Replies of Taiwan NGOs to ICCPR LOIs

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台灣障礙者權益促進會 Taiwan Association for Disability Rights
經濟民主連合 Economic Democracy Union

Covenants Watch, Taiwan

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List of NGOs and Corresponding Paragraphs

Contents

GENERAL ISSUES

1. In its Response to the Concluding Observations and Recommendations Adopted by the International Group of Independent Experts of April 2016 (hereinafter referred to as "Response"), the Government of Taiwan described its efforts towards establishing a National Human Rights Institution in accordance with the Paris Principles (§§ 1-3). On 10 December 2015, the Control Yuan introduced the draft Organic Law of Control Yuan National Human Rights Commission (ibid, § 3). In its Shadow Report on Government's Response to the 2013 Concluding Observations and Recommendations of 16 August 2016, Covenant Watch (hereinafter referred to as "CW"), reported that during her election campaign, current President Tsai Ing-wen had publicly announced on 9 December 2015 "that she would promote the establishment of a national human rights commission if elected on the January 16, 2016 national polls". Did the Government adopt the draft Organic Law or take any other further step aimed at establishing a National Human Rights Institution in Taiwan?

Replied by Covenants Watch

1. The progress of legislation regarding the NHRC:

(1) Following the review of the review of Initial State Reports in 2013, a National Human Rights Institution Research and Planning Task Force, composed of 5 members of the Presidential Office Human Rights Consultative Committee (POHRCC) was formed. The task force carried out several rounds of consultation and generated three versions of proposals to establish an NHRC in July 2014: (A) NHRC within the President's Office, (B) NHRC within the Executive Yuan, (C) a stand-alone NHRC not attached to any existing governmental branches.

(2) During President Ma's administration, no action was taken on the proposals.

(3) The Control Yuan sent in a separate proposal to the POHRCC, in Jan. 2016. In that proposal (D), the Control Yuan essentially claims itself to be the NHRC, and suggested that the commissioners of the Control Yuan (29 in total) also serve as commissioners of the NHRC at the same time.

i. In contrast, Legislator Koo (currently Director of the "Ill-gotten Party Assets Settlement Committee") proposed a bill (E) in which 11 commissioners of the Control Yuan are designated as full-time NHRC commissioners, and the structure of the Control Yuan (including the nomination and qualifications of the commissioners, as well as organization of the staff) is adjusted to fulfill requirement of the Paris Principles.

	Proposal (A) and (F),	Proposal (D)	Proposal (E)
	Presidential Office	Control Yuan (CY)	Control Yuan (CY)
Legal basis	New institution based on legislation; Some questions legitimacy because ambiguity in the constitution regarding power of the Presidential Office	Constitutional body, Existing Control Act and "Organic Law of the Control Yuan"	Constitutional body, Revised Control Act and "Organic Law of the Control Yuan"
Mandate	Protection and promotion of HR	Primarily protection of HR, as extension of the ombudsman functions of the Control Yuan	Protection and promotion of HR
Composition	11-13 Commissioners; nominated by the President and approved by the Parliament	29 ombudsmen; nominated by the President and approved by the Parliament	11 commissioners; nominated by the President and approved by the Parliament
Members	1/3 (A) or 1/2 (F) from civil society	Qualification of members in "Organic Law of CY" unfavorable for pluralism	1/2 from civil society
Bridging international HR laws	High probability of examining domestic law against int'l standards	Conflict may exist between prosecuting officials by domestic laws and examining those laws against int'l standards	Specifically appointed commissioners and staff, re-training of staff to change institutional practice
Investigative Power	May be contestable under Presidential Office	Full (current CY power)	Full (current CY power)
Cooperation with legislation	High probability	Low probability with the current "Control Act"	"Control Act" has to be revised to enhance cooperation
Promotion of HR	High communication and educational capabilities	Not within the functions of current "Control Act"	"Control Act" has to be revised to accommodate

(4) Civil organizations coordinated by Covenants Watch sent in a proposal (F) to the Legislative Yuan (through Legislator Yu Mei-Nu) in in November 2014 and again in June 2016, which has a similar structure to proposal (A) of the POHRCC.

2. Position of the Executive Branch:

(1) President Tsai's promised during her election campaign to establish the NHRC, and VP Chen as Chairman of the POHRCC affirmed the intention, but no definite step was taken.

(2) The government has not provided a time frame for establishing the NHRC.

3. Comparison on the three major versions of legislation:

(1) Three proposals are compared in the table below.

(2) The main limitation of the Control Yuan proposal (D) is that CY itself does not

enjoy high reputation, and the "Control Act" is not compatible with the Paris Principles in many aspects.

(3) The main limitation of the Presidential Office proposal (A) is the constitutional ambiguity regarding the functions of that office.

Replied by Association for Taiwan Indigenous Peoples' Policies

4. From the draft proposal for the establishment of a Human Rights Council, which was announced by President Tsai Ing-Wen last year, it was announced that an "Independent National Human Rights Commission" would be established, and up until November, the DPP would frequently raise the Paris Principles in relation to it. However, at present, the responsible body for human rights in Taiwan is caught between the Human Rights Consultation Committee of the Presidential Office, and other government bodies (the Control Yuan's Human Rights Protection Committee, the Executive Yuan's Working Group for the Advancement of Human Rights, and affiliated working groups in the Examination Yuan and other ministries).

5. As written in the Constitution, the two human rights conventions, and the Indigenous Peoples Basic Law, the human rights of Indigenous Peoples are clear. However, the human rights of Indigenous Peoples in Taiwan at present continue to be encroached upon. What is even worse is that government agencies take the lead in trampling on Indigenous Peoples' rights. Therefore, there is an urgent need for government human rights institutions to live up to their proper responsibilities (concerning the human rights education, proposals for legal reform, and applying for complaints).

ARTICLE 3

7. The Report provides information on pages 6-8 that between 2012 and 2014, the percentage of women as senior civil servants, (including political appointees) while increasing, still lags behind that of men (27.87% to 31.10%). Please provide information on whether there are policy measures such as the use of temporary special measures to accelerate the pace of women's participation in senior managerial positions not only on the basis of gender but also on the basis of indigenous status and disability. If not whether such policy measures will be considered.

Replied by LIMA Taiwan Indigenous Youth Working Group

6. According to item 7 of the ICCPR List of Issues, the Review Committee pointed out that besides gender, Indigenous status should also be the base of temporary special measures to accelerate the pace of women's participation in senior managerial positions in government agencies. We would like to further emphasize that regarding civil servant recruitment, it's not enough to employ certain percentage of Indigenous persons directly, but there should be more proactive actions taken by the government.

7. For example, currently there is the Special Examination for Indigenous Persons as the mechanism for the recruitment of Indigenous civil servants; there are also regulations set up regarding the percentage of Indigenous employees in government agencies. However, the purpose of the Special Examination for Indigenous Persons is not only about the insurance of job opportunity of Indigenous Peoples, but to consider how the governmental system and its operation can better advance Indigenous public affairs with equality and respect on the basis of Indigenous Peoples' special political position. Especially after the Indigenous Peoples Basic Law took into force in 2005, there have been several legislations and law amendments regarding the rights of Indigenous Peoples. the Indigenous administrative affairs in the national administrative system should therefore be more complicated and precise.

