



Right to Assembly and Demonstration



Sunflower Movement



LGBT Issues

# Shadow Report 2016

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



Right to Housing



Migrant Workers Issues



Indigenous People and Ancestral



人權公約  
施行監督聯盟  
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of the International Covenant on  
Economic, Social and Cultural Rights**

**Covenants Watch, Taiwan  
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## *About the report*

The Shadow Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights was prepared for two reasons. First, it complements the government report for the review of the second state human rights reports 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.

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## Special Chapter on Indigenous Peoples

### Article 1 Right to Self-Determination

1. Reference to the Special Chapter on Indigenous Peoples of the Covenants Watch ICCPR Shadow Report, Paragraph 1 through 7 regarding the issue of the right to self-determination for Indigenous Peoples.

### Article 2

#### International Cooperation and Development Assistance

2. Has the Ministry of Foreign Affairs (MOFA), in the course of engaging in its work on international cooperation and development assistance, contributed to any misunderstandings or even negative impacts with respect to the country's Indigenous populations? Moreover, when performing its diplomatic mission, has the Ministry, in a desire to exhibit the unique characteristics of Taiwan through displays of Indigenous culture, but actually misinterpreted those cultures and, to the contrary, perpetuated stereo-typical representations of Indigenous Peoples and even exacerbated their discrimination? For instance, in the Ministry's promotion of its young ambassadors program there have occurred over the years several cases where performance troupes, when interacting with host countries at international events for displays of Indigenous songs and dances or during celebratory activities for designated diplomatic holidays, have perpetrated numerous misrepresentations of the costume, dances or songs of specific group of Indigenous Peoples. Such instances create erroneous impressions and disseminate false information that causes harm to many of the country's Indigenous Peoples. MOFA should present a concrete policy that promotes better understanding and respect to Indigenous Peoples amongst its diplomatic staff and relevant international planners.

### Article 3, Article 26

#### The Principal of Equality and Anti-Discrimination

3. Reference to the Special Chapter on Indigenous Peoples of the Covenants Watch ICCPR Shadow Report Paragraph 8 through 23 on the country's discrimination and discriminatory incidents as pertains to cultural hunting rights, cultural fishing and harvesting rights; rights for use of advanced technologies; and right to self-determination.

### **Employment Discrimination Faced by Urbanized Indigenous Peoples**

4. According to statistics from the official website of the Council of Indigenous Peoples, currently 45.7% of Taiwan's Indigenous population resides in urban areas, meaning nearly half of the population has left their homelands to dwell in non-traditional locales. Most of them have left due to poor employment prospects in their traditional homelands. Most of the Indigenous areas are lack of sufficient policy guidance for industry, preventing Indigenous Peoples from obtaining beneficial development under the limitations of the law and natural resource access; thereby resulting in a flight to urbanized areas to pursue a livelihood.
5. After migrating to the cities, except for a select few who obtain public sector employment in the military, civil service, teaching, or medical services among others, most, however, remain unable to find stable career-oriented employment due to ethnic stereo-types and discriminatory job practices that effect this vulnerable population. Paragraph 21 of the core consensus document for the second State Report on the two covenants points out that the economic situation for Indigenous Peoples remains fragile. Their average yearly income for 2014 was NTD650,810, about 61.4% that of national households. From this it is evident that even if Indigenous persons choose to move to urban areas, their economic position and employment conditions remain vulnerable.
6. Per Articles 2, 3 and 26 of the ICCPR stipulating the principles of non-discrimination and equality, as well as Article 2 on anti-discrimination and Articles 6 and 7 on job security and equality in the work place in the ICESCR, the nation should take active steps to both eliminate employment discrimination faced by vulnerable populations and to ensure equal access to development opportunities.
7. The second State Report on anti-discrimination measures regarding employment responded only to those measures regarding unemployment compensation and specialized courses for Indigenous job training, and, even



when providing statistics to demonstrate job training effectiveness, only the number of participants was indicated. The report completely failed to answer how effective the measures were in dealing with the employment difficulties of the Indigenous population coping with high unemployment and low-paying jobs.<sup>1</sup>

8. A comprehensive approach that takes into account factors such as insufficient community employment opportunities, difficulties in the promotion of community industries and urban employment discrimination, should be the method of choice when considering proposals on Indigenous job security. As a result, we recommend the following:
  - (1) The Ministry of Labor in its State Report should explain its statistical data on current Indigenous job categories and the actual number of employment counseling successes by job category. This would make for a more substantive examination of the effectiveness of the country's currently proposed measures on job security.
  - (2) The present "Indigenous Peoples Employment Rights Protection Act" has certain stipulations on hiring percentages and employment promotion for public enterprises, public projects and government procurement; however, the current State Report lacks relevant explanations on their effectiveness. As a result, we suggest that the Council of Indigenous Peoples and the Ministry of Labor make a joint inventory of current hirings by the relevant institutions to determine whether low rates of implementation might merit recommendations for improvement.
  - (3) In addition to lowering the unemployment rate, the Ministry of Labor together with the Council of Indigenous Peoples should jointly confront such issues as Indigenous low-wage and high-risk employment as well as insufficient opportunities for career development. This should be done in the effort to investigate and draft concrete plans for job counseling and career advancement so as to turn around the systemic problems faced by Indigenous Peoples in the labor market.

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<sup>1</sup> Refer to Paragraph 49 of the Second State Report on the ICESCR

## Article 9

### Encroachment on the Social and Cultural Rights of Indigenous Peoples

9. Article 10 of the Amendment to the Constitution clearly sets out the principle of "respect for the issues of Indigenous Peoples" as do the provisions on "conformance to the unique characteristics of Indigenous Peoples" in Articles 24, 26, and 28 of the Indigenous Peoples Basic Law. However, their emphasis on the spirit of multiculturalism and their statutory assurances for the basic rights of Indigenous Peoples have yet to be realized in their execution, nor do they appear to ever be attainable. Because the country lacks a system of participatory parity for Indigenous Peoples as well as reliable investigatory data for long-term care of Indigenous Peoples (presently only the national census has been used to estimate the conditions in Indigenous areas), the particularities and differences between Indigenous Peoples has not been readily observable. This situation has resulted in a failure by current welfare policy planners to incorporate Indigenous perspectives that has then led to the inability of the service provision system to meet the needs of Indigenous populations.
10. Articles 14<sup>2</sup>, 18<sup>3</sup> and 24<sup>4</sup> of the Long-Term Care Act passed in 2015 will have a lasting impact on the development of a system of long-term care for

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<sup>2</sup> Article 14" Central government authorities should carry out on fixed dates surveys the resources and needs of long-term care that consider the special needs of diverse cultures and unique difficulties of outer island remote areas. Based on this set forth development plans for long term care and adopt necessary grant policies. Central authorities in order to even out the development of resources for long term care shall partition long term care service network areas, allocate area resources, and establish service networks along with development plans for transport systems and staffing. Moreover, limits on the establishment of long term care organizations or subsidies shall be imposed on areas with a surplus of resources. Those areas deficient in resources should be provided grants in order to carry out fully all the items of a robust long-term care service system. In Indigenous areas the planning and mobilization of long term care services, long-term care service networks, and staff development should be carried out by central authorities in consultations with the Council of Indigenous Peoples. Central authorities to provide grants for relevant research to develop new services in long term care. Central authorities shall decide primary and secondary grant items, the methods to set-up or limit the expansion of long-term care organizations, the planning of second stage long term care networks, the means for human resources development, and other such relevant matters."

<sup>3</sup> Article 18 "The provision of long-term care, per the special items of long term care announced by central authorities, shall be administered by long term care personnel. Long-term care personnel training, continuing education, and on the job course content should consider the differences in areas, ethnicities, genders, specific diseases, and care giving experience. Long-term care personnel should receive set performance marks for continuing education and on the job training. Long-term care

Indigenous Peoples. The content of these three articles, however, lacks a system of direct participation by representatives of Indigenous Peoples and, moreover, clearly limits counterparts in participatory counseling to only those institutions at the level of central government (e.g., the Ministry of Health and Welfare or the Council of Indigenous Peoples). This deficiency results in an encroachment on the social and cultural rights of Indigenous Peoples at the site of care. For example, Taiwan's long-term health care service designates a professional care manager responsible for evaluations and allocated hours. Since the long-term care system lacks equitable participation by Taiwan's Indigenous Peoples, the ability to speak Indigenous languages and cultural familiarity is usually overlooked in the selection of a professional care manager. Moreover, the stressful activity of initiating a case for localized long-term care many Indigenous takes place in homeland regions at the country's margins and progresses slowly.

11. The proportionate rate of elderly in the Indigenous areas exceeds that of the general population: for 2015, the Indigenous areas with the highest percentage of persons 55 years and older was 39% (Taidong County, Changbin Cheng Township) and the lowest 14% (Kaohsiung City, Namasia District); both of these exceed Taiwan's 12.51% average elderly population statistic. From this data it is evident that the social security needs for these Indigenous areas is pressing; however, according to data from the Ministry of Health and Welfare analyzing the use of long-term care services for 55 Indigenous rural areas in 2013, only 42 disabled elderly Indigenous utilized long-term care resources, well below the national average for allocations. Among these Indigenous areas nearly 30% did not reach half of the national average for disabled elderly care expenses. These numbers indicate that the long-standing position of Indigenous areas at the country's margins when it comes to the allocation of long-term health care resources.

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personnel training, certification, continuing education course content, grade certification, effective periods for accreditations, and the management other newer relevant issues shall be determined by central authorities.”

<sup>4</sup> Article 24 “Long-term care organization application requirements, establishment standards, liability qualifications; the application process for their set up, expansion or transfer; audit benchmarks and the content to be recorded on establishment licenses; and other relevant management items shall be determined by central authorities. The establishment of long-term care organizations and staffing in Indigenous areas to be determined by central authorities in consultations with the Council of Indigenous Peoples.”

12. This marginalized situation indicates neglect for the unique historical and cultural circumstances of Taiwan's Indigenous Peoples; a situation that can be extended to include the individual's social right to long-term care and the recognition of the Peoples' cultural rights. Under the premise of the nation's obligation to recognize an individual's social right to care and the Peoples' cultural rights, a reliable investigation of the data on the situation of long-term care broken-down into statistical categories of ethnicity and content of long-term care should be carried out that will lead to the establishment of a system of long-term care for Indigenous Peoples.
13. Summary and Recommendations:
  - (1) The government should undertake a survey based on the specific service content needs of the Indigenous Peoples. Recommendation is for the establishment of a system for investigation of the data derived from Indigenous areas (not just inferential estimations), and a developmental plan that respects the wishes of Indigenous Peoples for long-term care.
  - (2) Based on the premise of comprehensive consultation with Indigenous Peoples, the process of amending the following articles of the Long-term Care Act should go forward: Article 5, section 1; Article 6, section 5; Article 7, section 2; Article 9, item 2, section 2; Article 14, section 5; Article 18; Article 19; Article 22; and, Article 24.
  - (3) An independent system of long-term care for Indigenous Peoples at the community level should be promoted and provided with sufficient funding. A mechanism of collaborative management should be set up that provides for Indigenous Peoples participation in aspects of coordination, deliberation, and consultation on relevant items of long-term care<sup>5</sup>.

## Article 10

### Child Care and Nursery of Urban Indigenous Peoples

14. In order to support the family, most indigenous people immigrant to urban areas for better working opportunities who also encounter high living

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<sup>5</sup> Consensus management is a pattern type in the spectrum of Indigenous autonomy and not a set mechanism. Due to unique histories and cultures, each tribe has different strengths. Because of this, the equitable participation of tribes in discussions and policy decisions as well as joint management and autonomy is paramount

expanses of the urban areas, rent of the house and cost of the original family from the indigenous communities, so adults of the family are expected to work for less financial stress. Due to the weak social supporting system and the lack of family connections, however, after moving to urban areas, the concern over child mining has become a common problem of urban indigenous people.

15. Based on ICESCR, the states should provide the widest possible of protection and assistance to the children (article 10). Although explicit general plan of nursery of the state shown in the State Report, the differentials of families with urban indigenous people and normal people are not included in the report yet.
16. For example, normal families might experience less childcare stress by public nursery and childcare facilities; however, suffering from insufficient social resources, urban indigenous peoples have limited access to the useful resources in the urban areas. The highly demand of public childcare services in the populated cities, regardless of the private childcare units, has made most of the indigenous parents choose to leave the children in the traditional communities with families and relatives due to large childcare fares.
17. Regarding insufficient family care resources of urban indigenous people and kinship care and grandparenting in the traditional communities, we recommend,
  - (1) In accordance with Ministry of Education, Council of Indigenous Peoples should provide possible assistance with education regime and policy resources for families of grandparenting and kinship care in the communities, who will be equipped with fine communication and more parenting experiences to form a strong support to indigenous children in the family.
  - (2) Nearly half of the indigenous population now lives in urban areas. High stress among indigenous parents in urban areas is linked to poor economic resources and inadequate social support. The government should develop sufficient patterns of care in respect of multiple cultures to solve the difficulty of economic instability which cause the urban indigenous children to have lack of self-confidence and loss of cultural identity due to vulnerable household background and poor adaptation.
18. No matter being raised in urban areas or rural areas, the complete and sufficient care should be equally enjoyed by indigenous kids. The state

should not confine the childcare system to local childcare units; instead, the differentiate of disparate areas and ethnic groups should put into consideration. With various patterns of care result from different social structures, the integration of relevant policy-making levels, e.g. Ministry of Health and Welfare, Ministry of Education, Council of Indigenous Peoples and etc., enables the state to fully support and assist indigenous families which is also the foundation to ensure every child grows up in a safe and healthy environment.

## Article 11

### Right to Housing of Indigenous Peoples in Urban Areas

19. Indigenous areas have faced uneven distribution of resources, which led to the lack of resources for development. As a consequence, nearly half of the Indigenous population moved to the metropolitan areas in order to seek for better employment, education, healthcare, and other vital functions. The status of urban Indigenous Peoples' housing could be roughly divided into scattered communities and Indigenous households in the urban areas. Both of these categories face the common dilemma because of weak economic conditions, lack of social support system, and ignorance of ethnic subjectivity.
20. According to Article 11 of ICESCR, the government should provide disadvantaged individuals and families basic living guarantee residence. The government's ICESCR Core Document, paragraph 21 points out that the proportion of Indigenous homestead is 73.2%, which is lower than the 85.32% of households nationwide because Indigenous population continues to move to the urban areas. However, in the ICESCR Core Document, paragraph 220 for minority's residency, it takes merely performance of transferring reservations in response without offering measures and instructions of residency improvement for Indigenous Peoples who live scattered in the city such as the Sanyin Community and the Sijhou Community etc. Therefore, we argue strongly that the State Report should add information referring to plans for rent, homebuyers, and community-type collective housing and statistical data for currently residential overview. Additionally, the report should make a clarification for

the current situation and the corresponding process of the 20 urban communities in 6 counties.

21. The issue of urban communities which face difficulties regarding community care, cultural heritage and residents' autonomy are simplified to residency. The composition of urban communities has specific historical causes, elements, a common cultural context and collective norms. However, the government has no idea regarding the particularity of urban communities, the fundamental of community sovereignty, by operating meanings of resettlement subsidies, settlement counseling, and demolition of the illegal building in many cases to solve community problems in urban areas.
22. For instance, the response from government's conclusion and recommendations in ICESCR Initial Report, paragraph 47-49 shows that urban Indigenous communities have been seen as illegal construction and thus limit government's obligations in coordinated sets of measures such as counsel and loan. This is clearly inconsistent with "realization of the rights" mentioned in Article 11 of ICESCR. The plan and progress of social housing remain stagnation and unknown. Moreover, New Taipei City government tends to build houses by the loans for people live in Sijhou Community instead of from the perspective of the right to housing. This policy forces community members into private sector of financial market in an adverse situation.
23. In the current situation, numerous urban communities are still facing serious problems in terms of right to housing. After severe storms, the Sijhou Community encountered distress but merely received financial support from the private sector. The government did not provide appropriate assistance during the period of post-disaster reconstruction. Even in the end of 2015, local authorities eradicated community garden of the Sijhou Community, which reveals that government departments underestimate plan and arrangements of residential relocation.
24. In addition, the right to water for urban Indigenous settlements is hard to reach the general standard of living. Whether the Sijhou Community, the KanJin Community, or the Sawaz Community are treated unequally and even discriminated by the past governments initiatives and legal policy. These communities become the city's problems receivers from economic development and industrial pollution. These problems have not been coped with by the central and local government, and however, are subjected to existing laws. There is the need to incorporate these issues into due process

of law and the people should be able to substantially participate in the process to affect the decision-making and make recommendations to amend the law.

## Article 12

### Aboriginal right to medical treatment

25. Taiwan's Indigenous live in the lack of public resources allocated field, seriously affecting the communities' fundamental right to life. Due to employment opportunities, the young population moves to urban areas, the main residence in Indigenous areas is the old people, children and disable people. People with chronic illness, disability live under the inconvenient living conditions, lack of the necessary assistance, and it is not easy for them to see the doctors. Differences between each Indigenous language and culture lead to differences in health awareness, self-care and professional medical team. It is also not good to the healthy restore and chronic disease control after hospital discharge. Repeated migrations and changes due to policy or natural disaster, plus inappropriate project plan and public construction, directly lead to the place of residence facing various risk and also threaten the safety of local residents.
26. In response to paragraph 240 of the State Report of the ICESCR, significant disparity exists in the distribution of medical institutions. Besides the severity of difference existing between the townships and villages of counties and cities<sup>6</sup>, each county (city) itself exhibits clear disparity of distribution with the residential areas of Indigenous Peoples being always the most deficient in medical institutions.<sup>7</sup> Although each township has at

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<sup>6</sup> According to year 2014 statistics compiled by the Taiwan Medical Association, the medical institutions in Taiwan's six direct administered metropolitan areas (Taipei, New Taipei City, Taoyuan, Taichung, Tainan, and Kaohsiung) account for 71.9% of the country's total (table 10, p.7). Yearly additions of new medical institutions are also mostly concentrated in these areas (table 9, p.14). The Indigenous Peoples population is comparatively concentrated in the Hualien area of Taitung County and makes up a mere 2.2% of the total national population. Change to medical institutions is also experiencing negative growth. Additionally, according to the same data higher level hospitals for the whole of Taiwan district-level and above hospitals (district, regional, medical teaching centers) are more than 90% concentrated in the 6 direct administrative metropolitan areas; the two cities of Hualien and Taitung account for a mere 3.4% (p.36).

<sup>7</sup> According to not 48's similar statistical data, within Hualien County 65% of medical institutions are concentrated in the administrative districts of Hualien City and Jian Township. In Taitung County



least one health clinic, however despite the distances in service areas<sup>8</sup>, most are concentrated along main arterials such that for some clinics in remote townships the distance to clinics of neighboring townships with more abundant medical resources is actually comparatively closer than the township's own clinic. Thus, the issue of proximity to medical services for residences has yet to be actually improved.

27. In addition, the transportation in Indigenous living areas is often poor, especially the road condition and lighting system. The lack of convenience public transportation makes it difficult for the ill or disable residents to access doctor by themselves, or would have to waste an amount of time and money. If the residents have to go to hospital, the constant commute between hospitals and home will cause more burdens on the patients and their families. When disaster occurs, Indigenous living areas will easily become isolated by damage, the residents thus can't get immediate help.
28. The above identified phenomenon demonstrates that during the planning of the medical services network by authorized health authorities' due consideration was not given to the geographic distances in areas inhabited by Indigenous Peoples for the specialized distribution of medical facilities. Pursuing distribution only on the basis of cost accounting has resulted in a situation of false equality in medical services between townships.
29. The distribution of health workers is concentrated around hospitals which are mostly located in high-density population centers.<sup>9</sup> <sup>10</sup>This is especially true for medical professionals engaged in specialized treatment of relevant acute diseases which are to an even greater extent over-represented in urban centers. In comparison to Taiwan's urban areas, medical professionals living in or travelling to Indigenous areas are mostly living off a civil service salary.

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only 53% are concentrated in Taitung City.

<sup>8</sup> For Hualien County's Hsiulin Township, Taiwan's most vast in administrative area with 1,641.8 square kilometers, there are only 12 clinics within its borders. Nantou County, Xinyi Township with an area of 1,422.4 square kilometers has 9 clinics.

