planning of in-service training courses. Many education units under the Ministry of Education hold or participate in almost identical sexual harassment and sexual assault prevention courses each year. Thus, even if educators participate in training courses on gender equality education, their perception of gender equality remains at the level of "sexual harassment is unacceptable," yet they are ignorant of basic concepts such as eliminating gender barriers, subverting gender stereotypes, and gender diversity. Teachers' ignorance and gender stereotypes, which lack gender awareness, are then passed on to students, thus creating substantial obstacles in gender equality education.

71. We suggest that the Ministry of Education must first recognize that it has made little effort in promoting gender equality education internally, determine the needed planning for in-service training courses based on practical education needs and the diversity of gender equality education, and then provide adequate subsidies and enforce all educators to participate in all basic gender equality courses.

Schools' Gender Equality Education Committees are Only Capable of Processing Sexual Harassment Cases

72. In response to Paragraph 68 to Paragraph 70 on page 11 and page 12, Paragraph 28 on page 13, Paragraph 80 to Paragraph 82 on page 29, and Paragraph 171 on page 39 of the Concluding Observations and Suggestions in First State Report on ICESCR and ICCPR, according to the Gender Equity Education Act, schools should establish gender equality education committees and proactively promote gender quality education-related affairs[18]. However, the gender equality education committees in most schools have only fulfilled the obligation of preventing and investigating sexual harassment and sexual assault, while the promotion of gender equality education is ineffective. In addition, it is also common for schools' gender equality education committees to overlook or ignore cases of sexual bullying in schools[19].

[18] Article 6 of the Gender Equity Education Act:
1. Integrate related resources in various departments of the school, draft gender equity education projects, and implement and examine the results of the projects.
2. Plan and implement activities related to gender equity education for students, staff, faculty, and parents.
3. Research, develop and promote courses, teaching, and assessments on gender equity education.
4. Draft and implement regulations on gender equity education and prevention of sexual assault and sexual harassment on campus, establish mechanisms to coordinate and integrate related resources.
5. Investigate and handle cases pertinent to this Act.
6. Plan and establish a safe and gender-fair campus.
7. Promote gender equity in family education and social education at a community level.
8. Other matters related to gender equity at school or community level.

[19] *Seventh-Grader with Gender Neutral Appearance is Sexually Bullied*, **Apple Daily**, October 18, 2015. (Link: http://www.appledaily.com.tw/appledaily/article/headline/20151018/36846897/); *Three Junior High School Students Given Demerits for Testifying Against Sexual Bullying, Legislator Yen-Hsiu Lee Criticizes the School for Closing the Case Carelessly*, **ETtoday**, July 22, 104. (Link:

73. There are two major causes to why schools' gender equality education committees are incompetent:

(1) The Ministry of Education requests schools to supply the funding and personnel for their own gender equality education committees.

(2) The Ministry of Education strictly requires schools to report cases of sexual assault, yet completely disvalues the planning, research and development, content, promotion, and review of basic gender equality education. The Ministry of Education has also failed to define in detail the definition of sexual bullying, suggestions on how to process relevant cases, and approaches to counseling. As a result, schools' gender equality education committees only pursue the minimum standard of preventing sexual harassment and sexual assault, and completely ignore other aspects of gender equality education.

74. We suggest the following:

(1) The government should subsidize schools' gender equality education committees with sufficient resources, abundant administration, professional personnel and funds, and clearly regulate the minimal amount of subsidies that should be applied to education, thereby enhancing basic gender quality education and to solve the root cause of the problem.

(2) The Ministry of Education should proactively participate in and subsidize the gender equality education plans proposed by schools' gender equality education committees. The Ministry of Education should include items such as the reduction of gender barriers, improvement of gender diversity education, prevention of gender bullying and discrimination, promotion of diverse families, and increase of schools' gender-friendly facilities in evaluations and perceive these items with the same importance as sexual harassment prevention. Furthermore, the Ministry of Education should strictly prohibit religious forces that are detrimental to gender equality education from entering schools.

(3) The Ministry of Education should limit the composition of members and further subsidize schools' gender equality education committees and prohibit the inclusion of members who are not professionals in gender equality education. Gender equality education committees should be further stratified and its functions clarified. Other units within the school must comply with the regulations of the gender equality education committee, thereby achieving gender mainstreaming.

(4) The points mentioned above can be employed via executive orders or the addition of enforcement rules for the Gender Equality Education Act,

---

http://www.ettoday.net/news/20140722/381116.htm)

thereby overcoming the difficulties of achieving gender equality on campus within a year or two.

Medical Power of Attorney for Same-Sex Couples

75. In response to Paragraph 330 of the ICESCR

76. Taiwan's Medical Care Act[20] endows the "interested party" with medical rights such as signing the letter of consent for anesthesia and surgery. According to the Ministry of health and Welfare's letter of interpretation, a same-sex partner is classified as an interested party in the Medical Care Act. As of 2015, a number of counties/cities in Taiwan have begun allowing same-sex couples to register as partners at household registration offices and claimed that registered couples could sign letters of consent at medical institutions as an interested party.

77. In actuality, partnership registration has not increased the right to medical decision making of same-sex couples. Medical malpractice has become a growing issue in Taiwan. From the perspective of civil law, an interested party has no right to claim compensation for the injury or death of a patient. From the perspective of criminal law, an interested party does not have the right to press charges. To self-preserve, most medical personnel are inclined to have family members with legal status to sign important medical documents even if a same-sex partner is present. To avoid lawsuits, certain hospitals even clearly specify the priority of family members with legal status over interested parties on letters of consent (no penalties apply to hospitals that refuse to have a same-sex partner to sign medical documents). This problem involves many different aspects, including visitation right, the right to be informed, the right to medical consent, and even medical power of attorney.[21] Under current conditions, same-sex partners are unable to participate in medical decision making. There are even cases where same-sex partners are excluded from the intensive care unit visitation list by the patient's original family, and only learned of their partner's death afterward. As of March 2016, only six municipalities in Taiwan allow partnership registration. Thus, the medical rights of same-sex couples dwelling in cities/counties that do not allow partnership registration are even more susceptible to violations. Furthermore, this problem is not exclusive to same-sex couples, it also affects other non-marriage based families such as single persons, the divorced, and cohabiting heterosexual couples.

78. The objective of the Patient Autonomy Act, promulgated in January 2016, was to provide actual legal status for medical agents. [22]Same-sex partners who cannot

[20] Article 63 to Article 65, Article 74, Article 75, and Article 81 of the Medical Care Act

[21] Please refer the Ministry of Foreign Affair's response on June 15, 2015 to an official document submitted by Attorney Victoria Hsu, CEO of the Taiwan Alliance to Promote Civil Partnership Rights (*Wai-Shou-Ling-Er-Zi-Di* No. 1055120732).

[22] The Hospice Palliative Care Act states that when the expression of the decision maker's will becomes impossible, the medical agent can assist the patient in signing documents on whether to choose hospice palliative care or to use life support treatment. If the decision maker does not have a medical agent, only a

assist the patient in signing letters of consent at the medical site due to a lack of legal identity can quote the Patient Autonomy Act and self-appoint as a medical agent, thereby assisting the patient in signing letters of consent or executing pre-established medical decisions. However, when a same-sex partner's opinions differ from that of the patient's original family members, the hospital might prioritize the original family members' opinion to avoid being sued. Thus, same-sex partners might still not be able to effectively execute their right as a medical agent due to the absence of legal status.

79. Article 10 of the Patient Autonomy Act[23] states that if a same-sex partner becomes a medical agent, he/she will be excluded as the patient's legatee and beneficiary, which makes medical power of attorney and the right to receiving estate and insurance mutually-exclusive, leaving same-sex couples with only one of the two options.

80. Specific Suggestions:

(1) To avoid differences between the medical rights of same-sex families and that of families based on heterosexual marriage, government agencies should proactively resolve problems pertaining to the violation of medical rights, such as medical institutions refusing same-sex couples to sign letters of consent.

(2) Regarding the Patient Autonomy Act,

a、specific regulations should be established to state that medical agents have equal priority as the patient when making medical decisions. As for the priority of other legal family members, patient autonomy should be considered, thereby creating a comprehensive medical decision-making status for same-sex couples.

b、Amend the criteria for medical agents in the Patient Autonomy Act to prevent same-sex families from having to choose between the right of legatees or the right of beneficiaries.

Same-Sex Couples' Reproductive Autonomy

81. In response to Paragraph 330 of the ICESCR

---

family member with legal status can sign letters of consent. However, Article 10 of the Patient Autonomy Act expanded the power of attorney for medical agents. Originally, medical agents were only able to decide whether to choose hospice palliative care or life support treatment. This decision now includes receiving medical inform, signing letters of consent, and representing the patient in expressing his/her medical intent according to pre-established medical decisions. The Patient Autonomy Act is estimated to take effect three years following its announcement.

[23] Paragraph 2, Article 10 of the Patient Autonomy Act: Except for the heir to the decision maker, the following persons shall not act as medical agents for the decision maker:
1. The legate of the decision maker
2. The designated donee of the decision maker's body or organs
3. Persons who benefit from the decision maker's death.

82. The Second State Report on the ICCPR did not mention issues related to the reproduction of same-sex couple, which indicates that Taiwan's government has completely ignored this subject.

83. Currently, the Artificial Reproduction Act is centered on providing artificial reproduction technology for infertile heterosexual couples. Severe penalties are employed for violations, such as revoking physicians' license to practice. As same-sex marriage is not yet legalized in Taiwan, same-sex couples are excluded as users in the Artificial Reproduction Act. In other words, the Artificial Reproduction Act is a law that discriminates against families that are not based on a marital relationship.

84. Regarding surrogacy, which may be relevant to male same-sex couples, the government only referred to Item 16.33 and Item 16.35 of the Second State Report on CEDAW and stated that as consensus is yet to be reached on this issue and to respect the opinions of all parties, the government will conduct a poll and reference various information for formulating a draft bill.[24] However, the government has not taken any action on reviewing the surrogacy system since the completion of the review of the Second State Report on CEDAW. When it comes to human right issues, the government should not use means such as polls to establish evidence that supports its discourse and rational. The government should adopt the ideology behind the Two Covenants, which is to protect and maintain equal rights for minorities and disadvantaged groups.

85. Article 12 of the Artificial Reproduction Act states that where the implementation of artificial reproduction involves the recipient couple's acceptance of sperm donated by a third party, the performing medical care institution shall obtain the husband's written consent. That is, if a woman decided to conduct oocyte cryopreservation prior to marriage and later got married, her husband must provide written consent before the oocyte can be extracted and used in the future. If a woman is not in a marital relationship, she cannot receive artificial reproduction. Hence, the Artificial Reproduction Act is discriminative and deprives women of their personal autonomy.

86. Taiwan's families that are not marriage-based are completely excluded from the Artificial Reproduction Act. Thus, alternative families are forced to use the transnational medical system to reproduce. Traveling to countries such as the U.S. or Canada for their technology is economically[25] burdening and time-consuming. Furthermore, couples who do so must assume the high risks of receiving transnational medical care.

[24] Item 16.33 of the *Second State Report on CEDAW* is a conclusion reached during the 2012 Consensus Conference on Surrogacy. Item 16.35 of the *Second State Report on CEDAW* indicates that the government believes that different parties have not reached a consensus on the issue of surrogacy.

[25] Comparing domestic and international costs of artificial reproduction, a single procedure in Taiwan costs between NTD $10,000 and NTD $100,000 (costs vary depending on the difficulty of the technique), and a single procedure abroad costs between NTD $300,000 to NTD $1 million (not including travel expenses).

87. From 2014 to 2015, a same-sex family that had a child via transnational artificial reproduction filed a lawsuit to enable their child to enjoy comprehensive legal rights and protection. The family claimed that same-sex families should share custody, yet their case was overruled by the court for discriminative reasons. [26]

88. Specific suggestions:

(1) The Artificial Reproduction Act should be amended to expand the applicable subjects beyond "those who are infertile" and "husband and wife" (i.e., families based on marriage), thereby allowing alternative families to also use artificial reproduction technology.

(2) Taiwan's government should ensure equal reproductive care for all women in Taiwan and strive to reduce cases in which women are forced to resolve reproductive obstacles by seeking transnational medical care. [27]

(3) Regarding surrogacy, the government should continue to communicate with the public rather than use polls to resolve human rights issues.

(4) The government should consider the best interests of the child, as stated in the Convention on the Rights of the Child, and recognize the parental rights of the parents (the parent who are not related to the child by blood) of children who were artificially reproduced by same-sex families, thereby ensuring comprehensive legal rights for same-sex families.

The Rights of Diverse Families and Same-sex Partners

89. This report provides responses and supplementary comments to points 327 to 330 in the 2nd State Report on ICCPR and the concluding recommendations adopted by the international group of independent experts in the 2nd State Report on CEDAW.

90. Based on points 78 and 79 of the concluding recommendations adopted by the international group of independent experts in the 1st State Report on ICCPR & ICESCR on March 1, 2013, which specifically point out that:

(1) Taiwan's current laws do not protect marriage equality (same-sex marriage) or cohabitation rights for same sex or different-sex couples, which is deemed discriminatory.

[26] Taiwan LGBT Family Rights Advocacy and Attorney Yen-Jong Lee filed a lawsuit against the court. Although social workers deemed the family capable of raising the child, the court of first instance overruled the same-sex couple's adoption request because society has not reached a consensus on same-sex marriage, because the children of these families will become the subject of public opinion. The judge in the second instance court also stated that de facto marriages refer to the union of a man and a woman; thus, laws on stepchild adoption are not applicable to same-sex families.

[27] Taiwan is a signatory of CEDAW. The General Comments No. 24 of CEDAW requires States to eliminate discrimination against women in their access to health-care services throughout the life cycle, particularly in the areas of family planning, pregnancy, and confinement and during the post-natal period.

(2) The Experts recommend that Taiwan's government amend the Civil Code to give legal recognition to the diversity of families in the country.

(3) The Experts remind the Taiwan Government that the protection of human rights of all should not be made contingent on public opinion.

91. Point 33 of the concluding recommendations adopted by the international group of independent experts in the 2nd State Report on CEDAW, on June 26, 2014 specifically points out that:

(1) The Review Committee is concerned at the lack of legal recognition of the diversity of families in the country and that only heterosexual marriages are recognized but not same-sex unions or cohabiting partnerships. This is discriminatory and denies many benefits to same-sex couples or cohabiting partners. Thus, the Experts recommend that the Civil Code be amended to protect the diversity of families in the country. (Note: this recommendation is the same as the above recommendation from the Review Committee in the 1st State Report on ICCPR & ICESCR.)

(2) The Review Committee is also concerned about the lack of statistical data on all cohabiting households and same-sex household. The Review Committee specifically recommends that steps to be taken to collect and collate data on all unregistered unions and provide the information in the next State Report.

92. Nevertheless, the Taiwan government has failed to correct the deficiencies of human rights as mentioned in the Experts' concluding recommendations until now, and has even worked against the recommendations in certain cases as listed below:

(1) The Ministry of Justice denies that "the lack of legal recognition of the diversity of families in the country in which only heterosexual marriages are recognized but not same-sex marriages or cohabiting partnerships is discriminatory." The Taipei City government sought a constitutional interpretation regarding whether Taiwan's Civil Code violates the Constitution by restricting marriage to heterosexual couples in July 2015. However, the Ministry of Justice concluded that marriage as recognized in the Constitution is limited to an agreement to marry made between one male and one female party. Same-sex marriage is thus neither a fundamental human right in the Constitution and the absence of regulations regarding same-sex marriage does not constitute a violation to the Constitution. The Ministry of Justice stated that the regulations regarding marriage as stipulated in the Civil Code have not violated the Constitution and provided their legal opinions for the Executive Yuan's reference. While the Executive Yuan did send the request for constitutional interpretation submitted by Taipei City Government to the Grand Justices for review, the Ministry of Justice's comments justifying the lack of legal protection of same-sex partners as not violating the Constitution, and denying the discrimination and social exclusion that result from it has demonstrated the authority's lack of sensitivity to such issues, which is especially troubling.

(2) The Ministry of Justice still tried to use public opinion as a condition for granting human rights protection and even had made contradictory remarks regarding the results of the public survey on same-sex marriage despite the fact that the survey

was initiated by the Ministry of Justice itself. The Ministry of Justice only quoted survey results when the results were considered in line with its position and used such results as grounds to postpone the amendment to the Civil Code. For example, the Ministry of Justice conducted an online poll on legalizing same-sex marriage on August 3, 2015, disregarding the concerns and concluding recommendations as expressed by the Experts; and the results showed a majority in favor of legalizing same-sex marriage. To many people's surprise, the Ministry of Justice conducted a further phone survey to obtain new results and used these results as a ground for postponing the amendment to the Civil Code. Based on the results of the phone survey in December 2015, the Ministry claimed that "the public opinion is divided on the form and ways to protect same-sex partners" (see Point 329 in the 2nd State Report on ICCPR) and thus the amendment to the Civil Code was further delayed on grounds that there was not sufficient social consensus. Under such circumstances, the Ministry of Justice claimed to initiate amendments in "two phases" in point 329 of the 2nd State Report on ICCPR. This is unreasonable in terms of the time consumed and costs incurred to adopt two-phase amendments instead of directly amending the Civil Code to allow same-sex partners to marry. The Ministry of Justice has never provided convincing statements to justify the two-phase amendment approach which violates the principle of substantive equality for same-sex partners.

(3) The Ministry of Justice has continued to refuse to amend the Civil Code to include clauses to protect LGBTIQ partners right to marriage as well as heterosexual couples the right of cohabitation.

a、The marriage/family institution is regulated by the Civil Code in Taiwan. There are no technical difficulties in amending the Civil Code to include the rights to marry for the LGBTIQ, which would help realize the principle of equality (we believe that "separate is not equal"). In the previous legislative term, there were already two proposed bills to amend the Civil Code regarding marriage equality (same-sex marriage); however, even after the new government took office, the Ministry of Justice continues to use stalling tactics and fails to give reasons for not amending the Civil Code. It has once again outsourced a research on a "special law" to govern the rights of same-sex partners in June 2016. The lack of a substantive reason for the Ministry of Justice to sponsor further research that aims to draft a "special law" on the basis of segregated legislation and the absence of a specific timetable for the legislation of same-sex marriage are clearly just further avoidance and delay in fulfilling the principle of substantive equality. We'd like to voice our strong opposition and protest the "segregation policy" and continued stalling strategy by the Ministry of Justice. In addition to the inaction of Ministry of Justice, the current opinions upheld by the Ministry of Foreign Affairs also prohibit legal same-sex partners that registered their marriage overseas from filing for long-term residency in Taiwan as spouses, which has greatly undermined the rights to reunite for transnational same-sex couples/families.

b、The current laws in Taiwan only protect "heterosexual marriage between a man and a woman" while cohabiting heterosexual couples do not have any substantive legal protection. These families exist, but like same-sex partners, they are provided no legal protection in terms of the rights of property, tax,

labor, social welfare, litigation status, acting as agents for each other in daily household matters and many other areas.

(4) To add further context to the above, many local governments have begun to accept civil partnership household registration for same-sex partners, but this household registration does not carry legal weight as the legal status of spouses. Rather this registration only serves to establish identity in rare circumstances (for example, the permission of same-sex couple's visitation rights and the right to make medical decisions for each other; or the right to take "family care leave" as regulated in the labor laws). However, the rights derived from the household registration are a far cry from the rights enjoyed by legal spouses in Taiwan, that is, the household registration is neither a synonym to marriage nor does it solve the problems and discrimination faced by same-sex partners every day in terms of social and legal aspects. In addition, the household registration is restricted to same-sex couples but not heterosexual cohabiting couples, thus continuing the lack of legal protection for heterosexual cohabiting couples that are not yet in a marriage.

(5) There is currently a lack of statistical data on all unregistered unions. Even though the Review Committee of CEDAW specifically requested the inclusion of such data in the next State Report, the Taiwan government has failed to collect and collate the data to date.

(6) We believe that there are strong reasons for the government to conduct a census regarding sexual minority and unmarried cohabiting families: it is by referring to a reliable data source that sexual minority and unmarried cohabiting families can be included in the Sustainable Development Goals (SDGs) and other human rights categories and we can correctly identify the influence on the income, safety, education, health, domestic violence and migration that result from the stigmatization and prejudice against sexual minority and unmarried cohabiting families. This will also help us understand and define the preferences and life goals, evaluate the efforts that should be devoted by the government to realize the human rights of sexual minority and unmarried cohabiting families and the effectiveness of the plans (if any) put forward by the government as well as the fair distribution of the resources devoted.

(7) The lack of legal protection for same-sex partners and unmarried (heterosexual) cohabiting partners under current laws violates Articles 2.1, 2.2, 23.1, 23.2 and 26 of the International Covenant on Civil and Political Rights (ICCPR).

93. The violation stated above is, in our opinion, resulted from the idleness of administrative departments and Legislative Yuan (parliament), which is the result of a lack of political will of those in power to provide equal rights to same-sex partners and cohabiting couples. To get to the bottom of the issue, the government should seriously acknowledge that "the lack of legal recognition of the diversity of families and that only heterosexual marriages are recognized but not same-sex marriages or cohabiting partnerships is discriminatory and a denial of human rights." Based on the acknowledgement, the government should further proceed to collect and collate statistical data on sexual minority and unmarried cohabiting families and to amend the Civil Code accordingly.

Improper Police Searches of Individuals and in Popular Destinations for Gay Persons

94. ANIKI, a gay sauna in Taipei City, was searched 85 times in 2015 by the same police department, which equates to an average of 7 searches per month. On average, each search was conducted by more than 12 police officers. The number and scale of inspections at ANIKI significantly exceeded that of similar businesses, which are also generally highlighted in police searches. Other popular gay venues around Taiwan have exhibited similar situations on different levels. This indicates that the government uses its public authority to violate the privacy (Article 17 of the ICCPR) and the right to equality (Article 2 and Article 3 of the ICCPR) of gay businesses and gay persons.

95. The Police Power Exercise Act came into effect in 2003. The act includes regulations on criteria for conducting police searches, measures for verifying citizens' identification, and responses to citizens' objections and complaints. The objective of these regulations is to regulate the government's use of public power and to safeguard citizens' rights. Although ANIKI was listed as a key location for police searches, no significant criminal cases were uncovered during 2015, which sufficiently proves that the polices' claims of criteria for conducting searches are non-existent. The true reason for frequent searches is discrimination against the LGBT community.

96. During the searches, ANIKI's employees and customers were repeatedly mocked and threatened for their sexuality. [28] In a coordination meeting held with residents in living in the community where ANIKI was located, the police showed many photos taken during the searches of condoms littered on the floor of the sauna to residents. The police's objective was to connect gay people with various stigmas, such as sex, AIDS, and crime. Stigmatization is a typical form of manipulation that stems from discrimination. This case demonstrates a difference in law enforcement caused by discrimination, and the violation of the right to equality and privacy, which directly violate Article 3 of the ICCPR. The business in question was repeatedly violated by public authority and filed numerous complaints according to relevant law, yet never received a proper response. This indicates that the complaint mechanism is ineffective and

[28] According to internal documents of the coordination meeting held in Taipei City, the business in question stated that police officers used inappropriate language during the searches, such as "You say you're a legal business? You know very well what you're into," "this place is so filthy, who knows what goes on in here," "a search is a search, there doesn't need to be a reason," and "it looks like you've never seen a place go out of business because of police searches!" In this coordination meeting, which was held on January 26, 2016, the police department of this jurisdiction included dozens of photos of "condoms littered all over the floor," which was used by the police to justify an increase in searches due to safety concerns caused by frequent gay sex in the business in question. For the meeting, meeting notice, official document numbers and internal meeting documents, please refer to the appendices. For the video of the interpellation, please see: https://www.youtube.com/watch?v=PkrM-03oeCM&feature=youtu.be. The police department of the jurisdiction (Datong District Police Department) states that when conducting a search on February 7th, 2015, a small amount of illegal drugs was found on five gay customers, which is why the business in question was listed as a key location for police searches.

insufficient for protecting citizen's rights from being violated by public authority or resorting citizens' rights after they have been violated.

97. We suggest that both the central and local government should establish a set of clear and transparent regulations, review, and complaint mechanisms regarding the cause, number, frequency, method, and the process of police searches. These mechanisms should not be established solely by the police; rather, representatives of disadvantaged groups whose rights are easily violated by improper law enforcement should be allowed to participate. These groups include the LGBT community, women, migrant workers, marriage migrants, and people with physical and psychological disabilities. By separating the establishment and the enforcement of regulations, unjust law enforcement is prevented. After establishing a regulatory mechanism, aside from passively conducting regular reviews of police searches, the government should also ensure that compliant channels are plentiful and effective. Furthermore, the government should provide LGBT and gender equality education during the cultivation and in-service training of police officers, thereby proactively eliminating stigma and discrimination against the LGBT community.

The Criminalization of HIV/AIDS

98. On the surface, the objective of the HIV Infection Control and Patient Rights Protection Act is to protect the rights of carriers. However, the act contains articles that criminalize HIV/AIDS and punishes unaccomplished offenders (Article 21). As the State Report failed to mention controversies regarding amendments to this act,[29] Taiwan Tongzhi Hotline Association believes that it's important to highlight that this act severely violates the rights of carriers. The act also violates the ICCPR's statement that all persons are equal before the law, the ICCPR's anti-discrimination ideology, and the presumption of innocence (Article 26, Article 2, and Article 14).

99. Article 21 of the HIV Infection Control and Patient Rights Protection Act was stipulated with the concept of HIV/AIDS as being different from other forms of infectious diseases, and the penalties are equivalent to that of aggravated assault. In addition, Article 21 further penalizes unaccomplished offenders. In other words, whether or not an infection to another person is caused, the carrier is seen as guilty. In actuality, as of March 21, 2016, defendants in 17 cases in Taiwan were found guilty under the act, yet no infections were caused in 13 of these cases. Additionally, the plaintiffs in two of the cases were also carriers. Despite prolonged legal proceedings, the plaintiffs were unable to prove that

[29] The Persons with HIV/AIDS Rights Advocacy Association of Taiwan comprises numerous HIV/AIDS groups and gay groups, among which Taiwan Tongzhi Hotline Association is also a member. The HIV Infection Control and Patient Rights Protection Act has been renamed and undergone numerous amendments over the past 20 years. In recent years, the HIV Infection Control and Patient Rights Protection Act is more centered on education and the protection of rights. However, despite the protests of private groups that advocate for legal amendments, the Center of Disease Control refused to abolish this law during the latest amendment (2014) on the grounds of public health and disease prevention.

they were infected by the defendants.[30] In "unaccomplished" cases, whether parties concerned are carriers is not an attendant circumstance that constitutes a case. Thus, many cases are constituted based on the definitions of unsafe sex as announced by the Center of Disease Control.[31] Thus, if carriers engage in unsafe sex, they are unanimously seen as unaccomplished offenders regardless of the level of risk for infections. This definition is overly vague and deviates from international medical trends on HIV/AIDS.[32] If a judge has little medical knowledge on HIV/AIDS, he/she will adopt the interpretations announced by competent authorities for determining risky behavior,[33] which often leads to judgments that put carriers at a disadvantage.

100. According to the International Guidelines on HIV/AIDS and Human Rights published by United Nations Programme on HIV/AIDS (UNAIDS), [34] criminalizing HIV/AIDS is not only ineffective towards prevention but also causes people to refrain from getting tested or seeking medical attention. Placing complete responsibility of engaging in safe sex on HIV/AIDS carriers can also cause stress among carrier communities. According to our practical experience, non-carriers who terminated a relationship with carriers sometimes take advantage of this act and file lawsuits as a form of emotional outlet. As relevant laws are detrimental to HIV/AIDS prevention, decriminalizing HIV/AIDS has become an international trend.[35]

101. Conclusions and suggestions: The UN's the International Guidelines on HIV/AIDS and Human Rights clearly states that criminal and/or public health legislation should not include specific offenses against HIV/AIDS. Thus, the stipulation of specific offenses against HIV/AIDS clearly violates the principle of quality under various international law human rights and further violates Article 26 of the ICCPR, which dictates that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In

[30] Data was collected from courts of various levels up to March 21, 2016.

[31] *Shu-Shou-Ji-Zi-Di* No. 0960001319, Ministry of Health and Welfare, Executive Yuan (January 10, 2008): Unsafe sex refers to the direct contact of mucosal tissue or the exchange of bodily fluids without the use of protection during sexual behavior that is medically determined as possible of spreading HIV.

[32] In recent international discussions on HIV/AIDS infections, it has been determined that aside from unprotected sex, viral load is also a critical factor that affects the risk of infection. If a carrier takes regular medication, the viral load can be reduced to a minimum that is undetectable and thus not infectious. Under these circumstances, the occurrence of unprotected sex should not be used to determine the risk of contracting HIV/AIDS. For relevant discourse, please refer to data published by the WHO in 2012 (Link: http://apps.who.int/iris/bitstream/10665/70904/1/WHO_HIV_2012.12_eng.pd).

[33] Although a carrier performing oral sex on a non-carrier is deemed as low-risk behavior, the 2014 Criminal Court Judgment *Su-Zi-Di* No. 8 of Taiwan Chiayi District Court shows that the judge found the defendant guilty on the grounds of "direct contact with mucosal tissue or the exchange of bodily fluids without the use of protection during sexual behavior is medically determined as possible of spreading HIV."

[34] International Guidelines on HIV/ AIDS and Human Rights, HR/PUB/06/9. The guidelines, a collection of resolutions reached by the United Nations Human Rights Council, were promulgated after being reviewed by the United Nations General Assembly. The guidelines were established based on all current international human rights mechanisms.

[35] Including the UNAIDS's 2013 policy recommendations.

recent years, the UN has recommended signatories of the Two Covenants to review their criminal law and decriminalize HIV/AIDS. Thus, we suggest that Taiwan's government should immediately delete laws regarding intentional infection, that is, Article 21 of the HIV Infection Control and Patient Rights Protection Act.