8. Therefore, in regards of the recruitment of civil servants, besides employment percentage of Indigenous persons, we strongly recommend that EVERY civil servant and staff member in the government agencies and departments, whose work tasks would be relevant to or affect Indigenous Peoples, no matter if he/she is an Indigenous person or not, he/she should have certain degree of understanding on Indigenous cultures and knowledge systems. This would actually not be difficult to achieve. It only requires to include relevant contents in the Civil Service Examination, as well as to have more trainings on Indigenous cultures and knowledge systems for the civil servants.

9. In addition, to substantively implement Indigenous persons' right to political participation, the Ministry of Examination should review and evaluate the current contents and subjects of the Special Examination for Indigenous Persons and to make necessary adjustments in accordance with the changes of national laws and regulations.

ARTICLE 7

17. In § 90 of its Report, the Government states that amendments were made to Article 8 of the Educational Fundamental Act with the aim to "prohibit students being subjected to any form of corporal punishment that would damage their physical or mental health". Does this mean that corporal punishment which is not proven to damage the physical or mental health of students is still permitted under this act?

18. Is corporal punishment still permitted in any institution, including the military, schools, special educational institutions or the family?

Replied by the Humanistic Education Foundation

Our responses to the questions are as follows: (injured child photos are attached)

10. In Article 8 of the Educational Fundamental Act, any form of corporal punishment and bullying is not permitted. Thus, corporal punishment which is not proven to damage the physical or mental health of students (if it exists) is still not permitted under this act. The reason why corporal punishment has been an important issue of child human rights is that: regardless of severity, it causes physical and mental harm, and it is an infringement which must be prohibited. Even with the declaration of Article 8 of the Educational Fundamental Act, there are still some problems in the real educational environment of Taiwan:

(1) The laws and regulations do not adequately protect students:
For example, the definition of school bullying (according to Regulations on the Prevention of Bullying on Campus which is set by the Ministry of Education.), only includes bullying among students. Bullying between the school principal and students, administrative staff and students, teachers and students, are not mentioned. Even verbal bullying that teachers do to the students is not included or prohibited in the Educational Fundamental Act.

(2) In the regulations, the Ministry of Education leaves room for disguised forms of corporal punishment:
"Making students do reasonable physical activities" is classified as "special disciplinary measures" by Teachers' Counseling and Disciplining Methods and Precautions for Treatment of Students (set by the Ministry of Education). In this way, schools are given opportunities for disguised forms of corporal punishment. For example, a table tennis coach of National Taipei University of Education Experimental Elementary School blamed a student for a ball deflection and made him go up and down 2400 stairs, causing him to be injured. Until now, the school

still insists that it is physical activity, not corporal punishment. In fact, it is corporal punishment in the name of discipline.

(3) After suffering corporal punishment, students still cannot acquire full relief in the appeal process:

During the procedure of dismissing or punishing teachers, students are not litigants, they cannot express opinions to Teachers' Review Committee or Performance Review Committee. Besides, they have no way of knowing what facts are identified by the school investigation team, as well as the punishment given to teachers. Furthermore, the Ministry of Education and competent educational authorities only review cases through the written documents. In cases where teachers administered corporal punishment to students, there is no investigation from external personnel. And reports submitted by the school will never be questioned. Even if the victimized students and parents disagree with the report content, they cannot make the competent educational authorities investigate cases on their own. Under this situation, even when it is obvious that the school is deliberately distorting the facts, the victimized students and parents cannot obtain help or redress anywhere.

(4) Teacher dismissal:

It is stipulated in the Teachers' Act (Article 14, Subparagraph 11) that a teacher may be dismissed if "Conducting corporal punishment or bullying student(s), causing severe physical or mental injury." But whether to classify "severe physical or mental injury" is for Teachers' Review Committee's consideration. In this committee, over half of the members are teachers, besides, administrative staff and school personnel make up the majority. The decisions which the committee make are affected by colleagues' relationships. That is the reason why teachers are not dismissed even in many serious cases. With such a committee composition, Teachers' Review Committee often abide by the belief "teaching seriously, seeking for students' progress eagerly" to exonerate teachers of corporal punishment.

(5) Administrative punishment of teachers:

In this case, the school Performance Review Committee make the decisions. But, it is made up of teachers and administrative staff from the same school. In many cases, after students suffered corporal punishment and parents submitted inspection reports, schools only gave a minimum punishment (reprimand) to the teachers. We highly recommend that the International Review Committee request from the Taiwan government a chart of corporal punishment cases and punishments administered in the past decade. In this way, you may understand school attitudes toward corporal punishment. Even though there are students injured, the schools do not regard it as a major issue.

We may say that from an occupational ethics viewpoint that the inappropriateness

of corporal punishment has not yet been recognized. For instance, the Humanistic Educational Foundation received an appeal from New Taipei Municipal Wen De Elementary School in 2014: special education students were hit by resource class teachers as punishment for carelessness on homework or tests, and the punishment frequency was high. These punishments continued over several semesters. However, the teachers only received 2 reprimands as punishment. In 2013, teacher Huang, the deputy head of Students' Behavior Section of New Taipei Municipal Xi Kun Junior High School, reined a student's neck and dragged him on the floor, then threw him heavily onto the ground. He received 1 reprimand only.

11. There are regulations of prohibition of corporal punishment in military schools, schools and special educational institutes. But, in special educational institutes the protection of laws and regulations is inadequate, and there is neglect by administrative organs. During the Six months from the end of 2013, National Tainan Special School had received a series of parental complaints: a homeroom teacher from the junior high division had been administering corporal punishment to students. He pulled students into the toilet, beating them, kicking their knees, pushing students into a desk, pulling clothes, grabbing their necks, punching them in the chest, hitting students with iron chairs, knocking their heads against a wall, resulting in head and back swellings and contusions. Also, a homeroom teacher of the senior high division broke a student's left arm and causing extensive bruising on the student's arm, with additional bruising on the inside part of the thigh and buttocks. In the preschool division of National Tainan Special School, a homeroom teacher administered corporal punishment to a student many times, resulting in the student being administered to hospital because of contusion around the student's eyes and nose bridge, as well as cerebral hemorrhaging.

Even though the behavior of these three homeroom teachers was identified as child abuse and they were penalized, the school tried to downplay the severity of the incident and dwell on the trivial in investigation reports. Thus, what the teachers got respectively were merely 1 minor demerit, 2 minor demerits and 2 minor demerits from the Performance Review Committee. Even though the Humanistic Educational Foundation presented these cases to the Supervisory Institute, and a correction act was proposed, these teachers are still teaching in the same school. Actually, a school with so many serious corporal punishment cases should be temporarily suspended and investigated, reviewed and evaluated. However, even in this case, the Ministry of Education still prevaricated with the investigation report restarted by the Supervisory Institute. Although corporal punishment in schools is clearly defined and prohibited by laws, corporal punishment is still occurring in the real-life educational environment because the administrative organs don't deal with

corporal punishment cases seriously enough; teachers who damaged students' physical and mental health were not strictly punished and can still be teaching in schools without any improvement.

School corporal punishment is not allowed by law, but it seems permissible to break the law when shielded by administrative organs.

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ARTICLE 9

Mandatory hospitalization

27. According to the Covenants Watch Shadow Report (paragraphs 185-189), mentally ill patients subject to compulsory hospitalization under the Mental Health Act have received little professional legal assistance if they wished to challenge the decision of hospitalization, and, in practice, there have thus far been few cases filed in courts and no successful cases ordering release. Is this observation correct? What are the measures of the Government to ensure that adequate resources and legal assistance are provided to enable patients in custody to resort to judicial remedy? Please provide statistics for the number of patients subject to compulsory hospitalization, the number of cases in which patients have petitioned courts for release and the results.