<sup>9</sup> According to similar statistical data in not 1, in 2014 Hualien and Taitung Counties together had 1,096 physicians, a total population of 557,863 and total land area of 7,783.82 square kilometers, making the number of people per physician 500 and the number of physicians per square kilometer 0.14. The nation's capital, Taipei has a total of 9,213 physicians in an area of 271.80 square kilometers, making 293.32 per physician and 33.90 physicians per square kilometer.

<sup>10</sup> Within Hualien County and Hualien City there are 552 physicians representing 70.1% of the county's total 787 physicians. Not considering Hualien City's physician and the population to area calculation, a simple calculation indicates that Hualien County's physicians need to service 966.05 persons in an area where each square kilometer has only 0.5 physicians.

They earn less than their peers with frequent reassignments, long working hours, more responsibilities, and significant discrepancies in functional living conveniences compared to cities. Medical equipment and support staff insufficiencies, to which can be added the tendency for most patients to present more severe symptoms of disease and medical emergencies, contributes to a less than adequate sense of accomplishment as well as high levels of turn-over amongst these medical practitioners.<sup>11</sup> This has resulted in a constant state of staffing deficiencies for medical institutions operating in Indigenous areas, which has led to a self-perpetuating vicious cycle. While larger medical facilities in the areas do dispatch support physicians, however, due to time required for one-day round-trip travel and continued obligations at the dispatched physicians' home facilities, the amount of time available for their support services on site is limited.

30. The Ministry of Health and Welfare, in an effort to cope with the current deficiency in medical resources for Indigenous areas, has put in place two contingency plans. The first of these is an Integrated Health Care Delivery System (IDS) that relies upon intra-county large medical facilities for the provision of general and/or specialized clinic visits twice a week to the various settlements in mountainous or off-island townships.<sup>12</sup> The other of these is an improvement plan for those areas having insufficient western medicine treatment resources, whereby hospitals or clinics in the more populated townships of the central plain<sup>13</sup> are incentivized to open facilities or provide circuit clinic visits to settlements lacking sufficient medical resources. Both plans are covered by the National Health Plan and have an additional fixed budget for the payment of incentives.

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<sup>11</sup> The Ministry of Health and Welfare Taitung Hospital between the years 2012 to 2106: physicians went from 30+ to 10+ with staff turnover in the range of 500 to 600. Refer to: <http://www.cna.com.tw/news/firstnews/201601200345-1.aspx>(last browsed: 2016/06/26)

<sup>12</sup> New Taipei City, Wulai District; Taoyuan City, Fuxing District; Hsinchu County, Wufeng and Jianshi Township; Yilan County, Datung and Nanao Townships; Miaoli County, Taian Township; Taichung City, Heping District; Nantou County, Renai and Xinyi Townships; Jiayi County, Alishan Township; Kaohsiung City, Nanmasia, Maolin and Taoyuan Districts; Pingtung County, Sandimen, Mudan, Laiyi, Chunri, Taiwu, Shizi, Majia and Wutai Townships; Hualien County, Hsiulin, Zhuoxi and Wanrong Townships; Taitung County, Yanping, Jinfeng, Hairui, Daren and Lanyu Townships.

<sup>13</sup> Hsinchu County, Guanxi Township; Miaoli County, Nanzhuang and Shitan Townships; Nantou County, Yuchih Township; Pingtung County, Manjhou Township; Taitung County, Chihshang, Guanshan, Luye, Beinan, Changbin, Chenggong, Tungho, Taimah, and Dawu Townships, and Taitung City; Hualien City, and Hualien County, Hsincheng, Jihan, Shoufeng, Fenglin, Guangfu, Fengbin, Ruisui, Yuli and Fuli Townships.

31. In practice, however, both of these plans have merely transferred a model of urban medical treatment to the Indigenous regions. Time restraints and lack of incentives have resulted in the preference of physicians to maintain the fixed locale clinic system over one that utilizes house calls. One of the problems in the physician dispatch system is that patients with a diagnosis suspecting a more serious condition have to wait diagnostic results on the next visit or make a personal trip to the city hospital for tests due to the lack of adequate labs and testing equipment nearby or the problem of local equipment that cannot communicate with that of the designated facility. Efforts to integrate local resident needs between designated facilities and local Health Clinics have also been unsuccessful and many specialized clinical visits due to the lack of a referral mechanism or requisite equipment resemble little more than a visit to a general clinical such that they can be called specialized clinics in name only.
32. Additionally, there is wide discrepancy in language, life-style, and health knowledge between physicians and local residents. Communications between doctors and patients about a diagnosis and its later follow-up procedures presents such difficulties that the physician generally opts to merely prescribe medicine to treat health problems in these local communities as opposed to educating patients on their health care. Cost considerations of the designated provider facility also lead to frequent changes in the attending physician or the designated facility. These frequent personnel changes adversely affect the sense of control or level of confidence in the patient. Continued inability to integrate local residents' health information between regions and between institutions as well as the manner by which residents might be able to set health policy in light of their ineffectual participation rights all demonstrate that despite the shifting of resources, they have yet to truly be in the benefit of Indigenous Peoples.

### **Right to Health of Indigenous Peoples**

33. Average life expectancies for Taiwan's Indigenous Peoples at all age levels, which are less than those for non-Indigenous, demonstrate that their right to health has yet to be raised to an adequate level. Although the Ministry of Health and Welfare in 2011 completed plans for the "Indigenous Peoples Health Act", however up to the present date discussions of the Act have yet to be taken up in its administrative branch. Inequalities in health care

experienced by Taiwan's Indigenous Peoples are a stark reminder of the hegemony of the country's mainstream ethnocentrism and its systemic, economic and governmental discrimination of Indigenous Peoples. Life expectancies in all age groups of Indigenous populations, as shown by current data, are less than those for non-Indigenous populations. Moreover, the damage done to Indigenous life expectancies can be closely related to the structural violence caused by the failure to fully implement the rights of Indigenous Peoples. Indigenous women's health, high new-born mortality rates, high rates of accidental mortality, alcoholism, suicide, tuberculosis, chronic hepatitis, cirrhosis, and metabolic syndromes all point to the serious health issues confronting today's Indigenous Peoples.

34. However, the government, in its amendments to the policy on Indigenous Peoples health, intentionally used the terms “medicalized”, “generalized”, and “individualized”, resulting in the inability of the Ministry of Health's legislative department to proceed with already considerably delayed discussions on Article 24 “Draft Indigenous Peoples Health Act” in the year 2011 “Indigenous Peoples Basic Law”. Moreover, the newly issued “2025 Health and Welfare Policy White Paper” also cancelled the Indigenous Peoples special chapter contained in the “2020 Health of the Citizens White Paper”, resulting in Indigenous people being faced with a grave situation harmful to their health rights. In order to resolve the inequitable situation in health care confronted by Indigenous Peoples, the government should rely on the concept of health rights set forth by the World Health Organization to plan and establish a medical system and policy of improved living conditions that conforms to the needs of Indigenous Peoples and provides for cultural safety. At the same time legislative work for passage of the “Indigenous Peoples Health Act should be expedited so as to ensure the health and welfare of Indigenous Peoples.

### **The Impact of Man-Made Environments on the Mental and Physical Health of Indigenous Children**

35. In Taiwan, there are physical and mental challenges to Indigenous children imposed by man-made environment and measures. For example, the government in response to the financial and declining birthrate phenomenon, has cut down and merge Indigenous schools in some rural areas (or some areas simply do not have junior or senior school). This

situation results in more children forced to leave their families or communities, and moved to boarding schools, or long commutes between school and home every day. This situation affects Indigenous children not only on personal safety and physical health, but also in the absence of appropriate support systems and cultural care, more often causing their mental and physical inadaptation, and confusion regarding identity, cultural exclusion, and psychological trauma phenomenon.

36. The migration policies for the relocation of communities do not meet the principle of proportionality in the area and land category. The plan and demand of facilities for relocation do not allow Indigenous Peoples to participate fully that not only compress life and survival, deprive the right to farming, hunting, gathering, but also expropriate the right for children in cultural learning and the growth of healthy humanistic environment.
37. The government has placed nuclear waste on Lanyu Island for more than 30 years. Even though the government claimed that the storage of the nuclear waste is safe, the worries about and stress of nuclear waste pollution have seriously affected the local Indigenous persons, including the physical and spiritual health of children. Also, the chimney of the fired power plant located near the kindergarten directly harms the health of children over the years.
38. The cases described above shows man-made measures and facilities change could impose negative impacts on Indigenous children's physical, mental, and cultural health.

## **Article 13**

### **Indigenous Peoples Education Act**

39. According to Article 13, Item 2, Section 3 of the ICESCR, the Implementation Bylaws of the Indigenous Peoples Education Act was not completed until 2005, despite the 1998 promulgation of the Indigenous Peoples Education Act. In 2011, the Council of Indigenous Peoples set out planning for a "Third Semester System Experimental School" with schools for each group of Indigenous Peoples estimated to be completed by 2016. Progress toward completion has already fallen behind schedule, creating in the process

further classism.<sup>14</sup> Additionally, government advocacy of "Primary School Closures and Mergers" in response to trending low birth rates has raised concerns of a worsening situation for Indigenous primary education.<sup>15</sup> As for qualified teaching staff, the year 2013 amendment to Article 25 of the Indigenous Peoples Education Act set the teacher ratio for Indigenous students which should continue to be observed after the end of the improvement period in 2018. Per the section on higher education in Paragraph 5 under Item 2 of the same Article, Indigenous students who advance to higher education are over-represented in technical vocational schools.<sup>16</sup> This situation limits the full development of critical thinking capacities as well as the cultivation of talent for diverse fields, affecting adversely the overall progress for said Peoples.

## The Right to Education

40. The Council of Indigenous Peoples and Ministry of Education simultaneously promote Indigenous student educational assistance policies to augment the acceptance rate basis the percentage of students participating in college placement testing. They also provide a variety of programs to relieve the economic burden of educational expenses. However, year 2013 statistical data on Indigenous education released by the Ministry of Education for the preceding 5-year period, revealed deferred-studies rates ranging from 3.1% to 4.8% and dropout rates ranging from 1.3% to 1.6% for high school level students. Both of these rates exceeded those of the general student population. For colleges and universities, Indigenous deferred-studies and dropout rates were 7.23% and 10.27%, respectively; higher than the 5.78% and 6.43% rates of the general student population. The reason of "economic difficulties" was cited by 11.1% of students who deferred studies (reasons for the other 89.9% were not mentioned). The most cited reason for dropping-out (54%) was "overdue failure to register or

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<sup>14</sup> Refer to Lin Wen-lan: 2014, "Make Culture based on the "Tribe": The Practice of Educating and Cultural Revitalization in Indigenous Tribal Schools."

<sup>15</sup> Refer to: "The position of Taiwan's Indigenous Peoples Teachers Association on the Closing Down and Merging of Remotely Located Primary Schools." [http://indiginousteachers.blogspot.tw/2013/01/blog-post\\_15.html](http://indiginousteachers.blogspot.tw/2013/01/blog-post_15.html)

<sup>16</sup> Refer to Pao Cheng-hao: "Taiwan Needs a Small and Beautiful Indigenous Peoples Integrated University." <http://goo.gl/CzwOha>

overdue failure to re-register following a period of deferred studies". Are these comparatively higher rates for deferred studies and dropouts amongst Indigenous students related to oppressive stress brought on by racial discrimination or prejudice from their peers? Additionally, within the organizational structures of high schools and universities are there not units tasked with the specific responsibility of offering multicultural counseling or designated bodies/teachers who can provide guidance to Indigenous students coping with issues of cultural differences at school?

41. In connection to the above issues, anti-discrimination policies related to Indigenous educational rights should not be limited only to the elevation of education participation rates but at the same time need to also closely examine the current educational environment. Is long-term planning needed to nurture a sense of the subjective self and cultivate Indigenous talent through methods such as the safeguarding of ethnic pride, extension of ethnic networks and augmentation of ethnic welfare? According to the 2014 statistics of the Ministry of Education on Indigenous education, the top field of study for Indigenous students in college and university was nursing (3,285 persons), representing 12.9% of Indigenous students. Moreover basic technical and vocational areas of study made up the top 20 fields studied, indicating underrepresentation in the training of logical reasoning via majors in the Humanities and Liberal Arts departments.
42. Additionally, each teacher-training college in its training of qualified teachers might include such relevant course curriculum credits as multicultural education, Indigenous culture and history, and Indigenous student psychology so as to raise the standard of teacher training as well as cultural sensitivity. This would nurture respect and understanding for other cultures so as to prevent such issues as racist language and subjective bias being brought into the classroom by new teachers. These are all important elements of anti-discrimination policy.
43. The Council of Indigenous Peoples has pointed out that current curriculum outlines already include competency indexes related to ethnic harmony and respect for diverse cultures. These subjects serve to assist students in acquiring respect and knowledge for the culture of diverse ethnic groups while also promoting ethnic harmony and preventing discrimination. However in the classroom, besides just textbooks that have shallow, selective and fragmentary narratives, material dealing with Indigenous cultures and histories contains many errors, stereotypes and

historical anachronisms. For example, in the period starting from Dutch rule of Taiwan to mid-Qing governance the Indigenous Peoples of the plains endured unequal treatment and oppressive policies imposed by outside governing forces: a period of historical suffering seldom depicted in current textbooks.

44. Overall, while there may be a legislated foundation in the educational system, however at the level of actual implementation of Indigenous education is still relegated to a supplementary status for overall education. First of all, take the Indigenous language classes in elementary school as an example, there is only one class per week and by junior and senior high school the course is optional. The importance of the Indigenous language course in the school curriculum remains well behind that of English and Chinese. Qualified minority language instructors have yet to receive status on par with the job guarantees of full-time English instructions, instead having only the status of teaching assistant in the classroom. Secondly, although a number of elementary schools have applied for grants from the Council of Indigenous Peoples to promote Indigenous education as a core curriculum, however the arduous efforts of primary school teachers to nurture Indigenous educational content are underappreciated at the junior and senior high school levels where materials promoting progressive advancement through grade-levels are instead prioritized. The neglect for courses related to Indigenous cultures in secondary schools represents a major gap in the passing along of Indigenous education. These instances demonstrate that the government's establishment of a coherent educational system to promote Indigenous subjective identity remains in its infancy and that Indigenous education in the overall educational environment still holds the status of being a supplemental product.

### **Indigenous Peoples' Language Education**

45. After going through a long period of suppression, Indigenous languages began a period of revitalization following the lifting of martial law in 1987. Since the 1990s, individuals, people, churches and schools have begun to produce a number of Indigenous related books and teaching materials. In 2001, through the hard work of people from all walks of life, a 9-year program for Indigenous languages became an official part of the teaching curriculum with a once a week class in which the teaching of



speaking and listening comprehension took precedence over reading and writing.

46. The 9-year curriculum "Elective Course" implementation syllabus explained: "3. Primary students from grade 1 to 6 must take one of three native languages: Minnan, Hakka, or Indigenous. Study of the language in Junior High is optional. Schools may, according to local conditions and resources, offer other native language courses in addition to Minnan, Hakka, and Indigenous." Whether looking at the amount of learning content or time allocated for teaching, the portion of class hours and level of importance attached to minority language teaching remains far behind that for Chinese.
47. The upcoming "12 years of compulsory education curriculum outline" in 2018 is going to shift the methods of Indigenous language learning courses, which is going to focus more on reading and writing, and less on the listening and speaking. However, in the discussion of curriculum design, the Indigenous representatives urged the Ministry of Education to categorize the Indigenous languages in the obligatory courses. Upon receiving the rejection from the Ministry of Education, the Indigenous representatives instantly required the Ministry of Education at least to make Indigenous language as obligatory course in the Indigenous focus schools. And the Indigenous students' right to learning in secondary education was then slightly secured. Nevertheless, in the regular high schools, the Indigenous language is still categorized in optional courses, which means it depends on schools to decide whether or not to give the course of Indigenous languages for students. Under this condition, Indigenous students' right to learning Indigenous languages is compromised for school's convenience.
48. Since implementation of the 12-year national basic curriculum syllabus, there has been a simultaneous shortage of qualified teachers. The current average age of qualified instructors for Indigenous languages is around 50 years old. In the 15 years since implementation of the 9-year curriculum relevant institutions have yet to actively cultivate young Indigenous language teachers or to assist in changing the employment status of current Indigenous language instructors into that of an official teaching position. Without urgent attention to planning and empowerment, Indigenous languages will quickly vanish as the shortage in qualified teachers accelerates.
49. The Indigenous languages have been an official part of the curriculum for 15 years. In comparison to Chinese their status has not noticeably improved;

moreover, under the influence of Taiwan's teaching-for-the-entrance-exam, Indigenous languages have been consistently considered to be languages lacking competitive value. Even the magistrate of Taidong County, where the greatest numbers of Taiwan's Indigenous reside, has publicly expressed the misconception that Indigenous languages squeeze out English instruction. Neglect for the legacy rights of Indigenous languages will ultimately bring to an end of Indigenous language learning while still in its formative stage, not to mention the effects of Indigenous language revitalization.

50. Presently Taiwan's local language courses are viewed like "art classes", that is to say not as a critical part of primary school education. Moreover, in practice not all schools are able to cope with students' language learning needs and provide the relevant teaching staff and class resources. Many children not in their homeland regions are not able to freely choose their own Indigenous language to study at school and, instead, are compelled to elect a different local language, having a serious adverse impact on the development of Indigenous languages. Faced with exam-based pressure at the junior high school level, local language courses have been designated electives, lacking active encouragement for their selection and a fixed schedule of course offerings. By high school there are not even any relevant course options. At the university level such course offerings are dependent on whether a school has relevant resources (relevant departments or programs as well as qualified teachers) and whether or not a school's administrators are determined to offer a course. From this it can be surmised that government efforts to compile teaching materials and set up a system for the production of texts might be said to be satisfactory, however in practice at the site of instruction the results have been less than lackluster.
51. A return to equality in language status is of particular importance with respect to Taiwan. Over the past 60 years many speakers of local languages have been gradually departing while younger generations, facing the structural and educational constraints of the emerging environment, have not been able to fully utilize the languages in everyday life. As a result it has become the solemn duty of the government to actively promote the revitalization of local, especially Indigenous languages.
52. Therefore the following proposals are recommended:

- (1) Draft a National Language Development Act that confirms the status of the country's local languages and, based on this foundation, promote the right to language equality.
- (2) In respect to local Indigenous languages, efforts should be stepped up to promote their return and heritage. When necessary, methods, such as required language courses, should be incorporated into the mainstream curriculum and systematically put into effect. For example, methods such as taking a second local language in addition to one's own can be used to expand the user environment, allowing local languages to actually be used and circulate.
- (3) The government should do a full accounting of the educational resources and qualified teachers available for Indigenous languages instruction. An online teaching program should also be developed so as to preempt, via online access to courses, the opting out of those schools that are not in Indigenous homelands or that have extremely low demand for language learning.

### **Urban Indigenous affirmative culture**

53. Most of the Indigenous area and some urban areas with abundant resource do have the power to revitalize and maintain their culture because of central policy support. However, there still has some Indigenous persons who live in the urban areas with less resource or inside territory depopulation; they are hardly to find the way to learn their maternal culture. Secondly, even set the related resource units inside of urban area, normally it's a small amount or single spot. Urban Indigenous Peoples usually live scattered and culture development work is hard to spread and inefficiently under this circumstances.
54. According to Article 13 of ICESCR regarding the right to education, Article 15 regarding affirmative culture, the country should actively maintain the vulnerable groups' rights to education and rights to participate in the development of cultural life. In the ICESCR second State Report, although listed Indigenous culture and maintenance of affirmative action policies, but which refers to the use of language in an unfriendly environment, the strong influence of language, lack of field and other issues, are still the actual situation in the Indigenous area. However, in the State Reports, they do not have any specific policies and solutions for this case.

55. Regarding the situation and problem faced by urban Indigenous, we advise:
- (1) The things like Indigenous language, traditional cultural knowledge or even Indigenous rituals of practice, not only host in the fixed space (such as the Indigenous Peoples Committee Hall, tribal universities), but also should develop culture promotion class by walking around or organize some theme activities. Make urban Indigenous Peoples enjoy the equal culture learning opportunities without any limitation.
  - (2) In addition to handling affirmative cultural activities in the metropolitan area, also should focus on strengthening the establishment of links between the traditional land and metropolitan area. So that urban Indigenous are not required because of the commuting distance, economic costs and other obstacles forced to alienate their maternal culture. For example, although each Indigenous person can choose the one optional day off for the Indigenous ritual by their wish and tradition, the clansman who lives in the urban area may flinch because of the distance between urban and rural area, transportation cost or may subject to the employers and peers complaint. Therefore, they would rather keep their job instead of going back to their communities and participate in the ritual activity. In this regard, the Government should consider the difference between reality and ethnic, cultural differences, in order to implement affirmative culture, rather than the seeming performance.