Those with Multiple Identities

102. Those with multiple identities refers to people who are simultaneously gendered disadvantaged and social disadvantaged, such as a gay person who has a mental disorder. The State Report failed to mention the rights of those with multiple identities.

103. The government has an insufficient understanding of those with multiple identities and further dissociate disabilities from gender identity, or misbelieve that gender identity leads to disabilities. For example, the government may perceive that the sexual orientation of gay people with early psychosis is caused by their mental disorders.

104. Currently, Taiwan's laws (e.g., People with Disabilities Rights Protection Act) do not protect those with multiple identities. Thus, both support systems and services neglect those with multiple identities. For example, a gay person with a mental disorder can only receive services for mental disorders, yet has no means to express that sometimes factors that trigger the onset of the mental disorder are caused by their identity as a gay person. Even when establishing a support system, the government continues to disregard new forms of services and views multiples identities separately, which indicates a neglect of the uniqueness of multiple identities.

105. We suggest that:

(1) the People with Disabilities Rights Protection Act should be amended to include those with multiple identities and

(2) new forms of services be included in extant support systems for those with mental disorders.

Anti-Discrimination Clauses Under the Immigration Act

106. Item 27 of the 2012 First State Report on ICCPR, which details the review of complaints of discrimination, and the 2015 Second State Report on ICCPR[36] indicate the government has not effectively enforced the anti-discrimination clauses under the Immigration Act. In other words, these clauses are seen as mere references and have not been examined in detail. In the past, the Anti-Discrimination Team of the National Immigration Agency often dismiss complaints on the grounds of "the complainant is not a party concerned,"

[36] *Initial State Report on ICESCR and ICCPR* (Link: http://ppt.cc/sXi7O)

"unable to determine if the complainant's rights have been violated," and "the complaint subject's cognition and strong perceptions are protected under freedom of speech.[37]" This indicates that the current review mechanism has an overly narrow interpretation of factors that constitute discrimination, and completely overlooks the damage that hate speech inflicts on victims and groups of discrimination.

107. In addition to the incompetence of the anti-discrimination clauses of the Immigration Act, other regulations that protect the principle of equality are scattered in various specific regulations. No special laws exist to uniformly prohibit all forms of discrimination that individuals and groups must bear.[38] These problems violate the anti-discrimination ideology of Article 2 of the ICCPR[39].

108. We suggest the government to stipulate a special anti-discrimination law that includes practical penalties, which can effectively amend damage caused by discriminatory speech or behavior. In addition, sensitivity training on quality should be enhanced for future agencies responsible for reviewing discrimination complaints, because while safeguarding freedom of speech, review units cannot ignore the power relations between advantaged groups and disadvantaged groups. Finally, the government should proactively promote social education that elevates quality, thereby fulfilling the vision of protecting human rights.

Live News Streaming on the Internet Challenges Media Self-Regulation

109. Regarding the promotion of gender quality in broadcast media as stated in Paragraph 43 of the State Report, aside from the various government-established consultation mechanisms on producing and broadcasting gender issues, many media self-regulation mechanisms are provided by media transformation groups, such as the Media Reform Alliance, the Campaign for Media Reform, and Taiwan Alliance for Advancement of Youth Rights and Welfare. The development of Taiwan's media self-regulation is attributed to the thriving media transformation civil movement and the establishment of various laws and regulations; hence, different types of self-regulation mechanisms have been established for various types of media, such as cable television, public media, printed media, and online media. The Media Reform Alliance has received at least 120 complaints in the past four years from various self-regulation mechanisms. The most common types of news that receive complaints are, in sequential order, "news on bloody or violent events (20%)," "news on harm to children and youth (18%)," "news on sex and nudity (13%)," "news on sexual assault and sexual harassment (12%)," and "news on crime

[37] The Ministry of the Interior's Decision on the discrimination complaint filed by the TransAsia Sisters Association, Taiwan (TASAT) in 2011 (Link: http://ppt.cc/kqTXM)
[38] Transcript of the public hearing held on the legislation of the Anti-Discrimination Act (Link: http://ppt.cc/44cZi)
[39] *International Covenant on Civil and Political Rights* (Link: http://ppt.cc/atBk8)

(12%)." The top three causes of complaints are "overly details description of the crime (25%)," "the violence and bloodiness causes discomfort (23%)," and "a violation of the concerned party's privacy (20%)." Among different aspects of news reports, "news photos" receive the highest proportion of complaints at 30%, followed by the content of the report (20%). Under these conditions, media self-regulation mechanisms serve as a safety valve for the media. When the media inappropriately invades people's privacy, consumes crimes and the crime process, fails to fulfill its responsibility of providing balanced reports, encourages public trails, labels specific subjects, shows inflammatory content, and causes social opposition for boosting ratings and hits, media self-regulation mechanisms can be launched to control and review the reported content. Thus, media self-regulation mechanisms can request the media to carry out due diligence, provide balanced reports, maximize public interest, and practice media professionalism that emphasizes empathy and gender sensitivity, thereby reducing harm and protecting the human rights and respecting the privacy of disadvantaged groups.

110. However, no number of media self-regulation mechanisms and relevant laws and regulations can accommodate the rapid development of new media. In an era of digital streaming, all media are seeking greater space for development. With the lead of Apple Daily, many news companies have now developed live news streaming on the internet. To rapidly release the latest news and to maximize hit rates, the production process of new is shortened. As a result, editors are unable to adequately screen news content. Hence, the internet is littered with news that is full of gender discrimination, exaggerated, and lacks verification. A large supply of news stores results in a content farm. Thus, the greatest challenge that currently exists for medial self-regulation mechanisms is live news streaming on the internet, a form of news reporting that is solely centered on speed and no longer values interviews, verification, and screening content, which has degraded the professional standards and value of news.

111. To prevent Taiwan's media environment from further deterioration, we suggest the following:

(1) Focus on elevating the influence of non-mainstream media, such as public media, independent media, social media, and self-media.

(2) When facing self-regulation crises and challenges brought by live news streaming on the internet, competent authorities responsible for managing the media the media itself should address the chaos caused by live news streaming on the internet and enhance the screening functions of media self-regulation mechanisms. The NCC and the Ministry of health and Welfare should assume responsibility as competent authorities and urge Taipei Newspapers Association's Children and Youth in the News Self-disciplined Committee and Institute of Watch Internet Network to collaborate and establish self-regulation mechanisms for news complaint

reviews according to Article 45, Article 46, and Article 46-1 of the Protection of Children and Youths Welfare and Rights Act.

Article 6 The Right to Life

National Policy on Capital Punishment

112. Response to 66 and 67 of the ICCPR Secondary Report. 56 of Concluding Observations and Recommendations suggested that "Taiwan intensify its efforts towards abolition of capital punishment and, as a first and decisive step, should immediately introduce a moratorium on executions". However, neither the ICCPR Secondary Report, its Concluding Observations and Recommendations, nor the actions of the government have shown any concrete policies, measures, research or work timeline have been dedicated to reaching this goal within the past 3 years. Contrastingly, the government have continued to use public support as an excuse to continue capital punishment whenever a serious criminal case draws media attention. This shows the government does not understand nor respect its duty to uphold the values of the ICCPR.

113. The 2014 survey conducted by Academia Sinica (A survey on public attitudes and opinions towards the death penalty and related issues), for which 2039 people were interviewed, shows that 85% of the public oppose repealing the death penalty. However, after more careful observation it becomes apparent that when the public are given more information about the death penalty, including its systematic flaws, they become more inclined towards abolition. Also, if other options are given, whether life imprisonment without parole or a life sentence with the potential for release, the public will be less inclined to support the death penalty.

	Do you support abolishing the death penalty?	Would you support the death penalty being replaced with life imprisonment or a life sentence with the potential for release after a mandatory 25 years and good behavior, if the rate of recidivism was low?	Would you support the death penalty being replaced with life imprisonment without parole, with the offender working in prison to support victims' families?
Yes	12%	41%	71%
No	85%	55%（only 17% strongly oppose）	27%

114. Response to 68 of the ICCPR Secondary Report. In 2009, Minister of Justice Wang Ching-feng invited representatives from civil society and researchers to establish the "Research and Implementation Group on the Gradual Abolishment

of the Death Penalty (The Research and Implementation Group or The Group)" to meet the requirements of the covenants.[40] On December 22nd, 2012, the Ministry of Justice announced "We have always stood for 'performing administrative duties according to the law' when it comes to the death penalty and have absolutely never publicly promised abolition or 'ending the death penalty'." Several members of the Research and Implementation Group openly accused the Ministry of Justice of lying and therefore resigned from the Group on December 25th, 2012. We suggest the government restart The Group and invite suitable experts to participate.

Victims

115. Response to 68 of the ICCPR Secondary Report. The Research and Implementation Group agreed to prioritize the strengthening of victim protection, yet since December 2012, there has been no action regarding this resolution, nor any further meetings of The Group.

116. Besides the suggestion of restarting the Research and Implementation Group, the Ministry of Justice, the authority in charge of crime victim protection matters, should draft a national blueprint for victim protection policy. They should actively work on a system to console and compensate victims and to set up a case management system. They should assist the integration of related resources and ensure appropriate services and support are offered for the many, diverse needs of victims. They should continue to practice restorative justice for victims and offenders, and specify tactics for educating and training justice practitioners (including police). The crime victim protection implementation services should fulfill victims' right to information and inform them of their other rights and the litigation process, to decrease the gap between victims and their case information.

Unjust Cases

The Cheng Hsing-tse Case

[40] The Ministry of Justice invited experts, NGO representatives and government officials to establish the "Research and Implementation Group on Gradual Abolishment of Death Penalty" in 2010. The first two key goals were, as explained: "For effective policy on gradual abolition, and to reach the end goal of complete abolition, the Ministry of Justice plans to establish the "Research and Implementation Group on Gradual Abolishment of Death Penalty" as a permanent. "The two covenants and the Act to Implement the ICCPR and ICESCR have been passed by the Legislative Yuan and the covenants have been ratified by the President. Abolishing the death penalty is at the core of protecting human rights. To make strides towards it, our policies must actively promote abolition, the permanent research group must be established, there must be mechanisms to actively promote abolition, we must encourage other ministries to implement supporting measures, we must receive the recognition of the public and victims groups, achieve our end goals, follow the international trend of abolition and start implementing a human rights safeguard." These are the primary intentions of the Research and Implementation Group and the reasons why the members of civil society wish to participate in it. (http://www.taedp.org.tw/story/2432)

117. Response to 63 of ICCPR Secondary Report. Aside from the problems raised by NGOs with Cheng Hsing-tse's case, in 2014 the Control Yuan conducted an investigation that concluded Cheng had confessed under torture. When the pro bono lawyers requested a retrial from the high court, the judge who tried the second hearing and sentenced Cheng to death made the decision on whether to open a retrial or not. The judge did not recuse himself and furthermore rejected the plea, highlighting a constitutional problem of the recusal of a judge with the retrial procedure.

118. In March 2016, a prosecutor of the Taichung High Prosecutor's Office requested a retrial for Cheng Hsing-tse on grounds of new forensic evidence. The pro bono lawyers also filed a retrial, which set a historical record for both sides professing the accused to be innocent. The Taichung high court confirmed Cheng would be given a retrial on March 2nd, and the next day the Taichung High Prosecutor's Office announced detention would not be necessary, allowing him to finally be released after 14 years. Another retrial is currently being processed by the high court of Taichung.

The Chiou Ho-shun case

119. Chiou Ho-shun was accused of involvement in the Lu Zheng and Kehung Yu-lan murder cases of 1988. There was no evidence to convict Chiou, other than his confession obtained under torture, and no way to refute his alibi. The officers that tortured Chiou were convicted in 1998, yet after 23 years in detention, Chiou was still given the death sentence in 2011. 57 of Concluding Observations and Recommendations specifically mentions Chiou Ho-shun, pointing out "the death penalty must never be imposed on the basis of a confession extracted by torture, as in the cases of the Su Chien-ho trio or of Chiou Ho-shun… The Experts strongly recommend the commutation of the death sentence in all such cases." In 2015, the police officers who witnessed the torture also testified that Chiou was innocent, yet up to this day all special pleas have been rejected by the court. The Prosecutor-General, Yen Da-ho, filed an extraordinary appeal for Chiou on July 15th, 2016 and the Supreme Court has not made a decision yet.

The Hsieh Chih-hung Case

120. In 2000, there was a double murder case in Tainan. The police arrested Kuo Jun-wei and Hsieh Chih-hung, and found the murder weapon and victim's phone in Kuo's house. However, Hsieh's fingerprints were not found on the murder weapon, nor were the victim's bloodstains found in his car or on any of his clothes. No scientific evidence has been found to convict Hsieh of the crime. Hsieh "confessed" to the double murder and sexual assault of the female victim at the police station, however, forensic reports indicate that no evidence pointed to Hsieh sexually assaulting the female victim. Once out of police monitoring, Hsieh wholly denied his guilt and furthermore admitted to being tortured. To confirm whether he had been tortured or not, the court requested a recording of

the police interrogation, but the recording had purportedly been lost. In the end, the court still used Hsieh's confession to convict him and sentenced him to death in 2011. Special appeal measures taken by the lawyers have still not been accepted by the court or the Grand Justice. Hsieh's pro bono lawyers have pleaded seven times for the Prosecutor-General to make extraordinary appeals, yet all were rejected. There have also been three appeals to the Grand Justice for a constitutional interpretation, all of which have been rejected. A fourth request is still being processed by the Grand Justice of the Judicial Yuan. Meanwhile, this case was sent to the Control Yuan for further investigation.

121. In March 2016, the Ministry of Justice issued a press release stating that the Prosecutor's Office of the Supreme Court would establish a working group for special appeals in death penalty cases. This was for confirmed yet highly disputed death penalty cases to be thoroughly checked through. The NGOs hold the establishment of this group in high regard, but suggest before establishing a group for emergency reassessment of death penalty cases, there should be consultation with the NGOs and the academics. The function of the group and to what standards such highly disputed cases will be reviewed should be explained clearly. The group must understand the demands of the ICCPR clearly before proceeding with re-examinations. The cases of Chiou Ho-shun and Hsieh Chih-hung must also take priority.

Amnesty Act plea procedure and the review mechanism

122. Although granting amnesty or commutation are administrative powers, the judicature can conduct investigations and according to Article 6 (4) of the ICCPR, "the right to amnesty and sentence commutation of the accused and condemned" is indeed a right, not a special power at the President's discretion. The Human Rights Committee also agrees with where Article 2 states, "where there is a right there must be a remedy". There is an empty space in the Amnesty Act, where there are procedural obstructions when the accused and condemned actually request amnesty.

123. Response to 190 of Concluding Observations and Recommendations and 53-56 of the ICCPR Secondary Report. International experts concluded in 57 of the primary Concluding Observations and Recommendations that the executions of the death penalty violate the rights to amnesty and sentence commutation. Although 26 individuals with death penalty convictions made amnesty pleas to the President in 2013, Ma Ying-jeou not only procrastinated on the issue, but also executed at least four of those people.[41] In 57 of the primary Concluding Observations and Recommendations report, international experts concluded that the process for amnesty pleas set out in the ICCPR "seems to be violated" by our government. This, however, was purposely translated as "may violate" which gave the government a larger scope for excuses. The behaviour of the government evidently disregards the ICCPR and professional advice in

[41] The 4 people are Wang Jun-chin, Dai Wen-ching, Wang Hsiu-fang and Liu Yan-kuo.

Concluding Observations and Recommendations. The Amnesty Act is highly flawed with regards to plea procedure and examination mechanisms. We expect the international experts will give clearer and more severe comments in the upcoming conclusions report.

124. The President is expected to state publicly the number of amnesty pleas, how they are being dealt with, and if there are opportunities for administrative remedies after the ratification and implementation of the two covenants. On the legislative level, we suggest:

(1) regulations be set for amnesty plea procedures for death sentence cases,

(2) the government establish an advisory body for amnesty pleas and sentence commutation,

(3) before the Amnesty Act is amended, the Ministry of Justice must deliberate and implement the rules for reviewing amnesty pleas during the transitional period, in order to mend the gaps in the current Amnesty Act.

Presumption of Innocence/Media trials

125. One of the aims of ICCPR Article 14 (2) on the presumption of innocence is to protect the accused from facing a "media trial". High profile murder cases in Taiwan always receive a great deal of media attention which often contaminates public opinion. Take the 2012 murder of a school boy at an arcade in Tainan as an example. During interrogation by the prosecutor, the accused stated, "Killing one or two people does not get you the death sentence?" He merely posed a question to the prosecutor. However, because the interrogation was leaked to the media, who reported it as "arrogantly threatening", the court had a difficult time with investigation, clarifying the original meaning of what the accused said, and the motivation of his offense. The media infringed upon the defendant's right to the presumption of innocence which appears to have affected his trial.

126. The 2013 Hsieh Yi-han case is a specific example of where the right to presumption of innocence was seriously violated. From when prosecutors of the Shilin District Prosecutor's Office commanded the police to search and immediately detain a suspect on March 6th 2013, up until prosecutors brought a lawsuit upon Hsieh Yi-han for murder and burglary on April 12th of the same year, many media channels reported the investigation process at great lengths, even including the photograph from the case file, related records and the contents of the investigation report. This already violated the principal of private investigation in the code of criminal procedure (Art. 245: An investigation shall not be public.). Personnel involved in investigation processes or the execution of the law clearly hold the blame for leaking information from investigations. We believe the Judicial Yuan, Executive Yuan, Ministry of Justice and related government departments should take effective measures to investigate the people who leaked case information to the media, in order to protect the right to presumption of innocence. Also, according to the

explanation of 59 of the ICCPR General Comments No.32, if the right to a fair trial (Article 14) is violated in a death penalty case, the court cannot rule execution, otherwise this violates the "deprivation of life" clause in Article 6. Therefore, the investigation of death penalty cases must be met with "the highest standards of due process". When similar media trials happen using damaging information, the court must not rule execution. The investigation process of the aforementioned case violated the innocence principal and the court still handed the accused a death sentence, violating both articles 6 and 14 of the covenant.

The Supreme Court debate, the defendant's right to present at court hearings and the other factors of unfair trials

127. Response to first part of 71 of the ICCPR Second Report. There have been different practices at the Supreme Court in the past three years regarding death sentence cases, such as if there were pretrial procedures and debate procedures or not. For example, some cases have only the debate procedure[42], while some have not processed anything[43], and there are no strict guidelines for debate procedures. In 2016, there were a number of second instance death penalty cases (the Huang Lin-kai and Li Hung-ji cases for example) where appeals to the Supreme Court did not go through a legal debate. Although most of these cases were sent back from the Supreme Court, the lack of going through a legal debate will actually limit the legal arguments for one case, whether it's on the first two instances for the trial on matters of fact, or on the third instance for the trial of law. We suggest the Supreme Court assures all cases go through proper legal debate involving both the prosecution and defendant, and shows respect for the right to life. The penal litigations related to third hearings should be reexamined regarding death penalty cases to at least comply with the minimum standards set by the ICCPR.

Cases debated in the Supreme Court since 2012

	Year	Defendant	Case type	Pre-trial Procedures	Debate	Judgement	Court appearance	Remarks
1	2012	Wu Min-Cheng	Murder	O	O	Revoked，later given life imprisonment	X	
2	2013	Chen Yu-an	Domestic violence	X	O	Death sentence	X	

[42] Example: Chen Yu-an case, Taiwan Supreme Court 2013, Verdict No. 446; Lin Yu-ru case, Taiwan Supreme Court 2013, Verdict No. 2392

[43] Example: Lin Ji-hsiong case, Taiwan Supreme Court 2014, Verdict No. 807 and the latest Li Hung-ji case, Taiwan Supreme Court 2016, Verdict No. 480

			homicide					
3	2013	Wu Chi-hao	Domestic violence homicide	O	O	Life imprisonment	X	
4	2013	Lin Yu-ru	Domestic violence homicide	X	O	Death sentence	X	
5	2013	Chiou He-cheng	Kidnap for ransom and murder	X	O	Death sentence	X	
6	2013	Lin Guo-cheng	Rape and murder	X	O	Life imprisonment	X	
7	2013	Chen Kun-ming	Murder	X	O	Revoked，later given life imprisonment	X	
8	2013	Peng Jian-yuan (1st time at the Supreme Court)	Murder	X	O	Revoked	X	
9	2013	Zhang He-ling	Domestic violence homicide	O	O	Revoked，sentence currently being commuted to life imprisonment at the high court	X	
10	2013	Shen Jiang-tian	Domestic violence homicide and other crimes	O	O	Revoked	X	
11	2013	Chen Yong-zhi	Murder	O	O	Revoked	X	
12	2013	Sun Kuo-huang (1st time at the Supreme Court)	Murder	Announced but not heard	X	Revoked	X	

13	2014	Lin Ji-hsiong	Murder	Unannounced	Unannounced	Revoked	X	Died of illness in detention center
14	2104	Peng Jian-yuan (2nd time at the Supreme Court)	Murder	O	O	Death sentence	X	
15	2104	Shen Wen-bin (1st time at the Supreme Court)	Murder	O	O	Revoked	X	
16	2015	Sun Kuo-huang (2nd time at the Supreme Court)	Murder	O	O	Revoked	X	
17	2015	Hsieh Yi-han (1st time at the Supreme Court)	Burglary, murder and other crimes	X	O	Revoked	X	
18	2015	Tseng Zhi-zhong	Domestic violence homicide	O	O	Revoked, later given life imprisonment	X	
19	2015	Chen You-shu	Kidnap for ransom and murder	O	O	Revoked	X	
20	2015	Hsieh Yi-han (2nd time at the Supreme Court)	Burglary, murder and other crimes	O	O	Revoked	X	
21	2015	Shen Wen-bin (2nd time at the Supreme Court)	Murder	O	O	Revoked	X	
22	2016	Li Hung-ji	Domestic violence homicide and other crimes	X	X	Revoked	X	
23	2016	Huang Lin-kai	Rape and murder and other crimes	X	X	Revoked	X	
24	2016	Cheng Jie	Murder	O	O	Death sentence	V	

128. All legal debates in the Supreme Court since 2012, except in the Zheng Jie case where he was summoned to court, have faced the ambiguous situation of the accused being absent. The accused have had no way of interacting with the defense council in court. This has led to an ineffective defense and the accused being deprived of their rights to be present and heard. The right to be heard is at the core of litigation rights and even though the third hearing is a legal review, the accused should be present as a matter of principal, especially for cases of the death penalty or life imprisonment. The right to be heard cannot be arbitrarily deprived. Article 389 of the Code of Criminal Procedure states a debate only at the discretion of the court is depriving the accused of the right to a fair and public trial which violates article 14 (1) of the ICCPR.

129. The Supreme Court deals with civil appeals and criminal cases refused by the high court and its branches upon first hearing, those refused by the high court and its branches upon second hearing, those adjudicated and protested by the high court and its branches, and cases with extraordinary appeals. There are 10 courts that deal with criminal cases in the Supreme Court. When the same case goes through the Supreme Court and the verdict is revoked and appealed again, the same group of judges rehears the trial, and the judges will often give the same conviction to protect their initial decisions. This violates the right to a fair trial and thus the death penalty should not be given in these cases.

130. Neglecting the right to be heard, and the situation where same groups of judges retry the same case at the Supreme Court, violate article 14 of the ICCPR (right to a just court and right to a fair trial), article 6 (right against the deprivation of life) and the advice of experts in Concluding Observations and Recommendations. These violations should be amended and the judicial constitution should be changed. In order to be cautious about giving death verdicts, the Court Organization Act should be amended. The verdict should be made unanimously, unless there are other regulations.

Persons with mental or intellectual disabilities must not be sentenced to death and executed

131. Response to 187-189 of the Concluding Observations and Recommendations. According to the binding powers of The Commission on Human Rights since 2005 (2005 resolution 59), the state must not sentence to death or execute persons with mental or intellectual disabilities. However, since 2013, the sentencing of person with mental or intellectual disabilities has been commonplace.[44] Wang Jun Chin who had an IQ of only 66 was executed by firing squad in 2015. We believe no person with mental or intellectual disabilities should be executed, and this principle should be added to article 57 of the penal code, and article 465 of the sentencing laws.

The right to examine case files

[44] For example, Lin Yu-ru, Chen Yu-an and Peng Jian-yuan.

132. Response to 219 of the ICCPR primary report. To help the accused with extraordinary appeals and relief related to a retrial of their death penalty case, defense lawyers requested to examine the case files from the Supreme Court Prosecutor's Office, including a CD copy and transcript of the recording tape. They were refused on the grounds of the Personal Data Act and the Government Information Disclosure Law. The refusal violates the rights of the defendant and the lawyer, to which the Article 90-1 of the Court Organic Act should apply to.

Problematic Executions

133. The government openly stated they hold the utmost standards of precision when implementing the death penalty. However, according to Implementation Guidelines for Reviewing Enforcement of Death Sentences, verification is limited to ensuring there will be no relief programme or reason to stop the execution, which is reckless and unbridled. For example, according to the Guidelines, if any reason for amnesty exists, no execution should be carried out. However, the Ministry of Justice has time and time again executed the death sentence even before the president has reacted to the amnesty request.

134. The Death Penalty Execution Deliberation Committee called together by the Ministry of Justice appears to have followed no strict standards. According to the minutes of committee meetings between 2010 and 2014, only one meeting was chaired by the Minister of Justice in 2014. Between 2010 and 2013 only one meeting was held for each execution with an average time of under two days between meetings and executions. The longest recorded meeting since 2014 has been 2 hours. Supposing each meeting held between 2010 and 2013 was also two hours long, with 21 executions within that time period, total meeting time would have been around 8 hours. This signifies the decision time period per execution was no more than 24 minutes. Even though 5 meetings were held for each execution in 2014, the total time spent meeting was 7 hours, and the decision time period per execution was no more than an hour and a half. This means decisions are made hastily and carelessly.

Liu Yan-kuo case

135. Liu Yan-kuo was alleged to have killed a police officer and a female homeowner in 1997. Liu was given a life sentence, but a family member of one of the victims testified that Liu was not the killer. Liu was still not relieved of his conviction. There were many areas of doubt in this case; for example, no gunpowder residue was found on Liu's clothing. The “on-site ballistics identification” was only conducted 12 years after the incident happened and the house had already been resold and rebuilt by this time. There was no clear way of knowing who killed the female homeowner. This case has been passed back and forth between 64 judges and remanded 7 times.

136. On April 29th 2014, the media published news of an upcoming execution, and at 4pm on that day, lawyer Chiu Hsien-Chih faxed Liu Yan-kuo's extraordinary appeal to the Supreme Court Prosecutor's Office. Before 2 hours has passed, the proxy chief of the Prosecutor's Office rejected it and on the same day executed Liu. This shows the ministry of justice had not substantially checked over the plea and it shows how imprecise the Implementation Guidelines for Reviewing Enforcement of Death Sentence is.

The Du brothers case

137. The Du brothers were accused of murder in China, where the investigations also took place. Their death sentences were carried out in Taiwan in April 2014. The problematic verdict was watched intently by academic and legal spheres. The most prominent issue was that the accused were handed the death sentence without the evidence and witnesses being examined and presented in Taiwanese courts or a legal debate. The key pieces of evidence were Chinese police records and evaluation reports. All other evidence was circumstantial and neither the judge nor the accused had a chance to question the witnesses in court. They never had the opportunity to see the evidence during the trial either. The penalty was dealt out without respecting Ministry of Justice executive procedures. We believe the code of criminal procedure's heresy and evidential rules should be amended. We ought to reexamine the Mutual Legal Assistance Agreement and the investigation and judgement procedures in overseas cases.

Cheng Jie case

138. On May 21st 2014, Cheng Jie was accused of killing 4 and injuring 24 in the Taipei MRT. The Supreme Court announced he was to face the death penalty on April 22nd. He was executed on May 10th. What drew controversy was the execution taking place only 2 weeks after the judgement without notifying the family or defense lawyers, and with no time to prepare an extraordinary appeal. The entire investigation, whether during police and custody questioning, prosecutor’s questioning, search and arrest or mental health assessment, was conducted without the presence of defense lawyers. During the psychiatric evaluation, the physician injected the accused with drugs, claiming it was to help him talk, which was extremely invasive. Without written consensus, this violates self-incrimination laws and rules of general medical practice, and the prohibition of unlawful questioning. Therefore, the forensic psychiatric report written by National Taiwan University Hospital was a production of many questionable conducts. Although the accused was called to the Supreme Court, it was ruled that he committed the most serious crime and the court believed that rehabilitation was neither possible nor foreseeable, and therefore the death penalty was given. This shows the court did not deal with the case according to sentencing regulation, and neglected due process of law and the ICCPR to make their judgements.

Treatment and the phenomenon of Death Row

139. Response to 200-203 of the ICCPR Secondary Report. Response to 178 of Concluding Observations and Recommendations. Taiwan's prisons are in need of drastic improvement. Before executions, prisoners' families are not informed, and prisoners themselves are only informed just beforehand. Cheng Jie was executed very quickly beyond normal procedure. Since there is no knowing about when executions will be carried out, death row inmates are in a constant state of anxiety which is considered torture and inhumane and degrading treatment. In addition, mentally unstable inmates usually refuse treatment and abstain from recognising their own illness. When put on death row or caught between long court procedures, their health deteriorates rapidly. The Agency of Corrections is reluctant to solve the problems. The fact that the Agency of Corrections is not taking the death row inmates' rights to mental health care seriously can also lead to inhumane treatment.

Chiang Kuo-ching (Response to 64-65 of the ICCPR Secondary Report)

140. After the national compensation was paid to the family, slight progress regarding the compensation claim against the implicated military officers has also been made. Nevertheless, the investigation of the criminal responsibility of the military officers involved in this major misconduct continues to be extremely difficult. Duty lawyers have been assisting Chiang's mother with making requests to prosecute the 9 high ranking military officers implicated - which includes the then Operations Commander Chen Chao-min – for murder. After four years of proceedings, the Taipei District Prosecutors Office made the third non-prosecutorial disposition on November 6th, 2011, and transferred the case to the Taiwan High Prosecutors Office for reconsideration. In agreement with the Taipei District Prosecutors Office's ruling, the Taiwan High Prosecutors Office dismissed the case. Citing expiry of the 10-year statute of limitations, prosecutors refused to open cases based on "coercion" and "intimidation and endangerment". However, according to the second investigative report conducted by the Control Yuan, the duty attorneys believe that] the implicated military officers were involved in a case of homicide, to which the statute of limitations is inapplicable. Thus, the attorneys have applied to the Taipei District Court for trial setting. Currently, the case is pending.