The League for Persons with Disabilities, R.O.C.

12. The Mental Health Act regulates that "severely" mentally ill patients could be subject to compulsory hospitalization or ordered community treatment (OCT) by review board (like a tribunal). However, article 46 of the Act authorized OCT to carried out without informing patients, which appears to run counter to Paragraph 2 of Article 9 of ICCPR and Article 14 of CRPD. Patients subject to OCT receive little professional legal assistance if they wish to challenge the ruling of the review board. We urge the government to address how such patients can access judicial remedy, and provide statistics for the number of patients subject to OCT, as well as the number of cases in which patients have petitioned courts for release, and the results of such petitions.

The right to legal assistance

39. According to the Covenants Watch Shadow Report, no asylum-seekers in Taiwan have received any legal aid when detained in the alien detention centers for the crimes of illegal entry or overstay (§ 195). Is this observation accurate? Please elaborate on the measures taken by the Government to allow legal aid to be provided to illegal entrants or overstayed aliens and Mainland Chinese.

Replied by the Taiwan Association for Human Rights

13. According to Article 14 of the Legal Aid Act, the Legal Aid Foundation can only provide legal aid to foreigners who have legal status in Taiwan. Since many asylum seekers who usually entered Taiwan illegally (by boat or using fake

passport) or already overstayed, most of them are not qualified the condition required in article 14 of Legal Aid Act. No asylum seekers had been given legal assistance by Legal Aid Foundation since it foundation in 2004. Most asylum seekers have approached the Taiwan Association for Human Rights to seek help. However, even though we held press conference with Parliament members or sent their testimony and evidence to the National Immigration Agency(NIA) to prove that sending them back might put them in danger, NIA always responded that the Refugee Act is not in place and no procedure for the asylum seekers accordingly, so NIA would have to follow the Immigration Act to repatriate them. From November 2014 till now, NIA has repatriated 3 Kurdish people who escaped from the prosecution of IS, and 5 asylum seekers from China (PRC).

40. According to the Covenants Watch Shadow Report, rural and remote areas may have fewer defense lawyers available than more developed areas as a result of unnecessarily onerous geographic restrictions on the lawyer's right to practice relating to registration (paragraphs 308-310). Please provide information on whether access to counsel and legal aid in rural and remote areas is adequate in practice.

By Association for Taiwan Indigenous Peoples' Policies

14. According to the statistical data of the Legal Aid Foundation from 2011 to 2016, the highest rate of legal aid of Indigenous Peoples is in Taitung (16.09%) and the second is in Hualien (14.78%). However, there has been insufficient numbers of lawyers serving in those two areas. There are approximately only 24 lawyers in each of those two areas. Compared to the lawyers in Taipei area, which have more than 2000 lawyers, it has caused the vulnerability to the protection of the rights of Indigenous Peoples when it comes to the interrogation of the Indigenous defends and the cultural defense due to the insufficiency of the lawyers.

15. Considering the cause of the cases, economic reality and transportation, the lawyers mostly practice in the urban areas. Therefore, to cancel the fee of joining the local bar to release the financial burden of the lawyers in order to encourage the lawyers to practice in the remote areas may be the solution to ease the problem. However, the lawyers of the Indigenous defendants concerning the cultural defense is very critical. Therefore, the lawyers should be seriously selected for Indigenous defendants.

The right to the free assistance of an interpreter

43. The Covenants Watch Shadow Report claims that there is a gap between the supply and demand for interpretation services in judicial proceedings (paragraph 318). Has the Government assessed the demands based on statistics for the number of cases involving defendants from different countries before evaluating the adequacy of the current supply? Please provide available statistics and comment on whether the courts, prosecutor's offices and police stations have adequate interpretation services for the accused person, especially in rural and remote areas. In addition, has the Government considered enacting legislation to ensure adequate training, certification and staffing of interpreters, as suggested by civil society groups.

Replied by the Indigenous Youth Front

16. Although paragraph 318 in the CW ICCPR Shadow Report was about the need for interpretation services for foreigners, we must point out that the interpretation services in judicial proceedings for the Indigenous Peoples in Taiwan are also seriously insufficient.

17. Mandarin Chinese is the major language used in Taiwan. The government therefore takes it as granted that every citizen has the capacity to use, express and communicate with Mandarin Chinese sufficiently. However, we observed that many indigenous persons, especially those who are of elderly age or reside in the Indigenous communities for long, are not necessarily capable of expressing themselves clearly in Mandarin Chinese. Also, legal wordings are more difficult to understand than terms used in daily lives. This often leads to the result that the judicial rights of litigants are violated due to the lack of fully understanding of their own rights.

18. The sufficient and appropriate training, certification and allocating for interpretation services in Indigenous languages are relatively more difficult and complicated. Although the Indigenous population is around 2% of the national population, there are more than 16 Indigenous Peoples/Nations with at least 42 languages. Therefore, it is critical to thoroughly consider and evaluate how to establish a flexible system providing interpretation services in Indigenous languages in cooperation with Indigenous communities and/or NGOs.

ARTICLE 17

50. The Report also indicates that any illegal surveillance with regard to communication monitoring would be subject to civil and criminal liabilities (§ 271). Please provide information of cases where legal action has been taken against illegal surveillance, if any.

Replied by the Taiwan Association for Human Rights

19. In September 2013, Prosecutor-General Huang Shi-Ming（黃世銘） was exposed that he not only tried to monitor the communication between Ker Chien-Ming（柯建銘）, who was the General Coordinator of DPP legislators, and Legislative Speaker, Wang Jyn-Pyng（王金平）, but also reported the content to President Ma Ying-Jeou（馬英九）. Prosecutor General Huang was charged for leaking secrets, abusing his power, and violating the Communication Security and Surveillance Act. In the final verdict, he was convicted to a prison term of one year and three months. This case is also the most representative case of illegal surveillance done by government in Taiwan in recent years.

20. Besides that, due to that the Code of Criminal Procedure add interlocutory appeal for Communication Surveillance on 14 January 2014, therefore, those being monitored may not file an interlocutory appeal for problematic communication surveillance before 14 January 2014, and even after 2014, there's still no statistics about interlocutory appeal.

21. Finally, according to an interpretation made by the Ministry of Justice in order to reply the Yahoo, while the Communication Security and Surveillance Act does not cover the communication content which has been stored, it leads that the government could use other law or legal documents than the Communication Security and Surveillance Act to access people's communication information. This is also the defect in Taiwan's communication surveillance legal system. Because under the table, it is very possible to exist much more cases which could be legal but still over harm People's privacy.

54. In Recommendation 72 the experts called upon the Government "to immediately take preventive steps to block any merger or acquisition of news channels or newspapers" and to enact "a comprehensive law on ensuring that the diversity of media is encouraged to protect free speech and the right to seek, receive and impart information and ideas of all kinds". Why has the draft by the National Communications Commission submitted to the Legislative Yuan on 26 April 2013 not been adopted (cf. the Government's Response, § 254, and the CW Shadow

Report, § 294)? Have any other measures been taken in order to comply with the recommendation? If not, how does the Government intend to remedy the situation?