## Article 15

### Right to Culture: Indigenous Peoples' Day off for Traditional Ceremonies

56. From the perspective of the equality of each ethnic culture, Indigenous Peoples' rituals should be subjected to the same attention and respect with Han's festival custom. Start from 2011, the implementation of the "Indigenous rituals should have a day off" is a well-intentioned initiative, but it is hard to achieve due to the system design. This measure is not like State Report declared "will help the community to respect multiculturalism ", and it is also not conducive to the implementation of the requirements of Article 15 of ICESCR, paragraph 1, the individual has the right to participate in cultural life. Please see the following paragraphs for the explanations.
57. Make no contribution to the community to respect cultural diversity: Although the Indigenous ritual only belongs to Indigenous Peoples, the

vacation is made by state regulation. Indigenous employees always face to a deliberate dilemma when they ask for leave. Employers cannot understand the situation and treat it as a privilege. Even Indigenous employees have the right to leave; they will not advocate leaving. It is more likely to say that widen the gap between each ethnic groups than respect for the multicultural society.

58. It does not help to implement the required ICESCR Article 15, paragraph 1 of the right of everyone to participate in cultural life. For example, each year between July and August, each of the Amis/Pangcah communities will begin to stage the biggest ritual activity in the year called ilisin or kilumaan (different community has various name). The period during the festival about five to seven days and there is a month-long preparation time. This ritual is equivalent to New Year in Han Chinese culture. However, in Taiwan, Han Chinese New Year is a five-day national holiday, might be seven to nine days plus a weekend. Relatively speaking, one day off to Indigenous ritual seems like a ridiculous charity. Moreover, the majority of Indigenous employees work in the city. There is no enough time to take part in the cultural activity if count on the commuting time. Let alone with the full participation.
59. Here are the suggestions we advised: the government should customize a new policy of national holiday and abolish the national holidays which are untimely and symbolized the old authority. Some diversification respectful holiday like International Migrants Day, and International Indigenous Peoples Day. Moreover, the government should plan in the policy to make all ethnic groups can participate fully in their respective cultural rituals, even like the "cultural learning" vacation, let each ethnic group may take part and learn from other's cultures in order to truly promote the respect of a diverse society in Taiwan.

## **Article 2 & 3 the Principle of Equality and Non-discrimination**

### **The State Report's Failure to Present the Actual Number of Sexual Harassment Complaints and Implement the Legislation on Gender Equality**

60. In Paragraph 19 of the State Report captioned "Statistics of Sexual Harassment Cases", the government fails to show the actual situation of

sexual harassment, presenting only those cases in violation of the *Sexual Harassment Prevention Act* (SHPA). However, depending on the relationship between the victim and the offender and where sexual harassment occurs, the applicable law for filing a complaint can be the *Gender Equality Education Act* or the *Gender Equality in Employment Act* instead. Merely in the year of 2014, 3,013 and 127 complaints are filed separately under the latter two Acts<sup>17</sup>. Added up with the 549 cases under SHPA, the total number of complaints in 2014 amounts to 3,698, which is much higher than 1,389, i.e. the number of cases filed “between 2012 and September 2015”, as recorded in the State Report.

61. Article 7 of the SHPA stipulates that if the number of the staff, employees or customers of any organizations, troops, schools, institutions or employers reaches over ten, “an appeal channel for mediation and handling should be set up”; and if the number of people reaches over thirty, “measures for sexual harassment prevention should be formulated and be publicly announced”. Nevertheless, many businesses in the service sectors fails to comply with such regulations, yet the competent authorities<sup>18</sup> are idle in monitoring and rectifying non-compliances. We particularly urge the government to be more active in inspecting the formulation and improvement of measures for sexual harassment prevention in public places and service industries.
62. In Taiwan, the number of cases of sexual harassment on campus is on the rise year by year: while 145 cases occurred in 2006, 3,013 happened in 2014. Furthermore, over 40 percent of them took place in junior high schools, which notably shows the government’s failure to fully implement the education on gender equality. The competent authorities shall initiate studies and investigations as soon as possible to find resolutions to the potential causes.

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<sup>17</sup> See the statistics on “Appeals of Gender Equality in Employment” from the Ministry of Labor (<http://statdb.mol.gov.tw/html/sex/year103/8110.pdf>) and the statistics on “Reports of Suspected Incidents of Sexual Assault, Sexual Harassment, or Sexual Bullying on Campus” from the Ministry of Education (<https://stats.moe.gov.tw/files/gender/404-13.xls>), while the statistics on “Sexual Harassment Prevention Affairs” is provided by the Ministry of Health and Welfare (<http://www.mohw.gov.tw/CHT/DOS/DisplayStatisticFile.aspx?d=31899>).

<sup>18</sup> The competent authorities of SHPA are the Ministry of the Interior at the central level, municipal governments at the municipal level, and county (city) governments at the county (city) level. [Annotation by the translator]

63. For recommendations on how to carry out the *Gender Equality in Employment Act* and prevent sexual harassment in workplace, please refer to Paragraph 36 – 38 of this report regarding Article 7.
64. Article 17 of the *Gender Equality Education Act* requires elementary and junior high schools to “provide at least four hours of courses or activities on gender equity education each semester”, but most of the schools meet the requirement by arranging lectures for an entire grade or even an entire school, which brings about little effect. The government shall encourage schools to design courses or activities on gender equality on the basis of classes that deal with the particular conditions and issues among the class of students.
65. The current legislation, or the three *Acts* mentioned in Paragraph 1, has caused trouble for law enforcement. Practical experiences show that most people do not understand how to apply the law and make complaints in different situations of sexual harassment. We call upon the government to examine the cases happened in recent years and propose corresponding solutions on the problem of execution.

### **Unfriendly “Disabled-Friendly” Financial Service**

66. According to Paragraph 15 of the *State Report* captioned “Friendly Financial Protection Measures”, the government requires banks to provide barrier-free ATMs and online service at their operating sites, and a total of 224 voice-enabled ATMs had been set up throughout Taiwan. In fact, only 60 percent of those machines are friendly to wheelchair users, while less than one-tenth of them are virtually barrier-free to use for persons with visual impairment. Furthermore, it is not clear whether the service is geographically evenly spread across the country. The current 42 banks that provide “disabled-friendly” service consider mainly the dissemination of information, such as interest rate or exchange rate inquiry. Only 15 banks provide barrier-free online banking services, which are not really easy to use, as reported by some visually impaired users.
67. Paragraph 3, Article 107 of the *Insurance Act* stipulates that “if, at the time a life insurance contract is entered into, the insured is mentally impaired or of diminished mental capacity that he or she is incapable of comprehending his or her own action or lacks the ability to act based on his or her comprehension, all death benefits other than funeral expense benefits shall

be void.” The government ought not to allow the life insurance company by law to deprive the persons with disabilities of their insurance benefits in the name of “protection”.

68. We recommend the financial institutions to prioritize the replacement of unfriendly ATMs with barrier-free ones in public places such as traffic stations, hospitals, marketplaces and convenient stores; and to gradually meet the goal that there be at least one barrier-free ATM at every location installed with ATMs.
69. We urge the government to add the barrier-free online banking service to the list of necessary transaction services that financial institutions must provide.
70. The government shall review Article 107 of the *Insurance Act* and other unreasonable laws and policies regarding insurance, ensuring that persons with disabilities enjoy their rights to insurance. Also, it shall design educational and training programs for insurance companies and salespersons to facilitate their understanding of people with disabilities.

## Article 6 the Right to Work

71. For unemployment discriminations confronting the Indigenous Peoples, please refer to Paragraphs 17 - 21 in the [Special Chapter on Indigenous Peoples of the Covenants Watch ICCPR Shadow Report](#).

### Assistance to Young People in Employment

72. Responding to Paragraph 36 of the State Report, we especially recommend the government to provide young people aged from 16 to 24 who enter workplaces for the first time with related employment service facilities.

### Assistance to Persons with Disabilities in Employment

73. Even though Paragraph 32 of State Report specifies the “quantity” of employment increases among persons with disabilities from 2012 to 2015, <sup>19</sup>

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<sup>19</sup> According to the State Report, “a total of 21,796 people, 22,211 people, and 21,253 people, respectively, were helped to successfully get hired between 2012 and 2014”; and “from January to



the government fails to elaborate on and analyze the “quality” of these jobs. In fact, many persons with disabilities are employed as temporary workers or contractual personnel. It once happened to a person with disability that the school which hired him unfairly ended his employment contract when an accident caused disability to another regular employee, whose newly-acquired “disability card” would then satisfy that school’s need to employ sufficient percentages of persons with disabilities under Article 29 – 31 of the *Physically and Mentally Disabled Citizens Protection Act*.

74. Everyone has the right to work. While the labor rights of Indigenous women and new immigrant women are brought to light in documents prepared by the Ministry of Labor such as *New Thinking on Women’s Labor Rights* (2008) and *White Paper on Labor Policy for Women* (2013), yet women with disabilities totally disappear in the discussion. We encourage the Ministry to put more emphasis on the labor rights of the women with disabilities.

### **Protections and Restrictions of the Right to Work**

75. When the *Labor Standards Act* (LSA) was first enacted in 1984, it mainly applied to laborers working in the manufacturing industries; it was not until the Amendment passed in 1997 that the service industries are gradually included in the Act. Nevertheless, today some professional workers and particular types of jobs are still excluded from the application of LSA, which restricts these laborers from the regulations that protect their labor rights.<sup>20</sup>

## **Article 7 Conditions of Work**

### **Gender Salary Gap, Occupational Sex Segregation and Atypical Employment that Deprive Women from Having Equal Payment**

76. The percentage of women employed in atypical jobs is increasing on a yearly basis, coming to 7.64% as of May 2015, which is higher than that of men

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October 2015, a total of 18,174 people got hired under assistance”.

<sup>20</sup> For the list of professions and jobs excluded from the *Labor Standards Act*, see the website of Ministry of Labor at <http://www.bli.gov.tw/sub.aspx?a=m%2FmRcr6RwJo%3D>.

(6.46%).<sup>21</sup>The main cause is women's presumed role as birth- and caregiver; the ensued interruptions of work and difficulties of re-entering the workforce result in a higher tendency for women to accept atypical work and compromise on lower wage level, labor standard and elderly economic security than regular employees.

77. The government ought to put Article 10 of the *Gender Equality in Employment Act* into real practice, which pledges that "employees shall receive equal pay for equal work or equal value", by actively setting strategic goals and finding concrete ways to reduce discriminations confronting women in the workplace and promote gender equality in employment. According to the Ministry of Labor, women earn just 85.5% of what men do. In other words, women must work 54 more days to earn just the same annual income as men.<sup>22</sup> Before equal work receives equal pay for all, we still have a long way to go.
78. In addition, serious occupational sex segregation and inequality still persist in the workplace. In the labor market, stereotypically "female" jobs are payed lower wage than those "male" jobs. For example, obstetricians and midwives have obviously different wage rates despite the similarity of their work. We can never stop gender discrimination at workplace if the segregation remains unbroken.
79. For now, the strategic goal and concrete way means dealing with discriminations confronting women in the workplace, and promote gender equality in employment.
80. To ensure "equal pay for equal work", we recommend the government to push for salary transparency to prevent pay gaps hidden behind information asymmetry. The government can add the principle to the criteria for labor inspection, so as to prevent employers from taking advantage of disobeying laws.
81. The government should initiate the development of a "work value scale" based on the content of jobs and the nature of tasks that would reflect the

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<sup>21</sup> See the "Summary Analysis of 2015 Manpower Utilization Survey" from the Directorate General of Budget, Accounting and Statistics, Executive Yuan, <http://www.stat.gov.tw/public/Attachment/5112511747SQKUP4S8.pdf>

<sup>22</sup> In 2015, the average hourly earnings of women and men are NTD\$ 253.4 and NTD\$ 296.5, respectively. See the information provided by the Ministry of Labor based on the "2015 Employee Earnings Survey" from the Directorate General of Budget, Accounting and Statistics, [http://cb.mol.gov.tw/Home/NewsContent/3695?tree\\_id=9](http://cb.mol.gov.tw/Home/NewsContent/3695?tree_id=9)

true value of different occupations, which serves as one step to reduce discriminations and pay gaps against the presumed “female” jobs. The government can adopt the principle of “equal pay for equal work” in enterprise evaluation, encouraging all companies to join hands in promoting gender equality.

82. Conforming to the *Labor Standards Act*, the *Employment Service Act* and the *Labor Union Act*, the government ought to protect laborers from exploitation by middleman, complete the gender impact assessment and gendered statistical analysis on atypical employment, and examine women’s double exploitation under the abuse of labor dispatch or part-time/temporary employment, so as to avoid women from getting trapped in the vicious circle of three “L’s” (Low Payment, Low Protection and Low Achievement) in their working environments.
83. The ongoing reform program of the National Pension Insurance (NPI) should not overlook gender factors. Instead of simply basing the calculation on occupation or seniority, the NPI system should guarantee that irregular employees shifting between different types of social insurance programs and caregivers at home who have no occupational pension, women in particular, need not want for economic security in their old age.

### **Female Workers without Permits Easily Targeted for Harassment and Rape**

84. Paragraph 98 of the State Report states that the National Immigration Agency will provide workers without a permit who fall victim to human trafficking with “placement protection as well personal protection and necessary medical assistance”, but no corresponding measures and assistances are extended to those who suffer sexual harassment or rape. In practical experiences, workers without a permit dare less to speak up against violence, most of which are cases of sexual assaults and harassments, for fear that they would face forced repatriation after disclosing their identities.
85. We recommend the government to establish a system of distress and impunity for workers without a permit who fall victim to sexual assaults and harassments, helping them in avoiding violence and providing subsequent assistance in conjunction with their home country’s Foreign Embassy or Representative Office in Taiwan.

## Dispatched Labor

86. The following Paragraphs are in response to Paragraphs 43 - 44 of the State Report concerning dispatched workers. Official statistics show that there are 498,000 temporary and dispatched workers in 2008; the number continued climbing from 539,000 and 574,000 in the year of 2010 and 2012 to reach 612,000 in 2015. In scholarly estimation, the number of dispatched workers cannot be less than 350,000. It can be seen that labor dispatch has increased constantly in Taiwan.
87. According to the “Special Inspection on Labor Dispatch” conducted in 2009 by the Ministry of Labor, up to 86.4% of dispatch agencies are in violation of the current labor legislation, which seriously indicates the importance, and lack, of a special law and enforcement unit. However, the *Dispatched Workers Protection Act* drafted by the Ministry of Labor is dually oriented toward “safety” for the dispatched workers and “flexibility” for the manpower dispatch industry, while the two contradictory ideas (employment stability vs. industry development) give rise to conflicts in legislation. On the other hand, the current *Guiding Principles for the Rights of Dispatched Workers* consists of simply 6 Articles, which places its main focus on requiring the labor dispatching entities to meet their responsibilities under the *Labor Standards Act*, yet very little is demanded from the employers at the dispatched entities.
88. Given to the government’s inability to curb the abuse of labor dispatch, NGOs submit various proposals in this regard. Some believe labor dispatch is by its very nature a breach of Article 6 of the LSA that “no person shall interfere in the labor contract of other persons and obtain illegal benefits therefrom”. Others recommends different ways of regulations such as amending the LSA by adding a special chapter on labor dispatch, or drafting a new act forbidding labor dispatch or else protecting dispatched workers.
89. Therefore, we call for immediate legislation of the *Dispatched Workers Protection Act*, in which the following principles are essentially important:
- (1) The labor dispatching entities are not allowed to make fixed-term but rather non-fixed-term employment contracts with the dispatched workers.
  - (2) After one full year of service, a dispatched worker may make a written request to the dispatched entity for job transfer into a regular position, which shall not be subject to the approval of the dispatched entity, as is stipulated in the current draft law.

- (3) To ensure the principle of equal treatment, dispatched workers are entitled to the same labor rights and “basic terms and conditions” as the regular employees.
- (4) Employers of the dispatched entities are expressly required to undertake their duties under the *Labor Standards Act*, *Gender Equality in Employment Act*, etc.
- (5) In principle, except for the jobs positively specified on the list, employers of industries and businesses are not allowed to hire dispatched workers, whereas a maximum permitted proportion of hiring dispatched worker is to be determined.
- (6) The government ought to manage the labor dispatching industry strictly by developing governing regulations and granting permission for establishing such entities.

### **High Numbers of Dispatched Workers Employed in Governmental Organizations**

90. According to Article 2 and Article 7 of the *Government Procurement Act*, the term “procurement” refers to “the contracting of construction work, the purchase or lease of property, the retention or employment of services, etc.”, while the term “service” means “professional services, technical services, information services, research and development, business operation management, maintenance and repair, training, labor and other services as determined by the responsible entity”. Therefore, the forms of labor procurement shall be restricted to “retention” or “employment”, which does not include “dispatch”. Even granting that it is acceptable in government procurement, dispatched labor should be utilized as professional service that assists in, rather than substituting for, the performance of the official duties.
91. The Taiwanese government’s outright procurement and extensive use of dispatched labor constitutes violations of the *Act*. As the only country in the world to perform its official duties by dispatched workers, Taiwan not only fails to create reasonable job opportunities, but also directs large amounts of revenues to the manpower dispatch industry at the expense of dispatched workers who are weakened by overwork and low pay. Standing up against the government’s abuse of dispatch labor and the arising problems, we contend that:

- (1) The government ought to reduce exploitation of laborers from middlemen and supersede all of its labor dispatch contracts by formal employment contracts within the limit of three years, which would create job opportunities in the public sector and provide a more stable employment environment.
- (2) The government shall not misinterpret subcontracting relations to maintain *de facto* labor dispatch relations with the workers employed by the subcontractor, where many governmental authorities still exercise actual control and supervision of the contract workers.
- (3) The Public Construction Commission under the Executive Yuan ought to install a service line for filing complaints against dispatching companies breaking law or contract. When a complaint is established, the Commission shall terminate the procurement contract immediately and add the company to the blacklist.

## Working Hours

92. In response to Paragraph 58 of the State Report concerning working time, the annual average working time for Taiwanese employees is as high as 2,124 hours in official statistics. Despite the legal fact that the maximum normal working hours a week has been reduced to 40 under the LSA since January 1, 2016, the Ministry of Labor intends recently to increase the limit of overtime work from 46 to 54 hours, ignoring the “sweat” society exhausted from overwork. The main cause of the persistently high annual working hours in Taiwan is the government’s failure to enforce workers’ right to paid special leaves and official holidays as well as its tolerance of illegal overtime working.
93. Therefore, our proposals are as follow:
  - (1) The government shall revise Article 36 of the LSA and guarantee that a worker shall have at least two, instead of one, regular day off per week.
  - (2) The government shall increase the overtime wage rate. At present, a worker whose overtime work does not exceed two hours shall be paid an additional one-third of the regular hourly rate, and two-third for the further two overtime hours. If a worker consent to work on a holiday, he/she shall be paid double the regular rate. Nevertheless, as the Ministry of Labor interprets that regular holiday pay is already included in the monthly salary, so the employers only pay the workers the “additional” one-fold wage of

that particular day without doubling it. All of these wage rates lag behind international standards.

- (3) The current legislation allows employers to distribute the regular working hours so unevenly that many workers have to sacrifice their health and family life for rotating schedules with 2 twelve-hour shifts. The government shall revise the LSA immediately to forbid such rotation system and protect workers' right to rest with a compulsory break of at least 12 hours between successive work shifts.
- (4) The government shall put to real effect the provision that employers shall pay wages to workers for their untaken annual paid leave, which should be stipulated not only in the *Enforcement Rules of the Labor Standards Act*, but also in the *Act* itself and supplemented by penal provisions to enforce the regulation.

### **Special Regulations on Working Time**

94. In response to Paragraph 59 of the State Report concerning special working hours, we hold that the root cause of overwork in Taiwan is the very Article 84-1 of LSA, which was a compromise in the amendment process to include the white-collar workers in the scope of application. With the approval of the Ministry of Labor, there are currently 39 types of workers who are not subject to the legal regulations on working hours, recess and holidays because of the "special nature" of their jobs. This turns out to serve as the employers' excuse to evade overtime payment by arbitrarily defining their occupations as such particular jobs. Many workers who actually fall into this category are also unfamiliar with their legal rights, allowing the employers to omit the requirement of making a mutual agreement in written form, which shall be submitted to the local competent authorities for approval and record.
95. Thus, we call for the immediate abolition of Article 84-1 of the *Labor Standard Act*.