141. In its analysis, the Judicial Reform Foundation argued that the difficulty of investigating the criminal responsibilities of the officers lies in that - despite the statute of limitations on misdemeanors has expired - limitations on felonies are still valid. There is room for filing serious charges against Chen Chao-Min and the remaining parties; yet the prosecution is reluctant to do so. This could be perceived as the result of a lack of transitional justice mechanisms being applied to the justice system.

142. There has been a long history of the justice system harboring malicious prosecutions carried out at courts-martial. Shortly after the imposition of martial law, the Judicial Yuan Interpretation No. 272 was made to legitimize military trials of civilians. After the martial law was lifted, Justice of the Constitutional

Court - referring to the Interpretation No. 272 - held that criminal cases adjudicated in the military tribunals during the period of Martial Law may not be appealed to the ordinary courts subsequent to the abolishment of martial Law. This has resulted in the high threshold of rehabilitating victims of miscarried military justice. Throughout the Martial Law period, even the Justices of the Constitutional Court have contributed to authoritarianism, let alone general judges and prosecutors. The mind-set of conniving state violence is deeply rooted in the hearts of members of the judiciary, yet to be erased.

143. In preventing the prosecution's abusive use of non-prosecutions in harboring state violence, a thorough inventory of the prosecution personnel and a reform of the bureaucratic structure should be carried out. In addition, a supervisory mechanism of non-prosecutorial dispositions should also be introduced, which includes the abolishment of the Code of Criminal Procedure Article 260, which will make the effectiveness of non-prosecution-paper no longer technically equivalent to court decisions. Secondly, in the investigation stage, crime victims and/or their representatives should be given access to case files, or through other means, be satisfied with their right to information. This would increase the transparency of the prosecution process. Last but not least, for supervision purposes, files of non-prosecution dispositions should be released under the premise of privacy protection. In particular, copies of autopsy reports should be given to the family of the deceased when the case is closed, so that they can know whether the death of their beloved ones was unnatural or not.

The problems with police using firearms.

144. Response to Page 17, Paragraph 79-80 of the State Report. "The Act Governing the Use of Police Weapons" currently in force is just an abstract set of regulations and is not in line with the concrete demands of the United Nations' "Basic Principle on the Use of Force and Firearms by Law Enforcement Officials" (referred to below as Basic Principles). The State Report lays out only one case where police have been prosecuted for shooting and killing civilians, but is not clear on whether or not there are other such cases where police did not get prosecuted. The information provided is not satisfactory and not in accord with the effective report and investigation procedures demanded by Basic Principles.

145. Article 11 of Basic Principles includes: (a) Rules explaining the different situations where law enforcement personnel are permitted to carry firearms, and the types of firearms and ammunition they are permitted to carry. (b) Instructions of under which circumstances it is suitable to use firearms, and to avoid causing unnecessary harm as much as possible. However, the rules for using police equipment are less concrete, and lack specific regulations for conducting training on the circumstances where carrying firearms is permissible, which firearms are appropriate to carry, and how to avoid causing unnecessary harm. In the case given by the State Report, the officer was incapable of complying with the judge's demands to confirm whether the use of firearms was appropriate or not, nor was he able to provide a clear datum for judgement.

146. We suggest the government establishes a mechanism for heeding to the effective report and investigation procedures stipulated in Article 22 of Basic Principles. The government should also establish a set of work procedures, professional equipment and training programmed for a professional workforce (for investigating, forensics etc.) to deal with shooting cases.

Hsichih Trio

147. The criminal compensation judgement of the case of Su Chien-ho has violated the Twin Covenants. It contradicts the principle of trial on merit, and fails to fulfil the principle of proportionality.

148. In response to Paragraph 61 and 62, page 13 of the, the Wu Ming-han lethal case of Hsichih District has been dragging on for 21 years, where the accused trio were detained for 4,170 days. After their acquittal in 2012, the trio made a NT$60 million criminal compensation request. However, the Taiwan High Court was of the opinion that the trio have to take the responsibilities of their 2 previous confessions of guilt, and reduced the total amount of compensation to NT$15.846 million.

149. The original verdict concluded that the confessions of the trio were obtained through torture, and were thereby excluded from trial. However, the Compensation Ruling of the Taiwan High Court claimed that the original judgment "did not confirm the trio were tortured by the police" and required the trio to take the responsibilities for their statements acquired during interrogation, which is clearly unlawful and erroneous. Furthermore, the calculated amount of NT$5.282 million renders an average compensation of merely NT$1,300 per day. The amount is tremendously low when compared with the compensation of up to NT$5,000 per day as stipulated in the Criminal Compensation Act, and has obviously failed to meet the principle of proportionality.

150. General Comments No. 32 of the International Convention of Civil and Political Rights has made it clear that "the burden is on the state to prove that statements made by the accused have been given of their own free will." Hence, the Taiwan High Court should not blame the victims for not being able to prove that they were tortured, or reduce the amount of compensation they were entitled to.

151. Article 7 of ICCPR has stated "No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment", and under Article 14(6), victims of the miscarriage of justice are entitled to compensation. General Comment No. 13, point 18 of the ICCPR gave the warning, "many countries did not abide to or respect this right, or did not provide sufficient safeguards." The Taiwan High Court has "ignored" the correlation between "confessions" and "reasons behind confessions": it seems to be of the opinion "once the defendant confessed" and is under detention, "attributable grounds" will exist, thereby disregarding whether confessions were made because of threats, bribery,

intimidation, coercion or even torture. Therefore, not only does this judgment breach principles of logic and empirical rules, it also contradicts the spirit of Articles 7 and 14(6). The exemption of most liabilities on the part of the nation, and the lack of sufficient protection to the victims, has led to injustice.

152. Su Chein-Ho and the others have expressed their discontent with the judgment, and have applied for a review of the case at the Criminal Compensation Court. Nevertheless, the Judicial Yuan has copied the original reasons of judgement and dismissed the appeal. Obviously, the Judicial Yuan has failed to fulfill its duty as a superior court.

Article7 Anti-torture

153. Referring to Article 25 & 26 regarding the Indigenous People's rights, consent must be gained from any Indigenous Peoples before carrying out any human subject researches.

The case of Hung Chung-chiu and the human rights in the military

154. Several issues were observed during the trial and the investigation of Hung's case[45]. Before the death of Hung, the Republic of China army had been utilizing training as a disciplinary measure; the "corrective training" imposed by officers-in-charge was specifically intended to "make the disciplined soldiers physically suffer." However, the "trainers" implementing such measures lacked sufficient knowledge of professional physical training; therefore, they were neither able to determine the appropriate intensity and the limit of the disciplined soldiers during the process, nor to identify any possible physical crisis and provide necessary relief. In addition, the physical facilities of the detention facilities where such punishment was carried out were inadequate. For example, the cells used for resting and sleeping were too small (soldiers had to curl themselves to lie down, and when 2 soldiers were confined together, they had to lean closely with each other) and lacked sufficient ventilation. The cells were also illuminated brightly 24 hours a day for surveillance purposes. Furthermore, although Hung had filed a complaint, expressed his issue of claustrophobia, and had been psychologically assessed as high-risk, he was still directly sent to the detention institute. Thus, there was a lack of professional determination, whether on health or procedural grounds.

[45] The case happened on the evening of July 3rd, 2013. The director of Research Center of Sports Medicine and Health diagnosed that Hung's death was caused by multiple organ failure due to athletic heat stroke and hyponatremia brain disease. Hence, Taiwan High Court determined that, the cause of death was "athletic heat stroke due to over-training in humid and heated circumstance, which led to multiple complications," "highly correlated with BMI of the victim, the amount of training, the resting time, and the circumstances of the confinement cell" and "heat stroke which happened on June 28th, 2013, caused by the heat damage accumulated during the training in confinement cell, ultimately leading to death."

155. In Hung Chung-chiu's case, the experience that the victim had undergone in the disciplinary confinement should fall into the range of torture defined by ICCPR Article 7. Many soldiers had experienced such disciplinary confinement in the R.O.C. Army before Hung's death; although all of them have possibly been tortured, there has been no explicit investigation. Besides, there are gaps in the laws of Republic of China regarding torture. For example, the concept of "abuse" in Article 44 of *Criminal Code of the Armed Forces* which was applied in Hung's case only refers to whether the officers directly abused the "trainees," but it doesn't inquire into the question whether the inadequate arrangement of resting space by officers in authority constituted torture or not. The restrictive explanation of torture by the court may have been violated Paragraph 7 of General Comment No. 7.

156. After the case of Hung, another soldier, Chien Chih-lung, passed away in 2015[46]. It's obvious that the commanders in the military should bear greater responsibility for the welfare of citizens under their command, whose liberty of person is constrained by military discipline, to make sure they are not physically ill-treated. However, all too often they ignore calls for help, even when their health has already begun deteriorating. According to Paragraph 7 of General Comment No. 7, the denial of medical assistance in such circumstances should be considered a form of torture or inhuman treatment.

157. There are certain human rights issues in the Republic of China military which violate the ICCPR is not accurately implemented. First, the soldiers conducting physical training lack professional knowledge of physical training, health science, or emergency rescue; they often impose the physical punishment in the name of "training", claiming that they aim to strengthen soldiers' "willpower." Soldiers have no means to request either giving up or suspending the training. Such situations happened frequently before Hung's death, and continue to exist even after the tragedy. The large number of victims and their families is the main reason why the protest against the light indictments handed down by the military prosecutors in Hung's case drew 250,000 people to demonstrate in front of the Presidential Office. Second, officers usually consider soldiers who report health conditions as fraudulent. This assumption causes patients deprived of their liberty to be unable to seek medical assistance, which is a form of torture as well. Third, officers often lack the concept of rule of law, and they have a very limited understanding regarding others' rights and the legal procedures under which they may be limited. Even the supposed professionals within the military (e.g. the former military judicial officials) failed to understand the laws under the area under their jurisdiction. Such conditions have prevented implementation of the ICCPR in the military.

[46] Mr. Chien Chih-lung just enrolled in the army and joined the processional training in the gendarmerie school. Although he had expressed physical discomfort which was confirmed by medical professionals, because of the limitation of the freedom of person in the military, his unit still put him in solitary confinement and turned down his request to seek medical assistance until his health irreversibly deteriorated.

Excessive use of force by the police

158. There are significant omissions in Paragraphs79 & 80 and the section regarding torture of the State Report on ICCPR and ICESCR. Notably, the Report fails to mention the cases of police's overuse of armed force to the peacefully assembling public during the violent dispersals at the Executive Yuan on March 24th, 2014 and at Zhongxiao W. Rd. on April 28th 2014.

The violent disperse in the Executive Yuan on March 24th, 2014

159. The violent dispersal at the Executive Yuan occurred from late on the night of March 23rd to the morning of March 24th. It was started by the order given by Premier Jiang Yi-huah to the police, commanding that all members of the public inside Executive Yuan should be cleared away before 7 am on the 24th. Therefore, Wang Cho-Chiun, then Director-General of the National Police Agency (NPA), commanded the police to "fully eliminate" the protesters. During the action, the anti-riot police used shields, batons, fists, and feet to attack the peacefully protesting public, and fired high-pressure water cannons directly at people; some of the police even abused people by directly attacking their fragile body parts such as the head. Although the police successfully dispersed all the protesters before the deadline on the morning of March 24th, their brutal methods resulted in over a hundred people being injured, including then Legislator Chou Ni-an.

160. The Legislative Yuan Committee of Interior Affairs formed a taskforce and requesting the related administrative offices to provide the related documents within a week after the incident. However, the NPA refused to provide the key documents, **and the truth remains unknown.** As of today, only one police officer has been disciplined (Officer Hu, who was the commander with administrative responsibility over the police who injured Lin Ming-hui).No one else has borne either administrative or criminal responsibility, and no office has announced the full investigation report. According to a 3-page internal investigation report of the NPA provided to the office of Legislator Wellington Koo, the NPA only reported 3 officers to be investigated by the Taipei Prosecutors Office, but that **office has not yet announced any result of their investigation.**

161. Among the victims of the dispersal, 48 of them filed lawsuits of assault against Premier Jiang Yi-huah, NPA Director-general Wang Cho-chiun, the commissioner of the Taipei City Police Department, the chief of the Zhongzheng First Precinct (Fang Yang-ning), and several police officers who attacked people during the incident. However, when the dispersal was implemented, the police had intentionally covered their name badges and identity numbers; therefore, the victims were not able to identify the direct attackers. Plus, the administration passively avoided opening an investigation – even by intentionally hiding the overall list of the personnel who carried out the dispersal. Most of these **lawsuits has been delayed until now, so that the**

judicial investigation has also failed to yield any concrete result. In only one case, the Taipei District Court ruled that the Taipei City Government should compensate one of the victims (surnamed Lin) for excessive violence by the Taipei City Police Department. With both administrative and judicial investigations ineffective, civil society has requested the new Legislative Yuan which took office after the 2016 election to establish a committee to investigate the facts and assess the responsibility for the events of March 24th, 2014.

The disperse on Zhongxiao W. Rd. on April 28th 2014

162. From the afternoon of April 27th to the morning of April 28th 2014, anti-nuclear protesters held a sit-in protest which occupied a stretch of Zhongxiao W. Rd near the intersection of Zhongshan S. Rd. As these roads are major traffic arteries of the city, then Taipei City Mayor Hau Lung-pin announced that the government would clear them , "at any cost." The police started to forcefully disperse the public on Zhongxiao W. Rd. in the early hours of April 28th. A huge number of police was sent to the scene to disperse the people by attacking them with shields, batons, fists and feet. Water cannons were also fired on the protestors at a short distance dozens of times in a short period. Many were injured and sent to hospital. For instance, Mr. Liu was hospitalized due to the massive amount of bruises and contusion on his back and hip and hematuria.

163. 17 of the injured citizens have filed the lawsuit against Premier Jiang Yi-huah, NPA Director-general Wang, the commissioner of the Taipei City Police Department, the chief of the Zhongzheng First Precinct (Fang Yang-ning), and several police who attacked people during this incident. The case is still ongoing in the Taipei District Court.

164. As in the case of the dispersal at the Executive Yuan, the police also intentionally covered their name badges and identity numbers. Therefore, the victims were not able to identify the attackers, and no personnel have been disciplined. No victim in this case has received compensation from the state. In both cases of dispersal, the police have violated the rule of showing their identity as provided for in the *Police Power Exercise Act*, as well as the rule regarding the necessity of using weapons in *Act Governing the Use of Police Weapons*. Moreover, according to the evidence provided by the pro bono lawyers, the police do not have any standard operating procedures for the use of water cannons. Furthermore, the lack of education in human rights protection leads to the police arresting the assembling people and charging them with the crime of "interference with public function." Flaws in the Code of Criminal Procedure hinder the achievement of remedies through the justice system.

165. The police administration should establish a neutral, independent investigation mechanism to look into all accusations of police personnel who either command or execute torture or excessive force and issue reports. The mechanism should include external, impartial persons, rather than the police themselves. Such

reports should then be the basis of determinations of disciplinary measures by the Control Yuan and other agencies.

166. In both the two dispersal cases mentioned above, police also used force to disperse journalists and obstruct their reporting at the scenes. This was done even after journalists had already revealed their identities. In addition, the police took steps to segregate the journalists from the protesters to prevent them from directly observing the violent dispersal of protesters.

The issue of police equipment used in assembly and parade

167. In the State Report on ICCPR and ICESCR, the government stated that it has made the "regulations of using high-pressure water cannons for police personnel" in accordance with the prohibition of torture. However, the regulations only reaffirm the importance of following the existed laws and proportionality, and they lack both specific standards or limits as well as any investigation or reporting procedures. Therefore, such apparent regulations have failed to decrease the abuses in the use of water cannons. In the cases on March 24th and April 28th, 2014, the two cases of severe abuse both involved overwhelming police forces using high-pressure water cannons on unarmed, peaceful assembling people[47]. Beside the direct physical harm of the water cannons, also in at least one case of police intentionally flushing away the clothes of women, which humiliated the victims. However, the State Report has no examination or investigation on this matter.

168. Apart from water cannons, there are plenty of types of police equipment which can harm the public during dispersals, such as barricades, batons and shields. Using these in an excessive manner while dealing with assemblies should also be considered as a violation of Article 7 of ICCPR. For example, since 2014, there have been barricades and razor-wire set around central governmental buildings[48]. Also, in the dispersal on March 24th, 2014 dozens or hundreds of people were beaten with batons and shields; there was even a person whose epileptic seizure was triggered when he was beaten on his head by a baton. There was no investigation, statistics or discussion in State Report; the necessary operational procedures for the usage of the police equipment in order to avoid the abusing of them were not followed—which amounts to a form of torture.

169. We request the Taiwanese government to establish a concrete standard operational procedure for use of all police equipment in accordance with international covenants and human rights standards. This should include the specific conditions when to use police equipment, the operational regulations

[47] "Sexual harassment on April 28th",2014/05/12, Storm Media, retrieved from http://www.storm.mg/article/31007; "The 7 hours of terror in the violent dispersal at the Executive Yuan, 2014/03/25, Apple Daily, retrieved from http://www.appledaily.com.tw/realtimenews/article/new/20140325/366506/.

[48] "The barricades and gabions are finally removed after 2 years of the student movement," 2016/03/16, United Daily, retrieved from https://video.udn.com/news/457823.

for all methods, and explicit reporting and investigation procedures after each use. When cases of excessive force, such as beatings or firing of water cannons towards peaceful assembly, there must be an overall investigation and remedial measures.

The principle of non-refoulement

170. According to the "Principles in Compiling State Report" of ICCPR, the government should clearly address the methods that the State will take to assure no one will be extradited, repatriated or expelled to any place that will cause non-recoverable harm. However, the State Report only mentions in Paragraph 88 in State Report that, if any such situation exists, the person can "refuse to be extradited." After the national review of ICCPR and ICESCR in 2013, the Legislative Yuan has not passed the *Refugee Law*, and there are no other legal provision censuring the principle of non-refoulement, which protects the rights of asylum-seekers and refugees, in the *Immigration Law* or any other laws. Since the last review, the National Immigration Agency has already repatriated at least 4 asylum-seekers from People's Republic of China, and 3 Kurdish refugees who attempted to seek political asylum in Europe. There are still 4 Chinese asylum-seekers currently on trial for illegal entry. There is also a Ugandan asylum-seeker who had been attacked by homophobes; however, because there's still no Refugee Law in Taiwan, he is currently in a situation of overstaying his visa.

171. We again appeal to the Taiwanese government to pass the Refugee Law and establish a refugee protection mechanism as soon as possible.

Article 8 Prohibitions of Slavery and Enforced Servitude

Vulnerabilities and Rights of Female Human Trafficking Victims are Invisible

172. This section responds to Paragraphs 108 and 111 to 112 in page 22 of the State report. With regard to legislations on the prevention of human trafficking and protection of human trafficking victims, the initial State report mentioned the Executive Yuan Anti-Human Trafficking Coordination Panel as Taiwan's highest anti-human trafficking authority. However, information on the Panel's focus, interagency coordination activities, and mid-term and long-term plans for the prevention of human trafficking are not provided in both the initial and the second report. For this reason, additional information on the Panel's role and achievements are required.

173. According the Ministry of the Interior's report[49], 47% of human trafficking victims between 2011 and 2014 suffered sexual exploitation, with the composition of 21% foreign female, 8% Taiwanese adult female, and 18%

[49]National Immigration Agency, Ministry of the Interior, 2011-2014 Republic of China (Taiwan) Trafficking in Persons Reports (http://www.immigration.gov.tw/lp.asp?ctNode=32578&CtUnit=16539&BaseDSD=7&mp=1)

Taiwanese children or teenagers (gender unspecified, although judging from past statistics these are largely females). Meanwhile, the other 53% of human trafficking victims suffered labor exploitation, with the composition of 40% female and 13% male. This shows that women are indeed exposed to a higher risk of becoming victims of human trafficking, regardless of which type. However, the second State report contains only the number of cases, number of cases provided sheltered and number of minors, along with the national measures and budgets for the prevention of trafficking (sexual and lobar exploitation) of women, which are exposed to higher risks. The government should cross analyze the victims' gender, nationality, status upon entry into Taiwan and types of trafficking, in order to identify the specific groups that particularly suffers from human trafficking, and lay out the current and future prevention plan for them.

174. Fieldwork has revealed that female migrant workers who work as domestic helpers and caregivers (hereinafter "domestic workers") are more likely to be subject to multiple forms of exploitation, including forced labor, sexual harassment and assault, high debt and insufficient wages. At the same time, since this group lacks the method/capacity to receive correct information and utilize channels of assistance, they are likely to turn to informal channels, which expose them to a higher risk of becoming victims of human trafficking.

175. The State report does not explain the difference between numbers of cases investigated and prosecuted, or between that prosecuted and indicted. The Garden of Hope Foundation's experience indicates that many cases prosecuted as sexual exploitation under the Human Trafficking Prevention Act were indicted as mere offenses against morality. Such indictments do not effectively punish perpetrators, nor do they provide compensations to the victims. While civil suits are encouraged, the victims are often deterred by the prolonged process, cost and impact on their right to work.

176. Domestic work is not merely an issue of labor rights. It is also a means to prevent human trafficking. This report demands the immediate restart of discussions on domestic labor laws, with the aim to put forth in those laws effective measures of assistance.

177. Rights of migrant workers during lawsuits should be reviewed. Migrant workers should have the rights to remain in Taiwan and continue work when awaiting the results of criminal, labor-management or administrative suits.

Students Participating in Industry Cooperation Programs

178. In response to Paragraph 117 of the State report on the rights of students participating in industry cooperation programs, this report suggests the implementation of a piece of legislation designated to such programs. The Taiwan Labor Front has formed its own responding opinion on this issue.

Child Labor and Their Protection

179. This section responds to Paragraphs 121 and 363 of the State report. Taiwan's definition of child labor is labors above the age of 15 but less than 16. Work conditions for those 16 and above are no different to adults. The government should establish rules for underage labors above the age of 16 but less than 18, as their work hours' restrictions should be less stringent than that of child labors, but still different to that of adults. This report suggests that work hours for labors above the age of 16 but less than 18 should not exceed 10 hours per day, and they should not work between 11pm and 6am.

180. This section responds to Paragraph 120 of the State report. Taiwan's Labor Insurance Act stipulates that enterprises with less than five employees are not mandated to insure their workers. However, since such enterprises are where most underage labors work in, the vast majority of underage labors are not insured against occupational accidents. This report suggests that the government mandates employers insure their underage employees, before laws relating to occupational accidents are amended.

Article9 Freedom of Person

Miscarriage of justice and criminal compensation (response to #131, #132)

181. Regarding the reform of *Law of Compensation for Wrongful Detentions and Executions*, the latest State Report quoted Paragraph 134 in the first State Report on ICCPR, mentioning that the *Law of Compensation for Wrongful Detentions and Executions* was amended in 2011. But the new law is still flawed, and some victims of wrongful conviction are still unable to receive compensation.

182. The current *Law of Compensation for Wrongful Detentions and Executions* creates 3 categories of claimants: "intentional or grossly negligent Laws," "attributable" and "non-attributable". If a claimant who has been in custody, detained, or in compulsory services due to his intentional or grossly negligent Laws, he may not recover compensation. The non-attributable case will be compensated $NT3000-5000 per day, while the attributable case will only be compensated $NT1000-3000 per day. However, the concept of "attributable" is obscure and it violates the principle of clarity, it allows the authority to continue to assign a measure of guilt under the category of "attributable," and to make it as the justification for an inferior standard of compensation. For the victim who has already been acquitted, this is rather adding insult, which violates the constitutional principles of prohibition on repeated prosecution, protection against double jeopardy and presumption of innocence. It conflicts with the rights protected in Article 22 of the Constitution, and Article 9 Paragraph 5 and Article 14, Paragraph 6 of the ICCPR.

183. Moreover, according to Article 7 in the *Law of Compensation for Wrongful Detentions and Executions*, the amount of compensation is determined by the vague notion of "common sense." In the case of the "Hsichih Trio," when Su Chien-ho, Chuang Lin-hsun and Liu Bin-lang petitioned for compensation, the

Taiwan High Court approved the application. But in the decision it noted that, since their wrongful detention were caused by their own confession, it was attributable; and considering their occupation and level of education by the time they got detained (which were vocational high school graduate, household electric appliances worker; junior high dropped-out, plumber; high school graduate, unemployed), they were only compensated $NT1300, $NT 1200 and $NT1300 per day. Setting the "price" of the freedom of a person on their occupation and education by the so-called "common sense," is an obvious deviation from the intent of the ICCPR.

184. The current *Law of Compensation for Wrongful Detentions and Executions* only allows the compensation for punishments which limit the freedom of person, such as detention of accused, detention of an accused for expert examination, custody; or punishments including monetary fines or labor exactions. For those whose punishment was never executed, there is no compensation. The harm of miscarriage of justice cannot be compensated just because the sentences had not been carried out. In the case of Chen Long-Qi, he was sentenced harshly to 4 years for offenses against sexual autonomy. Although he was later acquitted, he couldn't claim any compensation to the state because his freedom hadn't been deprived. Such omission under the current *Law of Compensation for Wrongful Detentions and Executions* should be amended.

Compulsory hospitalization of mental patients and Habeas Corpus Act

185. In Article 9 Paragraph 1 of ICCPR, it addresses that "everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." In Paragraph 4, it addresses that "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." There have been many cases and disputes over the issue of the state detaining mental patient based on his mental condition, including what procedure should be followed and the role of the courts in making such determinations. In Taiwan, the existing *Mental Health Act* regulates that a doctor can file an application to send a patient to compulsory hospitalization based on the following conditions:

(1) if the case meets the standard of a "severe patient," in which the patient exhibits extremely unusual behavior that makes him unable to care for himself .

(2) if there is the possibility of the patient's hurting himself or others.

(3) if there is the necessity of full-time hospitalization.

(4) if the patient refuses to accept hospitalization or if the patient is unable to express his will.

186. Regarding the implementation of Article 9 Paragraph 1 of ICCPR, "no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law," the United Nations Human Rights Committee has highlighted in General Comment No. 35 that, to improve the freedom of person of mental patients, forced detention can only be the last resort, and due process is needed in order to protect the rights to express himself beforehand, and to seek remedy afterward. Therefore, there are legal procedures in Article 41 Paragraph 2 and Article 42 Paragraph 2 of *Mental Health Act*, requiring that the application of compulsory hospitalization should be approved by the mandatory examination of 2 specialist physicians and the Review Committee under Ministry of Health and Welfare consisting of specialists from multiple backgrounds. In addition to the discussions of the Committee, , the patient can also make declarations or statements through video, and submit his own thought on the legal requirements, such as risk of violence and the necessity of full-time hospitalization.

187. However, it is doubtful that the Review Committee can promote due process of law, and fulfill its function of filtering out the cases that do not satisfy the requirements. For example, according to the statistics of Ministry of Health and Welfare, the rate of approval of detentions by the Review Committee has been above 90%. Such a high rate of approval indicates that the Committee's proceedings have become a mere formality, and in particular that the questions of risk of violence and the necessity of full-time hospitalization are not strictly reviewed. In other words, if the function of review is weakened in the Committee, the decision of compulsory hospitalization can be arbitrary, and a patient can be easily assumed as in need of hospitalization just because he has mental illness or disability. Such condition contradicts the Article 9 of ICCPR.

188. According to Article 9 Paragraph 4 of ICCPR and General Comment No. 35, the concept that "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court," includes the rights of the patient expressing his unwillingness to detention, the necessity of taking proceedings before a court on the detention; and the power of the court to cancel the decision of detention and order release if the detention is not lawful. This is the "right of arraignment" protected by Article 8 Paragraph 2 in the Constitution. Before 2014, the "severe patients" who were forcibly hospitalized could only seek to appeal for the termination of compulsory hospitalization according to Article 42 Paragraph 3 in *Mental Health Act*. Therefore, the court can only examine on the necessity of continuing hospitalization, but not on the legitimacy of the decision made by the Review Committee under the Ministry of Health and Welfare. Although the Ministry of Health and Welfare has claimed that patients could raise administrative appeals against such decisions, the Executive Yuan rarely accepts any such appeals. As a result, the measures that deprive the freedom of the patient were never been examined by a court, which is obviously contravenes Article 9 Paragraph 4 of the ICCPR.

189. After the amendment of *Habeas Corpus Act* in 2014, persons who were deprived freedom for non-criminal reasons were allowed to appeal for arraignment before a court. This also covers the severe patients who were forcibly hospitalized, so that they are now able to appeal for a judicial examination of the legitimacy of compulsory hospitalization. According to the spirit of right of arraignment in ICCPR, the range of examination should include both procedural and substantive considerations, that is both whether the process of deciding the compulsory hospitalization was legitimate, as well as whether the case meets the legal conditions for compulsory hospitalization. However, although the law has been amended for over a year, very few actual arraignments have taken place; and there has been no case of the court determining a decision of compulsory hospitalization was unlawful and ordering the release of the patient. This indicates that the psychiatric institutions haven't provided sufficient resources and assistance to enable the patients to file such appeals, so that many patients are unable to execute this right in practice. It might also because patients often cannot receive professional legal assistance. Moreover, in the few cases that have been heard so far, the court has usually only examine the procedural legitimacy of the detention, without investigating the substantive elements. The courts so far seem unwilling to listen to the different points of view from patients, such as explanations for violent behavior, to carry out further investigation (such as requesting the presence of doctors to explain their comments, asking the family of patients their condition at home, etc.), and to evaluate whether other less coercive measures could be sufficient. Such careful procedures and measures are both part of the protection of the liberty of person under the ICCPR; international human rights laws also highlight that States shall not overuse detentions in psychiatric institutions, and that patients in custody shall be provided proper avenues of appeal. However, when there is still no precedent of a court-ordered release of a patient, it seems that there is still much work to be done to realize the protection of freedom of mental patients.