Replied by LIMA Taiwan Indigenous Youth Working Group

22. "The protection of the freedom of speech described under Article 11 of the Constitution includes the expression of opinion via radio or television broadcast media", the constitutional interpretation No. 364 stated. Radio or television broadcast is the important media of people expressing their ideas and speech, which reflect the public opinions, enhance democracy and supervise the government. Yet, the government attempts to control the Taiwan Indigenous TV by budget control and board member appointment, trying to turn this public media into channel of public relations and policy advocacy.

23. Transitional justice is an issue concerning the public interest of Taiwan society. However, there is one legislator using the name of congress oversight to ask the operator of Taiwan Indigenous TV, Taiwan Indigenous Peoples Cultural Foundation, to provide the detail of the news and programs regarding to transitional justice of Indigenous Peoples, including the name list of the journalists and the producers. This has seriously interfered the media's freedom of speech and independence.

24. In order to protect the freedom of speech, we urge the government to stop interfering the media's independence with budget control and board member appointment. And the congress shall grant the full budget to Taiwan Indigenous TV as to make it an important media for people to express their ideas and a body to supervise the government. We further request that the relative regulations and system of Taiwan Indigenous TV to be reviewed, so that there won't be any rooms for the political influence.

56. Can further information be made available concerning the legislative drafts submitted in February 2016 to the Legislative Yuan with the intention of enacting new anti-discrimination laws (cf. the CW Shadow Report, § 305)? Will the drafts, if enacted, comply with recommendation 74 of the experts? If not, will the Government reconsider to propose a specific provision on national, racial and religious hatred inserted in the Criminal Code despite the fact that such crimes as alleged may be punished under various other legal provisions?

Replied by the Covenants Watch

25. There is not a comprehensive anti-discrimination act.

(1) The need to have such an act should not depend on "a consensus among (governmental) agencies".

(2) The government has not taken any action in the preparation of such an act.

(3) As for the Legislative Yuan, the only anti-discrimination law that is under serious consideration is an Act against discrimination based on racial and ethnic grounds.

26. Several acts touch upon discrimination on different grounds, noticeably on gender and employment. Indeed, according to the official "Laws and Regulations Database", 37 acts or regulations contain the word discrimination. However, there exist significant pitfalls:

(1) In these anti-discrimination Acts, not a single one contains a definition of the term "discrimination". There is no description of the elements of behaviors or practices that constitute an act of discrimination.

(2) The Acts prohibit discrimination on specific grounds. Some of them, such as the Indigenous Peoples Employment Rights Protection Act, enlist positive actions, however, these Acts do not uniformly enlist Equality Duties. As a result, there is no way of ascertaining government's obligation in taking positive actions to advance equality of opportunity or to foster good relations between people who share a protected characteristic and people who do not share it.

(3) The coverage on anti-discrimination is fragmented. For example, regarding gender equality, the most significant laws were the Act of Gender Equality in Employment (2016) and Gender Equity Education Act (2013), but these Acts leave many aspects of social activities uncovered. For example, amid the struggle to revise the Civil Act to legalize gay marriage, discriminatory comments, some amounting to outright hate speeches, against LGBT were rampant on social media, but these conducts were not unlawful because the limited and fragmented coverage of laws.

27. The government replied that "mechanism for mitigation of discrimination between people has been written in the Criminal Code", however, the "mechanism" is restricted to the punishment of "public insult" (Article 309) and "offense of slander" (Article 310), both could be prosecuted only upon complaint. Thus, the Criminal Act is individual-based, and is inadequate in prohibiting various forms of "advocacy of national, racial or religious hatred that constitutes incitement to discriminations, hostility or violence" against groups.

Replied by LIMA Taiwan Indigenous Youth Working Group

28. The government stated that although there's no comprehensive anti-discrimination legislation, Taiwan has enacted a series of regulations, such as Indigenous Peoples Employment Rights Protection Act, Employment Service Act, Act of Gender Equality in Employment…etc., to provide legal guidelines and protections, covering all grounds of discrimination. However, these regulations are based on different courses and the subject to protect. For example, in the regards of relative regulations of the gender equality, if they don't consider the cultural perspective of gender equality, it could easily cause another form of discrimination, just like the prohibition of Burkini.

29. Moreover, in the Chapter of Offenses against Reputation and Credit in the Criminal Law, it still focuses on the invasion of individual rights. Therefore, if it's a hate speech against Indigenous Peoples as a group, there's no room to defend our right with the Criminal Law. Hence, there should be a comprehensive anti-discrimination legislation.

30. Since Taiwan has signed the ICERD, the government should follow the path of the implementation of the Two Covenant in Taiwan to adopt an act to implement the ICERD domestically and set out an actual time schedule of legislation. Therefore, the Indigenous Peoples will no longer suffer from discrimination in any forms.

ARTICLE 21

59. So far no legislative amendments have been made of the Assembly and Parade Act in order to bring in into conformity with Article 21 ICCPR as urged by the experts in Recommendation 75. Can more detailed information on the draft bill submitted to the Legislative Yuan in February 2016 renamed "Assembly and Parade Protection Act" be provided? Is it correct as argued by CW in the Shadow Report (§ 298) that the overall effect of the draft on the locations for assemblies and marches will not be changed and that unclear preconditions for forcible dispersion of assemblies and marches "may actually legalize police actions to disperse assemblies and marches"? Does the draft comply with Recommendation 75?

Reply by the Taiwan Association for Human Rights

31. The regulation of security distance in the Article 5 of the draft of〈Assembly and Parade Protection Act〉basically has the identical legislative purpose as the regulation of 〈Assembly and Parade Act〉that bans all the assembly and parade within the specific distance, which is now in force. Further, the National Police

Agency has yet to provide any reason and legal authorization of dividing the security distance into 30, 50, 100 and 300 meters respectively.

32. Meanwhile, it is expected that the amendment of this law will add the dwellings of the president and vice president, prosecutor offices, and medical institutions as the centers that allow the police to delimit the safe distance. First, the security of the presidential dwelling is already regulated by article 12 of〈Special Guard Service Act〉：" The delimiting of safety zone and the installing of safety facilities are permitted for the necessity of preventing the occurrence of the hazards." Therefore, the amendment of 〈Assembly and Parade Act〉makes meaningless repetitions.

33. The even larger doubt of the amendment is the addition of medical institutions as the center to delimit the safe distance. Since there are no ends of authorization and clear definition of "medical institutions", if we take all the 20,578 hospitals into account, the area that can be delimited as safety zone (distance) will be up to 58.7 million square meters. And we are deeply concerned that this will terribly damage the right to assembly and parade.

34. Article 17 preserves the forcibly expulsion, and as long as the police officials are authorized to do the expulsion, the pushing and jostling of people with the police will always make people violate the "Offenses of Obstructing an Officer in Discharge of Duties" in the criminal law, and exacerbate the criminalization of social movement cases in these years.

60. Do the administrative rules following Interpretation No 718 of the Constitutional Court grant the necessary protection of the right to hold urgent or spontaneous rallies (cf. the CW Shadow Report, § 299)? Is it correct as alleged in this report (§§ 301-303) that the accountability of the police when enforcing law "gravely threatens the freedom of speech and assembly" and that "a culture of impunity for the abuse of police powers continues to be a major threat to the exercise of the freedoms of speech and assembly in Taiwan" (cf. also the allegations in the CW Shadow Report, §§ 398-402)? If so, what does the Government intend to do in order to remedy the situation?