### **Labor Inspection**

96. The following paragraphs are in response to Paragraph 60 of the State Report concerning labor inspections. According to the *2014 Annual Report of Labor Inspection*, 12,277 business entities underwent inspection on labor

conditions in that year, while as many as 6,956 violations of legislation were found with over 97% of the cases involving the LSA. Nevertheless, most of the competent authorities just passively wait for labor complaints to initiate inspections. Given the public's little understanding and awareness of their legal rights, what are shown in the statistics are probably just the tip of the iceberg.

97. Therefore, our proposals are as follow:

- (1) The government shall increase the personnel and centralize the power of labor inspection. There are in average 0.42 labor inspectors per 10,000 workers in Taiwan, which is far less than EU standards. The ratio ought to be raised to 1 as soon as possible and progressively to 1.5. On the other hand, the authority competent to conduct labor inspections is decentralized disorderly not only to local governments from the special municipalities, but also to the Ministry of Economic Affairs and the Ministry of Science and Technology at places such as Export Processing Zones and Science Parks. However, the inspection agencies governed by the latter two Ministries are not so much the supervisors of labor safety, health and conditions as the service providers for businesses in the zones/parks. Concentration of power to a central authority is key to professional and independent labor inspections.
- (2) The authority to conduct a labor inspection shall be combined with the authority to make a corresponding administrative disposition so as to enhance deterrence and compliance. Many cases in the past that found violations of labor laws were not necessarily followed by penalties, for the ruling power resided in the local city and county governments, thereby countering the effects of labor inspections. In 2003, the Ministry of Labor decided to bring the power to make administrative dispositions concerning the *Occupational Safety and Health Act* (OSHA) back to the Central Authority and the six Special Municipalities, yet leaving the LSA unaltered. Ten years after, the disposal rate involving the OSHA has increased to 27%, while that involving the LSA stayed as low as 3%.

### **Gender Equality in Employment Act and Prevention of Sexual Harassment in Workplace**

98. In Paragraphs 25 – 26 under the caption of “Laws, Regulations, and Measures Protecting Employment Right”, the State Report fails to elaborate



on: (1) the reasons for, and the corresponding measures after, deciding to review, not to review, or to cancel a case of complaint filed under Paragraph 2, Article 11 of the *Gender Equality in Employment Act*; (2) the implementation situation of penalties on employers discriminating against applicants and employees because of their gender or sexual orientation since the 2014 amendment that raises the fines for violating Article 7 – 11 of the *Act*.

99. Responding to Paragraphs 43 and 62 concerning the measures for sexual harassment prevention, there still exist some flaws and restrictions in the *Act*. As practical experiences show, not all sexual harassment occurring at workplaces can be properly handled by the *Act*. For instance, if an employee is sexually harassed by a person from another company when performing his/her job duty outside, his/her employer is obliged to take remedial measures under current legislation. However, besides investigations of facts, little substantive assistance is provided to the victim. In addition, not a few victims would decide to stay silent after the occurrence of workplace sexual harassment for fear of the negative impact on their career advancement.
100. The committees on gender equality in employment of each city and county government are the frontline agencies to accept cases of alleged violations of the *Act*, but practically, they are often handled by the Employment Discrimination Review Committees set up under the *Employment Service Act*. When there are as many as 16 forbidden grounds for employment discrimination, either the central or the local governments have sufficient manpower to fulfill the mandate: in some cities and counties, only one person is exclusively dedicated to these tasks, while some other local governments assign the duty jointly to their personnel. For lack of expertise and manpower, it is really difficult for the committees to investigate cases of discrimination, promote public educations, etc. Many of the committees on gender equality in employment review less than ten or even zero complaints in a year.
101. Compared with the Equal Employment Opportunity Commission (EEOC) in the United States, which grants full power of investigation to the investigator and anticipates thorough interviews into cases of discrimination, most of the committees on gender equality in employment in Taiwan are not capable of such active investigations, but passively wait for complaints and then handle the appeals through written proceedings.

102. To ensure real gender equality and stop gender discrimination in the workplace, a comprehensive reform of the current mechanism for accepting and reviewing complaints under the *Act* is necessary. Only by setting up service desks in every districts by the agencies affiliated to the central competent authority can professional civil service be guaranteed.

### **Safety at Work and Prevention of Occupational Hazards**

103. In response to Paragraph 66 of the *State Report*, the prevention of occupational injuries in Taiwan mainly relies on the labor inspection mechanism and the *Occupational Safety and Health Act*, a substantial amendment of which in 2013 went into effect one year after. In spite of 87 regulations and enforcement rules, the normative clauses outlined in the *Act* remain symbolic for lack of public promotion and assistance/coordination measures.

104. Labor rights infringement by business prevails in Taiwan; the competent authorities at each level with insufficient staffing are slow in action to correct and punish the wrongdoings. For the majority of the 1,450,000 registered factories and business entities, less than one labor inspection is carried out in thirty years. In 2014, the number of inspections on labor condition is 12,277, including the re-examinations conducted on a same business entity. With the finding of 4,135 violations of the *Labor Standard Act*, the disposal rate comes to 33.68%. On the other hand, 90,942 business entities underwent inspections on occupational safety and health, while 6.07% (5520 cases) are found guilty. Even so, the violations established are rarely penalized judicially, incentivizing business to take advantage of non-compliance.

105. We recommend the government to increase the staffing of labor inspectors to 1 per 10,000 workers in Taiwan, and plan to raise the ratio progressively to 1.5. To ensure professional and independent labor inspections, the mechanism shall be managed and supervised by one single central authority. Also, an independent authority to make a corresponding administrative disposition ought to be integrated so as to prevent interference from other administrative agencies.

## Public Workers Uncovered by the *Labor Standards Act* or Full Protection of Reasonable Working Hours and Paid Vacations

106. A public servant shall be protected by Article 7 of *ICESCR*. A civil servant, who has strong obligations to obey the orders of his/her superiors and must work on rotating shifts (e.g. police and fire personnel), shall especially be protected by this Article because s/he faces more possibilities of suffering from exploitations resulting from his/her working conditions than other normal civil servants. But current protections are guarantees similar to that for normal civil servants. If there are any shortcomings, a ridiculous fact will thus arise: the government that shall be the model for private entities suppress its employees instead.
107. In response to Paragraph 58 of the *State Report on ICESCR*, after several amendments, *Labor Standards Act* has already been codified a certain amount of articles concerning employer penal provisions, reasonable working hours, and reasonable recess time, which gives employees certain guarantees; However, according to J.Y. Interpretations No. 396, No. 433, and No. 637, a public servant is not protected by *Labor Standards Act* because there is a civil service public law relationship between civil servants and the State. Therefore, provisions regarding maximum working hours limit are not applicable to civil servants. Only *Regulations of Implementation Program for the Civil Servants' Two-day Weekend*, which is without penalty and roughly codified, is applicable.<sup>23</sup>
108. According to *Regulations of Implementation Program for the Civil Servants' Two-day Weekend*, public servants' daily working hours are 8 hours, and weekly working hours are 40 hours in total; However, according to the statistics of working hours of a public servant working on rotating shifts, such as police personnel, his/her monthly working hours are between 244 and 264 hours. In other words, about 68 to 88 hours monthly overtime, over 8 hours daily overtime, over 40 hours weekly overtime, and over 12 hours daily normal working time along with expansion working time of a police

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<sup>23</sup> See "Looking into the Overtime Systems in Governmental Organizations: A Comparison between the Overtime System for Public Servants and the System for Workers" (<http://epaper.hrd.gov.tw/161/EDM161-0505.htm>), "Review and Improvements for Personnel Management and Attendance/Vacation System of Nationwide Police and Firefighter Officers" (<http://goo.gl/Pr8iB6>), and No. 0014 of Corrective Measures on Ministry of the Interior issued by Control Yuan in 2010 (<https://www.cy.gov.tw/CYBSBoxSSL/edoc/download/17368>).

officer are already common, which from a profound gap between legal regulations and the reality.

109. Due to staff shortage, a civil servant working on rotating shifts often has to face split shifts and continuous overtime shifts, which posts severe harm to his/her physical and mental health, and violates Clause 4, Article 7 of *ICESCR*, in which the assurance of “rest, leisure and reasonable limitation of working hours...” has been codified. The government’s omission, including no legal guarantee, no act of recruitment, and no attempt to lower the need of high working hours of police and fire personnel, instead, causes general police officers and fire safety personnel have to work overtime and work for excessive shifts in a day.
110. Therefore, we suggest that the labor condition of public servants shall be covered by regulations that equal or superior to *Labor Standards Act*: government employees are the key component of the administrative system to operate the state; however, the labor condition and the protection for public servants supporting state operation is instead ridiculously inferior to that in private entities. It is still understandable that there are special regulations regulating labor condition and working hours for governmental organizations concerning their distinctive features, but such labor condition protection shall not be inferior to the protection for general employees. If there are any shortcomings, civil servants shall have the right to claim to apply the related provisions of *Labor Standards Act*. Looking back at the spirit of *ICESCR*, which aims at guaranteeing all citizens’ safe and healthy working environment, there is no reason for the state to ignore the labor condition protections for public servants and regard them as the second-class citizens as the state itself is the employer and hires the most employees in the country.
111. We believe that, besides *Labor Standards Act*, the related provisions applicable to public servants shall be amended in order to substantially guarantee general public servants’ right to work, or that public servants can be applicable to *Labor Standards Act* when regulations applicable to public servants are inferior to the Act. We suggest that future amendments shall include the following principles:
- (1) Respecting to administrative regulations and regulations related to the execution personnel, the government shall gather execution personnel to enact, amend, abolish, and review the laws, and gives the representatives of execution personnel the right to actively enact, amend, abolish, and review.

- (2) Regulations for punishment effect public servants profoundly. Therefore, the government shall strengthen remedial procedures, such as gathering representatives of execution personnel to form an assemble and deliberate.
- (3) The government shall set clear standards on daily and weekly working hours and punishment provisions for competent authorities that violate such standards as well.
- (4) An impartial, non-governmental third-party organization can proceed examinations for governmental organizations. The violating organizations will be punished according to *Labor Standards Act* in order to substantially guarantee public servants' right to work.

### **The Need of a Labor Conditions Inspection for Public Servants Who Must Work on Rotating Shifts**

112. In response to Paragraph 60 of the *State Report on ICESCR*, under the circumstances of lacking related protections and the fact that *Regulations of Implementation Program for the Civil Servants' Two-day Weekend* provides that "Public Transportation, Police, Fire Department, Coast Guard, Medical Services, Customs, and other Government Departments, must provide service to the public all year round and so must implement the necessary shift systems (alternate duty / day-off)," the government shall especially proceed project investigations on labor conditions and propose solutions on schedule.
113. The labor condition examination shall be organized by impartial third-parties, such as private think tanks, enterprise unions or academia specializing in labor rights, in order to avoid the situation of "self-refereeing" when the government conducts such examination itself. Such examination investigates labor conditions in each governmental organization, and the results will be considered in annual Performance Evaluations for executive officers and become reference for job promotions. If there is serious fomentation of violation, *Labor Standards Act* is applicable.
114. We suggest that the remedial procedures for civil service punishment shall be strengthened: the remedial processes of a punishment, such as appeal, reappeal, or administrative litigations, are all approved by competent authorities or superior authorities. In order to maintain the image of their organizations, the competent authorities usually cannot judge objectively and impartially. The personnel who claims a remedy even faces strong

pressures in his/her organization. For the establishment of a safe and healthy working environment, remedial processes of a civil service punishment shall be improved and be conducted by non-interested and credible authorities, or by representative groups formed by personnel that is or was responsible for the involved duties. The related punishments shall be suspended before the decisions are made.

115. Improvements for procedures of formulation and amendments of administrative regulations: the formulation and amendments of administrative regulations within governmental authorities can only be implemented after being approved by representatives of related execution personnel gathered by the competent authorities. The right to actively amend or abolish such regulations that are out of dates and/or difficult to implement shall be given to execution personnel.

### **The Government's Act of Omission, the Detection Rate of Occupational Diseases for Civil Servants Working on Rotating Shifts Close to Zero**

116. In response to Paragraph 66 of the *State Report on ICESCR*, according to Article 7 of *International Covenant on Economic, Social and Cultural Rights*, the state parties shall ensure the right of everyone to the enjoyment of safe and healthy working conditions; however, civil servants who work on rotating shifts often have to face 12-hour shift, night shifts and split shifts. According to the report "Review and Improvements for Personnel Management and Attendance/vacation System of nationwide police and firefighter officers" submitted by National Police Agency to Executive Yuan in June 2013, the working hours of a police officer are roughly between 244 and 264 hours. In other words, a police officer's monthly overtime is about 68 to 88 hours. Furthermore, according to No. 0014 of Corrective Measures on Ministry of the Interior issued by Control Yuan in 2010, due to the need to deal mass gathering, accidents, projects and temporary duties, police officers often cannot get off work on time or have to go to work during off-duty period. Overtime working thus becomes common. This working condition has caused certain percentage of occupational disease, such as Depressive Disorder, Anxiety Disorder, Insomnia, Hypertension, Gastric Ulcer, Obesity, Bronchitis, Tonsillitis, and Sinusitis. However, there is no attention to such problems and medical costs subsidies as well. To make the matter worse, records of sick leaves have to be considered in the Performance Valuations,

which make these kind of public servants would only make a leave as the last resort. This is the best example of a governmental murder.

### **Wages and Labor Conditions of Teenagers**

117. In response to Paragraph 47 of the *State Report on ICESCR*, according to the nationwide investigation on 15 to 18-year-old "part-time teenage workers" conducted by Taiwan Alliance for Advancement of Youth Rights and Social Welfare in 2014, there are up to 52% teenagers receive less than the minimum wage of NTD 115/per hour among 2925 responses. There are even 25% respondents still receive less than NTD 100 per hour.
118. Among 2925 teenage part-time jobbers, except high percentage of them are payed less than minimum wages, 25% of them have experiences of wage deduction or paying fines, and 23.5% of them have once worked continuously over 7 days. In regard to labor insurances, only 40% teenage jobbers are insured by Labor Insurance, 35.8% of them do not know whether they are insured, even up to 18% teenagers are not protected by any labor insurances. According to the statistics of students' injury and severe accidents at work from Institute of Labor, Occupational Safety and Health, there are up to 64 severe accidents happening during teenage students' part-time works in recent 5 years (2008~2012). In addition, on campus, 328 injury events happen in laboratory or during internship, and up to 392 accidents happen during internship and part-time works.
119. *Labor Insurance Act* provides that firms with less than 5 employees are not subject to compulsory Labor Insurance. But the majority of minors works for such firms and is thus not protected by Occupational Accident Insurance. We suggest that the competent authorities shall first implement compulsory insurances for minors before amending related provisions of Occupational Accident Insurance.

### **Online Breaking News Going Against the Labor Rights of Media Workers**

120. Competition between internet news media is going against the labor rights of media workers, demanding reporters to spend long working hours making interviews and being rushed to release breaking news online. The first inspection on the labor conditions of news media, conducted by the Department of Labor of the Taipei City Government in 2014, found that all

of the 34 news and media companies violated labor laws. The first three grounds are: (1) the prohibition of overtime application (79.4%); (2) the failure to keep Employee Attendance Records (76.5%); and the employer's allowing their employees to work over 12 hours a day (70.6%). The media industry is part of Taiwan's sweatshop industries that should not be overlooked.

121. Besides, according to the questionnaire study by the Media Workers Unite, a rights group founded in 2014, the average weekly working time of media workers is 53.73 hours, more than that of all the industries by 8 hours. Some reporters say they used to work 36 hours with no rest, while others take not a single day off during a whole month. More than half of the interviewees feel mentally and physically exhausted, the main three causes of which are: receiving phone calls from their supervisors in midnight, frequent directions on and interventions in their report by the managers, and demanded to release breaking news. Studies also show that the most prevailing illnesses among the media workers are: "symptoms of spine, shoulder and neck or other muscle disease" (15%), "problems of mental health" (13%) and "sleep disorders" (about 1%).
122. We urge that the labor union of media workers shall stand out as the front-line fighters of their rights, and that the government shall encourage them to establish labor unions and enhance their bargaining power as well as improving labor inspections in this field.

## Article 8 Labor Unions

### The Right to Form and Join Labor Unions

123. In response to Article 8 of the *State Report on ICESCR* concerning labor unions (hereafter referred to as "union"), amendments to *Act for Settlement of Labor-Management Disputes* in June 2009 and *Labor Union Act* in June 2010 have greatly benefited the development of unions. However, statistics announced by government labor departments show that amidst a progressive annual increase in the number of registered unions since 2011, the rate of national labor organizations has steadily declined between 2012 and 2015 (34.9% to 33.4%). Excluding members of confederated unions, the number of industrial union members in 2015 increased by 6,436 compared to



the previous year. This growth was overshadowed by a sharp decrease in the number of enterprise and craft union members (4,084 and 18,930) compared to the previous year. The statistics therefore clearly indicate that fundamental unions in Taiwan are underperforming. The cause can be attributed to the union system characterized by the *Labor Union Act* and *Act for Settlement of Labor-Management Disputes*. Amidst high employment and the rapid rise in atypical workers, workers that fail to gain solidarity from unions will inevitably become the victims of economic development.

124. We propose the following suggestions:

- (1) According to current laws, workers are only permitted to organize industrial, enterprise, and craft unions, which inhibit union diversification. These laws should be amended to support free organization and, by extension, union diversification. For example, the organization of craft unions within enterprises is permitted in Japan.
- (2) Currently, union strikes are only admissible for interest disputes, unfair labor practice by the employer, and hostile collective bargaining. Moreover, calls to strike must garner the approval of no less than half of all union members by means of direct and secret balloting, and the legitimacy of strikes are determined by local labor authorities. Therefore, union strikes in Taiwan receive considerably more political interference than those in the United States or Japan, which are regulated by independent authorities. As a resolve, the unduly constraints on unions' right to dispute should be lifted. Unions should be authorized to self-govern their labor affairs, which would make them liable for the consequences of their dispute behaviors.
- (3) According to current laws, teachers and workers who are employed by the Department of Defense and its affiliated agencies (institutes) or schools are prohibited from participating in strikes. Water supply businesses, power and fuel supply businesses, hospitals, securities businesses, financial information services businesses, and telecommunication providers may call to strike when the minimal operations are maintained. Local governments may force arbitration on and terminate disputes that are considered a breach of public interest. This regulation equates to the direct deprivation of union dispute rights. The restrictions on unions' bargaining and dispute rights should be loosened.
- (4) Currently, local labor authorities are tasked with handling affairs concerning parties and negotiators engaged in collective bargaining. A dedicated

“National Labor Relations Board” should be established within the Board of Decisions on the Unfair Labor Practices to address relevant affairs.

- (5) Unfair labor practices are characterized by private rights and non-private rights violations. Parties dissatisfied with the ruling of private and non-private rights violations can submit an appeal through civil and administrative action, respectively. The latter forfeits the protection that the adjudication system offers to unions and collective bargaining. The homogeneity of unfair labor practice dispute should be maintained to achieve a unified remedial procedure.
- (6) According to current laws, an industrial or craft union pertains the right to collective bargaining once it represents fifty percent or more of an enterprise’s workers. This clause is often disputed. As a resolve, the mode of operation adopted in the United States can be implemented, whereby a secret ballot is used to garner no less than one-half of member votes. The ballot should be hosted by the *National Labor Relations Board* to maintain impartiality and unify standards across all county/city labor affairs bureaus.
- (7) A dedicated labor court and provisions concerning legal dispute procedures should be established to address labor dispute issues.

### **Teachers’ Solidarity Rights Remain Restricted**

125. In response to Article 8 of the *State Report on ICESCR* concerning the restrictions of teachers’ solidarity rights, teachers may organize county/city-level industrial and craft unions. However, they are prohibited from organizing enterprise unions (school unions). Private school teachers largely refrain from joining unions in fear of negatively influencing their relation with their employers. The acute decline in birth rate in Taiwan has hindered student recruitment, particularly in private schools, consequently leading to wage and research fund cuts. Private school teachers are defenseless against the school’s decisions and almost no unions are available to represent teachers in bargaining and settling with the employer.