Custody and Detention and

190. In reply to Paragraph 126 of the second State Report on ICCPR, regarding the duration of detention before trial, the current *Code of Criminal Procedure* states that it may last as long as 4 months. This contradicts the concept of the protection of liberty of person in Article 8 of the Constitution and Judicial Yuan Interpretation No. 392. Besides, in the phase of detention before trial, the prosecutor has the power to apply for detention, and the judge is responsible for examining the conditions of detention, which are different from each other. However, the roles of prosecutor and judge are overlapping and confused. For instance, there are cases in which, when a detention due to expire, the judge actively inquired whether the prosecutor intended to prolong the detention[50]. In addition, Interpretation No.665 requires that the court must

[50] According to Resolution No. 5 in 2015 of the Prosecutor Evaluation Committee, the brief facts of the case were: a judge surnamed Chen actively sent an inquiry to the prosecutor whether he intended to

examine the necessity of detention when considering detention of a suspect due to the severity of the crime or the possibility of escape; however, some judges ignore such requirements and neglect the importance of limiting restrictions on freedom of person of criminal defendants[51].

191. The case of detention application of Wei Yang happened on day after the forcible dispersal of the assembly at the Executive Yuan on March 24th, 2014. Since the government had announced that they would strictly punish the "villains" who occupied the Executive Yuan, the prosecutor immediately accused Wei Yang of the crimes of public assembly, damage, obstructing governmental operations and stealing documents, and applied to detain him immediately after the interrogation. The court turned down the application due to the lack of evidence to fit the conditions of detention. This is a typical case of a prosecutor abusing the power of applying for detention. Especially when compared to the prosecutors' passive attitude toward investigating the case of injuries caused by the police during the same incident, it also illustrates the issue of selectively choice of cases to investigate.

192. In reply to Paragraph 127 in the second State Report on ICCPR, , although according to the law a warrant is needed to arrest a criminal suspect, in practice suspects are usually forced to "voluntarily cooperate" with the police regardless of the law. According to Resolutions No.6, 7, and 8 of the Prosecutor Evaluation Committee in 2013, a prosecutor surnamed Wu issued blank warrants before an arrest, and ordered the investigators in Hualien to bring the suspect to Taipei for straight-face test. The suspect was told that he had to stay with the officers because they held a warrant. After the suspect refused to take the test, he was sent back to Hualien and then interrogated by prosecutor Wu. Only after this process, was the suspect formally arrested; however he had been already been forced to cooperate for more than 10 hours. On this case, the Prosecutor Evaluation Committee did not determine that this was unlawful, commenting that "such phenomenon happens often in practice; therefore, a single prosecutor should not bear all responsibility.". This reveals that such "voluntary cooperation" is a common practice used by prosecutors to circumvent the rule laid down by Article 8 of the Constitution.

Custody of foreigners

---

prolong the detention; moreover, before the prosecutor submitted the application, judge Chen had begun the interrogation of prolonging. Although such actions are against the *Code of Criminal Procedure*, according to the Committee they are very common in practice.

[51] According to request of evaluation of a Taiwan High Court Judge surnamed Wang submitted by the Judicial Reform Foundation on December 16th, 2015, Wang, had mistaken that the defendant had a circular order and prolonged his detention. In the second hearing regarding the detention prolongation, the defendant reminded the judges of the mistake. However, the judges still made the decision to prolong the detention due to the circular order (which doesn't exist) as well as the severity of the crime. The defendant made an interlocutory appeal to the Supreme Court, but the Supreme Court only noted the mistake and dismissed the appeal after the High Court corrected it.

193. Paragraph 128 in State Report mentions in Article 38 of *Immigration Act*, Judicial Yuan Interpretations No. 708 and 710 that, the Code of Administrative Procedure has amended on February 5th, 2015 and included a new chapter 4 to address the procedure, categories of petition on custody cases, the court in charge and the procedure of the trial. The involved person or family can appeal for an objection, and request an arraignment. However, according to the statistics, the was 6.3% of cases will be released. The trial usually only examines on the laws but the fact, and it never consider the necessity of "custody." Article 38 of *Immigration Act* addresses that, only when a compulsory exit order is difficult or impractical to enforce, a defendant can be temporary detained. Therefore, it shall be considered in the court that whether detention is the ultimate measure.

194. There were 8 Hydis workers arrested in a sit-in protest to express themselves in the evening of June 9th, 2015. They were arrested. The was Mandarin and English, but there wasn't any Korean in the disciplinary action documents. Also, the workers could only receive the documents right before their repatriation, and they couldn't understand the content at all.

195. No asylum-seeker in Taiwan had received any legal aid when he was detained in the alien detention centers for the crime of illegal entry or overstay. Since *Legal Aid Act* has regulated that only the "legally entry and resident" aliens can be assisted, the illegally entered or overstayed aliens would not receive any aid. Plus, since Refugee Law hasn't passed in Taiwan, all asylum-seekers would be considered as illegal immigrants, and would be excluded from all legal aid.

Wrongful trials on charges of sedition and espionage during the Martial Law period

196. In reply of Article 134 in the second Nation Report on ICCPR. Firstly, although the Foundation for Compensation Wrongful Trials on Charges of Sedition and Espionage During the Martial Law Period is transparent on the number of cases and the amount of compensation, the competent authorities, such as the Preparatory Office of the National Human Rights Museum, hasn't provide the further information regarding the content of the files like the standard that the Foundation followed when examining the compensation cases. The concrete content is not only concerning the rights of the victims and their families, but the compensation is provided from taxes. Therefore, the content of the permissions/ dismissals and the standard of compensation shall be revealed, so that the civil society can keep the authorities accountable.

197. Secondly, the propose of "keeping the important human rights historical memories of the state" is not saving the files in the institutions, but should include civil participation, so that the goal of "education in human rights, collecting of the historical materials in the Martial Law period, research and popularization" can be achieved. Although the competent authorities have

allowed access of the files to the victim groups, civil researchers and professionals, the legal professionals have questioned whether the decision is conformed to the regulation in Article 22 of *Archives Act*. Until now, the Ministry of Culture hasn't taken any active action on both the protection of the privacy and the education in human rights.

Article 10 Treatment of Persons Deprived of Their Liberty

Overview of Human Rights in Prison

198. Between 11 and 12 February 2015, an incident at the Daliao Prison (a prison for middle to long term imprisonment) occurred where six inmates took members of the prison staff, including the superintendent, as hostages. This was Taiwan's first prison incident where prison officers were taken hostages, and it only ended with the inmates taking their own lives. These six inmates shared a number of commonalities: they are all subjects of the three-strikes law without hope of release, and almost certainly would have had to spend the middle and advanced years of their lives in prison. Their messages during the hostage situation highlighted the stringent conditions of compassionate release, the inability to be self-sufficient with labor income (200NTD per month), the miscarriage of justice during trials, the infinitely increasing threshold of release due to parole and *nemo bis punitur pro eodem delicto* rules and the near impossibility of sentence reduction due to the three-strikes law, all of which rendered the inmates feeling hopeless within the prison and resulted in their suicides. Apart from the subsequent investigation of related negligence on the part of the staff, this incident did spark intense debates on prison conditions, but only briefly. Now, barely any mark of the incident is left in the public sphere.

199. Further into the past, Weishiao Lin, an Atayal young man serving his sentence in Taipei Prison, died in December 2014 due to the prison staff's misuse of guard instruments. Another individual, the juvenile Hungkai Mai, were admitted into Taoyuan Reform School on 10 June 2011 for theft by the decision of New Taipei District Court, but died in the afternoon of 5 February 2013 after being sent to the hospital in emergency. In 2014, Changhua Reform School dealt with an incident, in which resident juveniles physically rattle their quarters in protest to the treatment they received, by handcuffing nearly twenty of the juveniles overnight at a courtyard used for drying clothes. Such practice, according to the investigation of the Control Yuan, is not the first of its kind at the School but a disciplinary measure frequently utilized.

200. The aforementioned incidents occurred after the first international review of Taiwan's implementation of ICCPR and ICESCR in 2013. During the review, international experts have raised concerns with regard to overcrowding, torture, medicine and complaints in Taiwan's prisons, to which both the government and civil groups have responded accordingly. However, two years afterward, Taiwan's prison conditions remain grim today after 2013, as prison incidents continue to occur and are still not

addressed appropriately. The issues highlighted in the 2013 report still exist today. Current challenges and issues facing the prisons may be, tentatively, divided into the following categories:

(1) Health the hygiene (basic conditions to maintain the inmates' health: air, sunlight, water and food).

(2) Medicine (and its accessibility).

(3) Mental health (psychiatric treatment).

(4) Treatment of AIDS positives.

(5) Complaints (including that against parole decisions).

(6) Guard and control standard operating procedures (general guard and control within the prisons, use of guard instruments, compassionate releases and nighttime emergency guard and control measures), which also touches upon the issue of torture.

(7) Differences in gender (e.g. transgender, sex drive), religion and physical and mental disabilities.

(8) Work and labor income: voluntariness and work conditions.

(9) Detention of the defendant (for detention centers).

(10) Correction education of juveniles.

Inmate Complaints against Torture

201. Defendants of criminal cases may appoint defense attorney at any time to avoid being subject to torture. Victims of torture may file criminal cases against, inform on or raise complaints against the prosecutor, or claim to have been subject to torture to the prosecutors or judges. Inmates who are subject to torture may file complaints to the prisons or their supervisory agencies. However, correction facilities and police supervisory agencies have indicated that no such complaint was filed between 2012 and 2015.

202. The absence of complaints against torture may be attributed to the flawed mechanism for filing complaints: the fact that correction facilities and police supervisory agencies received no complaint does not mean the inexistence of torture. Possible causes for such silence are: 1) difficulty in filing complaints; 2) unsuccessful complaints may lead to further punishment; 3) complaints may be categorized as mere logistical matters, or addressed privately without being formally considered.

203. That inmates' themselves are unaware of the kinds of treatment constitute torture, or are skeptic about the effectiveness of complaints against torture, may

also be the possible causes for not filing complaints. For example, Weishiao Lin, an inmate at the Taipei Prison, was continuously kept in the ward for rule breakers, and was subject to illegal use of guard instruments 49 times. He eventually lost his life as a result of being illegally and inappropriately restrained[52]. Lin never filed any complaint against the torture to which he was subject.

204. This report suggests:

(1) the establishment of an external monitoring mechanism;

(2) ensuring complainants would not be subject to inappropriate treatment for their complaints or for subsequent investigations, and

(3) enhancement of the awareness of torture.

Prison Staff's Awareness of Torture

205. Paragraph 84 addresses the prison staff's inadequate awareness of the ban on torture or inappropriate treatment: Weishiao Lin, an inmate at the Taipei Prison, died on 1 December, 2014 after being tied down for several hours on the walkway. The Control Yuan's investigation reveals the illegal use of guard instruments and restraints by members of the prison staff, while the chief of the guard and control section, the secretary and the superintendent had neglected their duties in allowing such malpractice to occur.

206. This particular incident reveals the inadequate understanding of the danger and inhuman aspects of guard instruments and restraints on the part of prison facilities' staff. While rules and regulations that govern the use of guard instruments and restraints do exist in Taiwan, effective implementation and monitoring mechanism remains lacking.

207. This report suggests the following: 1) If training of prison staff already includes the ban on torture or inappropriate treatment, the existing training regimen should be reviewed for shortcomings that had led to the illegal use of guard instruments and restraints. 2) The use of guard instruments and restraints should be supervised by medical personnel and reported to superior agencies. An order of discipline should be issued in writing to the inmate subject to the use of guard instruments and restraints for future possible complaints. Without violating inmates' privacy, how guard instruments and restraints are used should be proactively made public for the purpose of public supervision.

The Group on Corrections Innovation

208. This section responds to Paragraph 140 of the State report regarding the Group on Corrections Innovation. The Group meets every six months to discuss their

[52]The Control Yuan's report on Lin's case can be downloaded at http://ppt.cc/78XKH

latest visit to a prison, which is a delay in terms of following up on the visit's findings. In addition, the Group may only make suggestions on general issues and may not visit prisons at its own discretion, which makes it ineffective in achieving true external monitoring as it serves only to mark the directions of corrections innovation.

Reassignment of Military Prisons to the Agency of Corrections, Ministry of Justice

209. With regard to Paragraph 141 of the State report on military prisons, as the Agency of Corrections prioritized acquisition of the land, the two military prisons reassigned to the Agency were found in adverse conditions, and were not fit for use as regular prisons at the time of the reassignment.

Rehabilitation/Protection

210. This section responds to Paragraph 143 of the State report on the rehabilitation/protection system. This area falls under the responsibility of Taiwan After-care Association. Statistics from the Ministry of Justice indicate that 34,148 inmates were released from prison in 2015 (23,094 sentence fulfilled, 11,054 granted parole). However, judging by the 2015 end report in the Association's 2016 budgets, various services provided by the Association remain inadequate: among this many rehabilitating inmates, only 1,073 received counseling, 708 participated in skill training and 1,575 received career development assistance, while only 3,906 were visited by rehabilitation counselors, 1,879 were subsidized for their homebound trip, and 23 were provided start-up loans. In addition, the quality and detailed content of such services were not publicly available. Although the Association has expanded its services to include families of the rehabilitated in the form of "Supportive Services Program for Families of the Rehabilitated", a study commissioned by the Ministry of Justice has shown that the Program's contents and standards vary when implemented by the Association's different branches or commissioned institutions. Also, only a limited number of families received the Program's aid, the total being 667 between 2010 and 2011. This indicates that while services for families of the rehabilitated are being developed, systemic planning for these services, as well as their level of proliferation, are still found wanting.

211. To sum up, the amount of services is obviously inadequate as opposed to the number of inmates released, while accessibility of these services also requires improvement. In addition, only overview of the "Supportive Services Program for Families of Rehabilitated" overview carried out by the Association's various branches and commissioned institutions is publicly available. Apart from statistics, detailed information on the content and quality of services provided, along with the criteria to engage such services, is not available.

212. These available services fall drastically behind the demand and lack adequate accessibility for individual subjects. The content of such services also requires

reconsideration, and their outsourced nature has fragmented the program and robbed it of consistent objectives.[53]

Treatment and Releases of Drug Addicts

213. This section responds to Paragraph 144 of the State Report on detoxification and compulsory detoxification treatments stipulated by Article 10 and Article 20 of the Narcotics Hazards Prevention Act. Detoxification treatments apply to first-time users of Category one or Category two narcotics, while compulsory detoxification apply to users of such narcotics who commit the same offense five years after being released from completion of treatment. Rehabilitation centers in this regard are only affiliates to the Agency of Corrections of the Ministry of Justice, not medical facilities. In addition, internal rules in rehabilitation centers are no different from that in regular prisons, and most centers have no designated doctors or nurses stationed. For example, Sindian Drug Abuser Treatment Center has no designated doctors, and Taichung Drug Abuser Treatment Center has only one, while the rest of these centers cooperate with nearby hospitals that serve as their medical resources. The Ministry of Health and Welfare's functions are not utilized.

214. Treatments vary vastly in different Centers, and mainly surround various religious groups. An amalgamation of different forms counseling and therapies are observed. For example, Taichung Drug Abuser Treatment Center uses reality therapy, while Centers in Taitung and Kaohsiung employ horticultural therapy and reflective treatment, respectively. Many long-term residents are subject to identical courses over time, which makes it difficult to track the effectiveness of specific methods long-term.

215. According to the Agency of Corrections' 2015 records on drug abusers' admission to correction facilities and their repeated offenses, there have been high rates of repetition: 50.6% among inmates incarcerated for drug use, 43.7% among offenders subject to one year of compulsory detoxification and 34.5% among offenders subject to detoxification less than two months. The Agency has also noted in these records that adjustments are required for guard procedures and edification programs.

216. Tracking of residents upon release is primarily the responsibility of Drug Abuse Prevention Centers. However, in page 227 of Drug Addiction Prevention Strategy Forum published by National Health Research Institute in September 2014, it has been noted that the jurisdictions of respective Prevention Centers are too large to provide accessible services, and case managers, who are hired on short-term contracts, are turned over too frequently to effectively establish relations with individual subjects. In addition, there is a significant lack of

[53]Ministry of Justice's statistics on correctional measures: http://ppt.cc/abO5q; 2016 budget of Taiwan After-care Association: http://ppt.cc/DXQ9S; Final report of Ministry of Justice's study on the establishment of a supportive services system for families of the rehabilitated: http://ppt.cc/eM4e2

community resources related to addictions, as the Ministry of Health and Welfare outsources these operations as one-year subsidy programs without an overall catalogue of available resources or the establishment of indexes to measure treatment effectiveness. Thus, social adaption of former detoxification center residents has been poor.

217. This report suggests:

(1) The proactive involvement of the Ministry of Health and Welfare to provide due medical personnel; also, medical facilities should be considered he best setting for addiction treatment.

(2) The Ministry of Health and Welfare should immediately review all current available resources for addiction treatment, including integrative resources such as ones that are of medical, social and labor in nature.

Edification Programs at Correction Institutions

218. This section responds to Paragraph 153 of the State report. Over the years, life education, character education and vocational training mentioned in the State report have been carried out by impartial figures, not trained professionals, to supplement the insufficient counseling resources. There have been multiple incidents where these persons revealed or even present fabricated individual information to the public, and carried out edification programs with customary methods: lecturing, or demanding self-denial or self-degradation, which are of no effect at all.

219. This report suggests:

(1) diverse programs to be devised to provide inmates with approaches to reconnect and interact with the society in dignity; and

(2) allowing programs that reflect a wide range of different values to enter the prison.

Prison Overcrowding

220. This section responds to Paragraph 154 of the State report on overcrowding. The key cause to this issue is the incarceration of those that do not need to be incarcerated. This is especially true in the case of drug users, for whom prison is not the most suitable destination. For these people, addiction treatment, both physical and mental, is more important.

221. Meanwhile, forms of discipline and punishment are unimaginative and limited, which fails to achieve the objectives of corrective measures. Furthermore, they exacerbate prison overcrowding, to the point where inmates' physical, mental health and share of basic resources are severely affected. Even worse,

insufficient guard personnel has also made high intensity control and guard operations difficult, which adversely affects medical treatment.

Solitary Confinement

222. Paragraph 157 of the State report stated that solitary confinement is not used as a means of punishment. In fact, the isolation itself constitutes torture. International experts' review in 2013 has repeatedly mentioned that solitary confinement is not merely a form of punishment but one of the most extreme forms of torture.

Inmates Comprised of Different Genders

223. This section responds to Paragraph 158 of the State report on inmates comprised of different genders. Stereotypes against those of different genders are prevalent in prison. Visits by the Prison Watch revealed that prison staff often "determine" inmates' sexual orientation with only gender qualities and assign quarters accordingly, which neglect the inmates' own identity and will.

224. Masculine culture in prisons results in prison staff's general stereotypes and stigmas against those of different genders, as well as negligence on inmates' gender differences and sexual needs.

225. This report suggests that prisons implement gender mainstreaming and comprehensive gender equality education for staff and inmates, instead of solely concentrate on issues of sexual harassment and assault.

De Facto Punishments in Prison not Imposed by Law in the Name of Edification

226. This section responds to Paragraph 159 of the State report on making sure that inmates do not receive punishment in addition to what the laws have imposed upon them. According to Article 76 of the Prison Act, punishment given to inmates who violate prison regulations are limited to: reprimand, suspension of visits, compulsory labor, suspension of purchase of goods, reduce labor wages, and suspension of outdoor activities. In reality, however, prisons employ punishments such as confinement in the ward for rule breakers[54], imposing more stringent regulations (e.g. long periods of upright sitting and military drills) and lowering living standards (e.g. wholesale ban on smoking and electrical appliances), all of which are not imposed by law but dealt out in the name of edification.

[54]Criteria for evaluation of inmate violations exist in prisons, but are currently categorized as internal administrative rules, which are not mandatorily published and hence not available on the Internet. Information on the realities in the ward for rule breakers can be found at PNN's PTS News Network commentary: *A Dark Forest within the Dark Forest: Realities in Taipei Prison's Ward for Rule Breakers* (http://ppt.cc/ASRZ; Article in Chinese.)

227. This report suggests an amendment of related criteria, and the deliberation on the necessity of, and alternatives to, wards for rule breakers and observation wards.

Determination of Violations in Prisons

228. This section responds to Paragraph 160 of the State report. The determination of violations of prison regulations can be easily abused, which makes it difficult for individual disciplinary staff members to show restraint. For "insubordination", prescribed as item 3, category 7 of the Reference Standard for Inmate Violations and Punishment, inmates may receive reprimand, suspension of 3 visits, or suspension of outdoor activities for 7 days. However, the concept of "insubordination" is extremely vague, and any deviation from the staff's instructions may constitute a violation.

229. The Prison Act has no provision that prescribes the forms of "violations", but punishments for these violations have a profound effect on the inmates' lives in prison. Such violations should be specified in the Act.

230. For "insubordination", rules that inmates are to follow should be first specified and verified as necessary for order in prison. Violations should be counted only if inmates display insubordination after being instructed to follow the rules.

Use of Restraining Instruments

231. This section responds to Paragraph 161 of the State report. Use of restraining instruments is inconsistent with human rights standards. Paragraph 1, Article 22 of the Prison Act stipulates that "precautionary appliances or calm rooms are used for consideration when an inmate has possibilities of escaping, committing suicide, acting violently or other disturbing behaviors", and Paragraph 2 of the same article stipulates that "precautionary appliance is limited to legcuffs, handcuffs, chains and rope restraints". However, according to General Comment 21 of UN's Human Rights Committee, Standard Minimum Rules for the Treatment of Prisoners apply to parties of ICCPR. Article 33 of the Rules prescribes that irons shall not be used as restraints, and that such instruments shall only be used as precaution against escape during a transfer, on medical grounds by direction of the medical officer, or by order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property, and in such instances the director shall at once consult the medical officer.

232. At present, legcuffs/irons are still listed as a precautionary appliance under the Prison Act, an inconsistency with Standard Minimum Rules for the Treatment of Prisoners. In addition, such instruments may be used without consulting medical personnel when inmates have "possibilities of…other disturbing behaviors", which is both vague and inconsistent with the Rules. By this language, the use of these precautionary instruments could easily escape the

purpose of preventing a prisoner from injuring himself or others or from damaging property, and become a de facto means of punishment.

233. This report suggests that Article 22 of the Prison Act should be amended in consistence with Article 33 of Standard Minimum Rules for the Treatment of Prisoners. Before the amendment takes place, Ministry of Justice's Agency of Correction should, as soon as possible, amend the guidelines governing the use of guard instruments for correction facilities in accordance with Article 33 of the Rules.

Lack of Rules Governing the Use of Electric Batons

234. This Paragraph responds to Paragraph 162 of the State report. In practice, prison facilities are issued electric batons. However, whether these count as "batons and firearms", as prescribed in Article 24 of the Prison Act, is a matter of debate[55]. Because the Act does not explicitly mention electric batons, there are no rules governing their issuance and use, nor is there a supervisory mechanism against their abuses.

235. This report suggests the establishment of clear laws and regulations governing weapons issued to prisons. For these weapons to be used appropriately, and for such usage to be properly supervised, rules should to be made with regard to their issuance and use. Records should be kept on the use of weapons and should be submitted to superior agencies. Inmates subject to the use of weapons should be issued explanatory documents afterwards for future possible complaints. Without violating inmates' privacy, how weapons are used should be proactively made public for the purpose of public supervision.

Intentional Obstacles against Same Sex Partners' Visits

236. This section responds to Paragraph 163 of the State report. When Wang, a gay man, was incarcerated in 2015, his request to be visited by his same sex partner ran into intentional obstacles, and he was asked to present proof that the two were registered to the same household. This is an unfair and more stringent requirement than that for heterosexual married couples. [56]

[55]See commentary by Ful-Dien Li at Storm Media: *Can the Death Remonstration Wake the Ministry of Justice from Stupor?* (http://ppt.cc/Ki3dV; Article in Chinese.)

[56]Wang was incarcerated on two occasions, from January to April 2015 and from December 2015 to February 2016. Before his first incarceration, Wang had written to the Ministry of Justice to request his boyfriend be allowed to visit as Wang's same sex partner. One week before his release, Taipei Detention Center's officer informed him that the Ministry had sent an official letter stating that with proof of cohabitation, applications for visits and communications would be permitted, though Wang did not file an application since he was soon to be released. Before his second incarceration, Wang and his boyfriend had acquired a proof of cohabitation, which his boyfriend sent to the prison along with the Ministry's official letter immediately after Wang's admission to prison. However, it turned out that Taipei Prison would only permit applications for visits from a partner registered to the same

237. The requirement to be registered to the same household, even prior to admittance to prison, is a requirement more stringent than that for regular spouses and almost entirely prohibits visits from same sex partners. This report suggest that Ministry of Justice impose of set of universal regulations which would allow all prisons to permit visit and communications applications from same sex partners with reasonable requirements (such as the proof of cohabitation required by Taipei Detention Center).

Prison Staff's Lack of Awareness and Supervision to the Use of Restraints

238. This section responds to Paragraph 164 of the State report. Awareness and supervision to the application of restraints is lacking among prison staff, as evidenced in the case of Weishiao Lin. In this particular incident, Taipei Prison, without direction of medical personnel, illegally employed a tongue depressor, and rendered the inmate unmovable in an identical position over an extensive period of time, which eventually caused the inmate's death. The occurrence of such lethal incident, even when there are in fact rules in place governing the use of restraints in prison, points to first line staff members' lack of understanding on the use of restraints and its danger, as well as gross failure in the prison's internal control mechanism.

Work within Prisons

239. This section responds to Paragraph 165 of the State report. Currently, work within prisons primarily consists of repetitive, non-skill processing commissions, such as folding paper bags, paper lotus flowers and processing hair clips. Such work only expend inmates' time and energy and has no effect in terms of cultivating professional skills in preparation for inmates' return to society.

240. Participation of such work is mandatory under current regulations, which excludes the possibility of inmates' choice on whether to participate upon admission, or absence for appropriate reasons. The acceptable reasons, such as illness or edification, for exclusion from prison work are determined entirely by prison staff.

241. Income from prison work remains low and insufficient for basic monthly expenses. While a number of prisons have developed respective niches that may provide inmates with up to 10,000NTD per month, inmates' monthly income at most prisons remains only about 200NTD. Such disparity should not be obscured by the use of average numbers.

---

household as the inmate. As a result, Wang was still not able to see his boyfriend during his incarceration. After his release, Wang shared his experience on the Internet and was contacted by a lesbian woman, who was not able to see her girlfriend even after she had registered both of them to the same household because her girlfriend was serving at Kaohsiung Prison, which only permits applications for visits from a partner registered to the same household as the inmate *before* the inmate's admission.

242. In summary, Ministry of Justice's Agency of Corrections has violated Paragraph 3(c), Article 8 of ICCPR on servitude, and Article 7(a) ii of ICESCR on remuneration that provides decent living for all workers.

243. This report suggests that:

(1) Article 32 of the Prison Act on labor wages should be amended. Under current laws and regulations, equipment maintenance should be at the Agency of Corrections' expense, and intended indemnity would not be paid to inmates in the case of victimless crimes. These should also go to inmates' income, hence

(2) Article 33 of the Act should be abolished, as the State should not require labor wages to be drawn for victim indemnity, especially when many inmates in Taiwan are convicted of victimless crimes (e.g. drug use). Labor wages should go wholly to inmates without being used by the State for any other purpose, while victim indemnity should come from other State budgets.

(3) Chapter 5 of the Statute of Progressive Execution of Penalty should be abolished. Basic living requirements for inmates should not differ with the progression of penalties. The Chapter is both meaningless and unnecessarily restrictive for inmates and thus should be abolished.

Economic Situation for New Inmates

244. This section responds to Paragraph 170 of the State report. Since new inmates may not participate in prison work, they have no income. Essentials should be provided to new inmates based on time of admission, age and gender.

245. Review schedule of inmates' economic situation should be specified, with at least one review every month. Essentials should be provided if an inmate's money under custody falls below 1,000NTD upon review. Inmates' requests for essentials should not be refused unless there is a significant difficulty.

Hot Water Supply in Prisons

246. The Agency of Correction states in Paragraph 171 of the State report that cold and hot water are provided in prison in predetermined periods based on seasonal conditions. This does not reflect the reality. In addition, Article 69 of the Enforcement Rules of the Prison Serving Act should be abolished.

Program to Improve Inmates' Living Conditions and Treatments

247. This section responds to Paragraph 172 of the State report. The Ministry of Justice should specify the content of the program, and allocate budgets for its operation and maintenance, instead of drawing on operational funds.

248. Other suggestions not corresponding to items in the State report:

(1) Article 67 of the Enforcement Rules of the Prison Serving Act listed "other living essentials" needed by prisoners' accompanied children. Staple and non-staple foods should also be included.

(2) A Paragraph that reads, "The visitation during holidays is twice per month." should be added to Article 63 of the Prison Act, and the original Paragraph 2 moved to Paragraph 3.

(3) Items and their prices in cooperative stores in prisons should be posted online for the sake of transparency; this report also suggests that the Agency of Correction should consolidate and assume responsibility of the tendering process of common essentials for all prisons.

Quality of Medicine for Inmates

249. This section responds to Paragraph 173 of the State report. The effectiveness of inmates being included in the National Health Insurance scheme, and the quality of medicine available to them under the scheme, should be reevaluated. Treatment variety and frequency do not fit inmates' needs in a number of prisons (for instance, frequency of psychiatry treatment at Taoyuan Women's Prison is significantly subpar), which would inevitably affect quality and accessibility of medicine.