Reply by the Taiwan Association for Human Rights

35. Regarding the 'Guidelines to safeguard continued progress of "unexpected, instant parade & assembly"' replied by the authority, the〈Principles on the Unexpected, Instant Parade & Assembly〉Article 3 indeed mentioned the 'unexpected' and 'instant' parade & assembly. However, despite the dispute

that the system of prior approval probably violates the constitution, the response 'the instant parade & assembly still call for application' mentioned by the government has totally violated the conclusion of Judicial Yuan Interpretation No. 718 that 'the application for approval which do not exclude urgent and incidental assemblies and demonstrations unconstitutional'. Additionally, 'the application shall be the social obligation for the group(s) before conducting any parade & assembly' responded by the authority is thoroughly groundless statement. Moreover, 〈Principles on the Unexpected, Instant Parade & Assembly〉 is the executive order. Any limitation on the people's rights to parade & assembly regulated by an executive order has violated the principle of legal reservation.

36. Concerning 'the status quo for the police in improvement in law enforcement' mentioned by the government has displayed the lack of consideration between the "rights to parade & assembly" and the "safety and social order". The reply 'But they are apparently not rational when they engage in unjustifiable occupation, sabotage through non-peaceful means.' mentioned by the authority displayed the rejection of understanding the connotation of 'peaceful assembly' in ICCPR, which is the mistake of equating the parade & assembly with the destruction of social order.

61. Please provide information on the filing procedure for assemblies and parades. Is it correct as alleged in the CW Shadow Report (§ 388) that "the state actually still has the ultimate approval power toward assembly and parade"? Does the system comply with the requirements of Article 21 ICCPR?

Reply by the Taiwan Association for Human Rights

37. The amendment of the Assembly and Parade Act has been deliberated "voluntary Registration System "in the committees mentioned in the government response at first paragraph. However, the consult among political parties had fallen twice in July and November, 2016. The amendment hasn't passed through the legislative procedure, which means the "License Beforehand System" is still in force right now.

38. The "License Beforehand System" gives the administrative authority power to define the "legal" assembly, and even makes the danger of speech censorship. Meanwhile, the "Registration System" set up the produce to force people register the assembly and parade to authority. Both of the system have the possibility to illegalize the peaceful assembly, and then legalize the enforcement to these peaceful assembly. The scope of free formation of legislation doesn't allow the authority to gag the freedom of speech. Before the "voluntary Registration System" pass, the

"License Beforehand System" and the guarantee of the usage right to the road are still threatening the right of the assembly.

62. Are the allegations in the CW Shadow Report (§ 397) that 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" correct? If so, what does the Government intend to do in order to remedy the situation?

Reply by the Taiwan Association for Human Rights

39. Take the event of the student occupation of the Ministry of Education on July 23, 2015 for example, the police not only indicted all the individuals on site (including three journalists) but also prevent the journalists from sending messages, press releasing, and photo-taking, and even tried to take away their cameras by force, all of which indicated the police's intention to obstruct their public accountability. Conditions as such have been so prevalent in demonstrations that they exemplify the question not about the police's public relation or communication with journalists, but the insufficient institutional protection of the freedom of the press. What the police should do on the site of demonstration is very simple: do not interfere with journalism. The response provided by the National Police Agency shows how they still fail to recognize this principle as people's right to know and monitor the government, and instead, regard journalism as something that should be held in their control in demonstrations.

63. Please provide more factual information on the case of Huaguang Community. Were the allegations of various violations of domestic law in the CW Shadow Report (§§ 392-395) brought before the Taiwanese courts? If so, what was the outcome of the judicial review? If not, for what reasons was a judicial review not initiated?

Reply by the Taiwan Association for Human Rights

40. Huaguang Community is one typical informal settlement whose predicament was noted by the independent experts in the 2013 Concluding Observations and Recommendations (paras. 47, 49) that "forced evictions be stopped unless alternative housing is provided." However, only a month after, in April 2013 the Ministry of Justice applied for forced eviction, leading to an on-site demonstration

after which many protestors were referred to Taipei District Prosecutors Office. Five protesters were later indicted for "Offenses of Obstructing an Officer in Discharge of Duties" in the criminal law (article 135). In June 2016, the High Court dismissed the appeal of the defendants and affirmed the conviction with 50 days of imprisonment. Four of the defendants converted the imprisonment into fine.

41. Although the defense attorney claimed on court that (1) the police's arbitrarily setting of traffic regulation area one day before eviction where the defendants were expelled was not legal "official duties", and (2) even if it was, the defendants' dragging of the police shields during the pushing did not constitute "duress" as the element of the offense. Nevertheless, the court refused to endorse such a contradiction, which exemplifies how the court has been more inclined to adopt the officials' stance in offenses of official duties.

64. Please provide information on the Social Order Maintenance Act. Is the allegation in the CW Shadow Report (§ 300) that this law together with the Criminal Code "is utilized to curb freedom of expression and assembly" and "actually applied by the Government, depending on the situation, in a targeted and instrumental manner to arrest, fine or indict people" correct? If so, what does the Government intend to do in order to remedy the situation?

Reply by the Taiwan Association for Human Rights

42. Neither the Criminal Code nor the Social Order Maintenance Act was enacted to punish the particular behavior or the assembly. Social Order Maintenance Act is a kind of the administrative law regulated a series of the behavior offended the public order. It was enacted in 1991.Due to the purpose of police power in the assembly would be considered more on cleaning up the area and expelling the crowd than applying the law before the enforcement. Therefore, the Social Order Maintenance Act ruling various types of behavior becomes one of the "toolbox" to find the suitable law. Meanwhile, this administrative law make most of the discretionary power belong to the administrative department, which mean the enforcement wouldn't have to be judged by the court. It would take effect once the assembly be expelled by police. That's the reason why the report address "actually applied by the Government, depending on the situation, in a targeted and instrumental manner to arrest, fine or indict people".

43. Finally, we have to emphasize that the amendment of the Assembly and Parade Act is not passed yet. Therefore, the criminal punishment ruled by the Assembly and Parade Act still exist right now. In November, 2016, people was even arrested

by police with the Assembly and Parade Act and the Social Order Maintenance Act for peaceful assembly in Kaohsiung City.

ARTICLE 23

66. In the previous Concluding Observations the Experts recommended that the law on the minimum age of marriage be amended to raise the minimum age of marriage of women to 18. Please indicate whether this has been done. If not, please provide information on whether there are plans to do so and within what time frame.

Replied by the Awakening Foundation

44. The independent experts that reviewed the initial state reports on ICESCR and ICCPR in 2013 concluded that the age difference of the minimum age of marriage between men and women in the Civil Code to be discriminatory and in violation of various provisions of the ICCPR, CEDAW and the CRC, and therefore recommend that the law on the minimum age of marriage be amended. In June 2014, the CEDAW Review Committee came to the same conclusion and urged that the government submit draft amendments that set the minimum age for marriage at 18 for both men and women. But the Ministry of Justice never made any effort to make proposal of that draft for amendments of the minimum age during past years. Only passive and negative attitude the Ministry had in promoting such a regulation reform.

45. There were three drafts regarding that amendment discussed in the Judiciary and Organic Laws and Statutes Committee of the Legislative Yuan on 17 November 2016. But the Ministry of Justice indicated that if the Civil Code sets minimum engagement age at 17 and marriage age at 18 for both men and women, it will restrict the freedom of women, because the current minimum engagement age for women is 15, marriage age for women is 16. And the Ministry also expressed if the amendment will set at 18 both for men and women, there should be an exception clause in order to avoid hardness.