126. Civil servants are prohibited from organizing labor unions. Firefighters have requested the right to organize a labor union for two years but to no avail. Currently, only the National Association for Firefighters' Rights is available to firefighters. The convener of the association, former Kaohsiung firefighter Mr. Kuo-Yao Hsu, received over 40 reprimands by the Kaohsiung City

Government Fire Bureau for a variety of reasons within a span of several months in 2014, eventually leading to dismissal<sup>24</sup>.

127. The leave for union-related business (LURB) for teacher union representatives is not protected by law and exhibit unreasonable limitations. The *Labor Union Act* only provisions for the LURB of enterprise union representatives. Unlike enterprise unions, other union representatives seeking LURB must bargain with their employers. Advancements in the provisions for the LURB of national/city/county craft and industrial unions have remained relatively stagnant since their promulgation roughly four years ago, and representatives are forced to continue using the LURBs provisioned for teachers' associations. However, county/city majors and principles have threatened on numerous occasions to cancel LURB due to its lack of legal protection. Subsequently, the Control Yuan announced the *Jiao-Jheng-Zhi-Di No. 00115 (2014)* in July 2015, stating that the LURB of teachers unions has no legal basis. This led to the Major of Tainan County canceling the LURB of teachers unions and deferring the consult of LURB for teachers unions.
128. The *Labor Union Act* stipulates that employers shall reasonably provide LURB to directors or supervisors of labor unions. However, provisions fail to include non-directing/supervising members. The Ministry of Labor has also expressed concerns regarding this matter. However, the Control Yuan announced the *Jiao-Tiao-Zhi-Di No. 0050 (2014)*<sup>25</sup>, which was a survey report on the LURB of teachers unions, explicitly limiting LURB to directors and supervisors of labor unions. These provisions enabled city/county governments and school principals to reject to bargaining LURB from non-directing/supervising unions members on *Jiao-Tiao-Zhi-Di No. 0050 (2014)*. These actions clearly constitute the improper intervention of union members' autonomy. The Control Yuan further stipulated in *Jiao-Jheng-Zhi-Di No. 00115 (2014)* that the LURB principles negotiated between the Ministry of Education and the National Federation of Teachers Unions (NFTU) are illegal.
129. Nantou Teachers' Union submitted a request to the Control Yuan in November 2014 to investigate the illegal ability grouping of a certain middle school and the negligence of the country government. The request was

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<sup>24</sup> Report (Link: <http://ppt.cc/XRw8J>)

<sup>25</sup> Survey (Link : <http://ppt.cc/zIYIU>)

revoked by the county council with comments such as, “You are a civil servant. How can you sue the county major?” and “using LURB to disrupt the education system.” The council member moved to abolish LURB, to which the county major surprisingly concurred.

130. We suggest that basic protection for the LURB of craft and industry unions should be included in the *Labor Union Act* to provision for instances in which enterprise unions cannot be organized. Additional protection or room for bargaining should then be provided based on the number of union members. Furthermore, a request should be submitted to the Control Yuan for abolishing the *Jiao-Tiao-Zhi-Di No. 0050 (2014)*, which is a clear violation of the Two Covenants. LURB should not only be limited to directing/supervising union members.

### Collective Agreement Legislature

131. In response to Article 8, Paragraphs 105 to 107, of the *State Report on ICESCR and ICCPR* concerning collective agreement legislature issues, the amendments to the *Collective Agreement Act* in 2008 and 2014 enforced the obligation of employers to bargain in good faith, specified the bargaining period, and proposed supporting measures to handle disputes effectively. If the employer expresses no willingness to reach an agreement and the bargaining period extends over a period of six months, and if the employer is ruled without reason for disagreement based on the *Settlement of Labor-Management Disputes Act*, the competent authority rule for arbitration after considering the interests of both parties. According to the statistics announced by the Ministry of Labor, the number of collective agreement cases increased from 300 to 644 between 2014 and 2015, suggesting that the establishment of the adjudication system has a positive effect on the collective bargaining of unions. However, only 664 effective collective agreements have been produced from 5,424 unions nationwide, highlighting that although the *Collective Agreement Act* facilitates collective bargaining, negotiating entities (unions) are in recession. Therefore, the *Collective Agreement Act* only benefits those capable of negotiating. In actuality, these unions are typically capable of forming collective agreements without the support of government legislature.

132. Several flaws remain evident in the existing collective bargaining system:

- (1) The eligibility of relevant parties involved in collective bargaining influences the confidentiality of union members differently. During the bargaining process, employers often question the eligibility of the labor representatives (unions). For example, employers generally request that representatives of industrial or craft unions to present a list of members of their union to verify that fifty percent of the employees are members of the union. This affects the anonymity of the union members.
- (2) Only union members are permitted to participate in the bargaining process. This hinders external professionals from assisting in the bargaining process. According to Article 8 of the *Collective Agreement Act*, bargaining representatives are limited to union members or employer organizations unless written consent is obtained for the participation of external parties. These regulations are clearly targeted at employees because they often require professional counsel for specialized aspects of the agreement, for which they require written consent from the employer, consequently leading to unfair bargaining situations.
- (3) Certain employees require the gain the approval of their competent authorities before they are able to sign the collective agreement. Article 10 of the *Collective Agreement Act* stipulates that collective agreement must be approved by a competent authority when one party is a public-owned business entity, subordinate agency (institute) or school of the Ministry of Defense, a government agency (institute), or a public school. This regulation renders the signing of collective agreements extremely tedious. For example, Yilan County Teacher Union engaged in 14 consults with the Yilan County Government (school representative). The terms and conditions of the agreement were revised from 52 to 30, two of which remain pending, and only 20 reached consensus. Moreover, the county government (competent authority) only approved the agreement after an extensive period. In this instance, Yilan County Government served both as the employer's representative and as the competent authority.

133. As a resolve to the aforementioned flaws:

- (1) The eligibility of the bargaining parties should be determined by the National Labor Relations Board. When the eligibility of the bargaining parties is questioned, the eligibility of the unions can be determined by the National Labor Relations Board to avoid unnecessary deference in bargaining time. The commissioning of an impartial third party not only alleviates disputes effectively but also safeguards the anonymity of the

enterprise union members, eliminating them from becoming the targets of future harassment.

- (2) The limitation on the participation of bargaining representative should be revised to enable unions to invite professional counsel without consent from the employer, thereby balancing bargaining situations, and ensuring that employees receive professional assistance during the bargaining process.
- (3) The requirement to gain the approval of competent authorities before signing bargaining agreements should be eliminated. Instead, competent authorities can participate in the bargaining process to express their opinions and prevent the violation of law enforcement or prohibition. This approach can further reduce the time required to sign bargaining agreements and prevent the aforementioned situation in which the employer representative doubled as the approving competent authority.

### **Teachers' Unions and Collective Agreement**

134. The development of collective agreements (hereafter referred to as "agreements") is extremely slow. The Ministry of Education and Ministry of Labor stand idly by as teacher union agreements become stigmatized. The Ministry of Labor claimed that between 2006 and 2014, the number of agreements has increased from 75 to 300. Among which, close to 200 agreements were signed by the Kaohsiung Teacher Union (KTU) and various schools in Kaohsiung City. These agreements only contain a single term, that is, "Schools shall withhold membership fees." Therefore, these agreements can only count towards one agreement, and its symbolic value greatly outweighs substantive meaning. Minus the 200 agreements signed with private schools, only a few agreements signed with public and private enterprises remain.
135. In an agreement between Yilan County Teacher Union and the Yilan County Government signed mid-2015 clearly stipulated teachers shall work no more than eight hours each day. This provision was maliciously attacked by an anonymous newspaper, the National Association of Head Teachers, anonymous parent group, and county council members, claiming that the provision "obstructed children's right to education." Moreover, the Minister of Education publically announced, "Teachers must be present when students are presents," implying that teachers' duty hours should be extended indefinitely. The Ministry of Labor made no response to this

statement and failed to promote the importance of the agreements publically and defend the universal value of working no more than eight hours a day. On 26 September 2015, the Yilan County Mayor responded to a query proposed by a council member by stating that he disagrees that teachers are laborers. Since the promulgation of the *Labor Union Act* in 2011, which enabled teachers to form unions, only 3 private schools have signed agreements facilitated by the NFTU.

### **Right to Strike and Arbitration:**

136. Teacher unions are prohibited from striking. No progress has been made concerning this prohibition for two years. The arbitration mechanism is considered an improper intervention by administrative institutions. In response to the concluding observations and recommendations proposed during the First International Review, the Ministry of Labor introduced the arbitration mechanism into the *Act for Settlement of Labor-Management Disputes* legally enabling teacher unions to strike. However, arbitration committees are located in local labor bureaus (offices) and their members are elected by the county or city, making the susceptible to government influence. NFTU member unions had previously proposed two arbitration cases. The one was a dispute between KTU and the Kaohsiung City Education Bureau concerning remuneration for extra duty hours during lunchtime in elementary and middle schools. No substantive agreement was reached. Rather, the court merely ruled that the Education Bureau should enter bargaining with the union in accordance with the *Collective Agreement Act*. The second was a dispute between the Teachers Union of Taichung City and the Taichung City Government concerning supervisory duties in elementary and middle schools. During bargaining, the Taichung City Government insisted that the Arbitration Committee “reinitiate a tribunal.” Sources state that the government’s insistence stemmed from their inferior bargaining position. As a result, a court ruling has yet to be formulated although the statutory deadline has passed. Moreover, existing arbitrary decisions continue to be deferred, which elevates the risk of change exponentially. The NFTU publically expressed their opposition during a press conference held on 22 March 2016. These instances clearly show that Taiwan’s labor arbitration system, which was initially aimed to be fair and credible, is tainted by government intervention.

137. An adjudication system is incorporated into the *Act for Settlement of Labor-Management Disputes*, established in the Ministry of Labor. The initial decisions of the Arbitration Committee were relatively fair. However, the aforementioned amendments made by the Control Yuan on the LURB of teacher unions have had a considerable impact on the decisions of the Arbitration Committee. Unions without LURB cannot maximize their potential. Teacher unions believe that the right to strike should be decided upon by the unions themselves rather than relying on alternative support mechanisms such as adjudication or arbitration.

## Article 9 Social Security

### Social Security System

138. In response to the Paragraphs 121 and 137 of the *First State Report on ICESCR*, Article 15 of the *Public Assistance Act* stipulates, “Municipality and county (city) competent authorities shall, according to needs, provide persons in low-income or middle-to-low-income households who are able to work with vocational training, employment services, business initiation aid, or work relief programs to help them to be self-sufficient.” However, central and local governments frequently commission contractors to provide employment services to disadvantaged groups to conserve budget and human resources. According to the survey statistics announced by the Control Yuan in 2013, the Council of Labor Affairs (former Ministry of Labor) employed 1,672 formal personnel and contracted 1,829 labor dispatch personnel, becoming the leading public organization in Taiwan in terms of employing dispatch labor (formal-dispatch personnel ratio of 1.09:1). The majority of the dispatched personnel are distributed among employment services stations, creating a situation in which atypical disadvantaged groups are providing employment services to financially disadvantaged groups. This situation is ineffectual for improving the quality of employment services.

139. A survey of low- and middle-income households show that only 5.7% of capable household earners are trained professionals. The other 94.3% remains untrained. Among the untrained and financially disadvantaged persons, the primary reason for the unwillingness to receive training is the

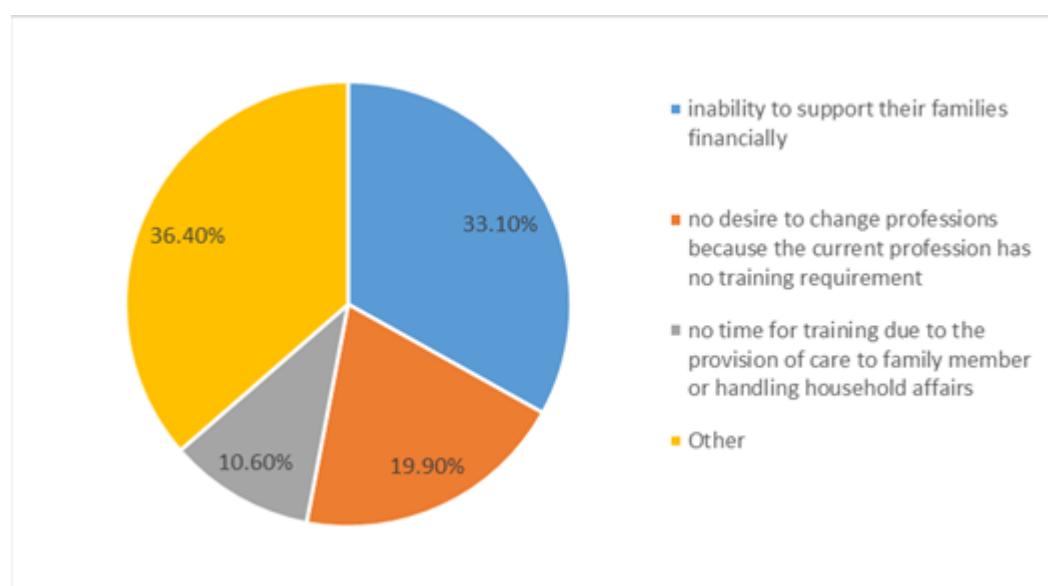


“inability to support their families financially” (33.1%), followed by “no desire to change professions because the current profession has no training requirement” (19.9%) and “no time for training due to the provision of care to family member or handling household affairs” (10.6%; Fig. 1). These statistics imply that although existing laws and regulations offer employment services to financially disadvantaged persons, the subsidization provided during the training period is inadequate to be subsistence requirements, resulting in a relative low willingness to receive training. Moreover, although the existing laws and regulations require municipality and county (city) competent authorities to organize professional training, the majority of counties and cities lack the resources to organize such courses. Instead, they opt to outsource training courses to private training institutes, leading to an increased degree of overlap among institutions. To remain competitive, training institutes focus on helping learners obtain professional certificates. This situation has actuated an unusual phenomenon in Taiwan where national licenses have become so common they no longer facilitate employment. Statistics released by the Ministry of Labor in 2014 show that 433,212 skill certificates were issued in that year. Among these certificates, 40,168 were for Chinese cooking (9.27%), and 12,508 were for web page design. These statistics shared similar results for low- and middle-income households. Among financially disadvantaged persons willing to receive training, 29% selected catering- and service-related courses and 25% selected computer- or information-related courses. These outcomes imply that with the immense number of financially disadvantaged persons funneling into similar courses, a sharp rise in competition in these industries will inevitably rise. Thus, helping financially

disadvantaged persons out of poverty is almost impossible without the provision of individualized services and training policies.

### Figure 1 Reasons not to receive training

140. We recommend completely revising the *Vocational Training Act* to facilitate future industries formulate plans to satisfy human resource requirements. This plan can then be applied to diversify professions, train enterprises, and



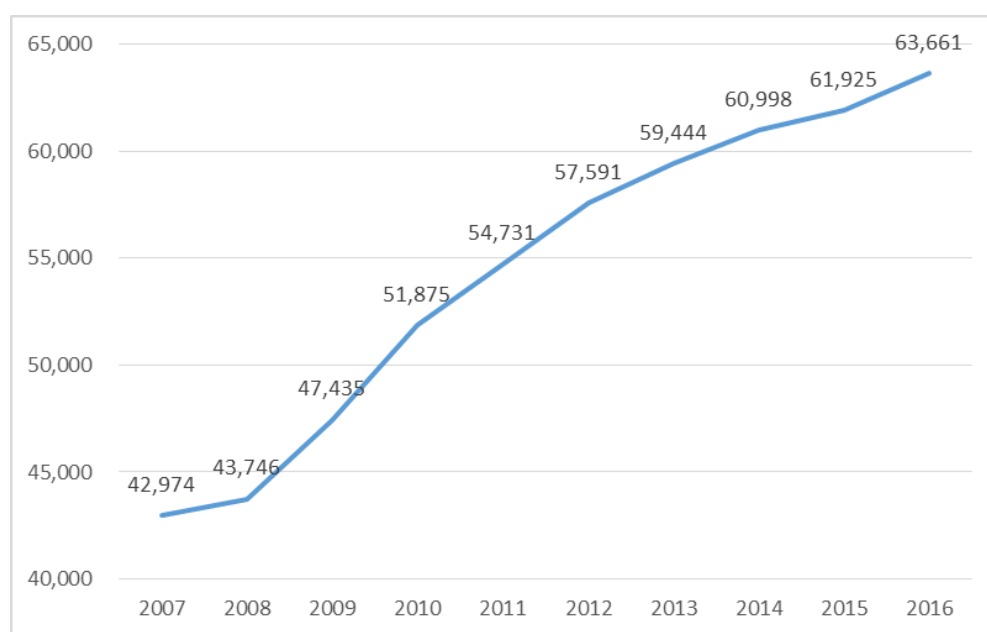
provide hiring incentives. In addition, training allowance for financially disadvantaged persons during the training period should be reasonably increased as an incentive for participation.

### Social Welfare Budget

141. In response to Paragraph 111 of the *Second State Report on ICESCR*, the increase in the social welfare budget was fundamentally an increase in cash transfers. For a long period, Taiwanese political parties have formulated various cash transfer policies to lobby votes. These policies have reduced social welfare to the transfer of cash. In a news report published in 2012, a former government official serving in the Ministry of the Interior confessed that cash transfers accounted for 94% of the social welfare budget in 2012<sup>26</sup>. At the same time, central and local governments manifested increasing

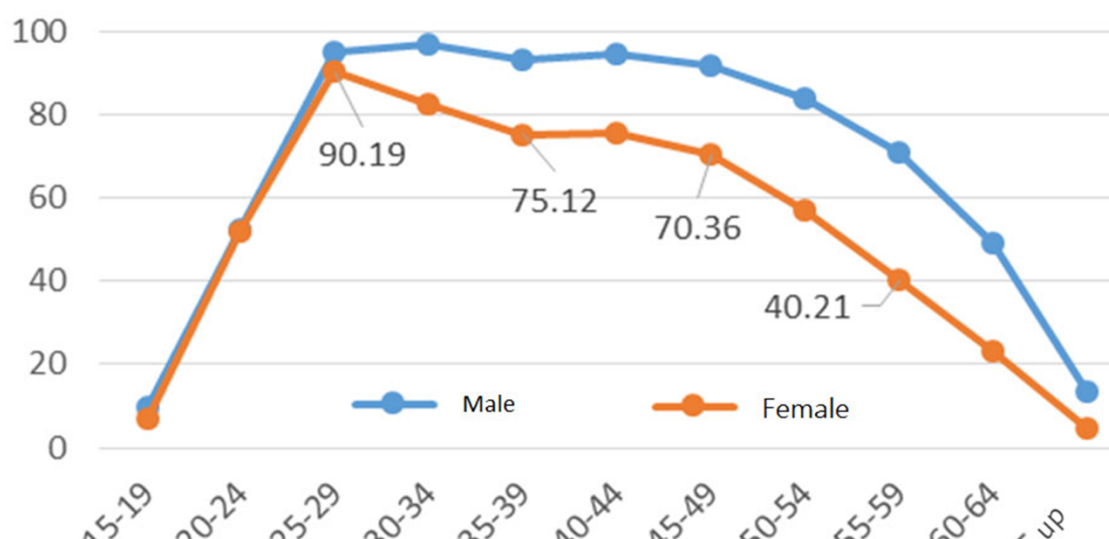
<sup>26</sup> Link: <http://www.epochtimes.com/b5/12/10/9/n3701883.htm>

financial deficit. The cumulative debt of the central and local governments increased from NT \$4.29 trillion in 2007 to NT \$6.36 trillion in 2016, which is a 148% increase in a decade (Fig. 2). In terms of the social welfare budget, the gradual increase in social welfare expenses is evidently attributed to political endeavors, in which politicians are eagerly willing to tap into the wealth of future generations to expand social welfare and, simultaneously, gain a political advantage. Many previous studies have warned that cash transfer policies may unintentionally exclude those truly in need, such as children and women, and that an overdependence of cash transfers severely hinders the provision of other services in social welfare policies. In addition, resource crowding destabilizes service quality. Cash transfers may also encourage women to leave the workforce and commit their time to household affairs, leading to a decline in the employment rate of



middle-aged women (Fig. 3).