250. In the case of an inmate medical emergency, no certified medical personnel is required to determine whether an inmate should seek external emergency treatment under guard. A set of simple rules were established by the Agency of Correction on the criteria for external medical treatments under guard, which is determined by prison staff without professional medical training according to the subject's life signs (such as blood pressure, body temperature, etc.). However, individual life signs cannot represent inmates' overall health and medical needs. The death of juvenile Mai at the Taoyuan Reform School was caused by the delay of external medical treatment.

251. Most prisons do not have doctors on site at night and during holidays, which makes these prisons incapable to deal with inmates' medical emergencies with medical expertise in a timely manner and decide whether external medical treatment is required.

252. Taiwan Prison Watch has written to the Agency of Corrections highlighting the above issues of treatment frequency, external medical treatment under guard, medical treatment on bail and the ambiguity in relief mechanisms. The Agency's only replied was that "inmates are not free to choose between medical treatments. The forms with which medical care is provided are under the jurisdiction of the correction institutions. Whether an inmate should receive treatment in the institution, seek external treatment under guard, be transferred to the sick ward, or seek treatment on bail, is the discretion of the institution having taken into consideration doctor's diagnosis and suggestions." This shows that individual correction institutions still tightly control medical

treatment in prison without involvement from medical professionals or health authorities.

253. This report suggests:

(1) Health authority should proactively participate in the supervisory of prison medicine to effectively evaluate its quality and accessibility.

(2) Medicine in prisons should be the Ministry of Health and Welfare's responsibility. A coordination mechanism should be devised from a medical perspective to provide treatment variety and frequency that fit inmates' needs. Standard operating procedures of, and reliefs with regard to, external medical treatment under guard, transfer to sick ward, along with that of medical treatment on bail should be established.

(3) Criteria for external medical treatment under guard should be leniently determined, where external treatment should be sought at once in an emergency, instead of delaying such treatment until the subject's life signs have weakened. The flow of seeking such treatment should be reviewed, as a whole, since looking at individual items within without a comprehensive assessment would not produce a flow that serves the inmates' needs. A nurse should be stationed at each prison to determine, instead of prison staff, the need for external medical treatment.

(4) Each prison should employ at least one designated, onsite medical specialist (a doctor or a nurse) to make medical decisions and provide medical assistance.

Inmates' Mental Health

254. This section responds to Paragraph 174 of the State report. Health evaluation is only performed at inmates' admission to a prison, with no following up on their physical and mental health except for observations made by prison staff without psychology training. Incidents at Taipei Prison such as an inmate's death at in April 2013, caused by physical abuse by a cellmate, and the suicide of another by a pair of scissors in June 2014, have indicated the prisons' lack of capacity to assess mental health.

255. Most prisons employ no counseling psychologists or clinical psychologists, only the assistance of intermittent voluntary services or occasional counselor visits. At prisons that do employ designated counseling personnel, the ratios of such personnel to inmates are so low that effective evaluation of, and counseling to improve, inmates' mental health are difficult.

256. Prisons have largely employ lectures by religious or self-help groups through edification personnel (of prison staff) without psychology training. These edification personnel are extremely few in number (for instance, in 2014, only six edification personnel were stationed at Kaohsiung Second Prison, which

housed 2,800 inmates) and their main responsibility is to organize lectures. For this reason, they do not have enough time or expertise to effectively evaluate inmates' mental health situation, or to make timely referrals to medical facilities or professional counseling providers.

257. This report suggests:

(1) inmates with sentences longer than ten years, and those with less but are emotionally unstable thus are exposed to higher risks, should be subject to proactive mental health evaluation.

(2) Prisons should offer regular counseling services for inmates to apply at their own discretion. Counseling services should also meet the following requirements: that counseling providers should possess adequate expertise; that case load for individual counselors should be kept at a reasonable level to ensure adequate time and quality for each case; that an inmate should be able to engage with the same counselor, and expect stable, trusting relations, and that counseling ethics such as confidentiality should be observed.

Medical Treatment on Bail

258. This section responds to Paragraph 178 of the State report. Although medical doctors may advise the correction institutions, final decisions of whether to approve medical treatments on bail are still made by prison superintendents. In addition, there is no corresponding remedies or procedures through which decisions may be overturned with adequate proof.

259. This report suggests that:

(1) on whether to approve medical treatments on bail, Ministry of Justice should defer to professional medical expertise and consider doctors' opinions with priority. The decision making process should also incorporate civil groups and (non-administrative) medical experts and accordingly make improvements, in order to establish a mechanism for professional analysis of such matters.

(2) The Ministry should provide administrative relief for those refused medical treatments on bail, such as obtaining third party opinion through self-paid medical treatments as evidence for complaint.

Prevention of Infectious Diseases in Prisons

260. The section responds to Paragraph 179 of the State report. Given the level of overcrowding, it is difficult to appropriately segregate patients with infectious diseases in prisons. In addition, the general facility shortcomings have resulted in poor ventilation and hygienic conditions in prisons. Combined with the

relatively low accessibility of medical resources, infectious diseases are difficult to prevent in prisons.

261. This report suggest that:

(1) Ministry of Justice review the issue of prison overcrowding from the source, and allocate budgets to improve prison facilities and hygiene.

(2) Correction institutions should have enough sick wards and isolation wards to provide necessary segregation and treatment following doctors' assessment of patient conditions.

Inconsistent Parole Review Criteria

262. This section responds to Paragraph 181 of the State report. Parole review criteria have been inconsistent in practice, even after Ministry of Justice's publication of specific rules. Former legislator Chingbiao Yen's swiftly granted parole is a case in point[57].

263. The cause of this issue is the prisons' unspoken rules on parole decisions. In practice, such decisions are made in no small part based on the suggestions of edification personnel who report on individual inmates' performance. Therefore, there is ample room for manipulation.

264. This report suggests that social adaptation programs should be tailored to each inmate's situation through discussions between inmates, social workers and psychologists. These social workers and psychologists who have assisted the applying inmates on social adaptation programs should be the ones to assess parole requests, and on the grounds of the level of completion of these programs. Medical diagnoses should be sought for applicants with personality disorders to determine related risks. Finally, inmates who are denied parole should have a larger voice at the parole review committee, in order to lower the level at which parole review criteria could be manipulated by prison administrations.

Persistent Lack of Complaint Information for Inmates

265. This section responds to Paragraph 191 of the State report. Inmates are still provided with less than adequate information regarding possible complaints, as the manuals issued to them do not include code of conduct for prison staff. Without this information, it is difficult for inmates to realize if members of the prison staff are treating them in violation of specific rules and complaints could be filed against such inappropriate treatments. For example, in the case of Weishiao Lin, the inmate was illegally subject to guard instruments and restraints, but there is no record of complaint from him against such treatment.

[57] See *Yen's Parole was Manipulation of Justice* by Jienjung Chien, Apple Daily (http://ppt.cc/Bmuiz; article in Chinese).

266. In addition, provisions of International Bill of Human Rights that are related to prisons are not included in inmates' manuals, not to mention their interpretations and case examples. For this reason, inmates have no way to realize that certain practices in prison have violated the Bill.

267. This report suggests that prison libraries should include the full catalogue of laws and regulations (such as compilations of Agency of Correction's official letters and orders). In addition, the Agency should also articulate, approachable explanatory material and case examples of International Bill of Human Rights provisions related to prisons to be included in prison libraries. Code of conduct for prison staff concerning inmate's rights, along with provisions of the Bill concerning prisons, should be included in inmates' manuals with reference to further available library resources. The manual should also include contact information of human rights groups for potential correspondence and consultations.

Measures and Regimens for Inmates to Bring Lawsuits Remains Incomplete

268. This section responds of Paragraph 194 of the State Report. As of Judicial Yuan Interpretation number 691, inmates seeking relief against their treatments in prison are to file their cases to administrative courts instead of regular criminal courts.

269. Two issues with regard to trials at administrative courts: 1) Inadequate legal aid: court cost at the administrative courts for each case falls between 4,000 to 6,000 NTD, which many economically disadvantaged inmates cannot afford, let alone employing attorneys to help with their claims. Although the Administrative Litigation Act includes provisions on litigation in forma pauperis, inmates', given their limited legal knowledge, often are not aware they may apply for resources, or how to make effective applications. 2) Administrative courts refuse to substantively examine whether treatments in prison constitute violations of inmates' human rights: Hoshun Chiu, an inmate with death penalty, once mentioned prison staff's drug dealing practices in his letter, which was withheld by Taipei Detention Center on the grounds of "obstruction of order in prison" and demanded that Chiu revise the letter. Chiu subsequently filed an administrative suit, in which the administrative court has recognized a broad scope of the prison's mandate on correspondence inspection and approval[58].

270. This report suggests that:

(1) to assist inmates' claims against treatments in prison in court, a special piece of legislation on legal aid to complaints against treatments in prison

[58] More information can be found at PNN's PTS News Network commentary: *An Inmate in Silence? Comments on the Verdict of Chiu's Memoir* (http://ppt.cc/bu3S; Article in Chinese)

is required, which would enhance Legal Aid Foundation's role of legal counsel on treatments in prison, its pro bono legal services, and subsidies to legal costs.

(2) The Prison Act should be amended in accordance with the International Bill of Human Rights. Criteria for inmates' various treatments in prison should be specified, so the courts would not refuse to substantively consider the cases on the grounds that prisons' mandates is broadly defined under current laws.

Inmates in Juvenile Correction Institutions

271. The section responds to Paragraph 187 of the State report. Although accessibility spaces, medical equipment and related professional expertise remain inadequate in correction institutions, juvenile inmates with disabilities are not sufficiently referred to welfare or education institutions for children or juveniles. More comprehensive considerations should be given to referrals as described in Paragraph 189 of the State report, including the subjects' physical and mental conditions after being admitted.

272. The incident surrounding Mai, a juvenile inmate at Taoyuan Reform School, is a case in point[59]. The School ignored Mai's need for psychiatric treatment (for ADD and emotional disorders already diagnosed prior to admission), as his instructor deemed him "almost pathologically stubborn". In addition, Mai was kept in isolation confinement for the convenience of overall class management despite his deteriorating health. As a result, Mai died during the course of his educational discipline.

273. Among all juvenile correction institutions' inmates, about 150 are admitted under the juvenile delinquency system. However, are the reform schools capable of providing adequate protection as they are? Insititutions with smaller space that promotes sufficient interaction should be established to support these inmates' reconstruction of interpersonal interaction and empathic capabilities.

Correction Schools

274. This section responds to Paragraph 188 of the State report. At present, juvenile correction institutions are divided into two correction schools and two reform schools, which are managed under different administrative branches with different personnel allocation and curriculum. However, only one correction school out of four institutions (Ming Yang High School) specifies juvenile inmates as their target subjects. Therefore, juveniles subject to educational discipline may be admitted unequally to different correction schools or reform schools by court decisions. (Reform schools are managed similar to prisons, while conditions are better at correction schools, which are preferred by most

[59] Control Yuan's correction on Taoyuan Reform School regarding the Mai incident: http://ppt.cc/o2XFN

juveniles.) In addition, courts responsible for such decisions are not closely integrated with correction institutions, and the former have no clear understanding of the actual situations in the latter. There are also no standards governing the decisions on whether to admit juveniles to reform schools or correction schools, hence treatments that fit individual subjects are difficult to administer.

275. Illegal corporal punishments still exist in juvenile correction facilities, and inmates are not allowed to file complaints to improve the situation, lest risking to be regarded as insubordinate. The torture incident at Changhua Reform School is a case in point, where inmates were inappropriately subjects of guard instruments and drills, which were employed frequently as a means of punishment. In addition, the School also punished students who violated regulations with excessive physical training and confinement in observation ward (individual subjects were confined as long as 17 months), and inmates under such confinement were not able to attend education sessions. These practices constituted torture and violation against the inmates' health and fundamental human rights.

276. Regular visits of juvenile courts to these correction facilities are ineffective in terms of understanding inmates' lives inside. It is also difficult for inmates to file complaints in order to stop inappropriate treatments. In the case of Mai, who informed the visiting juvenile probation officer of the corporal punishment he was subject to, the juvenile court did not perform any subsequent investigation. Mai's accusation was thus deemed false, and he was demanded to provide a confession.

277. This report suggests that:

(1) a review of the curriculum of correction schools and reforms schools should be performed in the short-term, in order to provide inmates with adequate adaptive education, which include academic and vocational skill training that may connect with regular schools.

(2) In the mid-term, correction schools and reforms schools should be consolidated. Juvenile inmates should not be treated differently because the two types of schools are under different administrative branches.

(3) In the long-term, an overall review of juvenile correction institutions should be performed, in order to, instead of simply addressing current shortcomings, develop a new education system that may be implemented on juvenile inmates effectively.

Connective Education in Correction Institutions

278. This section responds to Paragraph 189 of the State report. Variety and transferability remain insufficient for vocational skill training courses in reform schools, nor are the courses adaptive to the inmates' needs.

279. As course assignment are not made in full accordance with inmates' aspirations, sexual differentiation is also apparent in vocational training in addition to that in the assignment of classes and quarters. Females are to receive beautician or stylist training, while males are subject to technical training such that of plumbers, electricians or auto mechanics.

280. In terms of academic training, proper teaching personnel for adaptive education remain insufficient. Courses may even be interrupted by parents' visits and labor sessions, which results in most inmates' inferior academic performance in comparison to their outside peers of the same age.

281. This report suggests that Ministry of Education shoulders a larger responsibility in terms of juvenile inmates' connective education in correction institutions and their subsequent education in regular schools. Teaching personnel in correction institutions should be treated equally in terms of wages and benefits. More professionally trained teachers and education resources should be introduced, instead of relying heavily on volunteers of religious groups.

Discriminatory Treatments of Female Juvenile Inmates

282. This section responds to Paragraph 190 of the State report. Female juvenile inmates subject to educational disciple cannot enter correction schools, can only advance to eleventh grade in reform schools, and may not be able to receive vocational training according to their aspirations. This is a severe violation to these juvenile inmates' right to education.

283. Although there are remedy-teaching courses mandated by Ministry of Education, they are not implemented in practice, a negligence already impeached by Control Yuan.

284. This report suggests a review on the current inappropriate differentiation between correction schools and reform schools, in order to provide female juvenile inmates with equitable treatment.

Inmates' Suffrage

285. Suffrage is the preparation for inmates' return to society by maintaining their basic awareness and expectations as social humans, which is key to lowering the obstacles and increasing the incentives for the eventual return.

286. This report suggests that the Referendum Act should be amended so that provisions on absence voting apply to all incarcerated inmates, in order to restore their civic rights.

Overall Suggestions on the Inmates' Rights Chapter

287. Hygiene in Prisons:

(1) Hygiene improvements: Most prisons refuse to provide water at night on environmental grounds. Only water kept in buckets and drinking water in tea buckets are available, which creates a great deal of inconvenience to inmates who need water in their cells. Taipei prison even refused to install toilet tanks in the cells on the grounds of management and prevention of contrabands, hence toilets need to be flushed with water by hand, which is worrisome in terms of public hygiene. In general, improvements are needed for cell ventilation, inappropriate water restrictions at night should cease, and in-cell toilet tanks need to be installed.

(2) Many prisons also desperately require improvements for their ventilation and lighting conditions.

(3) The Agency of Correction should allocate budgets to improve the above facilities as soon as possible. Water and electricity allocation should prioritize inmates' health.

288. Medicine and Health in Prisons':

(1) Outdoor Activities: at least on hour of outdoor activities should be ensured in accordance with the suggestion of International Bill of Human Rights.

(2) Access to Medicine: A reevaluation on the effectiveness of 2nd Generation NHI and whether frequency of treatments fits the inmates' needs (for instance, frequency of psychiatry treatment at Taoyuan Women's Prison is significantly subpar). An evaluation mechanism should also be established where health authorities may proactively intervene. Criteria for reviewing applications of medical treatment on bail should involve civil groups and (non-administrative) medical expertise and accordingly make improvements, in order to establish a mechanism for professional analysis of such matters. Administrative relief should be provided to those refused medical treatments on bail.

(3) Counseling: Prisons should offer a counseling system where inmates may employ counseling services and engage with the same counselors. Counseling ethics such as confidentiality should also be observed.

289. Complaints and Guard and Control Measures in Prison:

(1) Administrative rules concerning inmates' rights such as parole review criteria and rules governing progressive measures should be included in inmates' manuals. Any amendments should be timely announced at wards and workshops.

(2) Administrative and judicial relief for measures on insubordination should be specified and their procedures made clear to inmates.

(3) External inspectors should be able to inspect prisons and interview inmates, and inmates' complaints filed to inspectors should be exempt from prisons' own inspections.

290. Work in Prison and Treatment for Individual Inmates:

(1) Review of survey items and implementation should be performed. For inmates with long-term sentences, priority should be given to the formulation of their overall treatment programs, which should include regular evaluation and monitoring of physical and mental health and future social adaptability.

(2) Labor income and its allocation in prison should be made public.

(3) Prison staff's awareness on AIDS should be improved upon.

(4) Prisons' accessibility facilities should be reviewed, and any insufficiency and errors should be amended in accordance with People with Disabilities Rights Protection Act.

(5) A talent pool of translators should be established in order to contact, when necessary, neighboring resources.

(6) Prison staff's awareness on sexual orientation and sexual identity should be improved upon.

291. Human Rights of Detained Defendants and Inmates on Death Penalties:

(1) Defendants' privacy is not protected, as spaces for attorney meeting are different in each prison, and in some prisons there are no partitions between defendants. Legal material that defendants receive from attorneys should not be inspected.

(2) 301. Defendants detained and prohibited visits should not be deprived of their fundamental rights to medicine and time for outdoor activities.

(3) 302. Inmates who have received verdicts of death penalty should only participate in workshop operations by their own choosing.

(4) 303. Relief results for individual death penalties, such as pardons, retrials and constitutional interpretations should be ensured by prison administrations.

292. More Transparency Required for Prison Rules and Regulations:

(1) There are "internal" and "external" versions of Ministry of Justice's laws and regulations database (http://mojlaw.moj.gov.tw/). Access to the former is restricted to the Ministry's staff, while the latter is open to the public. However, many prison rules and regulations are not included in

the external version, for the Ministry and its affiliate agencies often deem these to be administrative rules that do not need to be proactively made public. The public is thus unaware of many rules and regulations that concern inmates' rights and conduct of prison staff, such as "Guidelines Governing Use of Guard Instruments for Correction Institutions Affiliated with Agency of Corrections, Ministry of Justice", guidelines governing the use of restraints, guidelines for determination of inmate violations, and guidelines governing the progressive corrective measures at each prison.

(2) This report suggests that the laws and regulations database should not continue to be divided into two versions, which creates an information gap. All compilations of official letters, orders and administrative interpretations related to prisons should be available on the Internet.

293. Prison Edification should Prioritize Restoration of Inmates' Capacity to Return to Society, Especially the Restoration of Citizenship:

(1) Suffrage is the preparation for inmates' return to society by maintaining their basic awareness and expectations as social humans, which is key to lowering the obstacles and increasing the incentives for the eventual return.

(2) The core of edification programs should be to maintain interactions with the outside world. Only then could prisons effectively provide inmates with the necessary skills, including interpersonal interactions, judgment and knowledge of self.

Article 13 Ban on Arbitrary Expulsion of Resident Aliens

Asylum-seekers

294. According to "Guidelines for the treaty-specific document to be submitted by States parties under article 40 of the International Covenant on Civil and Political Rights", the government should provide information on requirements for the admission of non-citizens, in particular asylum-seekers, to the territory of the State. However, Ministry of Foreign Affairs and National Immigration Agency only provide such information to foreign nationals, foreign workers and foreign spouses. No information is to be provided to asylum-seekers since there is no legal mandate.

295. The Guidelines require the government to provide information on the availability of remedies against expulsion and whether or not they have a suspensive effect, whether persons concerned have access to legal assistance should also be indicated. In practice, only foreign nationals who legally enters and resides in Taiwan may be eligible for legal aid, as mandated by the Legal Aid Act, while those entering illegally, over-staying or seeking asylum are not.

296. The Guidelines require the government to provide information on the situation of internally displaced persons, but such information, such as that of those affected by earthquakes, is absent in the State report.

Article 14 Right to a Fair Trial

The Right of Citizens to Challenge the Integrity of Legal Convictions

297. Amendment 420 to the year 2015 Code of Criminal Procedure relaxed the rules on appeal so as to avoid miscarriages of justice . However, in addition to many factors outside the procedural code, such as peer pressure, blind respect for the law, and the burden of making an appeal, the actual practice of initiating an appeal continues to be hindered by the difficulties confronting alleged victims of wrongful prosecutions in opportunities to procure appeals. The legal process for relief (e.g., the right to examine the evidence, the right to legal representation, the right to a hearing, etc.) will continue to remain inadequate until such time as systemic reform.

298. Efforts to reduce the number of wrongful prosecutions might take into account examples from other countries. References to such examples might consider the subsequent establishment of an independent extrajudicial criminal case review commission for the review of the merits for the appeal of a criminal judgment so as to avoid verdicts originating from a single judicial hearing as well as to sufficiently raise thresholds. For example, the United Kingdom, the United States of America (North Carolina) and Norway, striving for more objective neutrality in the review of criminal appeals, have all set up professional independent criminal case review commissions for the determination of whether a case should be appealed or not. Conviction integrity units established in prosecutor offices are also highly effective in ascertaining whether or not erroneous convictions of the innocent have occurred through the investigation of controversial criminal cases undertaken by prosecutors.

299. Although Item 6 in Article 14 of the International Covenant on Civil and Political Rights provides for the compensation of persons found to have been erroneously convicted of a criminal offence, however if the innocent have yet to attain the effective means to redress judgments, even in systems where there exists a complete system for compensation, they will lack the means to put its use to effect. In order to ensure citizen rights against wrongful convictions, compensation must be accessible.

300. The government is obliged to set up a more complete system for extraordinary relief in criminal proceedings (e.g., the establishment of review commissions) so as to ensure that the wrongly convicted innocent have more opportunities to procure appeals.

Mechanism for Supreme Court Case Review

301. From 2002 to 2011, Taiwan's Supreme Court each year handled on average 572 formal petitions for interpretation of which the court each year on average rendered interpretations for about 16 cases (or interpretations for about 2.78% of all formal petitions during the period). More than 350 cases were not accepted for deliberation (about 61%), and, moreover, the 190+ cases making up the balance remained open (about 34%) (Su Yen-tu, 2013). In 2013 there were 553 new cases, 544 adjudicated cases and 9 interpretations; for 2014, 488 new cases, 522 adjudications and 10 interpretations; and, for 2015, 427 new cases, 385 adjudications and 8 interpretations, making for new lows in the percentage of interpretations to new cases. In comparison, figures for the United States Supreme Court during the same period from 2002 to 2011 show that for each term there were on average 79 full opinions, and for the Constitutional Court of Korea in the same period there were on average 151 full opinions per year.

302. The vast majority of formal petitions are sooner or later rejected by Taiwan's Supreme Court. Of those rejected, the most common reasons given by the Supreme Court for rejection are: "petitioner failure to substantiate unconstitutionality", or "mere personal opinions with vague accusations that fall short of forming objective legal reasons about the unconstitutionality of verdicts ", or other such statements. There may indeed be a rather large proportion of petitions, having already been dispatched by the Supreme Court justices for these reasons, that meet the criterion of other statutory procedures for formal petitions, but that are indeed frivolous cases not meriting acceptance by the Supreme Court. Solely from the available statistical legal data, we have no way to surmise what proportion of cases actually meet constitutional grounds or other procedural criteria, rather all that can be known is that the justices' "rejection is in fact a rejection."

303. As a result, both academics and practitioners have criticized the non-transparency of the mechanism for selection of cases. Some courts still hold to the belief that all will be returned to the system of “secret case assignments.” In April of this year the Supreme Court threw out the more than 60-year practice of confidential case assignments whereby the principle writer of a verdict could hide behind a panel of five judges. The outside world should be enabled to publicly evaluate the quality of verdicts and pursue accountability so as to put appropriate pressure on both the panels of judges and presiding justices. However the reasons for Supreme Court explanations or rejections are still hidden behind a 15 person panel, especially those for which there is no resolution or for which the judge commonly “vaguely accuses” the petitioner’s formal petitions of “vagueness in its accusations”. The courts and justices do not venture to take the risk of providing outside reviewers with public petition records or identities of presiding justices. Moreover, those lawyers who have applied for constitutional interpretation but been rejected have stated about the constitutionality of Taiwan’s Code of Criminal Procedures Article 388 for second petitions that, due to the complete unacceptability of rejection decisions by justices, civic bodies have made decisions to assist individual defendants in

the re-submission of appeal petitions for constitutional interpretations, however such petitions till this day have stayed lost in a bureaucratic sea.

304. The Ministry of Justice in response to citizen expectations in 2013 proposed draft amendments which included rules in Article 31 on the elucidation of reasons for decisions to reject and, moreover, the standardization of appeal time limits for appeals. However, this seems not to be the best means for resolution of the issue.

305. Overall, the mechanisms for the hearing of cases in the courts of various countries, e.g., the United States Supreme Court and the German Federal Constitutional Court, are, in fact, also not transparent with more than half done at the discretion of each said judicial court level. Nevertheless, the mechanism of Taiwan's Supreme Court for the hearing of cases is not without areas that are in need of reform .

306. Scholars further consider the following:

(1) legalization of the hearing process for cases does not indicate that policy determination for the selection of Supreme Court cases should be restrained by stricter rules. In a system that maintains that the "Supreme Court be required to elucidate the reasons for the rejection of petitions to hear cases," the Continuation or further codification of "indications of no reason", "lack of significant constitutionality," and other such existing practices, is not only unsupportive of efforts to raise the level of consistency and predictability in case selection determinations by the Supreme Court, but also leads to abrupt deteriorations in the partnering relationships between petitioners and the Supreme Court, and even to displays of hypocrisy.

(2) If problems occur in the setting of judicial political agendas, then comparatively effective reform strategies should be leveraged, i.e., "harnessing judicial politics to fix judicial politics." In addition to augmenting the public disclosure of the Supreme Court's case selection process, and making the Supreme Court's determination of case selection subject to more examination and fairness, assigning a fixed proportion of a minority of accepted Supreme Court cases the right to set the agenda is also a reform measure very much worthy of consideration.

Issues regarding the bar association (in reply of State Report Paragraph 237)

307. Paragraph 237 of this State Report only quotes Paragraph 204 of the initial State Report, which briefly introduces number of meetings and election methods. However, the regulation of registration in the Attorney Regulation Act is rare and create barriers for their practice.

308. According to Article 11 Paragraph 1 in the Attorney Regulation Act, "An attorney at law is not entitled to practice until he/she has become a member of a Bar Association." Paragraph 2 notes that bar associations should be formed

within the geographical jurisdiction of a district court. Therefore, there are 16 bar associations around the country, and a lawyer has to join a a bar association according to the district court they wish to practice law in. In other words, if a lawyer wants to practice all around the country, he has to join all 16 bar associations.

309. The membership fees are freely decided by bar associations. The membership fee is usually collected at the time of registration, and there is also a monthly fee. According calculations made in 2015, the total fee for a lawyer to join all bar associations is NT$446,300, with a total monthly fee of NT$9,120 - although some bar associations give discount to lawyers who register across areas, so this is calculated by the discounted rate. This is quite a burden to lawyers, especially newly-practicing lawyers whose incomes are around NT$50,000 per month. They can usually register in one or two district bar association and have to give up the chance to be appointed by clients from other areas. Relatively, people in rural or remote areas, where less lawyers are registered, would have less options when choosing their defenders.

310. In nearby countries such as China, Japan and South Korea, lawyers can practice around the country after they register in one bar association. There's no management reason to make a lawyer register in every district bar association. Plus, receiving sufficient assistance from lawyers is an important factor of the right to a fair trial in Article 14 of the ICCPR. The regulations on bar associations and their operation have overly restricted the right to practice of lawyers, and they should be revised.

Presumption of innocence

311. In reference to Article 6 Paragraphs 120 & 121 in the Shadow Report, it talks about the phenomenon of "trial by media", as in the case of Hsieh Yi-han.

The right to be heard

312. In reference to Article 6 Paragraphs 122 to 125, it talks about the right to be heard in death penalty cases.

The system of no appeal after innocence in the first instance and guilty in the second instance

313. In Point 65 of the 2013 Concluding Observations and Recommendations, and Article 14 Paragraph 5 of the ICCPR, people who are convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. In practice, Article 376 of the Code of Criminal Procedure regulates that certain cases are not appealable to the court of third instance, and there is no chance for appeal, which goes against Article 14 Paragraph 5 of the ICCPR. The professionals suggest that Article 376 of the Code of Criminal Procedure should be revised so that everyone who is judged

not guilty in the court of first instance, but guilty in the second instance, shall be able to appeal to the court of third instance.

314. Paragraph 259 of the State Report has pointed out that certain cases which are judged guilty are not appealable to the court of upper instance, and the Judicial Yuan has already investigated the revision of the laws that delete Article376 and revise Article 377. However, according to the statistics from the State Report, there are still almost 300 cases per year judged not guilty in the first instance, but proven guilty in the second instance since 2012, which proves that our country is still going against the ICESCR and the ICCPR. Hence, before the laws are revised, the court should follow Article 3 of the Act to Implement the ICCPR and the ICESCR, and grant the chance to appeal according to the intention of the ICCPR and the interpretation of the UN Human Rights Committee. However, according to Supreme Court Verdict no. 216 in 2014 and no. 4532 in 2013, both cases were judged not guilty in the first instance but guilty in the second instance. Both defendants claimed the existing laws violated the ICCPR and made an appeal to the court of third instance. However, the Supreme Court dismissed the appeals, also disregarding the demands of the ICCPR and the ICESCR. Such violations are still ongoing.

315. Regarding the current Article 376 of the Code of Criminal Procedure, which is against the right to appeal in the ICCPR, not only are the legislators obliged to amend the laws, the court also has the obligation to consider the ICCPR, and implement it in judgments before the amendment of laws.

Judicial interpretation

316. According to Article 14 Paragraph 3 and General Comment no. 32 of the UN Human Rights Council, a criminal defendant should have free assistance of an interpreter. This is related to the principles of just and equal rights in a criminal trial, and it is not only applicable in all phases of criminal cases, but also to those cases where foreigners are involved with crimes.