46. Article 989 of Civil Code prescribes that where a marriage is concluded contrary to the provision of Article 980 (marriage age), the party concerned or his statutory agent may apply to the court for its annulment; but such application may not be made, where the party concerned has attained the age specified in the said article or where the woman has become pregnant. So, if men and women who get married below the minimum age of Article 980, the period of women who try to apply to court for marriage annulment will be shorter than men. Because the

marriage age of women is only at 16, while men is at 18, women would attain the age specified in the said article earlier than men.

47. The Ministry of Justice even suggested the Legislators think the problems over, and still has no positive efforts to promote the amendment of the minimum marriage at 18 for both men and women equally, also do not put forward of any exception clause to eliminate the possible hardness the Ministry claimed.

Response by the Taiwan Alliance to Promote Civil Partnership Rights:

48. At present (December 2016) three bills containing proposed amendments to Taiwan's Civil Code with regard to marriage equality are before the Judiciary and Organic Laws and Statutes Committee of the Legislative Yuan (Taiwan's National Legislature). These three different draft amendments were proposed respectively by Democratic Progressive Party (DPP) Committee Member Yu Mei-nu (尤美女), Chinese Nationalist Party (KMT) Committee Member Jason Hsu (許毓仁), and the People First Party (PFP) legislative caucus. In addition to proposing the freedom and right of same-sex marriage, all three bills also raise the minimum age for marriage to 18 (regardless of sex). But whether any of these three bills will successfully pass through the legislative process remains uncertain.

67. With regard to the issue of the recognition of the diversity of families and same sex marriages, the Second Report indicates that surveys have been conducted that reveal different opinions regarding the subject (§ 329) and that the Ministry of Justice will continue to promote rational discussion so that the country will reach a consensus. Please provide information as to whether, as recommended by the Experts, gender equality and gender diversity awareness and education has been conducted to society in general and in schools in particular as well as the scale and scope of such education.

Response by the Taiwan Alliance to Promote Civil Partnership Rights:

49. On the issue of marriage equality, Taiwan's Ministry of Justice recently stated that it "supports the values of diversity and equality, and will take an open-minded attitude toward carefully evaluating various proposals for amendments to reach those ends, taking into consideration the necessity and complexity of consequential amendments to relevant legislation". So it would appear that the Ministry of Justice has shifted from its former position, under which it adamantly opposed amending the Civil Code to recognize the right of marriage equality and instead proposed a Same-Sex Partnership Act that separates same-sex couples from straight couples.

50. But in fact, the Justice Ministry has not adopted any specific effective measures to promote public consciousness of gender equality and diversity issues and to stimulate democratic and rational dialogue. What is more, regarding the three marriage equality draft amendments to the Civil Code currently under review in the Legislative Yuan, the Executive Yuan (Cabinet) stated through its Spokesman Hsu Kuo-yung (徐國勇) on 11 December 2016, "The Executive Yuan and the Ministry of Justice have no plans to submit a proposal of their own on the issue of equal marriage rights for LGBT, and will respect the decision made by the Legislative Yuan on related questions". (Agencies of Taiwan's executive branch have statutory power to submit bills to the legislature.) We believe that this is a huge warning sign.

51. In confronting such a serious human rights issue as marriage equality, the Office of the President, the Executive Yuan (the Ministry of Justice's superior authority), and the DPP, which is now the majority ruling party controlling both the presidency and the Legislature, should step up and take responsibility for setting the tone and consolidating the discussion on this significant policy issue, rather than continuing to stand silent as anti-gay religious figures engage in a drawn-out and vociferous campaign spreading messages of prejudice and discrimination.

52. In Taiwan society today, the government's failure to stand firmly in defense of equal rights for gays has led those on opposite sides of the issue to repeatedly rally their supporters to take to the streets and vie for the most populous shows of support. Numerous scuffles have broken out. A human rights issue has thus deteriorated into a numbers race.

53. We wish to reiterate that marriage equality is a human rights issue. The government has the duty to realize the basic human rights of all people, including sexual minorities. It should be stepping up social education and communication rather than putting off the realization of human rights on the fantastical pretext that a "social consensus" will emerge on its own.

ARTICLE 25

69. Please provide information on the proposal to introduce an absentee ballots system (cf. § 378 of the Second State Report).

Replied by the Taiwan Association for Disability Rights

54. According to Civil Servants Elections and Recall Act, Article 14, Any citizen of the ROC reaching 20 years of age shall have the right of suffrage, unless the declaration of guardianship has yet been revoked. In other words, whoever declared guardianship has no right to vote. This also violates full participation in

political life on an equal basis with others along with the absence of an absentee ballots system.

73. Please give more detailed information on the election system in so far as it concerns the legislator seats for indigenous peoples. Is it correct (as alleged in § 48 of the CW Shadow Report) that the system involves much higher election costs for indigenous legislator campaigns, that it benefits strong political parties and that it gives the current legislators a considerable advantage in both media coverage and control over voter lists? Are any measures envisaged to revise the system?

Replied by the Indigenous Youth Front

Please see below some more detailed information on the election system concerning Indigenous legislators.

55. According to Article 4 of the Additional Articles of the Constitution of the Republic of China, there are 6 reserved seats for Indigenous legislators, 3 members each shall be elected from among the lowland and highland Indigenous Peoples in the free area. However, there is no definition in the provision to clarify if lowland and highland are of status difference or geographical areas.

56. In all the relevant legislations, Article 2 of the Status Act for Indigenous Peoples is the only one with definition of lowland (plain-land) and highland (mountain) Indigenous Peoples:

(1) Mountain Indigenous Peoples: permanent residents of the mountain administrative zone before the recovery of Taiwan, moreover census registration records show individual or an immediate kin of individual is of indigenous peoples descent.

(2) Plain-land Indigenous Peoples: permanent residents of the plain-land administrative zone before the recovery of Taiwan, moreover census registration records show individual or an immediate kin of individual is of indigenous peoples descent. Individual is registered as a plain-land indigenous peoples in the village (town, city, district) administration office.

57. Therefore, as paragraph 47 and 48 in the CW ICCPR Shadow Report mentioned, the Civil Servants Election and Recall Act applies this definition to see the difference between lowland (plain-land) and highland (mountain) Indigenous Peoples as of status difference, but never take into account the issues of representation, and thus results in the unfair election system for Indigenous Peoples.

58. Currently, in the legislator election, only the Indigenous legislator election is Multi- Member-District constituency, others are Single-Member-District constituency. Article 70 of the Civil Servants Election and Recall Act provides that "If the vacancy reaches 1/2 of the quota in an electoral district, the voting of by-election shall be completed within 3 months commencing from the day of the occurrence of the fact." However, as to Indigenous legislators, it's 3 members elected from 2 electoral districts. That means it would only be required to held the voting of by-election if there are 2 vacancies for each lowland (plain-land) and highland (mountain) districts. For example, as footnote 33 in the CW ICCPR Shadow Reports described, in 2012, a lowland Indigenous candidate was accused of bribery and his election was later ruled invalid. But since the vacancy does not reach 1/2 of the quota, the voting of by-election cannot be held. There were then only 5 Indigenous legislators served in that term. That was an absurd result and violated the political rights of Indigenous Peoples.