**Figure 2 Government Deficit, by year, (unit: hundred thousand NTD)**



**Figure 3 Labor Participation Rate of 2015, by age group and sex**

142. We recommended returning social welfare to a centralized management system and reviewing the rationality of the social welfare budget and relevant expenses, thereby eliminating unnecessary cash transfer policies (e.g., free dentures for older adults over the age of 65 and free National Health Insurance for older adults over the age of 70), preventing local elections from excessively using welfare to their advantage but deepening the debt for future generations to cover, and ensuring the consistency in welfare eligibility and provision. The proportion of cash transfers can be gradually reduced to roughly 65% of the social welfare budget within a period of a decade, which is the average for the 28 OECD member countries. The retained budget can then be converted to providing public services, such as long-term health care or day care services. This approach would not only alleviate the government's financial burden but also create more job opportunities for a variety of services.

### **Social Assistance and Allowance**

143. In response to Paragraph 113 of the *Second State Report on ICESCR*, Article 5-1, Paragraph 2 of the *Public Assistance Act* states, "For persons who are capable of working but are unemployed, the calculation shall be based on base pay. As for persons who are recognized by the public employment service center as unemployed, including those who are at the age of 55 or elder or jobless after having failed to find a job after three job matches have been conducted by the public employment service center, or who are participating in full-time vocational training, the period of unemployment will not be used in calculation. Unemployment benefits shall be listed and calculated as other income."

144. This provision serves to prevent welfare dependence. As a counter effect, it classifies long-term unemployed persons as persons receiving a base income (NT \$20,008 as of 2015), which exceeds the minimum income bracket set in various cities and counties. Thus, long-term unemployed persons are marginalized from the social assistance system. Although the *Public Assistance Act* also excluded unemployed persons from imputed income calculations, unemployment benefits are only paid for a maximum of six months, which can be extended to nine months for specific cases, such as

middle- to old-age unemployment and financial hardship. Those that fail to secure employment after six months no longer receive support. The number of long-term unemployed persons (people who are unemployed for over twelve months) are gradually increasing. A total of 72,000 long-term unemployed persons were recorded in 2015 with an additional 60,000 persons unemployed for six to eleven months. The two groups account for 31.4% of the total number of unemployed persons in Taiwan. These persons are considered unqualified to receive unemployment benefits, becoming orphans of the social assistance system.

145. Current provisions concerning unemployment insurance explicitly state that only non-voluntary unemployed persons are eligible to claim unemployment benefits. Employees are often forcefully dismissed by their employers and classified as voluntary resignation. In these instances, employees not only lose their eligibility to claim for unemployment benefits but also forfeit social assistance eligibility because of imputed income calculations
146. Currently, social assistance is calculated based on the median of disposable income. Disposable income data is collected from a two-phase sampling process comprising 20,000 questionnaires. Thus, the credibility of the data is questionable. Numerous advanced countries use income tax data for calculation purposes. In Taiwan, the taxation of a number of income sources, such as securities and futures income, has little or no legal basis or is relatively low, such as land value tax or consolidated income from land and house transactions, creating a large gap between personal finance and taxation information and actual conditions. Moreover, a portion of the population is involved in the underground economy, such as street vendors. These factors make calculating a threshold for social assistance or measuring household income extremely difficult. Relevant authorities are incapable of confirming whether applicants have intentionally concealed income, leading to the inverse distribution of social assistance.
147. We recommend discarding the imputed income system and return to determining social assistance eligibility based on households or individual financial situations. The government should include capital gains into the scope of mandatory declaration through tax reform and levy taxes reasonably based on national financial conditions. In addition, regulations should be amended to enforce street vendors with a monthly turnover of less than NT \$200,000 to invoice their transactions. These approaches would

enhance the integrity of household and individual income data and avoid the inverse distribution of social assistance.

### **National Pension Insurance**

148. In response to Paragraphs 129 and 130 of the *Second State Report on the ICESCR*, *National Pension Insurance* was only ratified in Taiwan in 2008. As part of the occupational social security scheme, unemployed persons are forcibly characterized under “unemployed persons insurance,” creating a situation in which weak earners mutually insure one another. However, unemployed persons manifest a weak capacity for insurance payments, leading to a sharp decline in national insurance payment rate to 47% and sentencing the future finance situation of national insurance to turmoil. The majority of the unemployed persons insured under the National Pension Insurance are homemakers. Persons that forfeit their basic national retirement security due to the inability to pay the National Pension Insurance constitute a violation of Article 9 of the *ICESCR*.

149. Labor insurance is substantially better than the National Pension. The annual income replacement rates for National insurance and labor insurance are 1.3% and 1.55%, respectively. In addition, the insured salary for labor insurance is adjustable, whereas that for the National Pension is a fixed rate currently lower than that of labor insurance. In the past, many homemakers acquire labor insurance through craft unions. The review process in craft unions is relatively lenient, motivating homemakers to join craft unions and, by extension, labor insurance once National Pension became mandatory in September 2008. Union members increased from 2.37 million in 2008 to 2.55 million in 2011. This competitive association between National Insurance and the labor insurance of craft unions has caused the payment rate of National Insurance to drop below 50%, exacerbating Taiwan’s financial crisis.

### **Farmer Health Insurance**

150. The *Farmer Health Insurance Act* was ratified in 1989. The medical insurance portion of the Farmer Health Insurance was merged into the National Health Insurance in 1995, retaining lump-sum payment items, such as

childbirth, disability, and death. Therefore, the Farmer Health Insurance is unrelated to the National Health Insurance

151. *The Farmer Health Insurance* has been operating at a cumulative loss since its launch because of its low insurance rate of 2.55% on a fixed insured salary of NT \$11,100, translating to a monthly payment of NT \$78 dollars per person. The government has budgeted a total subsidization amount of NT \$150 billion, rendering the Farmer Health Insurance closer to a welfare allowance scheme than a social insurance scheme.
152. The most prominent incentive to subscribe to the Farmer Health Insurance is that members become eligible to receive farmer pension payouts as characterized by the Provisional Act Governing the Welfare Allowance for Elderly Farmers. In accordance with the latest amendments in 2015, subscribers of the Farmer Health Insurance for a cumulative total of 15 years or more and are 65 years or older are eligible for a pension payout of NT \$7,000 per month. Subscribers of less than 15 years are eligible for a pension payout of NT \$3,500. In the past, subscribers need only have joined for six months to be eligible for the NT \$7,000 criteria. This caused drastic repercussions. Therefore, relevant regulations were extensively amended.
153. In the past, an eligibility criterion of the Farmer Health Insurance was that the applicant must own at least 0.25 hectares of agricultural land. This criterion has since been amended to 0.1 hectares of self-owned or 0.2 hectares of leased agricultural land. However, most landowners typically engage in verbal commitments with tenants rather than written agreements. Therefore, Farmer Health Insurance has become a scheme specifically for agricultural landowners rather than farmers themselves, creating a contradicting situation in which young farmers are unable to reap the benefits of labor insurance.

### **Labor Insurance and Retirement**

154. In response to Paragraph 134 of the *State Report*, occupational injury insurance is part of labor insurance. It is not mandatory because of labor insurance is voluntary. Therefore, only a portion of laborers is protected for occupational injuries, with roughly 1 million laborers unprotected and not eligible for any type of occupational accident insurance payout.
155. In response to Paragraph 134 of the *Second State Report on the ICESCR*, owners of companies with four or fewer employees are not mandated to

subscribe to labor insurance, forcing these laborers to join a craft union and pay three times the insurance fee for labor insurance, resulting in the unfair treatment of employees.

156. In the past, pension payout for labor insurance was only available as a lump sum. Pension annuity was only introduced in 2009, finally improving the inadequacy of pension insurance. Estimations of government finances show increasing pressure in annuity payouts attributed to Taiwan's aging society and low birthrate. At the current rate, labor insurance reserves will deplete in 2027. Although the eligible age for annuity payout has been raised to 65 and rates have been scaled upwards by 12%, financial burden remains critical. In this context, an imminent challenge is developing a means to sustain the development of labor insurance.
157. The *Labor Standards Act* was amended in 2005, in which the previous Defined-Benefit Plan was converted to the Defined-Contribution Plan. Enterprises were tasked with contributing 6% of the employees' salaries to their personal labor insurance account. Since then, the labor insurance fund has accumulated NT \$1.5 trillion. This fund was initially managed by an elected Labor Pension Fund Supervisory Committee. This responsibility was transferred to the Bureau of Labor Funds, Ministry of Labor, in 2014. It has since been adopted as a tool for unrelated political endeavors.
158. In reference to Paragraphs 9 to 13 of the *Special Chapter on Indigenous People*, this chapter entails the violations to the social and cultural rights of Indigenous people relating to long-term health care.

## **Employment Insurance**

159. In response to Article 9, Paragraphs 148 to 150 of the *State Report* concerning employment insurance issues, the report should explain why, in accordance with the *Employment Service Act*, more applicants for parental leave without pay serve in companies with 30 employees or more (51%) than those in companies with 30 employees or less (41%).
160. Since the introduction of the parental leave allowance in 2009, the payout amount has far exceeded the initial estimations of the Ministry of Labor. During the amendment process, the Ministry of Labor optimistically estimated that the upper threshold for parental leave allowance requested by working women would be no more than NT \$4.05 billion. Even if both parents receive the allowance for the full six months, the maximum payout



would be no more than NT \$8.1 billion. However, as of July 2015, a total parental leave allowance payout of NT \$4.89 billion has been made. It is estimated that over NT \$9 billion will be paid out by the end of the year.

161. In the five-year period between 2009 and 2015, the parental leave allowance payout has increased by 3.7-fold, from NT \$1.72 billion in 2009 to NT \$6.38 billion in 2014, exceeding unemployment payout of NT \$6.35 billion for the first time. The parental leave allowance accounts for 42.7% of the total employment insurance payout, also exceeding unemployment payout of 42.5%. As of July 2015, the parental leave allowance payout has reached NT \$4.89 billion, accounting for 49.4% of the total employment insurance payout. A comparison with the unemployment payout of NT \$3.77 billion (37.7%) in the same month clearly shows an expanding gap between the two percentages.
162. Among the four payout items of the employment insurance (i.e., unemployment payout, early reemployment allowance, living allowance during vocational training, and parental leave allowance), parental leave allowance accounts for almost half of all payouts, which suggests unsupervised allocation. The excessive payout of parental leave allowance contradicts the primary objective of the employment allowance; that is, to provision for future unemployment and alleviate the financial hardship of unemployed persons.
163. The payout amount for parental leave allowance continues to rise, accounting for half of all employment insurance payouts. This phenomenon should be addressed with utmost stringency as it reduces the initiative that employment insurance has on unemployment. Moreover, parental leave allowance is unassociated to employment services institutes. Such payouts are typically the direct cash transfers of the Bureau of Labor Insurance. Therefore, they are comparatively different from unemployment payouts or vocational training allowance, which are both closely associated with the employment services system.
164. As a resolve, parental leave allowance should be characterized under labor insurance. Moreover, employment insurance premiums should be recalculated to exclude the 1% legal limit and to allocate a portion of the employment insurance budget to labor insurance. In this manner, labor insurance and employment insurance can be independently distinguished and maximize individual advantages, thereby achieving stable and sustainable national policy systems.

## Protection Workers of Occupational Accidents

165. In response to Paragraph 138 of the *State Report*, occupational accident insurance is restricted by the labor insurance framework. It has an insured amount limit and only offers lump-sum payments for permanent disabilities without considering the effects that reduced mobility has on the future income of disabled laborers or difficulties in reemployment or transfer. Disability annuities and survivor annuities for occupational accident deaths are calculated based on insurance years, causing a severe payment inadequacy for short-term subscribers. Existing occupational accident compensation provisions are distributed among various laws and regulations and entail a number of different calculation methods. Employers are concerned that they would be forced to afford a greater percentage, and thus constantly obstruct laborers' requests for standardizing occupational accidents.

166. The premium for occupational accident insurance is excessively low in Taiwan. It is 0.21% compared to the global average of 1%, leading to conservative payout and low compensation and creating a vicious cycle.

167. In response to Paragraph 139 of the *State Report*, occupational accident allowance and reconstruction costs are not allocated from a fixed source. Rather, 40% to 60% are budgeted from the occupational accident insurance fund each year. Systematic compensation and reconstruction tasks cannot be established due to an unstable source of funding.

168. We recommend that

- (1) Laws and regulations relating to occupational accident insurance can be collated into an independent legislature to compensate for existing flaws and ensure that all laborers are included into the insurance scheme, thereby elevating payout standards and ensuring that all victims of occupational accidents are reasonably compensated.
- (2) Reintegration systems should be reinforced by legalizing "Occupational Injury Prevention Centers" and "Work Evaluation and Improvement Centers." Victims of occupational accidents should be provided with financial assistance during their integration process, and the management of occupational accident cases should be improved to facilitate the reintegration of victims of occupational accidents back into the workplace.
- (3) A statistics database for occupational injury compensation should be established to elucidate the work attributes, demographics, and health

condition of victims of occupational accidents applying for compensation and systemize policies concerning occupational accident prevention.

### **Insurance and Pension of Civil Servants**

169. In response to Paragraphs 141 to 145 of the *State Report*, the retirement benefits of public servants and teachers are characterized in two levels, specifically, Public Insurance and Public Service Pension Fund, both of which are currently experiencing severe financial crises and are heavily dependent on government subsidization. Previously, the Public Insurance required an annual subsidization of NT \$18 billion to remain solvent, and an estimated additional NT \$250 billion is required in future. By comparison, the Public Service Pension Fund requires an annual subsidization of NT \$150 billion, clearly highlighting that both the Public Insurance and the Public Service Pension Fund are not self-sustainable systems. Instead, they are highly dependent on taxpayers' dollars for support.
170. According to the statistics announced by the Public Service Pension Management Committee, the average age of the civil servants and teachers on monthly pension is 55.2 and 53.9, respectively. The early collection of pension benefits by civil servants and teachers is the root cause of financial strain. An actuarial report released by the government showed that the Public Service Pension Fund for civil servants will no longer be sustainable by 2020 and will be completely depleted by 2031. By comparison, the Public Service Pension Fund for teachers will no longer be sustainable in 2017 and will be completely depleted by 2027. This urgent financial crisis requires extremely political intervention. Otherwise, it will not only be an actuator of financial collapse but also hinder the sustainable development of the pension system for civil servants and teachers.

### **Basic Social Security for Aliens in Taiwan**

171. In response to Paragraph 154 of the *State Report*, 89 persons were recognized as Tibetans under Article 16 of the *Immigration Act* as of September 2015 and approved for residency and employment in Taiwan. However, Article 16 contains a sunset clause that excluded Tibetan refugees that entered Taiwan after 2008 from all social security. In accordance with the *Immigration Act*, social security is only provided to aliens that enter

Taiwan during designated periods, and not provisions are currently available that universally provide basic social security for aliens.

## Article 10 Protection of Families, Children, and Young Persons

172. In reference to Paragraphs 14 to 18 of the Special Chapter on Indigenous People, this chapter entails the care for infants and children for Indigenous families residing in urban areas

### Inadequate Prenatal and Postnatal Protection for Underage Mothers

173. In response to Paragraphs 161 to 165 on Pages 41 and 42 of the *State Report* concerning the maternity protection system in Taiwan, the top three reasons for the rise in infant mortality in Taiwan are premature birth, low birth weight, and perinatal pathological changes<sup>27</sup>. The premature birth rate of mothers under the age of 15 is 14.7%, 10% for mothers between the ages of 15 and 19, and 9% for mothers over the age of 19.<sup>28</sup> However, the *Genetic Health Act* only offers special subsidization for mothers over that of 34, neglecting to protect the high-risk group of underage pregnant persons.

174. We recommend amending the *Genetic Health Act* to include medical assistance to younger pregnant women.

### Daycare System

175. In response to Paragraph 172 of the *State Report*, statistics proposed by the Ministry of Education in 2016 that 141,698 children are enrolled in public preschools (30.7%). The other 69.3% are in more costly private preschools. The percentage of children in public preschools decreases concurrently with their age (only 27% of 3-year-old children have the opportunity to enter a public preschool). According to the statistics presented in the 2013 Women Marriage, Fertility, and Employment Survey released by the

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<sup>27</sup> R. Y. Lin. *Key Policy to Uphold National Values - Providing Comprehensive Medical Care to Premature Infants*. **Premature Baby Foundation Newsletter**, Vol. 86. (<http://www.pbf.org.tw/html/content.asp?NSID=4&MGVOL=86&ID=1325>)

<sup>28</sup> Ministry of Health and Welfare National Health Department Statistics

Directorate-General of Budget, Accounting and Statistics, Executive Yuan, the average monthly fees for private preschools are NT \$8,930, which is twice that of public preschools. Therefore, preschool fees have become a substantial financial burden to parents of young children. Not only has Article 10 of the *ICESCR* urged countries to provide necessary assistance to families for children's education, the *Early Childhood Education and Care Act* also stipulates that the government shall provide all children with high-quality, universal, affordable, and accessible educare services. A substantial gap currently exists between available public educare services and the total ubiquitous of educare services. Moreover, the availability of educare resources varies considerably in different regions of Taiwan. These situations require the immediate attention of the government. We recommend that the government can continue formulating policies to provide free admission to preschool for five-year-old children, establish more affordable public preschools, and provide affordable daycare services for children between the ages of three and four. In addition, the government should endeavor to achieve resource equilibrium throughout Taiwan, providing children in all regions with an equal opportunity to receive public resources.

### **Daycare Services are Inadequate and Expensive; They Fail to Contribute to the Family Care**

176. Article 23 of the *Act of Gender Equality in Employment* stipulates that companies with 250 employees or more should provide breastfeeding and daycare facilities or appropriate childcare measures.<sup>29</sup> However, small and medium enterprises (SME)<sup>30</sup> account for roughly 97.6% of all companies in

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<sup>29</sup> The size of the company applicable to this regulation was revised from 250 employees or more to 100 employees or more during 11<sup>th</sup> Review Meeting in the first quarter held by the ninth Executive Yuan on 3 May 2016.

<sup>30</sup> According to the Standards for Identifying Small and Medium-sized Enterprises, the term "SME" as used in the Standards shall mean an enterprise which has completed company registration or business registration in accordance with the requirements of the laws, and which conforms to the following standards: (1) The enterprise is an enterprise in the manufacturing, construction, mining or quarrying industry with either paid-in capital of NT\$80 million or less, or less than 200 regular employees. (2) The enterprise is an enterprise in the industry other than any of those mentioned in the Sub-paragraph immediately above and either had its sales revenue of NT\$100 million or less in the previous year, or has less than 100 regular employees.

Taiwan, and the employment population in SMEs account for 78.12%<sup>31</sup> of the overall employment population in Taiwan. Therefore, the majority of the employment population do not benefit from the provisions of Article 23.<sup>32</sup>

177. Based on a survey conducted by the Ministry of Labor<sup>33</sup>, only 4.1% of enterprises with 250 employees or more have daycare services. Moreover, among the 77.3% of enterprises that provide daycare measures, 73.8% have arranged with private daycare service institutes. These private daycares are profit-oriented. Therefore, we are doubtful that they provide affordable services that effectively reduce the burden of the parents. Even the Legislative Yuan has outsourced its daycare obligations to private contractors that only provide 10% to 20% discounts, thereby only marginally alleviating parents' financial burdens<sup>34</sup>.

178. In terms of *the 5-year-old Child Education Support Plan* mentioned in the *State Report*, over two-thirds of the preschools in Taiwan are private institutes<sup>35</sup>. Therefore, the contribution of "free learning" is limited because private providers may use other forms of payment to turn a revenue. Therefore, the support plan cannot resolve the structural problem of the over-monetization of preschools.

179. The national coverage of the "Elementary After School Care Program" is 66.79%, implying that participating schools remain insufficient. Moreover, the primary issue with this program is the inflexibility of after school care hours. Workers in Taiwan largely leave work relatively late. However, elementary schools only provide after school care services until five or six o' clock in the evening, which creates a problem for parents to pick up their

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<sup>31</sup> 2015 White Paper On Small And Medium Enterprises In Taiwan 2015 released by the Small and Medium Enterprise Administration, Ministry of Economic Affairs ([http://book.moeasmea.gov.tw/book/doc\\_detail.jsp?pub\\_SerialNo=2015A01237&click=2015A01237#](http://book.moeasmea.gov.tw/book/doc_detail.jsp?pub_SerialNo=2015A01237&click=2015A01237#))

<sup>32</sup> On 21 March 2015, Legislator Yu-Ming Wang indicated during interpellation that the subsidization of the Ministry of Labor for the establishment of daycare facilities in enterprises only accounted for 1.1% of the companies in Taiwan. Please refer to the full report for more details: <http://www.appledaily.com.tw/realtimenews/article/new/20160321/820771>

<sup>33</sup> 2014 Ministry of Labor Employment Management and Gender Equality Survey: The "Daycare Measures" of Enterprises with 250 Employees or More (<http://statdb.mol.gov.tw/html/svy03/0324menu.htm>)

<sup>34</sup> Media report published by the SDP on 21 March 2016 (<https://www.sdparty.tw/articles/244>)

<sup>35</sup> 6,560 preschools were registered between 2013 and 2014. Among which, 1,919 were public preschools, accounting for 29.25%. Please view the 2014 Education Statistics released by the Ministry of Education for further details ([https://stats.moe.gov.tw/files/ebook/Education\\_Statistics/103/103edu.pdf](https://stats.moe.gov.tw/files/ebook/Education_Statistics/103/103edu.pdf))

children. Public after school care services are also not available during the evenings or holidays and private after school classes are expensive. This creates a daycare problem for parents with low incomes or who are required to work at night or on holidays. In addition, the lack of nighttime and holiday care services directly affect the employment opportunities for women with young children and who lack informal support systems. These women are often unable to secure employment due to the inability to find care for their children.