317. As the number of foreigners entering the country has rapidly increased in recent years, the number of cases that involve foreigners has gone up as well. Therefore, it is very important that our government provides the minimum protection for foreign defendants, such as sufficient interpretation assistance (provided by the judicial system) , the brief of the case, and a full explanation of the trial. Take for examplethe well-known, 2013 fishing boat murder case of Te Hung Hsing (No. 368). When the 9 Indonesian defendants were investigated in the Prosecutor's Office, the prosecutor assigned an Indonesian spouse who married a Taiwanese person as the interpreter. But there were problems like a lack of understanding of the case, and their poor grasp on legal terms. After the case was brought to court, the judge interrogated the 8 defendants at the same time, but the court only assigned a Malaysian interpreter for them. Although their languages are similar, it is still questionable if the key terms could be fully conveyed and understood. During the trial, the judge, the prosecutor and the

defendants had to communicate frequently, but the interpreter was too busy to translate every detail, which affected the defendants' rights to participate in and understand the content of the trial. Worst of all, the court only assigned one interpreter at first, and due to the number of defendants and the complications of the case, the interpreter was soon overloaded, which forced the court to assign another interpreter as an assistant. After countless trials, the interpretation went smoother, but the right to a fair trial was still violated during the first half. It also indicates that the court was totally unaware of the basic concept that interpretation is the minimum protection of a defendant's rights. The fact that the whole procedure had to adjust along with the trial shows that interpretation has been considered a non-important issue in the judicial reform, and the right to a fair trial for foreigners is easily violated.

318. Although the competent authorities of the Judicial Yuan and the Ministry of Justice have started training sessions for legal interpretation professionals, and recruited official and specially employed interpreters in all courts and prosecution offices, the number of interpreters and languages available is still severely inadequate. For example, the number of cases which needed interpreters from January to September 2015 was over 6000, but there were only 90 officially employed, and 244 specially employed interpreters, which shows a huge gap between the supply and demand. Also, interpreters obviously do not have the time or capability to understand the details of all cases they're in charge of. The problem of insufficient interpreters also exists in the courts and offices in non-urban areas and the languages of defendants are rarely used (e.g. Arabic, Russian, Turkish). When trials have opened and no interpreters could come, there were cases where the defenders served as interpreters, or the defendants brought their own interpreters to trial. This is clearly against the "neutrality and objectivity of an interpreter" rules in the Court Organic Act and procedure acts. Moreover, the right to have the free assistance of an interpreter protected in Article 14 Paragraph 3 of the ICCPR should include all phases of a criminal case. Since there are many cases that won't even go to prosecution or court, the amount of criminal cases is like a pyramid, and most cases stay in the police investigation stage. However, the Ministry of Justice has long ignored interpretation in investigation processes. Many foreign defendants have their first interrogation in a police station without interpretation. If the process is flawed in the beginning, the trial afterwards stands on a fragile foundation.

319. Finally, the Judicial Yuan and Ministry of Justice have set up "Operational Regulation Governing the Use of Interpreters of Courts and Instructions for Prosecution Offices Using Interpreters in Criminal Cases". However, such executive orders are too brief and only deal with the administrative process. There is still no explicit rule or operational regulation to protect the right to interpretation for foreigners. Issues that should be addressed include the training of officially and specially employed interpreters, the threshold of authentication, examination and assessment, the allocation of interpreters, and rewards and travel allowance that would affect the performance of interpreter.

320. Therefore, the government should not only focus on the training and assessment of interpreters, but also consider setting a specific law, and establishing competent institutions for judicial interpreters, so that the covenant right to interpretation for foreigners can be fulfilled.

321. For the protection of fair trials and to reassure the neutral role of the interpreter, "an interpreter should take the initiative to report to the court if there is any cause for refusal of interpretation or a conflict of interest, as well as of there is any reason that may potentially affect the faithfulness or neutrality of an interpreter performing duties." (Article 8 of the Code of Conduct for Court Interpreters). Article 10 also states: "an interpreter shall not accept solicitation or other favors, or receive improper benefits, and shall avoid making any unnecessary contact with parties, witnesses, expert witnesses or other relevant parties." In Article 25 of Code of Criminal Procedure, it says that "the provisions of this chapter relating to the disqualification of a judge (Article 17 Paragraph 6) shall apply mutatis mutandis to a court clerk or interpreter," which indicates that the interpreter should disqualify himself from a case if it concerns his own motions. However, for a judicial interpreter who speaks the same language as the defendant (who is also from the same country as the defendant) and not only keeps contact with parties outside the court, but also stands as a witness to address the case, his conversation with the defendant could be evidence to prove the defendant guilty in court.

322. By law, it is not neutral for a witness to also act as an interpreter, and it is difficult to see how duties could be executed "fairly" in such instances. It is against the justness of the interpreter to contact a defendant outside the court, and it is directly against the law of the "disqualification of the interpreter". Particularly in the courts of Taiwan, unless there are many defendants or it is a significant case, there are usually less than two judicial interpreters in the court. When a trial is lacking an assistant interpreter to reassure the accuracy of an interpretation, it can hardly be deemed "fair".

Improve Interpretation Services

323. The government should perform a thorough review on the need for various types of interpretation services both within individual agencies and in an interagency setting, and establish a comprehensive set of standard operating procedures for each type of interpretation services, as well as rules securing interpreters' labor rights. Budgets should be allocated, in accordance with Article 7 of Taiwan's Act to Implement the ICCPR and ICESCR, to create comprehensive training and certification standards for different forms of interpretation services, as well as service quality evaluations and proofreading mechanism for translated judicial documents. Meanwhile, budgets should also be allocated specifically for translation of judicial proceeding documents, in order to ensure the right to a fair trial for those who do not understand the language used in these proceedings.

324. There is no clear and uniform mandate among government agencies for the allocation of sufficient budgets to train, provide and manage interpretation services, and various agencies have their own regulations regarding the provision of interpretation services. As a result, central government agencies, local governments, the police and the legal aid system often find themselves short on interpretation capacity. In addition, since there is no comprehensive interpretation system within the central government, the following issues are prevalent in practice for interpretation services[60]: unreasonably low wages, insufficient regulations on duty of recusal, insufficient protection on personal safety, ambiguous application requirements and procedures.

325. As prescribed by Articles 9, 13 and 14 of ICCPR[61], the State shall not violate the people's right to liberty and security of person, nor the right to a fair trial. UN's CCPR General Comment No. 32[62] also notes that the State must provide free interpretation or translation of related documents. Therefore, interpretation serves not only to ensure the defendant's right to defend, it also directly affects the party's rights to life, to liberty and property, as well as personality rights in matters such as medicine and household registration, among others. Taiwan's lack of a comprehensive interpretation system is not only inconsistent with ICCPR, but also a violation of the due process principle in a modern legal state.

Right of Access to Files

326. Paragraph 255 of the State report only refers to Paragraph 219 of the initial report, which briefly explains Article 33 of the Code of Criminal Procedure: that the defender may examine the case file and exhibits during trial, and a defendant without a defender may request provision of copies of the written records in the file. However, given the progress in technology and court resources, there is currently no need to place such restrictions on the defendants' right of access to files.

327. The ratio legis of Article 33 of the Code (as amended in 2007), which limits the defendants' access to copies of the written records and not the entire case file, is to lower the cost on case file protection (by keeping defendants from damaging exhibits), and that on escorting defendants under custody to the courthouse for such access. However, to restrict the defendants' rights of access to related documents and exhibits on such consideration alone constitute an inappropriate restriction to the defendants' rights to defend and to a fair trial.

328. Furthermore, a pilot electronic documents and exhibits system, which scans and presents documents and exhibits digitally to the greatest possible extent, is already available at a number of courts in Taiwan. Should this system prove viable, all considerations on the costs of case file protection and defendants'

[60] Agenda Related Document of the 2nd sitting of Ninth Legislative Yuan's 1st session, dated 11 December 2015 http://ppt.cc/uqkwy

[61] Articles 9, 13 and 14 of ICCPR http://ppt.cc/atBk8

[62] Paragraph 40 of UN's CCPR General Comment No. 32

escort, as mentioned above, would no longer exist, and courts should provide the defendants with full access to electronic copies of documents and exhibits to the defendants so they may understand the grounds of the charges against them and how to defend themselves. Thus, appropriate amendments should be made to the obsolete Article 33 of the Code of Criminal Procedure, and the Judicial Yuan should also expedite implementation of the electronic documents and exhibits system at all courts.

Criminal Defendants' Right to Request Investigation of Evidence/the State's Negligence in Evidence Custody

329. Paragraph 3(e), Article 14 of ICCPR stipulates that defendants should be guaranteed the rights to examine the witnesses against him and to obtain the attendance and examination of witnesses on his behalf. This originates from procedural guarantee principles, such as that of presumption of innocence, due process and equality of arms, and should be interpreted to mean that, by extension, defendants should have the right to investigate both the evidence against him, and that in his favor. (The section on ICCPR's Article 14 in UN's Guidelines for the treaty-specific document to be submitted by States parties asks States to indicate if guarantee exists with regard to access to documents and other evidence). Corresponding to the defendants' rights above, the State has the obligation to keep evidence under its substantial disposal in proper custody, so to ensure that defendants may be found not guilty via the court's investigation, and to prevent contaminated evidence from being used as basis for guilty verdicts.

330. However, custody of evidence, and its management procedures and system, have never received its due attention, and related regulations remain hollow words. For example, almost every miscarriage of justice, overturned or are currently addressed by civil groups, involves evidence lost or contaminated. Examples include the knife in ChienHe Su's case, the recording tape in HeShun Chiu's case, the crime scene forensics video recording and bullet projectile in SingTze Cheng's case, and the DNA sample in JingKai Lu's case. In Lu's case, National Taiwan University Hospital's forensics report indicated that the sample examined did not match the defendant's DNA. While the court had excluded this evidence in favor of the defendant as "contaminated during transfer", other DNA samples similarly "contaminated during transfer" were still used as the basis for the guilty verdict. Worse still, several years later Chiu and his attorney had discovered new evidence and requested another DNA profiling with scientific method that was more sophisticated, only to be told by the prosecution that all case evidence had been destroyed hence no further testing was possible. Such gross State negligence in evidence custody, as well as on presumption of innocence and on due process is bewildering, let alone that Lu's case above is only the tip of the iceberg among numerous other victims of miscarriages of criminal justice. While Control Yuan's investigation has also indicated faults in evidence custody and management, and has demanded improvements from Judicial Yuan and Ministry of Justice, no substantive action

has been observed, and neither does the State report make any mention of this matter.

331. In this respect, civil groups have been urging the State to explain current evidence custody procedures and improvements made to them, and to study possible reliefs for criminal defendants subject to unfavorable verdicts due to State negligence of evidence custody.

The Role of Judicial Yuan should be Reviewed as Soon as Possible and Adjusted towards a "Unified, Single-Track" Structure in Accordance with J.Y. Interpretation 530, as Consistent with Constitutionalism

332. This section responds to Paragraph 229 of the State report. According to Article 77 of the Constitution, Judicial Yuan shall be the highest judicial organ of the State and shall have charge of civil, criminal, and administrative cases, and over cases concerning disciplinary measures against public functionaries. However, under the current Judicial Yuan Organization Act, it is not directly in charge of the above proceedings. This creates a separation between the highest adjudicative organ and the highest judicial administrative organ. The role of Judicial Yuan is the core issue to Taiwan's judicial reforms. In this regard, Judicial Yuan had organized the National Judicial Reforms Meeting in July, 1999, and published the meeting's conclusions and reforms timeline on 26 July the same year, which declares that the role of Judicial Yuan shall be adjusted towards a "unified, multi-track" structure (where individual courts within Judicial Yuan are responsible for constitutional interpretations and adjudication) in the near-term, and towards a "unified, single-track" structure (where thirteen to fifteen justices within Judicial Yuan have charge of civil, criminal, and administrative cases, and over constitutional interpretations, as well as cases concerning disciplinary measures against public functionaries, and that concerning dissolution of unconstitutional political parties) as the ultimate goal. This would make Judicial Yuan a de facto adjudicative organ consistent with the Constitution.

333. In addition to the conclusions of the 1999 Meeting, justices have also interpreted their own role in the form of Interpretation 530 published on 5 October 2001. The Interpretation noted that under the current Judicial Yuan Organization Act, Judicial Yuan shall establish every level of judicial court, Administrative Court, and the Public Functionary Disciplinary Sanction Commission. This Interpretation would have Judicial Yuan functions only as the highest judicial administrative organ in addition to justices in charge of constitutional and unified judiciary interpretations and convening of Constitutional Courts that adjudicate matters relating to the dissolution of unconstitutional political parties, thereby creating a separation between the highest adjudicative organ and the highest judicial administrative organ. The Interpretation also asks that the Judicial Yuan Organization Act, the Court Organic Act, the Administrative Court Organization Act, and the Organic Act of Commission on the Disciplinary Sanction of Functionaries be amended within two years of the Interpretation's

publication in order to comply with the ratio legis of the Constitution that places Judicial Yuan as the highest adjudicative organ. Judicial Yuan approved the draft amendments of the three Acts on 16 May 2006, which would achieve the above. However, KMT's boycott and the discontinuation of agenda between legislative sessions, have led to the lack of progress on reforms of Judicial Yuan's role.

Establish Truly Effective Lay Participation in the Legal System

334. This section responds to Paragraph 238 of the State report. The people's participation to the exercise of judiciary power is a realization of the principle of democracy in a constitutional State. The people, as the source of the State's sovereignty, have the right to participate in the exercise of judiciary power. This is an important feature of "judicial democratization". The core of lay participation is to introduce varying empirical rules and ideas of justice from people of diverse backgrounds into fact recognition and application of laws in judicial judgments, and to enable people's participation in the operation of the legal system. Through such transparency, this would prevent judges from having sole power in trials and abusing judicial discretion, and would prevent judicial judgments from severe disconnection with social experiences, thereby increasing people's confidence in these judgments.

335. Since the legal system was used as a means of oppression during the authoritarian period, as is had not protected the people from being violated by the State and had appeared in the form of perpetrator, the people's trust in the legal system have been poor since that time. In addition, those in power had neglected corruption in the legal system as long as it serves the purpose as a means of oppression. For this reason, the saying "life to the powerful, death to the powerless" under the legal system has long prevailed since the authoritarian period. In this respect, if the people's impression of the legal system is to be overturned, its image as a State apparatus should be dispelled, hence the necessity for the introduction of lay participation, which would return the legal system to the service of the people and thereby reverse its image and reestablish its credibility.

336. The "lay judge system" established by Judicial Yuan in 2011 contradict many principles of a legal State. And, based on the Bar Association's participation in many mock trials, the system, which allows for only expressions of intent but not for voting, is not effective as an instrument to realize lay participation.

337. Judging by courts' implementation of the lay judge system in mock trials, the State has indeed invested a substantial amount of human and financial resources. To achieve a good institution for lay participation, this report suggests future adjustments in the direction of the similar lay judge system in Japan, in order to establish truly effective lay participation in the legal system.

Article 16 The right to be recognized as a person before the law.

Children and Nationality and Birth Registration Regime

338. The government should give due consideration to migrant workers' pregnancy situation. Survey indicates that once migrant workers become aware of their pregnancy, they would choose either to leave the employer's household or to attempt to conceal their pregnancy, thereby making prenatal examinations impossible and health of the newborn difficult to manage.

339. Since the newborn's biological mother would be a foreign national, if the Taiwanese biological father does not claim the infant, birth registration would be impossible, and the newborn would not receive social welfare benefits.

340. 354. Given the government's stringent recognition of abandonment, and the difficulty in determining the responsibility of care, newborns are often left in the care of placement agencies. As such agencies receive newborns each month, even with vaccinations supported by the government, matters of medical care and nutritional supplement remain the overwhelming burden for the agencies, thereby creating a vicious cycle.

Article 17 Right to Privacy

Information Disclosure of Means of National Surveillance abusing problem

341. This section responds to Paragraphs 270-271 of the State report, on issues relating to legal protections on the people's private life. The 2014 amendment to the Communications Security and Surveillance Act originated in September 2014, when then Attorney General Shih-Ming Huang disclosed transcripts of surveillance recordings of DPP's lead legislator Chien-Ming Ker lobbying Jin-Pyng Wang, then president of the Legislative Yuan. Huang was eventually found guilty of breaching confidentiality by disclosing surveillance transcripts to President Ma. Furthermore, in the same incident, legislator Bi-Ling Kuan later discovered that Legislative Yuan's telephone switchboard had been tapped, which sparked widespread concerns among legislators and the public on State's abuse of surveillance. For this reason, the Act was amended and additional relief measures were put in place early the next year.

342. Since the amendment of the Act on 29 January 2014 and the addition of interlocutory appeals to communications surveillance in Articles 404 and 416 of the Code of Criminal Procedure, only nine appeals were made, and all were without success, were rejected by respective High Courts.

343. The amended Communications Security and Surveillance Act places strict limits, through retention of judges and *nulla poena sine lege*, to the circumstances under which judicial organs, the police and State intelligence agencies may apply communications surveillance. However, according to Judicial Yuan's 2015 annual report, communications surveillance applications the courts received over the course of 2015 numbered 22,770, covering over 30,000 number of lines, which was in fact an increase from that before the amendments, and over

hundreds or even one thousand times of such numbers in countries such as Japan or United States. The abuse of surveillance applications by the prosecution and the police has also affected the courts ability to review these applications substantively.

344. In addition, while Article 16-1 of the Act stipulates that the enforcement authority and supervisory authority for communications surveillance shall prepare an annual report with relevant statistical information, national intelligence agencies are still exempted from this requirement. Also, Judicial Yuan and Ministry of Justice, as the enforcement and supervisory authority, respectively, have each published their respective annual reports, but the report from National Police Agency remains absent, hence the public has no means to review and supervise its practices.

345. Finally, as the people's daily activities have expanded into the Internet, besides judicial organs and the police, administrative agencies now also rely on assistance from ISPs to perform their duties. Taiwan Association for Human Rights has initiated the Taiwan Internet Transparency Report since September 2014, with the hope that it would push the government into revealing agencies' requests to ISPs to provide user personal data and to remove content on the Internet. The first annual report was published at the end of 2015, and regrettably, less than half of the agencies that provided their mandate had produced relevant statistics. Compared to South Korea's government, which had published such information since 1999, the opaqueness of Taiwan's government policy makes it difficult for the people to supervise government's policies relating to the Internet, and reduces the "transparent government" slogan into hollow words. This report suggests that the government could establish a lawful set of procedures for related operations, and proactively publish relevant statistics to ensure the people's right to be informed, thereby enabling public supervision of the government.

346. In summary, this report suggests that courts should, to the greatest possible extent, substantively review future requests for communications surveillance orders, in order to keep the amount of requests at a reasonable level. The legislature should urge State intelligence agencies to complete the legislation of the Intelligence Surveillance Act, which would place obligations of transparency on the agencies, and should continue to monitor the statistics, production and release of the agencies' annual reports. Government agencies that require personal data to be provided by ISPs should proactively tally such requests and publish the statistics periodically.

Abuse of Consent Search

347. This section responds to Article 17, Paragraph 272 of the ICCPR State report on search. An incident of great controversy occurred in March 2016 regarding a search without warrant, as prescribed in Article 131-1 of the Code of Criminal Procedure, where a citizen spoke out about his experience of being searched by

Military Police personnel for his sale of documents relating to the White Terror on the Internet. The documents, although sensitive in nature, have exceeded the thirty-year confidentiality period. Furthermore, the MP personnel only secured consent through coercion and deception, and did not keep video record of the incident. As a result, the incident, once made public, sparked intense criticism from public opinion. In addition to the call to abolish the mandate for consent search in the Code, many experts and scholars have also placed the cause of this incident on the long lasting leniency by prosecutors and judges in dealing with the use of consent searches. These opinions call for prosecutors and judges to substantively review whether the party is adequately informed to give consent and the genuineness of such consent to search, in order to prevent the repetition of such incident in the future.

Personal Information Protection Act's Loose Protection **on Special Personal Data, and the Act's Flawed Amendments**

348. This section responds to Paragraphs 273 to 274 of the ICCPR State report. On issues relating to personal data protection, the Personal Information Protection Act was amended twice between 2012 and 2016, on 1 October 2012 and 30 December 2015, respectively. Provisions amended in 2015 have become effective on 15 March 2016, while the effective date of Article 6 governing the protection of special personal data, as amended on 1 October 2012, was delayed over concerns from the agency responsible for the Act. As a result, between 2012 and 2015, special personal data such as "medical records, medical treatment, genetic information, sexual life, health examination and criminal records" are only subject to the same level of protection as regular personal data. Finally, while the provision specifically governing such data became effective following the 2015 amendment, the amended provision prescribed that "when it is necessary for a government agency to perform its legal duties or for a non- government agency to fulfill its legal obligation", such data may be collected, processed and used without any other circumstantial or legal restrictions. This would undoubtedly increase the people's level of exposure to the State, and poses an enormous risk of creating a surveillance society.

349. The Personal Information Protection Act, as amended in 2012, provides the people with the right to request discontinuation of collection, processing or use of personal data. However, given the Ministry of Justice's lenient interpretations of the Act, and the ambiguity on "de-identification", the people's right to self-determination of information has been left unprotected. Since 2012, Taiwan Association for Human Rights have, together with other civil groups and citizens, raised an administrative suit against National Health Insurance Administration (NHIA), with the demand that NHIA not to use NHI data "beyond the purpose of collection" without "consent given by the party" or "proper legislation". The suit was raised precisely because NHIA had released the people's NHI data and health records to a third party for study without the people's consent or legal mandate. According to the Human Subjects Research Act, all studies should obtain the "informed consent" of subjects, and subjects

should be able to "withdraw" from studies. However, the NHIA database does not allow anyone to withdraw; in other words, the people are denied the right to refuse to be subjects. The 2015 amendment to the Personal Information Protection Act places the responsibility of de-identification on researchers upon the final release of study, instead of on data providers at the initial transfer, which exposes sensitive personal data to greater risks.

350. During the Sunflower Movement in March and April 2014, protesters who occupied the Executive Yuan on the night of 23 March were violently cracked down and expelled by a large-scale police force early next morning, which had caused many injuries among the protesters. On 9 April, legislator Mei-Nu Yu revealed that police units in charge of the investigation had requested hospitals provide the list of patients admitted at the night of the incident and the patients' medical records, in order to cross check the protesters' identities. This sparked intense criticism from public opinion, which held that the police had blatantly violated the people's privacy protected by the Personal Information Protection Act. However, Article 6 of the latest version of the Act on the collection, processing and use of special personal data, as amended on 30 December 2015, includes an additional situation in which related agencies are obligated to assist a government agency in performing the latter's legal duties. Such language will, undoubtedly, significantly increase the possibility of similar future incidents being legitimized.

Possible Violations of Medical Ethics in Human Biobanks' Recruitment of Test Subjects

351. This section responds to Paragraph 276 of the State report on the issue of human biobanks. Among the biobanks approved, Taiwan Biobank is the largest, which is funded by the government and commissioned to Academia Sinica. The project plans to recruit 200,000 regular people and 100,000 patients and collect data and information on their physical examination, surveys and interviews, and blood and urine samples. Research stations are established at close to thirty medical facilities for data collection and review. However, since the second half of 2015, concerned citizens have noticed that Taiwan Biobank has been recruiting subjects on the Internet with deceptive language or financial incentives, such as providing health examinations, or "Academia Sinica blood and urine test for 500NTD gift certificate", "500NTD Family Mart or PX Mart gift certificate for blood and urine test on six hours fasting", "Great news! Academia Sinica is studying chronic diseases". It was also pointed out that research stations have also been recruiting subjects with methods similar to free health examinations and gift certificates. Upon the media's coverage of such practices, Ministry of Health and Welfare, the competent authority of the Human Biobank Management Act, did not perform an investigation. This would likely result in the people's confusion between biobank participation and health examinations, which would render them incapable to correctly assess information regarding the risks to which their genetic privacy is exposed by providing test samples. Medical ethics on recruiting test subjects, and the essence of informed consent

are also compromised. This report suggests that the competent authority collect such advertising material and refer them to the biobank's research ethics committee for investigation. Interactive Internet applications such as LINE should also be banned from being used as a means of recruitment.

NHI PharmaCloud's Violation on Privacy of Sensitive Disease Patients

352. This section responds to Paragraph 277 of the State report on the NHI PharmaCloud. Ministry of Health and Welfare's NHIA started the pilot project on PharmaCloud, which, by the end of 2015, "is employed by 18,853 medical facilities, including 100% of all 503 hospitals, 67% (13,568) of all clinics, which includes 87% (8,923) of all medical clinics, 20% (699) of all Chinese medicine clinics, 60% (3,946) of all dental clinics, 82% (4,766) of all pharmacies, and 3% (16) of all domestic care providers."

353. According to NHIA statistics, the use of PharmaCloud and regular NHIA reviews would save as much as 10.4 billion NTD of medication expenses. It is apparent that PharmaCloud is effective, to a degree, in this regard. However, since 99% of Taiwan's population is insured under NHI, the fact that personal medical records in the PharmaCloud are completely transparent without security mechanism (e.g., informed consent was waived) exposes patients with sensitive diseases such as AIDS, who are not treated equitably under the current medical environment, to enormous amounts of fear and uncertainty. These patients have no way no knowing whether any individual hospital, doctor or administrative staff member would display malicious intent or even refuse to provide treatment altogether. AIDS positives have become the sacrifice to PharmaCloud's success in big data applications, and some positives are already decreasing the frequency at which they seek treatment. While NHIA is aware of this, it made no attempt to improve privacy protection, only suggesting that concerned patients may lock their NHI cards to prevent medical institution from accessing their records. This ignores the reality that patients would be asked to unlock their NHI cards on the scene in order to continue their treatments.

354. The concept of medical privacy has always been difficult to promote in Taiwan, hence the fact that PharmaCloud, when it was first established, did not take privacy protection under consideration was regrettable but unsurprising. However, even as the public now recognizes the problem and there is no technical difficulty to include privacy protection mechanism to the system, NHIA makes no attempt to rectify the system or devise other measure to improve it, but continues to promote the effectiveness of PharmaCloud and even plans for its expansion. Such policy, which ignores people's privacy and medical safety, should definitely be subject to review.

Competent Agencies of the Archives Act should be More Proactive on the Deliberation of Privacy Protection and Human Rights Education

355. This section responds to Paragraph 279 of the State report on the application for access to government archives. First, although Compensation Foundation for

Wrongful Trials on Charges of Sedition and Espionage during the Martial Law Period has released the information on the number of cases and compensations provided, the agencies taking over the archives, such as Ministry of Culture's Preparatory Office of the National Human Rights Museum, have not provided further information on the content of these archives, for example the Foundation's criteria in reviewing past compensation applications and in determining the amount of compensations. Such content does not concern only the rights of victims and their families. Since the compensation is provided using taxpayers' money, the above criteria should be publicly available for the operation to be accountable.

356. Second, "to preserve the country's important historical memory on human rights" does not mean simply keeping the files at a government agency, but should involve participation from the public, for the purposes of "human rights education and collecting, studying, and promoting historical materials on the martial law period". While the agency keeping the archives has included victim groups, experts and scholars in determining the accessibility for them, concerns from law scholars have already emerged on whether such limited participation complies with Article 22 of the Archives Act. The Ministry of Culture remains inactive in terms of balancing protection of the parties' privacy and promoting human rights education.

Historical Responsibilities and Recusals due to Conflict of Interest for Government Agencies Related the Archives Act

357. Whether government agencies may deny an application for access to archives, as prescribed by Article 18 of the Archives Act, has been called into question. Law scholars have noted that Article 18 does not overlap with Article 22 of the Act; hence Article 18 does not apply to open access to archives dating thirty years or more. In addition, National Archives Administration has, with an administrative interpretation, claimed that Article 18 of the Archives Act and sub-paragraph 2, Paragraph 1 of Article 18 of the Freedom of Government Information Law share the same legislative purpose, and the thirty year rule in Article 22 of the Archives Act is limited to "national archives selected for and transferred to the Administration. The Article does not apply to access to other agencies' archives." In other words, the Administration allows individual agencies to dictate the level of access for their archives, and thereby approve or deny applications for access. Such practice highlights two issues of the current Archives Act. First, to have individual agencies determine the accessibility of their archives, as prescribed by Article 18 of the Freedom of Government Information Law, neglected the difference between the nature of "political archives" and that of regular ones. The political archives is unique in the sense that it contains records of past human rights violations by the government's executive and judicial branches. In other words, the agencies that possess political archives may have participated in the violations in the past. Whether such agencies are eligible in determining the accessibility of these archives is thus called into question.

358. Second, the fact that agencies may grant or deny applications for access indicates that they are in possession of their won archives, which contradicts with the consolidated managing principle prescribed by Article 6 of the Archives Act. Political Archives preserve human rights history of the past, and are valuable for purposes of human rights promotion and studies, and if the management of which is not consolidated and accessibility determined by individual agencies, it could create obstacles for human rights education, promotion and studies.

359. Therefore, administrative interpretations are insufficient in terms of resolving legal concurrences on archive accessibility. Civil groups have been urging for a piece of designated legislation on the management and preservation of "political archives". This legislation would also help National Archives Administration in processing applications for access. For example, a permanent committee that involves broader social participation, such as that of human rights workers, scholars, lawyers and victims' families, could determine archives' accessibility and balance between freedom of information and victims' privacy. Social participation and an approach of deliberation in the decision-making process regarding access applications would also lessen the burden of liability for the Administration.