59. Lastly, according to the replies from the government, if the government has the concern that current legislators are prone to advantages if the system change to Single-Member District and see lowland (plain-land) and highland (mountain) as geographical areas, the government should take more proactive actions to improve the situation, for example, to amend the Constitution. If the system stays the same and the government takes no action, Indigenous Peoples' right to political participation would be continuously restricted in this incorrect situation.

74. Is it correct (as alleged in § 50 of the CW Shadow Report) that the election system in respect of indigenous legislator candidates may give rise to doubts as to the anonymity of voters? Does the system comply with Article 25(b) ICCPR? If not, are any measures envisaged to remedy the situation?

Replied by the Indigenous Youth Front

60. In the 2016 election, the Central Election Commission has announced an official explanation to authorize the local election commissions to gather the Indigenous voters from different districts to vote if there is doubts as to the anonymity of voters. However, this did not solve the dispute since the Indigenous voters would have to submit the application themselves and the gathering place for voting might be too far away. Therefore, it is to our knowledge that there were very few Indigenous voters submitted the application. However, there is no specific data to be found. We therefore require the government to provide relevant data and information in this regard.

61. We strongly reaffirm that to substantively resolve the doubts as to the anonymity of voters, the voting/election system should be reviewed and reformed, and before this is done, the Indigenous voters should be given the priority to conduct postal voting.

ARTICLE 26

76. The Report lists several laws which have anti- discrimination clauses. (pages 3-5 of the Report) The Report also provides information on complaints received in relation to employment discrimination. But there is no information on the enforcement of anti-discrimination laws in all other fields, health, education, immigration, the elderly, disability, armed forces etc. Please indicate whether the enforcement of all laws that have anti–discrimination clauses are monitored and by which authority; whether adequate remedies are provided for in these laws; in case of infringement of the laws concerned, please indicate whether there are easily accessible procedures for making complaints and whether they are well known to the public; please name the competent authorities tasked with adjudicating such infringement.

Replied by the Taiwan Association for Disability Rights

62. The enforcement of anti-discrimination on disability is weak. Generally speaking, the Social and Family Affairs Administration, Ministry of Health and Welfare takes control of the protection of the rights of people with disabilities, but the level is not high enough to reconcile with other ministries or departments. Some departments even denied the violation of discrimination. The Committee of Protection of the Rights of Persons with Disabilities under Executive Yuan holds meetings once every three months. And the local government of the Committee of Protection of the Rights of Persons with Disabilities holds meetings once every 6 months. How could this system be efficient and effective? It takes long procedures of getting solution for our complaints.

ARTICLE 27

77. According to § 3 CW, the implementation of "The Indigenous Peoples Basic Law" is still far from meeting the standards listed in the Concluding Observations and Regulations Adopted by the International Group of Independent Experts, Article 1, 3, 4 and 5 of the ICCPR and the UN Declaration of the Rights of Indigenous Peoples. § 7 CW suggests that the concrete implementation of "The Indigenous Peoples Basic

Law" could be realized by putting its content directly into the text of the Constitution in the form of a special chapter. Does the Government intend to adopt such an amendment? And to further ensure the rights of Indigenous People, particularly the right to self-determination, does the Government intend to elevate the UN Declaration on the Rights of Indigenous Peoples to constitutional status?

Replied by the Economic Democracy Union

63. First of all, it is neither unrealistic nor outdated to make the Indigenous Peoples Basic Law as the same level as the Constitution. In fact, around May and June in 2015, the Legislative Yuan has tabled several constitutional amendment proposals and discussed about the possibility of leveling up the status of the Indigenous Peoples Basic Law, and of listing out all the rights of Indigenous Peoples in the articles of the Constitution. There was also suggestion to include a special chapter on Indigenous Peoples in the Constitution to recognize Indigenous Peoples rights to self-determination, autonomy and so on.

64. Although the discussions and proposals abovementioned were not proceeded to the next stage since it is very complicated and difficult to amend the Constitution, what we would like to point out here is that the administrative bodies actually could have taken more proactive actions to push for the advancement of the Indigenous Peoples Basic Law up to constitutional level. For example, the Council of Indigenous Peoples has set up a working group on promoting Indigenous Peoples' rights in the Constitution in 2005. But there was no such effort made afterwards.

65. Lastly, we have not seen any effort made or willingness expressed by the government regarding to integrate the UN Declaration on the Rights of Indigenous Peoples in the national legal system or in the Constitution in Taiwan.

78. In § 4 of its Report, the Government submits that via amendment of "The Indigenous Peoples Basic Law" from 16 December 2015 indigenous tribes were conferred the status of "public judicial persons", in order to further their autonomy. How will these "public judicial persons" fit into the existing legal framework of local self-governing bodies? What is the status of the review of the "Regulations on the Indigenous People Autonomy" and its role in this context?

Replied by LIMA Taiwan Indigenous Youth Working Group

66. There are still a lot of unsolved questions in coffering the Indigenous communities the status of public judicial persons. Firstly, take the Paiwan Peoples as an example, the social basic unit of the Paiwan Peoples could range from families

to clans. The way of the Indigenous society function and decision-making is not necessarily bind with community. Therefore, we strongly concern about the outcome if they take the 743 officially-recognized communities as the unit of enacting collective rights of Indigenous Peoples.

67. On the perspective of "Good Governance", the "publicity" of the public legal persons for Indigenous communities involves the question of supervising, monitoring and obligation, as to truly fulfill Indigenous autonomy and self-determination. There are some questions thus emerged, for instance, should the members of the public legal persons bear the obligation as public servants? The current regulation of public legal persons of Indigenous communities doesn't illustrate this part.

68. Furthermore, comparing to other establishment of the public legal persons (such as Irrigation Association as public legal person) are all authorized by law. Nevertheless, the establishment of public legal persons of Indigenous communities is just authorized by an administrative order. If the government consider the public legal persons of Indigenous communities as the path to self-determination and autonomy of Indigenous Peoples, it should be authorized by law with higher legal status.

79. As stated in § 2 of its Report, the Government states that Indigenous Peoples may hunt wild animals, pick wild plants and fungi, among other non-profit activities, legally for the sake of their traditional culture, rituals, or self-use within aboriginal regions. These rights, however, are restricted by other laws and, according to statistical analysis referenced in § 12 CW, more than 330 Indigenous persons were prosecuted and sentenced for violations of the "Wildlife Conservations Act" and the "Act Governing the Control and Prohibition of Gun, Cannon, Ammunition and Knife" between 2004 and March 2016. According to § 18 CW, local Amis Peoples were penalized and prosecuted multiple times for violating the "Fishery Act" and the "Forestry Act". These measures and regulations fail to protect Indigenous cultures. Does the Government intend to amend the abovementioned regulations as well as the "Regulations Governing Indigenous Peoples Hunting and Use of Wild Animals based on Traditional Culture and Ceremony Needs" and to remove daily fishing, hunting, collecting and ceremonies from restrictions and prohibitions? How does the Government intend to raise awareness for the traditional cultures of the Indigenous Peoples among law enforcement personnel?

Replied by the Indigenous Youth Front

69. Regarding the condition and the suggestions of law's amendments about Indigenous Peoples' right to natural resources and the right to hunt based on traditional culture has been illustrated in paragraph 12 to 23 of the CW ICCPR Shadow Report.

70. There are three levels of law enforcement regarding the enhancement of cultural sensitivity, which are police officers, prosecutors and judges. Even though there are new additional trainings of the prosecutors and judges from the courts, the result remains unknown.