### **Single-Parenting and Grandparenting Families and Anti-Discrimination Measures for Children**

180. In response to Paragraph 174 of the *State Report*, numerous subsidization measures have been proposed in the attempt to balance the living standards of disadvantaged and normal families and to conform with the Article 23 of the *ICCPR*, which states that families should be protected by society and the country, and Article 9 of the *ICESCR*, which states that assistance should be provided to families for the care of dependent children and under no circumstances should children be discriminated against. However, general laws and regulations are based on nuclear families. Article 7 of the *Income Tax Act* concerning special deductions stipulates that special deductions for education tuition are only available to children of a taxpayer studying in a college or university and special deductions for preschool children are only available to taxpayers with children under or equal to five years of age. These initially favorable provisions unintentionally excluded grandparenting families. We recommend that these regulations be revised to include grandparenting families. Moreover, Article 4-5 of the *Income Tax Act* concerning tax exemptions includes individual, spouse, and children. We recommend that parenting families be included in the tax exemption criteria.

### **Regulations Concerning the Sexual Exploitation of Children**

181. Referencing Article 19, Paragraphs 368-371 of the Shadow Report on the *ICCPR*, this article describes the violation of freedom of expression due to the abuse of police law enforcement.

## **Child Labor (Celebrities) Under the Age of Fifteen**

182. In numerous instances, the provisions stipulated in the Regulations Governing the Determination Criteria and Inspection of No Harm to Mental and Physical Health in Article 45 of the Labor Standards Act are more stringent than the Labor Standards Act, particularly in protecting child labor. The lack of centralized regulations in the past resulted in the ratification of numerous labor contracts for child celebrities in accordance with the Labor Standards Act. Provisions in the Regulations Governing the Determination Criteria and Inspection of No Harm to Mental and Physical Health in Article 45 of the Labor Standards Act regulate that children under the age of six shall work no more than two hours per day, those between the ages of six and twelve shall work no more than three hours per day, and those between twelve and fifteen shall work no more than four hours per day. In addition, the number of working days during semester breaks shall not be more than two-thirds the total number of break days and no work is allowed within seven days of the beginning of the semester. These provisions substantially benefited child celebrities, who are students obligated to attend compulsory education.
183. However, contracts pertaining to child celebrities must be reviewed by the local government. This implies that local governments are responsible for investigating illegalities, putting the implementation of the aforementioned provisions in question. Many celebrity agents adopt a non-employment relationship with child actors to evade disadvantageous laws and regulations. Thus, we suggest that stronger intervention should be provisioned.

## **Child Labor and Child Labor Protection**

184. In Taiwan, child labor is defined as the employment of persons fifteen years and older and younger than sixteen. The work hours and labor conditions for children over the age of sixteen are the same as general adults. Flexible work hours for children over the age of sixteen and younger than eighteen can be arranged. However, these provisions should be distinguished from those for general adults. We recommend that children over the age of sixteen and younger than eighteen should work no more than ten hours a day and prohibited from working between 11 p.m. and 6 a.m.



185. The labor insurance laws and regulations in Taiwan stipulate that companies with less than five employees are excluded from mandatory subscription to labor insurance. However, the majority of underage workers are employed in such companies, implying that they are not protected from occupational accidents. Subsequently, underage workers account for a large percentage of the occupational injury rate per thousand people. We recommend amending provisions concerning occupational injury insurance to include underage workers into mandatory occupational accident insurance.

### **Flaws in the Marriage Interview System and Violation of Family Unification Rights Caused by Visa Flags**

186. To prevent the occurrence of sham marriages, the Taiwanese government implemented a transnational marriage interview system between Taiwanese citizens and citizen of 21 Southeast Asian countries. This system constitutes institutional discrimination. Subsequently, the interviewers for the Ministry of Foreign Affairs (MOFA) are assigned to relevant tasks following three days of training. Moreover, the lack of human resources has caused the application process to become extremely tedious. The Control Yuan highlighted numerous flaws in the interview system in its *Investigatory Report on the Management and Review of Transnational Marriage Affairs* released in 2012.<sup>36</sup> However, the Ministry of Foreign Affairs has yet to make relevant improvements. The Transnational Marriage Interview and Family Unification Rights Dialogue Forum was held in the TransAsia Sisters Association, Taiwan (TASAT), on 5 November 2014.<sup>37</sup> MOFA dubiously claimed that most of the Vietnamese spouses interviewed were married migrant workers flagged by customs in the attempt to rationalize the overly

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<sup>36</sup> Page 147 of the Investigatory Report on the Management and Review of Transnational Marriage released by the Control Yuan in December 2012 stated, “Completely eliminating illegal immigration by solely relying on an interview system is extremely difficult, and requires subsequent mechanisms to track the living conditions of PRC spouses ex post facto. The majority of PRC and overseas spouses pass their interviews and remain in Taiwan to start a new life. Constantly enforcing investigatory measures may exacerbate negative stereotypes towards transnational marriage.” (Link: <http://ppt.cc/PgkRx>)

<sup>37</sup> The TASAT organized the Transnational Marriage Interview and Family Unification Rights Dialogue Forum themed “Are Marriage and Neutralization Possible?” on 5 November 2014. A summary of MOFA’s presentation can be viewed on Page 8 (Link: <http://ppt.cc/IP7gl>)

subjective discretion of its interviewers. Further inspection into the meeting minutes provided by MOFA showed that they were inconsistent with the data<sup>38</sup> submitted to the Foreign and National Defense Committee, Legislative Yuan<sup>39</sup>. Moreover, a former first secretary of the Taiwan representative office in Vietnam was indicted by the Taipei District Prosecutors Office on suspicion of taking bribes for visa approvals.<sup>40</sup> We recommend that MOFA promptly evaluates its operations in this regard.

187. Article 23 of the *Immigration Act*<sup>41</sup> enables MOFA to flag the visas of overseas spouses that have received their dependent visa with a previous record of overstaying. These flags prevent overseas spouses from converting their temporary visas into permanent visas even if they are legally married, have families, and support their children and parents in Taiwan. They are required to leave the country every two to six months, and they are prohibited from legally working in Taiwan, severely affecting their family unification rights. In response, the Control Yuan produced a corrective measures report<sup>42</sup> targeting the MOFA on 31 July 2009 distinguishing foreign spouses from general foreigners. The measures explicitly state that the approval of visas for general foreigners can be freely decided upon by competent authorities. However, visas for foreign spouses involve the family unification rights of Taiwanese citizens. If MOFA is to exercise the same rights as the National Immigration Agency, it would be required to foresee that the stringency of all laws, regulations, and procedures are consistent with that of the National Immigration Agency. If the competency

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<sup>38</sup> The Dependent Interview Statistics of the Representative Office in Hanoi, Vietnam, published in the Commonwealth Opinions Webpage (Link: <http://ppt.cc/ABZzg>)

<sup>39</sup> Page 6 of the survey report (Doc. No. 1030008315) submitted by the MOFA concerning the overseas interview and consultation agencies in the 14th Meeting in the Sixth Period held by the 8th Legislative Yuan (Link: <http://ppt.cc/UrX8O>)

<sup>40</sup> "Taiwanese Diplomat Charged for Yaking Bribes for Visas in Vietnam," Politics Section of the Liberty Times Net on 30 April 2014 (Link: <http://ppt.cc/Q3N5a>)

<sup>41</sup> Article 23 of the Immigration Act (Link: <http://ppt.cc/owFq>)

<sup>42</sup> Abstract of the corrective measures report announced by the Control Yuan on 31 July 2009: The approval or rejection of visas for overseas spouses by MOFA is a political issue rather than a judicial issue. MOFA is clearly in violation of the basic human rights of the claimant and abuses the discretionary power endowed by the Regulations for the Issuance of ROC Visas to Foreign-Passport Holders. Overseas spouse visas should not be rejected in writing and applicants should be advised on remedial approaches to prevent a breach of basic human rights, equality of arms, and proper legal procedures. The approval or rejection of overseas spouse visa applications (temporary or permanent) should be distinguished from applications of general foreigners to prevent a breach of the equality principles stipulated in Article 8 of the Constitution of the Republic of China (Taiwan) and the right to family unification and reunion. (Link: <http://ppt.cc/6vxvq>)

of MOFA staff cannot match that of other institutes, they cannot flag visas voluntarily without the sufficient capacity to review each individual situation. In accordance with the *Investigatory Report on the Management and Review of Transnational Marriage Affairs*<sup>43</sup> announced by the Control Yuan in December 2012, Article 12 of the *Regulations for the Issuance of ROC Visas to Foreign-Passport Holders*<sup>44</sup> provides vague descriptions concerning the criteria for visa rejection, causing inconsistencies in the review outcomes for dependent visas by representative offices. MOFA should acknowledge the severity of this problem.

188. Flagging visas constitute substantive legal order that serves to issue administrative punishment to the flagged persons. This not only violates administrative procedures stipulated by Taiwanese law, but also breaches provisions concerning family unification and protection stipulated in Articles 10 and 16 of the *ICESCR*<sup>45</sup> and Articles 17, 23, and 24 of the *ICCPR*<sup>46</sup>. In actuality, the MOFA should not have the power to flag visa applications to eliminate the conflicting positions of the National Immigration Agency and the MOFA and the effects that negative processing has on family rights. A private shadow report published in 2012 has clearly highlighted this problem. However, no improvements have been made in the review meetings for laws, regulations, and administration measures hosted by the Ministry of Justice.

189. We recommend that

(1) Amendments be made to Article 23 of the *Immigration Act* to relinquish the right of the MOFA to flag visa applications. Moreover, the National Immigration Agency and the MOFA should cooperatively address this issue

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<sup>43</sup> Page 141 of the *Investigatory Report on the Management and Review of Transnational Marriage Affairs* announced by the Control Yuan in December 2012 states, "The rejection criteria for visa applications are stipulated in Article 12 of the *Regulations for the Issuance of ROC Visas to Foreign-Passport Holders*. With the exception of the following: 'Persons that are unable to sustain themselves in Taiwan or are suspected of engaging in illegal employment,' 'persons with evidence of intentional evasion of the law to remain in Taiwan,' 'Persons that may damage national interest, public safety, public order, and moral standards.' These items are considered ambiguous legal concepts that have yet to adopt a determination standard. Thus, they currently cause inconsistencies in the review outcomes for dependent visas by representative offices."

<sup>44</sup> Article 12 of the *Regulations for the Issuance of ROC Visas to Foreign-Passport Holders* (Link: <http://ppt.cc/ndDA4>)

<sup>45</sup> International Covenant on Economic, Social, and Cultural Rights (Link: <http://ppt.cc/VXwR0>)

<sup>46</sup> International Covenant on Civil and Political Rights (Link: <http://ppt.cc/atBk8>)

before this amendment is ratified. The National Immigration Agency should not treat flags as absolute administrative punishment.

- (2) Applicants of overseas spouse visas that conform to the exclusion criteria of Article 8 of the *Operation Directions for Banning Entry of Aliens*<sup>47</sup> should be permitted to enter Taiwan. MOFA should not, under any circumstances, flag the visa to prevent violating the applicant's work and residency rights.
- (3) MOFA should amend the ambiguous descriptions concerning visa rejection criteria stipulated in Article 12 of the *Regulations for the Issuance of ROC Visas to Foreign-Passport Holders* as suggested by the Control Yuan.
- (4) MOFA should immediately revise existing interview procedures, such as the erroneous announcement information on its official website<sup>48</sup>, clarifying to applicants that interviews can be conducted in writing rather than traveling to a specified interview location. Moreover, clear instructions for remedial approaches should be provided and promoted for unsuccessful marriage interviews.
- (5) Additional funding should be budgeted to remedy the inadequacies in representative offices, such as appointing additional staff to interviews or providing training to enhance interview professionalism and sensitivity.

## PRC Asylum Seekers

190. According to principles contained in the *State Report on the ICESCR*, member countries are requested to provide information concerning economic and social rights of asylum seekers, as well as information concerning their existing legislature and mechanisms to help asylum seekers reunite with their families. The State Report failed to mention that the Taiwanese government previously admitted nine PRC asylum seekers into Taiwan for "conditional legal residence." However, the wife of one of the asylum seekers, Mr. Peng Yen, remains in the PRC, unable to enter Taiwan for family reunification.

## Article 11 Adequate Standard of Living (Right to Adequate

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<sup>47</sup> Article 8 of the Operation Directions for Banning Entry of Aliens (Link: <http://ppt.cc/1nLx5>)

<sup>48</sup> The TASAT organized the Transnational Marriage Interview and Family Unification Rights Dialogue Forum themed "Are Marriage and Neutralization Possible?" on 5 November 2014. A summary of MOFA's presentation can be viewed on Page 3 (Link: <http://ppt.cc/IP7gl>)

## Housing, Food, and Water)

### I. Proactively Meeting Housing Standards: Housing Policies

#### Housing Discrimination [Paragraph 13 of the *State Report*]

191. Monetary subsidies are ineffective in resolving the long-lasting issue of housing discrimination in Taiwan's housing market, because people who have specific identities or those who belong to certain groups are often subject to differential treatment in housing. Taiwan's housing discrimination problem in the rental market is caused by an uncomprehensive legal system and market system, depriving fundamental protection for the rights of landlords and tenants. Landlords' concerns regarding their own rights, a lack of effective dispute settlement mechanisms, and stereotypes are common causes to why disadvantaged groups or individuals are often denied when renting. Be it purchase, rental, or government-sponsored social housing, neighboring communities often object to specific groups moving in. However, the government generally does not resolve these problems on the principles of freedom of contract or free market.

#### Housing Standards [Paragraph 213 of the *State Report*]

192. Although basic housing standards are defined in Article 34 of the Housing Act<sup>49</sup>, the following three problems remain an issue:

- (1) Indicator 1, "average minimum housing floor area per person," may be exaggerated. Floor area is calculated based on general square meters<sup>50</sup> rather than actual square meters.
- (2) Indicator 2, "types and number of important housing facilities," only include the number of "toilets," "urinals," "basins," and "bathtub or shower," (with

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<sup>49</sup> Article 34 of the Housing Act: In order to improve housing quality, central competent authorities shall establish basic housing standards based on social and economic development, public safety and health, and living requirements. Basic housing standards serve as a basis for housing policy planning and housing subsidies. The abovementioned basic living standards shall be examined and adjusted by the central competent authority every four years.

<sup>50</sup> For example, include rain sheds, balconies, driveways, or public spaces (with a ratio that ranges between 29.41% and 66.01%) in calculations for housing floor area.

one each per housing unit), which is insignificant as it results in substandard housing.

- (3) No proactive supporting plans exist for improving the conditions of the 170,000 households considered as substandard housing. According to Article 34 of the Housing Act, basic housing standards are only used as a basis for “housing policy planning and determining housing subsidies.”<sup>51</sup>

193. Recommendation: Conduct a comprehensive investigation on the housing conditions of substandard households and stipulate an implementation plan that highlights counseling and improvements, and employ supporting measures such as providing housing subsidies, thereby fulfilling the goal of policies established for governing basic housing standards.

### **Housing Information Transparency [Paragraph 214 of the *State Report*]**

194. Housing information transparency only applies to purchases/sales, whereas information transparency pertaining to rentals or other related areas are undervalued.

- (1) Home purchases: Taiwan currently exhibits inadequate regulatory oversight over the rental market. Although relevant laws were amended in 2011 to mandate the registration of actual real-estate transaction prices, many loopholes<sup>52</sup> have resulted in consumers facing difficulties in obtaining information on actual housing prices.
- (2) Rentals: The registration of actual real-estate transaction prices is exclusively for the purchasing and sales of houses. Excluding houses processed by realtors, houses for rent do not apply to the regulation mentioned above. However, 90% of Taiwan’s houses for rent are leased by individuals or small landlords. Less than 10% of houses for rent are managed by realtors, which indicates that rental information on the registration system does not accurately reflect the condition of the rental market.

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<sup>51</sup> Those who rent houses that are substandard should have a higher chance of success when applying for rental subsidies. However, after receiving rental subsidies, applicants must rent houses that comply with housing standards. A great disparity exists between the market rates of the two types of housing and the difference generally exceeds the subsidized amount. Although policies that promote rent subsidies can improve the housing standards of disadvantaged families, the affordability of housing is not properly considered.

<sup>52</sup> Problems include time of registration (builders only have to register after all houses are sold out or after project closure), registering general square meters rather than actual square meters, absence of information concerning clearances, and the fact that presale houses are not required to register.

- (3) Additional housing information: In addition to the purchase, sales, and rental of houses, the government should investigate and publicize problems related to the lack of completeness and accuracy of other housing-related information.<sup>53</sup>

### **Property Tax System [Paragraphs 214 and 215 of the *State Report*]**

195. Taiwan's property tax and transaction tax are overly lenient, and the property tax system is unreasonable, which are the primary causes of land speculation, hoarding, and commercial monopoly. In June 2015, amendments to Taiwan's Income Tax Act were completed (property and land income are jointly taxed regularly based on actual cost). However, two major loopholes exist, namely, the amendments only apply to land or property transacted starting in 2016, and the tax exemption of NTD \$4 million on housing investment profit is unreasonable.
196. In response to Paragraph 214 of the State Report, which claims that the percentage of current land value to market value will be adjusted annually, current land value serves as a basis for transaction tax and thus should equate to market value. Although the percentage has increased in recent years, data for the various counties and cities are exaggerated to different extents. For example, the current land value for tax-exempt land may be increased.

### **Social Housing [Paragraph 217 of the *State Report*]**

197. In 2011, the Ministry of the Interior published the Survey on Demand for Social Housing by Disadvantaged Families, which states that a total of 185,262 houses were needed in Taiwan's five municipalities, among which 31,114 were in Taipei City, and 52,439 were in New Taipei City. However, random sampling was conducted only on disadvantaged families and those working in the primary sector. The government has failed to elucidate the actual housing demands of the disadvantaged, which leads to a severe

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<sup>53</sup> Housing statistics such as various housing demands (e.g., purchases/sales, rentals, and housing for the disadvantaged), environmental risks, number of vacant houses, and housing additions and alterations.

deficiency in protecting the rights of the disadvantaged in relevant plans.<sup>54</sup> Furthermore, young people were not included in the survey but have since become the primary group that social housing is focused on.<sup>55</sup> The age limits on social housing applicants reflect a neglect of the housing demands for those aged 45 and above, which also adversely encourages landlords to impose age limits.

198. The *Housing Act* serves as a legal basis for social housing; however, details regarding the formulation and execution of social housing projects remain to be stipulated by local governments. For example, the *Regulations Governing the Rental of Social Housing in Taipei City* does not specify the proportion of houses guaranteed for disadvantaged families or principles for establishing rental rates. Rather than employ a tiered rental rate system in consideration for affordability and special needs, houses are leased at 70% to 80% of the market rate to disadvantaged families. This arrangement not only fails to ease housing burdens for the disadvantaged but also causes disadvantaged families to forfeit applying for social housing because of excessive rates or experience difficulties in paying rent on time, which are contradictory to the objectives of social housing projects.
199. The Ministry of the Interior stipulated the *Short Term Implementation Plan for Social Housing* and the *Mid- to Long-Term Promotion Plan for Social Housing* in 2011 and 2014, respectively. The objective of the plans is to confirm the target number of houses and subsidy budget for the government's social housing projects. However, the two projects did not consider the right to housing of the disadvantaged, and financial support for local governments was insufficient and in fact far from the financial demands of the practical implementation of relevant projects. Thus, local governments are often

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54 The majority of Taiwan's social housing is centered in Taipei City (91%). However, housing protection for the disadvantaged is extremely weak even in Taipei City. From 2011 to 2015, a total of 1,116 social housing units were built in Taipei City, among which 155 were reserved for those with special conditions or identities (14%), a number which is marginally higher than the 10% required by the Housing Act. This indicates that government housing policies for the disadvantaged are passive and that the volume of disadvantaged housing is underestimated. Taipei City's Jointly Developed Public Housing Project (570 housing units) rents 10% (57 housing units) to persons with special conditions or identities, and the Xinglong Public Housing Project (272 housing units) rents 30% (90 housing units) to low-income households of the former An-Kang Public Housing Project.