The opaque and illegal use of the Investigation Bureau, MOJ's Hogan Systems

360. In response to Paragraph 280 on Article 17 of the State Report on the issue of the establishment of Hogan Systems by the Investigation Bureau. In September 2015 and January 2016, Hogan Systems exposed cases regarding investigators privately inquiring about personal data in order to assist in tracking the progress of crime. These two cases are both illegal. They leaked large amounts of personal data. Hogan Systems was established in 1990，to integrate records of personal data held by each government department, and reduce the time necessary for the processing of official documents. However, the disturbing thing is that the categories of data contained in Hogan Systems, and procedures to be followed when applying and using Hogan Systems, as well as the auditing process of Hogan Systems remained opaque. In Article 16 of the Personal Data Protection Act, "the necessity to maintain national security or increase public interest" is key, and provides the legal foundation for Hogan Systems as claimed by the Investigation Bureau. However, due to the opaque status of Hogan Systems, this not only prevents the establishment of safeguards and the necessity of use to be actually inspected, citizens are also unable to ascertain whether or not Hogan Systems contain personal data not regulated by Article 16. We suggested that the Investigation Bureau, MOJ voluntarily announce the categories of data contained in Hogan Systems, procedures of application and use, and the record of use, etc. to increase public trust in this system.

The gender field on the ID causes the transgender group to encounter difficulties in real life

361. The gender field on our ID clearly indicates the gender (of the ID holder), and this has caused huge trouble for people who have not yet changed their gender identity, or transgender people who are unable to change the gender identity on their ID. This is an invasion of privacy and the body autonomy of transgender people. Taiwan's government avoids this issue, and provides no mentions in the two National Covenant Reports.

362. In Taiwan, there is a gender field on identification documents (IDs and the driver's license), indicating gender as "male" or "female." The existence of gender field increases the risk and inconvenience of some transgender people. In Taiwan, there are many opportunities for using ID, such as receiving registered letters at the post office, handling personal banking (such as using a credit card or opening a bank account), etc. When the gender appearance of the party does not match the obvious gender field (based on gender stereotypes) on their identifications, it often causes troubles or forces individuals to come out on the spot. Moreover, under the current household registration system in Taiwan, the alphabet and number on the ID is different for males and females. Many transgender people are forced to come out in the process of job seeking, because of the gender indicated on their ID, or the design of gender identification on the ID. The potential employer has put preconceived prejudice and discrimination aside before transgender persons have the opportunity to show their talent, making it more difficult for them to look for a job. This further affects their livelihood.

363. We suggest that:

(1) On the new ID which will be completed renewed and issued in 2018 and all other driver's licenses or identification issued afterwards, the gender field should be moved to a less obvious position and compulsory remarks should also be cancelled for citizens who to choose present or hide the content of the gender field （similar to the current spouse and military service fields）. An alternative is to delete the gender field（for example, there is no gender field on the current National Health Insurance IC Card (NHI IC Card)）. Moreover, for some transgender people who are unwilling to be restricted by the gender framework on male and female on the premise that the party has expressed her or his wish, they should be allowed to choose a gender option in addition to male and female.

(2) Review once again the necessity of distinguishing both genders from each other on the ID, and considering cancelling gender identification.

Identity of Children and Adolescent Homosexuals Constricted due to Lack of Relevant Information

364. This section responds to Paragraph 259 of the ICESCR State report, and Paragraphs 333 and 345 of the ICCPR State report. Taiwan Association for Human Rights' experience and the status quo in Taiwan indicate that the

government has not been promoting "identity of sex-sex partners, while at the same time provide information on public health and social welfare."[63] Sex education programs, websites and institutions provided by the government still focus on gender relations and childbirth health in a hetero-normative manner, and neglected the needs and the very existence of homosexuals.

365. Development psychology has proven that the awareness of one's own sexual orientation is part of achieving sexual identity, and the awareness to sex drive is also an important aspect of identity formation (Paplia, 2009)[64]. On children's best interest, current international human rights norms are also subjective of children and adolescents, and have stressed that sexual orientation must to be respected and taken into consideration.[65] For this reason, to deprive homosexual adolescents of opportunities and resources to sex information and education, that would otherwise expand their contact to and deepen their LGBT-affirmation, constitutes a violation of their rights to the highest attainable standard of health and to education (Article 12 and 13 of ICESCR).

366. Current regulations governing Internet content rating would give an "R" rating to any content that mentions sexual activities or homosexuality, even information which promotes safe sex, self-protection, AIDS and STDs prevention. For example, Taiwan Association for Human Rights has been asked multiple times by the government, based on individual complaints, to list its web page and links to download homosexual sex education materials as "R". This not only prohibits homosexual children and adolescents from coming into contact with information on safe sex, but also violates the freedom of expression and to impart information (Article 19 of ICCPR).

367. Responses and suggestions:

(1) The government should immediately cease to deprive children and adolescent of opportunities and resources to come into contact with information on sex, sex education and homosexual education, and should also cease its inappropriate practices that restricts freedom of expression.

(2) Government should avoid over-interpretations of Paragraph 11, Article 49 of the Protection of Children and Youths Welfare and Rights Act, and of

[63] Paragraph 333 of the ICCPR State report.

[64] Papalia, Diane, Sally Olds, and Ruth Feldman. 2009. P. 395 in their Human Development. New York: McGraw-Hill.

[65] Paragraph 55, Convention on the Rights of the Child General Comment No. 14: "Children are not a homogeneous group and therefore diversity must be taken into account when assessing their best interests. The identity of the child includes characteristics such as sex, sexual orientation, national origin, religion and beliefs, cultural identity, personality. Although children and young people share basic universal needs, the expression of those needs depends on a wide range of personal, physical, social and cultural aspects, including their evolving capacities. The right of the child to preserve his or her identity is guaranteed by the Convention (art. 8) and must be respected and taken into consideration in the assessment of the child's best interests."

other relative content rating regulations[66]. All excessive enforcement measures that automatically rates "information regarding sexual activities and homosexuality" as "R" should cease.

(3) The government should implement Judicial Yuan Interpretation 617 and include information that are "valuable artistically, medically or educationally" with regard to sex and homosexuality into the scope of freedom of expression protection. Such information should be available to homosexual children, adolescents and adults for their use and education.

(4) Government should expel hetero-centric hegemony from its policies, and proactively develop and promote pragmatic and comprehensive sex education, homosexual education and sexual health institutions, which would help in the healthy development of homosexual children and adolescents, and work towards the development of their sexual identity, sexual character and dignity, as well as towards the promotion of the public's respect of gay rights and fundamental liberties.

Article19 Freedom of Expression

Child and Youth Act

368. Paragraphs 186 and 187 of The Second State Report on ICESCR, National Police Agency, MOI merely emphasizes the rescue data for the past few years. The Agency does not mention the detailed data regarding its implementation plan, implementation methods (processed) and the number of people being transferred related to Article 29 of the original "Child and Youth Sexual Prevention Act." Such data as the number of people inside and outside of the network, the number of people being arrested by entrapment, the percentages of both genders being transferred, the ratio on age distribution of people being arrested etc. are left out.

369. The "Child and Youth Sexual Transaction Prevention Act" (hereinafter referred to as "the original law") has been revised as the "Child and Youth Sexual Exploitation Prevention Act" (hereinafter referred to as "the new law") in 2015. However, due to the fact that the Executive Yuan has not established the date of implementation, the new law cannot be officially implemented. The original law is still being implemented. The original idea of solving problems by revising the

[66] Article 49 of the Protection of Children and Youths Welfare and Rights Act is the mandate for Taiwan's current rating regulations, such as the Motion Picture Act, Regulations on Rating and Management of Gaming Software, Regulations on Rating and Management of Publications and Video Tape Recordings, and Internet content rating mechanism established by the government-commissioned content security institutions.

original law was in vain. The National Police Agency continues to violate the freedom of speech[67].

370. The content of each article on any criminal laws and regulations should be clear and definite to restrict the power of the state and prevent the state from criminalizing behaviors at will. The most obvious problem right now are unclear phrases such as "imply" and "impel other people to" in Article 29 of the original law. Since reflecting legal concepts in the Chinese language is difficult, it is easy for the police to interpret the law at will. Moreover, the original law enables easy and wrongful punishment on ideological grounds on reasons of "protection of child and youth" even though there is no mention of child and youth prostitution, if both parties are adults, or if there is no criminal act. Nicknames in the chat rooms are implicational, and the invitation of one night stands in the online forums are all possible reasons for transfer on the basis of violating the Child and Youth Act. Therefore, people with the aforementioned conditions are all possible targets of the police. To prevent such incidents, the police will not only pretend to be sex patrons but also induce victims to speak keywords, such as the amount for transactions or to agree to perform sexual acts, etc. This allows the policemen performing entrapment to obtain evidence to prove the victims' motivations for sexual acts. In addition, to facilitate reporting efforts, the police will exploit victims' fears attitude and not inform them about their rights and obligations. The police sometimes even stop recording during the report making process. This obviously violates the victims' rights. To sum up, we consider that National Police Agency to already be in violation of the freedom of opinions, expression and information listed in Article 19 of the ICCPR."

371. We suggest that：

(1) National Police Agency not use violent law enforcement measures to block the communication of information.

(2) Unclear legal phrases in the "Child and Youth Sexual Exploitation Prevention Act" be modified to be more precise, and there to be a moratorium on entrapment until the implementation of the new law.

(3) With or without motivation for sexual acts or whether or not nicknames are implicational, no one should be convicted so long as there is no sexual act related to child and youth.

(4) The National Police Agency should examine its means of implementation and announcing the content of related implementation plans, and explain the requirements of entrapment.

Suggested banning of the NGO-issued film *Shall We Swim?*

[67] 2015/10/23 "Serious call for the National Police Agency to retain accomplice of literary persecution" announcement **http://ppt.cc/Ls69c**

372. The film "Shall We Swim?", issued by the Gender Equality Education Association in 2011, is a teaching material for sex education. Its content includes issues relating to gender equality and sex education. It is a film independently funded, produced, issued and promoted by the NGO. The format includes a "public version" accompanied by an "introduction brochure" for instructions in related courses.

373. The K-12 Education Administration, Ministry of Education has sent an official letter to all schools on January 9, 2015 stating that "before the film (Shall We Swim?) has completed the examination and classification procedures, all schools should not promote and use it." This bans an individual civil publication.

374. Parent representatives to the Gender Equality Education Committee, Ministry of Education and certain parent groups have publicly objected to the United Nations' human rights covenants and conventions because Taiwan is not a member of the United Nations. They also claim that international human rights perspectives may not fit into our local context. They also objected to gender equality education, especially topics on homosexuality in education and sex education at schools. They have specifically asked schools to ban Shall We Swim? These groups pressured the Ministry of Education and asked that "the curriculum of courses related to gender equality education be agreed by representatives of parent groups before reaching a final conclusion," and "parental agreement is required if schools hire teachers outside of the school to teach courses on gender equality education." Not all parents had been trained as teachers, and if the Ministry of Education compromises with these parents and let them interfere with teaching, it will profoundly damage teachers' decision-making power and students' right to learn.

375. Since the middle of 2014, some members of the Sixth Gender Equality Education Committee, Ministry of Education have constantly asked the Ministry of Education to send an official letter to all schools "not to use and screen" this film. They further propose that the Ministry of Education revive examination rules on classification and reporting, even holding project meetings because of this and asking the Ministry of Education to draft "Principles on Selection of Assisted Teaching Materials for Elementary and Secondary Schools（draft）." They wish to put forward regulation stating that, "teachers should exam in detail and review completely before using publications sent for review as supplemental teaching materials to prevent violation of the law（'The Protection of Children and Youths Welfare and Rights Act,' 'Criminal Laws'）."

376. Article 19 of the "International Covenant on Civil and Political Rights (ICCPR)" indicates that everyone has the right to express opinions and enjoys freedom of publication. The General Comment No. 34 on Article 19 indicates that freedom of opinion and speech should be understood based on the universality of human rights and non-discrimination. Article 6 (1) of the "Educational

Fundamental Act" rules that: "Education should be based on the principle of neutrality." In other words, schools in general should not promote or engage in activities for particular political organization(s), and public schools should not promote or engage in activities for particular religious organization(s). Article 8 (l) of the same Act also states that: "The work, pay, and pursue of further education for education professionals should be designated by law, and their professional decision-making power should also be respected." It is the State's obligation to ensure that political parties and religion do not interfere with teachers' professional decision-making power.

377. The statements and proposals by the Ministry of Education's Gender Equality Education Committee have violated the freedom of publication and speech protected by the Constitution and reduced teachers' professional decision-making power. Preliminary censorship on films for the media has long been abandoned by democratic nations, and related rules and regulations in our nation have also been abolished long ago. Taiwan had declared the end of martial law many years ago, and we cannot tolerate the retrogression of democracy. The Committee may help teachers to understand related rules and regulations on the selection of teaching materials through promotion or research and study, rather than warn about violations through legal wording in the draft of principles. Wordings based on non-existent facts. This can induce a chilling effect among teachers. When facing conservative influences, governmental agencies have constantly taken steps back or gone with the flow. This has seriously hindered the progression of education about gender equality, may cause regression on freedom of publication and speech, restrict teachers' professional decision-making powers, students' right to education, and the vision to establish friendly campuses in future.

378. NGO-issued instructional films are protected under freedom of expression in the Constitution. The state should provide the maximum safeguards for this. The Taiwan Gender Education Equity Association (TGEEA) appeal for the following：

(1) Education authorities should not carry out the preliminary censorship of NGO-issued teaching materials that are exempted from censorship.

(2) The state should not side with right wing conservative influences to reduce teachers' professional decision-making powers and suppress teaching on gender equality and professional development.

(3) Parents should participate and make suggestions on school education based on "children's best interests," not to carry this to the extreme, nor exceed the foundation that "the state should protect students' rights on learning, education, body autonomy, and personality development."

Freedom of media coverage and the mediation of police's exercise power should include citizen reporters

379. Paragraph 292 of the State Report states that if expulsion is necessary due to illegality or danger, preliminary advice and communication should be reinforced with appeals to the media to cooperate with police measures. Police should also provide necessary media consultation and assistance at the site of demonstrations or rallies. However, during the 2014 Occupy the Legislature Movement, journalists became the target of attacks from the police or unsatisfied masses. Journalists are not only "doing their jobs" when they report on the site of a protest, they also exercise their rights as news media who are reporting. In doing so, the media indirectly allows the general public have their rights on freedom of speech. When the police forced media professionals to leave the site via non-violent persuasion or violent force, they abused the right of media professionals to report and the media's role as the fourth estate that supervises the government. The police also abused the general public's right to know. In order to deal with increasing protest activities, Taipei City Police Department announced the "Taipei City Police Department Code of Practice on Executing Assembly, Parade and Media Coordination" ordinance in 2015, stating that they have reached an agreement with Association of Taiwan Journalists (ATJ) and other related organizations after many negotiations. Under the directive the Taipei City Government will establish "press zones" and "opinion expression zones" on protest sites to separate journalists and the protesting public.

380. However, it has been a long time since open conflict between the protesting public and the police occurred where the police had to disperse protesters or drag them away by force. Such incidents tend to become focus of media shooting, given that every photo journalist wants to get as close to the site of a confrontation as possible to gain more exciting and direct footages. Therefore, the act of establishing a press zone is restriction on journalists rather than protection; it not only restricts their freedom of reporting, but it also creates difficulties for media given the intensity of media competition. Because of criticism and objections toward this measure from all social circles, Taipei City Mayor Wen-Je Ko suggested that "journalists should wear vests" instead. The aforementioned method is mainly for the police to distinguish "journalists" and "protesters," and to treat them accordingly. However, "The Grand Justice Interpretation No. 689" announced on July 2011 makes the following explanation on the freedom of news reporting: "the freedom of news reporting is protected by the freedom of news. This not only protects the act of reporting performed by journalists who belong to news organizations, but it also protects the act of news reporting performed by the general public for the purpose of providing valuable information and news for the masses, or promoting discussion on public issues in order to supervise the government." In other words, the freedom of news reporting extended from Article 11 of the Constitution not only protects news organizations and media reporters, but also protects the general public in performing news reporting, covering independent media and citizen reporters. The main point of explanation by the Grand Justice

is on the "act" of reporting rather than the "identity" or "profession" of reporting, and certainly has nothing to do with "standpoint."

381. We suggest that the police should treat citizen reporters as reporters, and follow the rights on freedom of reporting granted by the Constitution to provide them the same treatment as ordinary media reporters. This can reduce incidents of conflicts during on- site reporting at events.

The Public Television should be responsible for empowering public media

382. To deal with the inferior quality of commercial media reporting, the Public Television, operated on public affairs budget, should play the role of being the platform of domestic audio-visual content fund-raising and broadcasting, making sure to protect the rights of media usage for disadvantaged and diverse groups and to balance the public opinion market. The State Report should include chapters on public media. In 2013, the fifth board of directors was unable to be constituted even after three rounds of nomination approval process. Facing the deadlock that had stalled the setup of the fifth board of directors for more than 25 months, , the Campaign for Media Reform, the Alliance for Media Reform and organizations concerning the development of the Public Television initiated a series of appealing announcement and protests, to call upon the immediate termination of fierce battle among political parties, in order for the Public Television to normally operated as soon as possible. The Citizen Alliance for Media Reform, scholars and media reform organizations went to the entrance of Executive Yuan to hold a sit-in protest on "the immediate solution for difficulties of Public Television and comprehensively start media reform" for six consecutive days. Then, in order to deal with the unresolved list of the fifth board of directors, "Alliance for Citizens Supervising Public Television" organized and proposed three main requests: first, appeal to the review committee to abandon prejudice from political parties, and uphold the spirit of professionalism and concern for the public to complete the review process as soon as possible; second, appeal to the newly established Public Television Board of Directors to set up a system for citizen participation and self-regulation; third, appeal to the Executive Yuan Department of Culture to promote a revision of the Public Television Law. In addition, the Alliance will hold new conferences on Public Television supervision every six months and continuously provide advice on the enhancement of Public Television and Public Broadcasting.

383. The Alliance's supervision report indicates that the quality and viewership rating of the news program on Public Television's main channel are outstanding. This means that the viewing public in Taiwan increasingly demands quality public broadcasting, especially when important public issues and events occur. Viewers tend to choose Public Television news programs which are diverse, fair and without political bias to watch during these times. However, the management level of Public Television still appears passive and inactive in reaction on how to expand the Public Broadcasting Group and its role of public

service. They even positioned the Public Television as a "small and beautiful supplement of commercial television," limiting itself to a conservative reading of current rules and regulations. Taiwan's civil society does not expect the Public Television to be merely a supplemental, decorative "little refreshment," but responsible for maintaining democracy, promoting social progress, educating the general public, ensuring public access to media, establishing rules for media accountability, enhancing the quality on news reporting, expanding resources for the Public Television, and reinforcing the ability of operating teams, including the Board of Directors, to manage. Public Television should not replace program host(s) when dealing with important public affairs or issues related to itself, such as during the Occupy the Legislature Movement or when exchanging ideas with a lack of appropriate judgment toward the complicated political issues between Taiwan and China.

384. We have the following three suggestions especially for this issue:

(1) The Public Television Board of Directors should openly advocate and actively promote the revision of "Public Television Law," and related digital stream as well as broadcasting laws to include Taiwan Indigenous Television (TITV) and Hakka Television Station (Hakka TV), gradually returning scarce electromagnetic wavelengths to public service. In addition, it is necessary to integrate Rti, PBS, NER and talents, to include a public broadcasting service into the Public Broadcasting Group while striving for a public film and television fund to increase related budgets.

(2) The CTS should be not be merely a de jure member of the PBS group; it should be substantially reformed to be a genuine public TV, in order to respond to appeals made by different stakeholders and civil society.

(3) The cultural policies of the Cultural Department should make empowering the Public Broadcasting Group a priority. It should actively promote the revision of Public Television Law to centralize the currently dispersed public resources. The Cultural Department can empower the Public Broadcasting Group, and let it become a fund-raising and broadcasting platform for domestic audio-visual contents.

Article 21 The rights to assembly and parade

Assembly and Parade Act

385. Taiwan's government has precisely indicated in "The Initial State Report (2012)" that the Assembly and Parade Act violated Article 21 of ICCPR. Including a series of rules and regulations such as the permit system, the power for the police to disperse criminal punishments, the time limit of application consecutive punishment, and fines.[68] These regulations should all be reviewed

[68] 《International Covenant on Civil and Political Rights The Initial State Report》, ¶267

and revised. All the levels of government should adopt practical measures to implement the protection of Covenant rights;[69] both the "Response to the Two Covenants: The Initial State Report Concluding Observations" and "The Second periodic state reports" have the same response toward the lack of implementation on the rights of assembly and parade.[70]

386. In the concluding observation, the international experts especially suggested that "suppressive legislation ought to be removed, even though the practice may have changed"," the Legislative Yuan without further delay adopt the required amendments to the Assembly and Parade Act so that it is brought into conformity with Article 21 ICCPR" "civil society have to invoke the jurisdiction of the Judicial Yuan to challenge the legitimacy of the offensive provisions of the Act."[71] However, from the first ICCPR review in 2012 until now, even though there are many related proposals of draft revision, the Assembly and Parade Act has not been revised. The government has not actively promoted or effectively entered this Act into proceedings in order to actually be reviewed. After the Parliament and President election on 16 January 2016, whether the situation improves remains to be seen.

387. Although the government claims that a response has been actually made regarding requirements from the Covenant and the Judicial Interpretation No. 718 by the Judicial Yuan（the request to exclude the accidental and emergency assemblies from the permit）in 2014, there have been gradual modification regarding assembly and parade. In practice, the government has oftentimes applied other laws, such as the Criminal Code and Social Order Maintenance Act, other than the Assembly and Parade Law to address citizens' assemblies and parades without taking into consideration the nature and scope of the fundamental right in question. [72]Therefore no matter an assembly, parade, or various on-site acts are general, accidental or emergency in nature, the people who participate this assembly are still being suppressed, dismissed and punished due to the adaption by other laws. This violates requirements from the Covenant and judicial interpretation.

---

[69] 《International Covenant on Civil and Political Rights The Initial State Report》, ¶¶269-270

[70] 《Response to the Two covenants The Initial State Report Concluding Observations and Recommendations 》, Articles 259-260；《International Covenant on Civil and Political Rights The periodic state reports》, Articles 297-299

[71] 《Review of the Initial Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants Concluding Observations and Recommendations Adopted by the International Group of Independent Experts》, ¶75

[72] For example, articles 42、64、67、68、71、72、73、74、85、86、90、91 of the Law for Maintaining Social order, articles 135、136、140、149、152、153、160、246、306 of the Criminal Law, articles 6、27、28 of the Police Power Exercise Act, article 36 of the Administrative Enforcement Act, Article 8 of the Principles of Accidental and Emergency Assembly and Parade

388. Even though the government claims that a proposal has been made for revision of the law, the government's proposal for revision of the Assembly and Parade Act still has suppressive content that against the Covenant and the concluding observation. For example, almost all assemblies and parades have to be filed in advance. If not, there will be punishments, such as being dispersal and fines.[73] This violates the idea that the Covenant guarantees all "peaceful" assemblies and parades, which will not be suppressed because of not filing. In addition, the filing procedure request protester to present a written agreement from the manager or owner of the venue. Incomplete filing will be seen as unfiled and there is no regulations regarding the consent of venue, which means the state actually still has the ultimate approval power toward assembly and parade.[74] This violates the positive obligation of the state to provide the venue for assembly and parade, especially when it is unable to mediate the conflict among different groups that apply for the same public space at the same time.

389. If the government is able to provide effective remedy and accountability, this will be a crucial part to protect the freedom of assembly and parade. However, presently the police tend to refuse presenting their identification while carrying out a task and the suppression to the journalists or the on-site recorders causes the lack of accountability. When the tension turning high during the protest, the police tend to react with violence toward the protesters and journalists. Suggest: The means of law enforcement by the police should take into account the principle of proportionality, punishments should only put on those who cause obvious and immediate danger the identification of law enforcement personnel should be clear.

The foreigners' right to assembly and parade

390. In response to Paragraph 297 of the ICCPR State Report, the police should follow proportionality when dismiss assembly and parade. However, during the period when the laid-off Hydis factory workers came to Taiwan to plead and protest, they expressed their appeal via a peaceful sit-in. The Taipei City Zhongzheng Precinct Police to circle and arrest factory workers.

391. In response to article the Judicual Interpretation No. 718 announced the Assembly and Parade Act partially violates the Constitution, and the Act should ensure a emergency assemblies, for both citizens and foreigners have the freedom to peacefully assemble and parade. Taipei Police Department No. 10432249200[75] "does not approve" laid-off Hydis factory workers to hold emergency assembly activities due to the fact that they don't have "the document to prove that the owner or manager of the revenue has agreed on its usage for assembly. However, the venue of the assembly was outside of the house of the workers' employer . It is impossible to obtain approval for the

[73] Articles 24、25 of 1050219Assembly and Parade Act Draft Amendment, the Executive Yuan edition
[74] Article 9 of 1050219 Assembly and Parade Act Draft Amendment, the Executive Yuan edition
[75] Taipei City Police Department Official Letter No. 10432249200

space outside, since the road does not belong to any particular person. The violation of foreigners' right to assembly and parade in Taiwan has exceeded the power of the police, and violated the meaning of the aforementioned Judicual Interpretation No. 718.

The abuse of offenses on obstructing an officer in discharge of duties, the case of Hua Guang Community

392. On 24 April, 2013, the Court enforced the demolition of Huaguang Community by force. Supporters and community residents held a concert right on the spot on April 23, but in the evening on that day, the police came in advance and blocked the designated area, and separated residents, store owners in that area and supporters from one another. During the evening event, one of the residents was not willing to accept the road blockage performed by the police. This resident took a detour to go home, which resulted in a dispute with the police. Because the police ignored this resident's appeal for passing through, the residents and students got excited emotionally and attempted to pass through the road blockage, resulting in conflict. During the conflict, the police arrested several supporters. And, in the dawn on 24 April, the demolition equipment from law enforcement had been moved into the community in advance, once again causing another conflict between the police and supporters. The police arrested those supporters again. During the Huaguang Community Enforcement on April 23 and 24, a total of 15 people were placed under arrest. On 15 June, 2016, 5 of them were sentenced to 50 days of detention due to obstruction of public duties.

393. Improper space control：in the practice of assembly and parade in Taiwan, in addition to Article 6 of the "Assembly and Parade Act" being the typical and distinct pattern of space control, in order to prevent civilians from expressing opinions to "representative" government agencies, the police also based on Articles 6 and 27 of "Police Power Exercise Act" that "the police may verify the identity of the following people in public places or public-accessible places," "people who pass through designated public places, road sections, and check points," and "to prevent danger or harm, the police may temporarily repel or prohibit access of people or vehicles that pose obstruction while exercising their powers," to adapt Articles 1 and 2 of the "Assembly and Parade Act" to fit other legal regulations[76], and to establish a controlled area to eliminate civilian

[76] On the parts disagreed by Justice Cheng-Shan Lee in the Judicial Yuan Grand Justice Interpretation No. 718 mentioned that "Article 6 (1.6) of Police Power Exercise Act rules that: "the police may verify the identity of the following people in public places or public-accessible places：……6. people who pass through designated public places, road sections, and check points." Item 2 on the same Article rules that："The designation stipulated in the sub-paragraph 6 of the preceding Paragraph shall be made only when considered necessary to prevent crimes or deal with events that may affect major public safety or social order. /the designation shall be determined by supervisors in charge. "Also adapted from regulations on Article 1 (2) of the Assembly and Parade Act："The matters with no applicable provisions in this Act shall be governed by other relevant laws. "The police is able to

assembly and parade, such as in the case of the relocation enforcement of Huaguang Community. The police, based on the Court's civil execution order, expanded the police force and road blockage area at their own will, and restricted people's right to assemble and parade here through the "identity check." However, Article 27 of the "Police Power Exercise Act" is in the chapter of "Immediate Enforcement," and the purpose is for the police to instantly control a particular area to prevent danger. In this case, the police blocked the road a day ahead. In other words, this was a planned execution of official duties not related to any serious danger. It obviously does not match the immediacy of immediate enforcement. Moreover, when the police ponders on the administration, they will not evaluate whether or not this conforms with the principle of proportionality, such as in the case of land grabbing incident of Da Pu. The crowd raised strips of cloth far away from the road where the presidential vehicle would pass by, but the police arrested them by force, and constantly controlled the space at will, evidently violating the Article 21 of ICCPR" to ensure the civilians' rights to assembly and parade.

394. The Abuse of Offenses of Obstruction an Officer in Discharge of Duties: "Assembly and Parade Act" went through explanation by Justices of the Constitutional Court's Interpretation No. 445. After the Justices of the Constitutional Court's Interpretation No. 718 announced its partial violation on the Constitution, the police in recent years have switched to the chapter of Offenses of Obstruction an Officer in Discharge of Duties within the Criminal Law to punish protesters, especially utilizing Article 135 of the current "Criminal Law" as a general measure. This law emphasizes that when civil servants perform duties according to the law, if someone acts with "force, threat," this may constitute offenses of public duties. In comparison, strict criminal punishment allows police to more easily clamp down on civilian assembly and parades, creating a chilling effect. In the case of Hua Guang Community Eviction, the police transferred 5 defendants according to the Offenses of Obstruction an Officer in Discharge of Duties, even though the legality of their duties was highly questionable. In this instance, the police expanded the execution of official duties at their own will for the purpose of implementing a government's administrative act. In addition, the protest of the 5 defendants actually did not affect or prevent official duties from being performed. They were put into jail because of resisting the unequal power of state machinery. The police further abused their power upon affirming "force, threat," and in the other case of Huaguang Community. Supporters of Huaguang accidentally dragged the police shield during the pushing that occurred. On facing the advantage of official police duties, they were sentenced to 3 months in jail according to the Offense of Obstructing an Officer in Discharge of Duties. The law enforcement system and the Court obviously violated the meaning of protection for peaceful assembly and parade on ICCPR."

---

expand controlled space outside of the " prohibited zone" in the name of "identity check, "strangling the lifeline of freedom of assembly."