71. In terms of the result of the cases regarding Indigenous Peoples' cultural right enforcement, the proportion of the judges and prosecutors agreed with the culture defense is increasing. However, it's still not the general opinion and the laws have not been amended, which means the similar cases could have the different results due to the different opinions from the judges and prosecutors.

72. The police officers keep abusively arresting Indigenous persons, while they conduct their cultural practices. Even though they weren't prosecuted or proved to be innocent at the end, the process wasted a great deal of time and legal resources and deeply traumatized the Indigenous defendants and even the dignity of his/her Indigenous group or community.

80. Although the Government advocates for the inclusion of tribal decision-making processes in reconstruction, relocation and settlement activities, as stated in § 2 of its Report, CW criticizes in its § 32 to 34 that it has failed to implement this approach by forfeiting to comprehensively understand the mechanism of participation, decision-making and consultation as well as Indigenous Peoples' traditional knowledge on disasters referring to the site. How does the Government intend to better respect and include the knowledge and the will of the Indigenous communities in the relocation processes?

Replied by LIMA Taiwan Indigenous Youth Working Group

73. We learn from the experiences of post-disaster reconstruction that no matter it's about the preparation for, reaction to or reconstruction after natural disasters, Indigenous Peoples is more f passive roles or can just follow the government's decisions. The Indigenous knowledge, which has been proved to be effective in strengthening resilience against disasters, has not been incorporated into the current disaster responding mechanism, policies and regulations. Therefore, we strongly recommend the Ministry of Science and Technology, the National Science and Technology Center for Disaster Reduction, the Risk Society and Policy Research

Center, National Development Council and the Emergency Response Centers in city and county governments to invite Indigenous representatives to join the decision-making process of disaster preparation, response and reconstruction with full and effective participation and thus further strengthen the preservation and revitalization of Indigenous knowledge.

74. Each of the Indigenous Peoples/Nations reside in different parts of Taiwan have developed their unique social structures, languages, cultures and mechanisms of negotiation, discussion and decision-making because of different geographical and natural environment. However, under different colonial ruling regimes, Indigenous Peoples' knowledge cultivated from their lives in their traditional territories regarding disasters has been weakened and denied, the resilience within the Indigenous societies has thus been weakened as well. Therefore, we firmly recommend that the government should take proactive actions, such as empowerment projects on disaster response at different stages, to revitalize Indigenous Peoples' traditional knowledge and responding capacity regarding disasters. The government should also incorporate relevant scientific research of Indigenous traditional knowledge to develop policies responding to climate change effects occur in Taiwan.

75. According to the Indigenous Peoples Basic Law, there is regulation on how to achieve the free, prior, and informed consent (FPIC) of Indigenous Peoples and communities. However, from the central to the local governments, as well as private cooperation, no matter it's about tourist development, post-disaster reconstruction, or other relevant important policies, Indigenous Peoples' FPIC has seldom been obtained. The Indigenous Peoples is rather passively informed with the decision and asked to follow the orders afterwards. We therefore call on the Control Yuan to review and investigate this issue and establish a monitoring mechanism to substantively monitor the central, city and county and local governments to implement the principle of FPIC.

81. According to § 49 CW, only Indigenous citizens are permitted to vote for the 6 legislator seats, which are reserved for Indigenous Peoples. This leads to the isolation of the Indigenous part of the population by allowing non-Indigenous legislators to ignore Indigenous affairs. What is the justification for this arrangement and what could the Government do to redefine its election system to reinforce ethnically and regionally representability and reflect an inclusive system design?

Replied by the Indigenous Youth Front[1]

76. Regarding to the reform of Indigenous legislator election system, we could learn from the experiences of other countries. For example, in New Zealand, after the reform in 1996 to establish the MMP system, the constituency has been redefined several times. In 2014, there were 64 constituencies defined nationally plus 7 Maori constituencies. Therefore, there were 71 seats in total. According to the regulation, the political parties shall nominate Maori candidates in Maori constituencies. However, we observed that due to the fact that the principle of ethnic mainstreaming has been implemented quite successfully, even in the non-Maori constituencies, many political parties also nominated Maori candidates.

77. As to the problem that the current Indigenous legislator election system deprived Indigenous voters' general civil right, we could also learn a lesson from the voter registration system in New Zealand. The Maori voters can decide whether they would like to register and vote in Maori or non-Maori constituencies. If the principle of ethnic mainstreaming is implemented more successfully, in a foreseeable future, the Maori voters would choose to vote in regular constituencies; then the Maori constituencies would have no need to exist anymore.

78. If we base on the lesson learned from New Zealand and transform to the system in the circumstance in Taiwan, with the precondition that not to amend the Constitution, we could define 6 Indigenous constituencies in Taiwan according to the geographical areas and ethnic distribution. And then in light of the principle of ethnic mainstreaming, the Indigenous voters can decide if they would like to vote for Indigenous candidates or non-Indigenous candidates from the districts where they reside. This could be a more ideal possibility for the election system reform.

79. The reform of election system should be based on the goal of electing a legislator who can really represent the Peoples, not to elect someone with better support and more resources from political parties. When reforming the system, the goal should be to achieve equal vote and substantive representation. The Gerrymandering of constituency demarcation, as well as the situation where the political party controls and restricts the legislators should be avoided.

82. As stated in § 24 CW, the Government should respect the language, cultures, customs and values of the Indigenous Peoples when formulating laws and regulations, administering justice and various procedures. Yet, § 26 CW argues that not every case

[1] The reply makes reference to an article written by Lee Tuo-Ze.
http://talk.ltn.com.tw/article/breakingnews/1301887

concerning Indigenous Peoples should be tried in the Special Unit or Special Court of Indigenous Peoples, but only those concerning the protection or impact of Indigenous culture. How does the Government intend to delineate the jurisdiction of the Special Unit and the Special Court of Indigenous Peoples? What measures can the Government take to equip these judicial bodies with the necessary expertise to adjudicate cases relating to Indigenous culture?

By Association for Taiwan Indigenous Peoples' Policies

80. The lawsuit cases of Indigenous Peoples, including criminal cases, civil cases and administrative cases, are under jurisdiction of the special courts of Indigenous Peoples. However, the family cases are still under the courts of family cases.

81. On the question of specializing the special courts of Indigenous Peoples, which means having the special courts of Indigenous Peoples focus on the "specific Indigenous cases", there are few things to consider.

(1) what is the definition of the specific Indigenous cases? What are general and specific cases?

(2) Should the party of the special courts of the Indigenous Peoples limit to Indigenous persons? And what if one of the parties is a non-Indigenous person, or the two parties are both non-Indigenous people but the cause of the case is related to cultural conflict over Indigenous Peoples?

(3) Are the special courts professional enough? Due to the educational system remain single cultural orient, which is harder to allow the students in law schools to have the capacity of multicultural mindset. Therefore, it will certainly result in overlooking the sovereignty and the rights of Indigenous Peoples, and the rights of Indigenous Peoples would be decontextualized as the welfare of the vulnerable groups.

(4) The ultimate solution is judicial autonomy of Indigenous Peoples and to build up the legal system of Indigenous Peoples other than the single cultural orientation of the current law system. It could start from the current special courts of Indigenous Peoples, to take reference in the criterion for sentencing of Indigenous Peoples in Australia, and to establishment the Indigenous Peoples' courthouse, and ultimately to consider the possibility of judicial autonomy of Indigenous Peoples.