395. Regarding the statistic and trend of offense of obstructing an officer in discharge of duties, through challenge the improper Assemble and Parade Act for many years, law enforcement agencies used to investigate and prosecute appealing and protesting events based on the "Assemble and Parade Act." In the past, and the Court tended to loosely accept statements from law enforcement agencies. However, according to Taipei District Court Summary Appeal Judicial Decision No. 115 in 2002, the opinion of the Court switched to "whether or not the distance between boards raised was proper" for the very first time; and in 2006, Taipei District Court Regular Judicial Decision No. 709 in 2005 addressed the issue regarding the effect of the white board raising, talking about the actual review of the principle of proportionality. [77]Upon accepting questioning about the improper execution of the "Assemble and Parade Act" from every level of the Court, law enforcement agencies in recent years gradually switched to prosecuting protesters according to articles related to chapters of Offense of Obstructing an Officer in Discharge of Duties in the "Criminal Law," Based on the case integration by Taiwan Association for Human Rights,[78] there were a total of 35 first instance Judicial decisions related to appealing and protesting cases. Among the 18 prosecutions involved with Offense of Obstructing an Officer in Discharge of Duties on the "Criminal Law," 15 of them were convicted guilty, and only 3 of them were convicted innocent; in additions, 7 prosecutions involved with the "Assemble and Parade Act," and 4 of them were convicted innocent.

Lack of effective mechanism to inquire about the responsibilities of the State and national organizations related to assembly

396. According to Paragraph 90 of "Guidelines for the treaty-specific document to be submitted by States parties under article 40 of the International Covenant on Civil and Political Rights", the government should provide "any registered statistic related to violence against peaceful members of assembly or prosecutions against unarmed members attending assembly. Have these prosecutions been investigated, how would the result of investigations be? " However, the State Report didn't provide any information never mentioned this. The State bears an obligation to provide to those whose rights have been violated in the context of an assembly an adequate, effective and prompt remedy determined by a competent authority having the power to enforce remedies.(refer to Paragraph No. 89 on A/HRC/31/66).

397. Everyone has the right to observe and monitor assemblies. This right was originated from Article 19 (2) of ICCPR", and is applicable to related

[77] Refer to *Assembly is irrational? Parade is guilty!* By Jen-Hao Liu – the shaping of history and law enforcement of assembly and parade control, p. 160.

[78] Use the judgments query system of Judicial Yuan, choose "criminal" in Category of Judgment, set up the Date of Judgment as "from January 1 to December 31, 2014,"in Full Text Search enter the phrase "assembly + parade + protest + appeal, "the results and opinions of judgment on appealing and protesting cases related to the first instance from every district court in Taiwan.

information in order to deal with human rights issues (refer to Paragraphs No. 66-71 on A/HRC/31/66). However, the police in Taiwan often hinder and even arrest people monitoring the assembly, including journalists, and also hinder the inquiry of accountability regarding human rights issues related to the assembly. For example, on March 23 and 24, 2014, the Executive Yuan performed armed suppression actions. According to media footage, during this action, the police assigned armed policemen to expel journalists before expelling protesters[79]. Moreover, according to the announcement by Indiemedia, before the armed expel in the dawn on April 28, 2014, the police once again expelled journalists with force[80]. On July 28, 2015, 3 journalists were arrested on the protest site at Ministry of Education because of "invasion of residence."[81] On November 7, 2015, once again 2 journalists were arrested on the protest site.[82] The police often argue that they are unable to distinguish between protesters and journalists, yet in the aforementioned incidents, journalists all have proved their identities with journalist ID, but they were still under arrested, so the police hindered the monitoring of assembly on purpose, in order to avoid inquiry of accountability on human rights after wards.

398. In order to ensure the policemen are responsible for illegal actions or dereliction of duty, it is necessary to properly archive the decisions made by commanders from each level. All law enforcement personnel must be identified precisely (refer to Paragraph 65, A/HRC/31/66, Paragraph 79, A/HRC/20/27). Article 4 of "Police Power Exercise Act" rules that when the police execute their duties, they may wear uniform or present ID to prove their identity, but many policemen do not have the police number or name on their uniform. Such equipment as criminal police vests, hats, riot control equipment or rain gear can obscure police numbers.[83] There are also policemen wearing plain clothes when performing assembly duties.[84] These measures result make it impossible to identify police identity in the observation and monitoring footage shot on the assembly site, seriously hindering inquiry into police accountability afterwards.

---

[79] Taiwan Democracy, 2014, "Executive Yuan expel: All media have been pushed outside, freedom of the press is dead: press driven out by police" https://www.youtube.com/watch?v=BqQsOmxOQGY, March 23, 2014

[80] Indiemedia, May 1, 2014, Indiemedia's announcement of "428 Chung-shiao West Road pedestrian bridge incident, " URL：http://www.indiemedia.tw/posts/1882

[81] United Daily News (UDN), July 28, 2015, Important News, Petition to protest the curriculum guidelines, Taipei City Police Department：3 journalists illegally entered Ministry of Education

[82] Liberty Times, November 9, 2015, Politics, Citizen reporter under arrest accused of being illegally restricted due to live broadcasting of protest at Taipei Songshan Airport

[83] On Taipei District Court 2014 Summary No. 107 Judgment, the police could not perform particular tasks due to the barricade of riot control equipment.

[84] Newtalk, the police shouted out "peace and rational" while dragging protesting cashiers, URL：http://newtalk.tw/news/view/2014-11-12/53522

399. Taiwan's government uses administrative rules and regulations, rather than the law, to widely restrict civilians' freedom of assembly. These increase restrictions are not included in the law. For example, "Taipei City Police Department Code of Practice on Executing Assembly, Parade and Media Coordination" has planned a press zone during the assembly, and stated that they will expel media outside of this zone.[85] "Principles of Accidental and Emergency Assembly and Parade" requires that emergency assemblies and parades be approved. "Police Agency Operating Procedures on Handling Mass Activities" is even deemed confidential and not open to the public. On facing the inquiry of accountability, these self-established administrative rules and regulations easily become the foundation for illegal actions, making it easy for policemen on site easy to escape responsibility.

400. The government should perform non-judicial monitoring on more levels, including effective internal investigation procedures and independent supervision agencies (refer to Paragraph 94, A/HRC/31/66). However, the supervision mechanism in Taiwan's police agencies is too lazy to perform investigations and accountability. During the armed suppression in the Executive Yuan on March 23 and 24, 2014, there were tens to hundreds of civilians injured. Policemen were seen on footage clearly beating civilians. The National Police Agency first stated that they were unable to identify those policemen, and then indicated that no policemen or police officers were responsible. During the investigation by the Control Yuan, the police refused to provide related footages for evidence[86]. During the anti-nuclear assembly on April 28, 2014, the police attacked the a crowd in a peaceful sit-in with water cannons. Footages circulated on the internet showed that the crowd was being shot by water cannon from the angle of the police, including women whose clothes were being washed out by water cannons so they became half naked.[87] During a protest on July 23, 2015, some media also published photos provided by the police of minors being arrested on the closed site where only protesters and policemen were present.[88] According to Article 9 of the "Police Power Exercise Act", the police should use evidence collected on-site, such as footage, solely for judicial litigation. These actions have obviously invaded the privacy of the protesters. However, the police indicated that they were unable to find those who performed such actions, and they also denied any improper action.

401. Prosecutors should carry out their functions impartially and without discrimination, and should give due attention to prosecuting crimes committed

[85] Liberty Times, December 31, 2014, Society, Taipei City protest site will establish "press zone," reporters criticized this to be invasion of freedom of the press

[86] Liberty Times, June 5, 2014, Politics, Executive Yuan expel incident, the police refused to provide footages to the supervisors, and the supervisors talked smack and said: What are you afraid of?

[87] Stormmedia, 428expel sexual harassment, the police intentionally used water cannons to wash out female student's pants, URL：http://www.storm.mg/article/31007

[88] Liberty Times, October 1, 2015, Society, 723 Occupying the head of Ministry of Education's office, anti-curriculum students questioned the police leaking photos

by public officials. (refer to Paragraph 93, A/HRC/31/66). However, Taiwan's Prosecutors Office has not properly performed their investigation duties toward assembly related cases. On one hand, they threatened civilians who have asked for the inquiry of accountability with police violence. After the armed suppression action on March 23 and 24, 2014, the prosecutors have not performed any investigations of police violence. On the contrary, injured civilians and their witnesses who have prosecuted and provided legal documents voluntarily and privately came under prosecutor investigations on accusations of committing offences such as Offenses of Obstruction an Officer in Discharge of Duties [89]. This will cause serious a chilling effect and discourage civilians from following the judicial route to inquire for accountability on illegal actions done by the police during the assembly.

402. The Justice system refused to review private prosecutions related to the assembly by civilians based on technical procedures. After the armed suppression action on March 23 and 24, 2014, tens of injured civilians made private prosecutions to the Court. The Court only accepted the case of the first person who made the prosecution and turned down all other cases, on the grounds that all cases are actually the same case. [90]However, the Court did not integrate other private prosecutions into the first person's, so civilians were unable to seek accountability from the police through judicial procedures.

Article 23 Family rights

Sexual rights of people with disabilities

403. The current issue of the State Report does not include guidance on marital sexual behavior, personal sexual life, and guidance of sexual behavior prior to marriage, etc. for the people with disabilities.

404. According to Article 50 (5) of the "People with Disabilities Rights Protection Act", the state should provide personal support service on "marriage and maternity guidance." The legal principle has to treat persons with disabilities as having the right for marriage, sex and maternity. The evaluation tools for people with disabilities in our country also include assessments on whether people with disabilities need support services to meet their demands for intimate relationships and sexual behavior. However, there are currently only legal processes to demand evaluation without related policy planning and service resources to support the accessibility to their emotional and sexual lives by people with disabilities.

405. Our suggestion is that the state examines problems of current practice, and provides related policy planning and service support.

[89] Liberty Times, December 5, 2014, Politics, The truth of 324 not yet clear, THE NGOs appealing the academic circle not to hire Yi-Hua Chiang

[90] China Times, May 6, 2015, Society, 323 occupying the Executive Yuan, 39 more people being prosecuted.

Reasonable naturalization system

406. In 2012, the Legislative Yuan adopted on first reading of the Ministry of Internal Affairs (MOIA)' Nationality Act amendments. In 2014, during discussion of Article 3 of the "Nationality Act" at the Internal Affairs Committee meeting in the Legislative Yuan, the MOIA insisted on using the abstract phrase "moral rectitude" as one of the qualifications of naturalization for foreign spouses. The Minister added a new article on the draft, indicating that it has the final say on whether or not a person has moral rectitude. This is an unlimited expansion to the administrative right to decide whether or not a civilian should obtain her or his nationality. Moreover, Article 4 of the current Nationality Act provides no special treatment for foreign spouses undergoing domestic violence or those widowed, and they have to meet the financial requirements for naturalization as any foreigner. In the amendment draft, Article 4 will consider those who have become divorcees because of domestic violence or widowed as "foreign spouses" with a lower financial requirement. However, in order to be eligible for this clause, they need to prove that they financially "support" the parents of the deceased spouse. Because there is no specific definition of supporting, foreign spouses become vulnerable in the process of naturalization to the judgement and opinion of spouse' parents, who might not be satisfied with the way they are supported. In particular, if the state does not approve of the manner in which theses divorced or widowed foreign spouses maintain their parents-in-law, they may lose their right to special naturalization as foreign spouses. This affects their rights and benefits as well as those of their children. In addition, Article 1115 of the Civil Code ranks parents-in-law as 6th in priority for claims on support obligations. The duty of widowed and divorced foreign spouses to support their children should come before the duty to their parents-in-law.

407. Under Articles 3 and 4 of the draft "Nationality Act" by the Ministry of Internal Affairs, family will be the key determinant on foreign spouses obtaining nationality. However, the state has established various obstacles for the naturalization of foreign spouses, which will prevent the active protection for family and children mentioned on Articles 23 and 24 of the "International Covenant on Civil and Political Rights (ICCPR)." These challenges, at the same time, indirectly violate paragraph 6 of general opinion No. 21, and Articles 2 and 5 of CEDAW. They also violate Article 9 of the "Convention on the Rights of the Children (CRC)" on no separation between children and parents.

408. We urge the MOIA to modify the definition of "moral rectitude" on Article 3 of the "Nationality Act" immediately, and restrict its own unlimited administrative rights on nationality for civilians. The ministry should also eliminate sentences requiring foreign spouses to "foster their spouse' parents" to ensure protection of the immigration status of foreign spouses. This can, in turn, help foreign spouses stabilize their own livelihoods in Taiwan.

Guarantee on the rights to family reunion

409. The issue of family reunion exists not only when foreign juvenile children apply for residency in Taiwan. The state should also handle the issue regarding foreign parents of Taiwanese juvenile children who are unable to apply residency in Taiwan. According to Article 31 of the "Immigration Act," the right of residency of divorced foreign spouses is determined by custody of their juvenile children. If a foreign spouse does not meet the financial requirement for naturalizes, this foreign spouse can only legally reside in Taiwan until her or his children reach the age of 20. Moreover, under Article 23 of the "Immigration Act" and Article 13 of the "Enforcement Rules for the Issuance of ROC Visas to Foreign-Passport Holders," they will not be eligible to apply for "dependent residence" from embassies and missions abroad for entrance into Taiwan because they are neither "the spouse of a Taiwanese citizen" nor "juvenile descendent of a Taiwanese national."

410. All the aforementioned articles not only violate Articles17 and 23 of the ICCPR, they also violate the spirits in Articles 3, 9, 12, 18 of the CRC.

411. Defeating human trafficking and improving the right of family reunion for all families are not in conflict. So, the "Enforcement Rules for the Issuance of ROC Visas to Foreign-Passport Holders" should be revised as soon as possible, expanding to include applicable parties for "residence permit" or "identity transition from visitor to resident." In addition, the Ministry of Internal Affairs should also broaden the residency rules and regulations mentioned in Articles 23 and 31, so that foreigners who truly "foster juvenile children with Taiwan nationality" may apply residency in Taiwan or extend their residency in order to take care and foster their children. This way, the state would be able to ensure the rights of family reunion of immigrant families, and avoid situations where the immigration status of marriage immigrants is uncertain.

Article 24 Children's rights

Child protection (legal aspect)

412. According to Paragraph 345 of the ICCPR State Report, Taiwan has widely revised the Protection of Children and Youths Welfare and Rights Act in recent years and expanded the scope of protection. We consider that expanding the scope of the responsible reporting person, but without adding personnel for the following treatment will result in the increase of high-risk cases referred to social workers. Each social worker already has to carry nearly a hundred cases. The state indicated that it was bound by the total number of government employees; to increase personnel in the Social Affairs Department means to reduce personnel in other departments. Whether or not the quality of service meets the demand of children and youths, and whether social workers could shoulder the huge burden, both affect the best interests of children and youths. Such a vicious cycle will definitely compromise the fulfillment of rights to life,

protection of family, and protection of children by the state as required by the Covenant.[91]

413. The state has proposed to use the concept of sexual exploitation to deal with sex transactions among minors, such as the revisions in the *Child and Youth Sexual Exploitation Prevention Act*. However, regulations on child protection are still insufficient. For example, the penalty for utilizing children and youths to act as escort hostesses or involving them in sexual services is merely a fine of US $2,000 to $10,000, which is far less severe compared to other penalties (articles 35, 36, 38, 40, etc.). As the last line of defense against child and youth sexual exploitation, law enforcement should be stronger. In recent years, children and youths being sexually exploited have been resettled at mid-way schools, which are in many ways operate like correctional facilities, so there is a risk of stigmatization.

414. There are different standards for the Court to judge physical and mental abuse. The focus is on external injuries. Visible, physical abuse provides evidence more easily. Physical and mental abuses that seem not to have "immediate danger" become easy for judicial personnel to overlook due to the lack of actual evidence on abusive injuries. Consequently, state agencies may deem that there is no need for intervention, and then transfer them to local Social Affairs Department as high-risk treatment cases. This may cause the possible deprivation of children's rights and benefits, since the state claims inadequate reason for active intervention.[92] The state also holds different standards based on the varying

[91] For example, in a case of child abuse in Chu-Tung, the family had already been an enlisted case by social workers for a long period of time. When social workers visited the family of this brother-and-sister, they felt that this pair of brother-and-sister needed assistance. Yet, because there seemed no immediate danger, they did not initiate an intervention. The abuse of these two children and the death of one of them happened between two visits by social workers. Social workers did not have the power to intervene in advance.

[92] Take the case of Mr. Yeh in Miaoli neglecting care of children as example. When making a family visit, the homeroom teacher discovered that the child was seriously neglected. The spouse originally taking care of the child had passed away. The widowed single parent who already did not have the ability to fulfill a parent's duties, had to take responsibility for caring for children. This resulted in unstable career situations and addiction to alcohol, that led the parent to ignore his child. The parent asked his child to take care of his own demands, frequently not giving his child money but asking him to purchase alcohol and cigarettes. If his child did not bring these back, he would scorn, beat or even lock his child outside of the door. After getting drunk, the parent would wake his child up in the middle of the night to scorn him. The parent did not provide regular meals for his child, did not care for his child's hygiene. The child had a filthy genital area and body odor, which led to rejected by classmates, etc. The child's school not only let the child take school provided nutritional lunch back home for dinner, but the principal also linked resources for the child to have breakfast at 7-11. The child's homeroom teacher enabled the child to take showers between classes every other day. The school also informed the Social Affairs Department, but the Social Affairs Department considered the child as being in no immediate danger. So, they did not actively intervene, and only provided economic support and assigned a home service assistant to help clean his home once a week. The parent often prevented his child from going to school because of his own demands, making excuses

identities of the responder[93]. In the Judicial Yuan's statistic report, it is not possible for anyone to know the foundation for the scope of penalties in child abuse cases or the judge's final judicial decision. As a result, we are unable to ascertain the degree of familiarity of judicial personnel have toward children and youth issues, or how much attention they pay to such cases.

415. Article 15 of the Family Act rules that the guardian acts as a guarantee for the voice of children and youths or disadvantaged children in hearings relating to family issues. However, blocked channels of supervision and communication as well as the lack of follow-up tracking are problems. There were incidents where the guardian became the means for parents to go against social workers in child protection cases[94]. Article 5 of the Protection of Children and Youths Welfare and Rights Act demands that state and public organizations consider the best interests of children and youths as priority, and to treat their protection and assistance as top priorities when handling issues related to children and youth. However, the Courts, including guardians and judges all refuse to completely understand case study seminars held by social service agencies because of reasons such as "judicial independence" and "safeguarding judicial decisions," when it comes to judicial standards. They also refuse to completely understand the situation that children and youths in those cases have to face. This obviously

---

such as his child being sick. The parent even resorted to trickery by letting his child go to school to check-in to avoid attendance rules and regulations, but county social workers and judicial agencies all considered this child "without immediate danger." They consequently did not this case as physical and mental abuse, and did not provide active protection.

[93] Details refer to Kaohsiung High Administrative Court Litigation No. 350 Judicial decision in 2002, Kaohsiung High Administrative Court Litigation No. 64 Judicial decision in 2007, Taichung High Administrative Court Litigation No. 195 Judicial decision in 2009, Taipei High Administrative Court Litigation No. 2182 Judicial decision in 2008, Taipei High Administrative Court Litigation No. 1965 Judicial decision in 2010, the Supreme Court Tai Appeal No. 773 Judicial decision in 2010.

[94] For example, there was a case of neglect and abuse of a child whose family name is Chen in Hsinchu County (this case did not appear on the news because there was no severe harm). The mother of the child has borderline personality disorder and often did not take care of her son. After receiving reports, the government resettled the child with a guardian, whose family name is Hsu. The guardian was influenced by the mother of the child and therefore believed that the County government grabbed her son. The guardian consequently ignored the records and actual observations that County social workers and agencies presented about the mother's neglect and inability to perform parental duties. On the contrary, the guardian felt that social workers demanded too much of the mother. During case processing, the Social Affairs Department invited the guardian to attend case study seminars, but the guardian refused on the basis of judicial neutrality and told the mother that he would do her justice. Finally, the Court accepted the guardian's evaluation and rejected the extended resettlement request made by the Social Affairs Department. The mother immediately moved her household registration from Hsinchu County afterwards to get rid of the social workers who cared about her son, and handed her son to a 24-hour babysitter in another county. This was in total contradiction from what she had told the guardian. The mother previously indicated to the guardian that, "I want to be with my child every day" and "I cannot live one day without my child." Instead, the mother acted in ways consistent with the expectations from the county case study seminar.

violates the principle of taking the best interests of children and youths in account as priority, and damages the state's efforts to cooperate on protecting children and youth.

416. The Family Act does not require guardians to do follow-up tracking on the case subject. Therefore, they have no way to know whether their treatment and judgment are appropriate or not, nor can they increase protection on the rights and benefits of children and youth. It is really not easy to judge on the best interests of children and youths, the Judiciary has attributed the responsibility of tracking cases to social service agencies, yet using the guardian to go against social workers in court, profoundly reducing the effect on assisting children and youths to seek their best wellbeing.

School bullying **is getting more and more serious, investigators of gender issues on campus do not have the required professional expertise**

417. In response to Paragraph 355 on page 65 of the State Report, which focuses on the prevention of school bullying, the Ministry of Education's "Regulations on the Prevention of School Bullying" requires schools to organize campus bullying prevention teams to handle school bullying. In practice, school bullying is getting more and more serious, the main reason is that schools are unwilling to face and actively deal with problems. They merely classify such cases as playfulness among peers. The passive attitude of schools not only affects the physical and mental development of the individual student being bullied, it further influences other students' behavior. In particular, this passive attitude schools adopt encourage negative peer group behavior seen through culture, thoughts and slangs.

418. There are still not enough personnel to properly perform investigations on gender issues. Some of the individuals in the in the talent database have not kept up to date with developments in the area. They are not familiar with updates to related laws and regulations, and even lack professionalism when they perform investigations. This is despite the fact that the Ministry of Education has "Directions Regarding Professional Training on Investigation of Sexual Assault, Sexual Harassment or Sexual Bullying on Campus and Establishment of Professional Investigators," and K-12 Education Administration, county and city governments all hold many annual training programs for investigation professionals on campus gender issues.

419. Instructors of school associations (personnel) and faculties at private schools are not bound by the Reporting System for Unfit Educational Personnel. Perpetrators of bullying can transfer to other units and stay in the education system. This endangers the innocent.

420. We suggest:

(1) Enhancing the sensitivity of school faculties at all levels toward bullying behavior, to raise their awareness and ability to identify bullying. We also recommend strengthening referrals for guidance for the bully and the victim to correct and prevent problems that develop from bullying.

(2) It is necessary to effectively and actively handle bullying, such as strengthening the patrol of campus restrooms, staircases and empty classrooms where incidents of bullying often happen. We also suggest enhancing teachers' and students' understanding and respect for others in schools at all levels to establish and improve the friendliness of campus environments.

(3) Adding "instructors of school associations（personnel）" and "faculties at private schools" as objects applicable to Article 10 of the "Regulations on Reporting, Information Gathering and Inquiry of unfit educational personnel."

Violence in Parent-child and intimate relationships suffered by homosexuals

421. The Second State Report does not actively face issues regarding violence in intimate relationships among homosexual communities or parental violence toward homosexual children. It highlights the so-called "friendliness" and "acceptance" of Taiwan's state toward homosexual communities. Such an approach focuses on the legality of articles without being actually and actively translated into "inclusive" practice.

422. The Association has been providing telephone consultation for 18 years. From telephone calls in the past 5 years, we realize that callers under 18 years of age were mostly facing issues regarding parent-child violence.[95] These include being grounded by family members and restrictions on making friends in situations of high-powered control. We can also read from the "Survey Report on the Life Condition of Children and Youths in the Taiwan Region" in 2010 and 2014 that sexual orientation is an issue that causes trouble in the lives of youth.

423. The current systems of protection from domestic violence and protection of children and youths practiced in Taiwan do not include related discussions, services or statistical data on homosexual children and youths. Moreover, many researches in Taiwan have mentioned "pseudo homosexuality" and "situational homosexuality." This suggests the erasure of situations homosexual youth encounter in Taiwan. The state has not taken the responsibility to educate the society, such that many parents still misunderstand LGBT groups. This causes risk in parents-child relationships. Parents or the social welfare system also too easily put homosexual children in the position of immaturity and ignorance. This results in questioning the existence of homosexual children and youths,

[95] For the entire year, among calls received by the help hotlines for homosexual youth, about 30~40%（especially lesbian couples）mentioned that one of the parties was under high-power control, grounded, and restricted from making friends by their family.

and persuading "changes" in sexual orientation in the name of protection, without helping homosexual youth go through processes of recognition.

424. Taiwan's government revised the Domestic Violence Prevention Act in 2007 to include cohabitation in the scope of protection against violence in intimate relationships. However, before the Association and Modern Women's Foundation researched and developed the "Service Plan for Homosexual Intimacy Violence" in 2009, the system of protection against domestic violence system never seriously ways to help homosexual individuals suffering physical and mental threats in violent relationships. Often, domestic violence protection systems, especially the police, use statements such as "insufficient cases" to avoid the unfriendly and discriminative situations. Despite persuasion and initiatives made by NGOs, there has only been little progress in recent years.

425. The current intimacy violence service system has not yet included homosexuals in the statistical classification of groups. There is still speculation on the actual number of cases. According to many researches, the occurrence rates of intimacy violence between homosexual and heterosexual couples are almost the same. Therefore, we strongly suspect underreporting, and that there are more homosexual individuals struggling with violence in intimate relationships who have not asked for help from official agencies. The statistics available are limited to homosexual couples who are currently or used to be in cohabitation relationship, and where the party and the counterpart have been entered into the domestic violence system. This usually applies to those who have already reached the stage of ending their intimate relationship, but does not address the prevention and avoidance of violence in intimate relationships. Questions remain regarding ways to assist homosexual couples to facing differences and conflict with each other, as well as the pressure created by structural discrimination in the larger environment. At the foundational level of prevention, we have not seen the state provide enough resources to face issues of violence in intimate relationships involving homosexual persons.

426. The Association suggests that：

(1) It is necessary to completely survey the current situation, and include sexual orientation and gender identification into the classification statistic for reporting and telephone consultations system. This can improve understanding of the current situation relating to violence among LGBT groups, and provide information about the reduction in social costs that come with the provision of friendly service and support systems. Such initiatives address the current lack of information and systematic research on the prevalence, reasons of occurrence, and means of treatment of homosexual suffering parent-child violence and intimacy violence. At present, information mostly comes from the work experiences of NGOs.

(2) Include LGBT sensitivity training into foundational and advanced professional programs for domestic violence and children and youth social

workers, or develop review forms especially for LGBT groups. Changes in these areas can help those who work in this field move away from hetero-normativity. Civil departments should establish regular consultation windows to accumulate working experience and knowledge, while forming the support system for colleagues.

(3) Introduce and reinforce LGBT education on campuses and in society to increase recognition of the basic legal protections for homosexual couples, reduce discrimination toward the homosexual community, and establish gender friendly environments. Such steps can help ease the situations of fear and threat surrounding efforts to "come out of the closet." By raising linkages and acceptance between the homosexual community and mainstream society, initiatives in this area can reduce violence and threats inside the "double closet."

Protection of children engaged in labor

427. Responding to Paragraph 365 of the State Report, we require that the state individually list companies hiring juvenile laborers in each labor examination. This helps to increase the precision of efforts to understand that rate at which companies violate laws and regulations that protect juvenile workers. Article 44 of the Labor Standards Law defines a child worker as a worker who is over 15 years old, but less than 16 years old. Children under the age of 15 can only engage in work under certain circumstances: They have to be junior high graduates and competent authorities need to determine and authorize that the nature of their work is not hazardous to their well-being. However, on several occasions, children aged 11 to 15 reported that they started working as butchers, restaurant wait staff and even construction workers from as young as 9 or 10. Citing prohibitions in the Labor Standards Law, the Labor Authorities deny that there are child workers in Taiwan with the exception of child actors. We hereby urge the International Review Committee to make inquiries with the relevant ministries regarding the on-the-ground situation of child labor nationwide as well as how the state safeguards children from labor abuses and exploitation.

No discriminations between inheritance of legitimate and illegitimate child

428. In response to Paragraph 348 of the second ICCPR State Report: Legitimate and "illegitimate" children currently seem to have equal rights in Taiwan with regard to actual judicial decisions. The distinguishing difference between "illegitimate" and legitimate children is based on the different means of establishing parent-child relationship with the biological father. The legitimate child only needs to establish this relationship on the basis of being born. According to Article 1063 (a) of the Civil Law, "a child so born is presumed to be legitimate." This is a paternalistic presumption; that is, to the parent-child relationship rests with the husband of the biological mother regardless of his will. For "illegitimate" children, they are not presumed to be "so born (legitimate)", and must go through legal actions such as adoption or be deemed

legitimate (through the marriage of biological parents) in order to establish parent-child relationship with the biological father. If a biological father is unwilling to perform such acts, or if the biological father had passed away and unable to perform as such, the "illegitimate" child will face difficulties in establishing the parent-child relationship with the biological father. In case that the biological father is unwilling to adopt, the "illegitimate" child may sue him for compulsory adoption. However, the Civil Law previously had certain time restrictions on the period for making such lawsuits in the past. Such reasons may make efforts by the "illegitimate" child to solve this issue through lawsuit challenging.

429. Violation of Article 26 of the Covenant that everyone is equal in before the law and should be protected by the law. The Civil Law protects families far more than individuals.

Restrictions of permanent resident participation

430. Although permanent residents under 20 years of age are considered minors with limited capacity, they are totally deprived of rights relating to citizen participation. These include imbalance between rights and obligations, for example, people under 18 years have no rights to stand for election or to vote; labor who are 15 years of age may participate in labor unions but have no right to stand for election as union cadre or to vote. Even though the Civil Code considers people from 7 to 20 years of age as people with limited capacity, the Administrative Procedure Act deprives young people of rights and various citizen participations, such as the right to assembly and organization, regardless of the consent of their legal representatives. We urge to reduce the age on civil rights of election: standing for election, voting, assembly, and organization to 18 years of age. We further suggest that people from 15 but not yet 18 years of age may perform related citizen rights such as assembly and organization if agreed by their legal representatives.