55 Taipei City and New Taipei City have been gradually implementing social housing projects targeted towards applicants from 20 years of age to 45 years of age with an annual household income that is less than the 50th percentile. Loose limits on income have resulted in insufficient care for the disadvantaged.



overly dependent on public-private partnerships when organizing social housing projects.<sup>56</sup>

### **Current Housing Conditions [Paragraph 216 of the State Report]**

200. Taiwan's housing market is characterized by a large number of purchases/sales (accounting for over 90% of the housing supply) an extremely small number of houses for rent on the surface (less than 10% of the housing supply), and an extremely small number of social houses and other forms of housing (less than 1% of the housing supply). In addition, Taiwan exhibits inadequate regulatory oversight (regarding housing prices) over the demand side of the housing market, which has resulted in severe land speculation in recent years. Furthermore, no oversight demands the transparency of prices, transactions, and other information for rentals, which indicates that the current condition of rentals cannot be elucidated. Thus, the data shown in Paragraph 216 of the *State Report* do not reflect the current housing conditions of the public. The data for rent-to-income ratio were sourced from cases managed by realtors, which only reflects a small portion of houses for rent and does not include houses leased by independent landlords. In terms of loan-to-value (LTV) ratio, the national median LTV ratio, which includes all counties and cities, is used to mask the staggering urban-rural gap in housing prices.<sup>57</sup> The fact of the matter is that the public is experiencing a growing burden for both rentals and purchases, yet the *State Report* has not further explored housing quality and the possibility of finding houses with adequate quality under such burdens.

201. Analysis of current housing conditions:

### **Table 1 Current Housing Situation**

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<sup>56</sup> For example, New Taipei City employed a build-operate-transfer model in 2013 consigned a builder to build social housing. To profit from the project, the builder initially sold 30% of the project's floor area as superficies right-based houses and leased 49% of the floor area at the market rate. Only 21% of floor area was leased at 80% of the market rate, which contradicts the values of social housing policies. After a series of protests from civil groups, the rental criteria were amended.

<sup>57</sup> According to the Housing Affordability Indicator Report published by the Construction and Planning Agency, Ministry of the Interior, the LTV ratio from April to June 2015 was 67.34% for Taipei City and 54.16% for New Taipei City, which indicates significant burdens for buying houses (the public exhibits a low affordability).

	Purchases/sales	Rentals	Others (e.g., social housing)
Percentage of housing supply	> 90%	<10%	<1%
Level of protection for buyer's/seller's rights	Medium	Low	
Level of oversight for price	Low	Low	
Affordability	Low	Medium	
Level of information transparency	Medium	Low	
Vacancy rate	High (the national vacancy rate in 2014 was 10.3%)	Unknown	

### Housing Subsidies [Paragraph 219 of the *State Report*]

202. Right to housing in Taiwan is centered on ownership. Taiwan's housing policies are geared towards assisting the public to satisfy their needs for buying houses and purchasing property (e.g., public housing or affordable housing for sale, or interest subsidies for housing loans), and the largest group that receives these subsidies is the middle class. Due to improper speculation in Taiwan's housing market, house prices have doubled or even tripled over the past decade. However, wages for Taiwan's youth has stagnated since the 1990s. Consequently, most wage workers find it difficult to buy houses. Even if wage workers decided to buy houses, they would have to bear excessive loan terms that may even reach 30 years. As a result, the higher housing prices are, the more subsidies the government provides, which then leads to unaffordable housing and even higher housing prices.

203. As housing prices continue to skyrocket, the effectiveness of subsidies begins to dwindle. Following the efforts of civil groups, the scope of rental

subsidies was expanded in 2015 and now cover 50,000 households. Nevertheless, rental subsidies have the following problems:

- (1) An over demand; the demands for rental subsidies significantly exceed the actual number of subsidized households.
- (2) An incomprehensive rental market; in particular, low-income households often live in illegal houses, which are not applicable to subsidization, resulting in the most economically disadvantaged groups being excluded from receiving subsidies
- (3) Receiving rental subsidies does not guaranty housing quality, because the subsidizing criteria only require applicants to live in legal houses and fails to understand the condition or quality of the houses.

## Rental Policies

204. Taiwan's housing development has always been centered on housing purchases/sales. With the traditional concept that equates owning property with wealth coupled with speculative investments, the majority of the public prefers to buy houses as a means of satisfying their housing demands.

205. The supply side of Taiwan's rental market has the following six characteristics:

- (1) Houses are owned by independent landlords, who manage these houses in person and without pay; thus, overly dispersed management results in an insufficient business scale.
- (2) Tax evasion or a failure to register houses that have been leased have become commonalities among landlords. The rental side of the housing market is thus becoming increasingly illegal, housing quality is inconsistent, and product information is often incorrect or not properly disclosed.
- (3) The government has not stepped in and managed the prevalent rooftop additions and illegal partitions, which results in poor quality housing and safety concerns.
- (4) Rentals only account for a small part of the housing market at 10.9%.
- (5) The return on investment for rentals is low. That for Taipei City is merely 1.57% (owners lower costs and subsequently make up for the difference through self-maintenance, tax evasion, and jerry-building).
- (6) The public's right to housing is not adequately protected. Relevant laws and regulations are scattered in the *Civil Code* and the *Land Act*, contractual rights and obligations are ambiguous, and the processes for dispute resolutions are

complex and time-consuming, which result in hesitation for both the leasing and renting party.

206. The size, demands, and current condition of Taiwan's rental market remains unknown due to a lack of statistical surveys. Consensus is that tenants in Taiwan are extremely under protected; thus, economically- and socially disadvantaged families, students, and the young working class account for a majority of the renting population. Young people set purchasing as a goal and renting as a temporary solution, and thus are willing to tolerate low housing quality and a lack of protection of their rights. On the other hand, tenants who are economically- or socially-disadvantaged have no other option than to rent. Despite this fact, they often face discrimination or rejection from landlords or are forced to relocate to houses with substandard quality or safety concerns due to rent increases. As a result, the economically- and socially-disadvantaged often have to relocate repeatedly.
207. Taiwan's price to income ratio has been among the highest in the world for many years,<sup>58</sup> and most individuals find housing in Taiwan unaffordable. Despite this leading to an increased rental demand, the government has been unwilling to proactively formulate rental policies. In 2015, a series of scams involving an unethical landlord, Shu-Jing Zhang, gained widespread media coverage. More than 100 former tenants were victims scammed by Zhang. Finally, the government launched measures of reform under significant public pressure. The Department of Land Administration, Ministry of the Interior subsequently proposed the Standard Contracts for Residential Lease Agreement and the Mandatory and Prohibitory Provisions of the Residential Lease.
208. Expanding and empowering the rental market are important focuses for future reforms. First, a tax reform is necessary for increasing rentals and creating a more transparent rental environment, because Taiwan currently has a large number of vacant houses that are owned by independent landlords who evade taxes. Developments in the rental industry should be

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<sup>58</sup> The price to income ratio (median of total house prices/median of household annual disposable income) of major cities around the world in the third quarter of 2015: Hong Kong (19), Sydney (12.2), Vancouver (10.8), San Francisco (9.4), London (8.5), Los Angeles (8.1), New York (5.9), and Tokyo (4.3). Taiwan's price to income ratio in 2015 was extremely high at 8.69, with the three highest cities being Taipei City (16.1), New Taipei City (12.95), and Taichung City (8.83). Data were sourced from the 12th Annual Demographia International Housing Affordability Survey (2016) and the 2015 Third Quarter Housing Statistics published by the Construction and Planning Agency, the Ministry of the Interior.

focused on elevating service standards and achieving greater transparency. Second, the rights and obligations of both the landlord and tenant should be clearly defined in a set of regulations, and effective intermediary mechanisms should be established for rental disputes, thereby elevating housing quality and rental rights. However, Taiwan’s rental market has many flaws that have accumulated over the years because of the absence of a proper system. Therefore, change in the current rental culture requires an overall review of current laws, amendments to existing laws, or establishing laws that are specifically for housing rentals, thereby securing a foundation for developing the rental market.

209. Overall suggestions for housing legislation and policies:

According to General Comment No. 4 of the ICESCR, Right to Adequate Housing, we propose the following five dimensions of policy reform and legislative suggestions:

Dimensions of reform	Prioritized policies and laws and regulations for the next four years
<p><b>Protect people’s right to housing and increase wellbeing</b></p>	<ol style="list-style-type: none"> <li>1. Stipulate a set of right to housing indicators that include safety, affordability, substandard houses and their location, rental discrimination, and housing for people with special conditions or identities. Conduct regular investigations, publish the results, and propose improvement plans.</li> <li>2. Amendments to the Housing Act:               <ol style="list-style-type: none"> <li>(1) Reinforce mechanisms for building social housing (laws and regulations pertaining to land, tax, finance, and organizations) and practice the principle of renting social housing to the disadvantaged (develop a reasonable screening mechanism, rent, and rental term).</li> <li>(2) Practice the principle of prioritizing housing subsidies for the disadvantaged.</li> </ol> </li> <li>3. Conduct a comprehensive review of any laws and regulations pertaining to the forced eviction of the public, establish public and necessary evaluation mechanisms, and enable public participation and arbitration and</li> </ol>

	remedy procedures as stipulated by the ICESCR.
<b>Property tax reform</b>	<ol style="list-style-type: none"> <li>1. Gradually increase and amend the government's appraisal standards to close the gap between appraisals and actual housing prices.</li> <li>2. Property tax amendments (the Land Tax Act, the Equalization of Land Rights Act, and the House Tax Act): Consolidate current land value and actual housing prices; consolidate current land prices, declared land value, and utility value; consolidate assessed present value of land and estimated land value; and review regulations on exempt land, tax rates, assessment frequency, and the composition of the assessment committee.</li> <li>3. Supporting measures: Enhance the financial discipline, tax rates, or tax base classifications of government authorities on various levels (e.g., imposed on the disadvantaged renting public land for non-public use or superficies).</li> </ol>
<b>Comprehensive information and market management</b>	<ol style="list-style-type: none"> <li>1. Announcing information on housing risks (e.g., flooding, earthquake resistance, dangerous geology, and fire and disaster relief) and promote a system for inspecting, auditing, and improving dangerous houses.</li> <li>2. Amend the Equalization of Land Rights Act, the Land Administration Agent Act, and the Real Estate Broking Management Act and the Regulations on Declaration of Real Estate Transaction Information and Inquiry Fees on the Information (e.g., rental, presale, and farmhouse transactions included), thereby significantly amplifying the timeliness and applicability of information.</li> <li>3. Include the registration of indoor net area and value in the purchase/sales contract.</li> </ol>
<b>Expand rental supply and develop relevant laws and</b>	<ol style="list-style-type: none"> <li>1. Encourage the private sector to lease houses to the disadvantaged (e.g., tax discounts and guaranteed rental and management).</li> </ol>

<p><b>regulations</b></p>	<p>2. Formulate a new law specifically for rentals to reinforce the protection of landlords’ and tenants’ rights, establish an effective dispute settlement mechanism, and promote the rental industry.</p>
<p><b>Reinforce administrative organizations and sources of finance</b></p>	<p>1. Reorganize the Construction and Planning Agency as the Division of Land and Housing and expand the business scope, labor, and budget of housing-related units.</p> <p>2. Establish an interdivisional integration mechanism for housing policies under the Executive Yuan, especially for integrating national land planning projects, urban projects, and housing projects.</p> <p>3. Designate and expand financial sources for housing funds and enable government authorities on different levels to establish government-run housing companies to promote housing businesses.</p>

## II. The Passive Protection of Right to Housing: Prohibiting Forced Evictions

### Problems Regarding the Implementation of the ICESCR’s Regulations on Prohibiting Forced Evictions

#### 210. Problems Regarding Domestication and Judicial Practice

- (1) Taiwan domesticated the ICESCR’s regulations on right to housing through the fragmented discussions of laws and regulations. Thus, the domesticated laws are only effective in principle, and little remedies are provided to citizens whose right to housing are violated. Using Huaguang Community’s civil case as an example, the court was not aware of the right to housing and particularly unaware of using the ICESCR’s right to housing as a basis for administrative judgment;<sup>59</sup> thus, residents of informal

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<sup>59</sup> The final verdict of the Huaguang Community Case: Please refer to the 2015 Supreme Administrative Court Verdict No. 543. The 1st Resolution of the Supreme Administrative Court Judge-Council in August 2014 concluded that “whether a claimant can directly pursue a cause of action against government departments is dependent on whether the content, terms, and conditions of the cause of action are clearly stipulated in the relevant regulations of the Two Covenants.” In the Huaguang Community Case, the judge asserted that the right to housing was not specifically defined in the ICESCR and thus cannot serve as a basis for cause of action. The verdict implied an affirmation

settlements who were forced to evict were perceived to have no cause of action in a lawsuit. The court's comments on the 1<sup>st</sup> Resolution of the Judge-Council in August 2014 directly limited the ICESCR's Paragraph 13 and Paragraph 15 under General Comment No.7, which emphasizes the possibility of remedies. Furthermore, the court continues to assert property rights as the only core form of protection for right to housing.<sup>60</sup>

- (2) We believe that the domesticization and judicial practice of the right to housing violates the spirit of Paragraph 3 and Paragraph 10 under General Comment No. 3 of the ICESCR (please refer to Paragraph 5 of General Comment No. 3) as well as that of General Comment No. 4 and Paragraph 13 and Paragraph 15 of General Comment No. 7. As a result, Taiwan's legal system is incomprehensive<sup>61</sup> regarding the prevention of evictions, and people are helpless when being forced to evict.
- (3) According to expert concluding observations, Taiwan must take immediate action in achieving the core obligations detailed in the ICESCR, that is, States must employ appropriate legislative measures and judicial remedies to fulfill the core obligations of ensuring the right to housing, prohibit forced evictions, and provide a definitive basis for the judicial right to defend and cause of action for people who are forced to evict.

#### 211. Problems Regarding the Implementation of Concluding Observations

- (1) The Preliminary Response Meeting by Various Authorities on Concluding Observations and Recommendations held in June 2013 reached a resolution regarding Concluding Observations No. 47 to No. 51. The resolution specifically requested the Ministry of the Interior to hold formal hearings on laws and regulations related to forced evictions, or on various forced eviction cases (e.g., Huaguang Community, Shaoxing Community, the Dapu Incident, Miaoli's Qiding Industrial Park, Phase 2 Development Project of Danhai New Town, the expropriation of land around Taoyuan International Airport MRT A7 station, and the expropriation case of the underground railway project in Tainan) and to postpone the demolition of land objects

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of using the right to housing as a right to defend; however, as subsequent reasoning denied the basis of cause of action in this case, the validity of implementing cause of action to defend is unclear.

<sup>60</sup> The court's perception, as explained above, is also apparent in J.Y. Interpretation No. 732, which asserts that freedom of residence as stated in Article 10 of the Constitution of the Republic of China, is a form of protection applicable to people who hold legal ownership over properties.

<sup>61</sup> Please refer to the 2015 Shadow Report No. 26 on the Review of the Initial Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants



for specific cases or requests stemming from unjust enrichment. However, as of June 2016, the Ministry of the Interior has not held relevant meetings. Soon after the preliminary response meeting, the government forcefully demolished four residences in Dapu, Miaoli, in July 2013, which subsequently led to one of the residents committing suicide. In August 2013, the government demolished Huaguang Community. The government also plans on recovering the residents' unjust earnings with no intention to postpone.

- (2) We believe that the Concluding Observations regarding the right to housing have not been practiced, which violates the ideology of Concluding Observations No. 7 and No. 13, which require the government to follow the content of the concluding observations and conduct reviews in a specific timeframe to fulfill its obligations as stated by the ICESCR. In addition, the government's failure to comply violates Article 3, Article 4, and Article 6 of the Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which is detrimental to the fundamental functions of the human rights reports system.
- (3) According to expert concluding observations, the government should review the implementation of concluding observations in the former human rights report, provide remedies for extant damage, and implement previous concluding observations during a specific timeframe.

#### 212. Problems Regarding the Translation of General Comments

- (1) The MOJ's Chinese translation of the general comments involving the right to housing is problematic. Although the translated content was edited in Taiwan, the translation by the MOJ included errors stemming from the simplified Chinese version published by the UN. The mistranslation of key messages may affect the reader's interpretation of the ICESCR's ideology or even diminish Taiwan's responsibilities in practicing the right to housing.
- (2) The MOJ's critical mistranslations cause confusion in the applicability of the two covenants. For example, Paragraph 8(A) of General Comment No. 4 states that "all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats." The underlined part of this sentence was mistranslated in the Chinese version as "procedural security of easement," which only entails procedural security. As a result, the President of the Executive Yuan quoted the mistranslation and publicly announced that residents of informal

settlements do not have the right to housing. Paragraph 16 of General Comment No. 7 states that "...must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available." The underscored section was mistranslated in the Chinese version as "take into consideration the circumstances (or use its discretion to decide whether)," which has become an excuse for the government for not fulfilling its responsibility of ensuring adequate housing for all households. In certain cases that involve informal settlements, the government only "takes into consideration the circumstances" when vacancies are available in public housing units. As a result, the government houses a small number of low-income households for a short period rather than taking all appropriate measures to the maximum of its available resources to ensure the availability of adequate housing as the case may be. Four similar mistranslations can be found in General Comment No. 4 and General Comment No. 7.

- (3) According to expert concluding observations, the government should reference translations by the private sector<sup>62</sup> and amend the Chinese version of the General Comments.

### III. Forced Eviction Due to Development

#### General Expropriation and Zone Expropriation

213. Many controversies arise from land expropriations, primarily because of a violation of the principle of proportionality and a lack of procedural justice. Regulations on public interest purpose and necessity of expropriation in the Land Expropriation Act are vague and lack concrete evaluation standards. The expropriation procedure is partially conducted by government agencies that need land, and expropriated households are often only aware of the fact during the expropriation process. At this point, public hearings held by the government are mere formalities. Although the people may voice their objections in the public hearings, these objections do not have practical influences on relevant policies. In certain cases, such as the Danhai New

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<sup>62</sup> [Translations by the private sector](#). Source: Li-Huan Wen, J.D., University of New Hampshire School of Law and NYS attorney.

Town Development Project, central authorities have deliberately manipulated and distorted public opinion. The specific deficiencies of the *State Report on ICCPR and ICESCR* are detailed as follows:

**214. Compensations are not Based on Current Market Value [Paragraph 221 of the State Report]**

The Act mandates that the value of expropriated land shall be compensated based on its current market value.<sup>63</sup> Compensations are generally determined by the Land Value Evaluation Committee after government agencies that need land employ appraisers to assess the land value; however, the committee lacks professionalism and time, and relevant reports and processes are not transparent.

**215. Problems Regarding Zone Expropriation [Paragraph 222 of the State Report]**

Zone expropriation is generally used by the government as a means of acquiring large pieces of land for urban development plans. The design of this system enables the government to acquire public land that is for sale and reduces the cost of acquiring land for public facilities. Thus, the government has financial incentives to frequently launch zone expropriations, which results in large forced evictions. As of the end of June 2010, 87 zones have been expropriated, which amounts to an area of 7,288 hectares. The primary problems of zone expropriation are stated as follows:

**(1) The mechanism for calculating right value forces landowners to leave the expropriated land:**

In contrast to Paragraph 221-1 and Paragraph 222-3 in the State Report, the zone expropriation system uses non-transparent right value calculations as a basis for allocating land to the original landowner. Furthermore, land appreciation that follows zone expropriation often obstructs many original landowners who held smaller pieces of land from receiving allocated land and are thus forced to receive monetary compensations instead.

**(2) In zone expropriations, low-income households and informal settlements are excluded:**

In contrast to Paragraph 222-3 of the State Report, the price difference for resettling in affordable housing projects within zone expropriations is unaffordable for most middle- to low-income households dwelling within

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<sup>63</sup> Article 11 of the Land Expropriation Act: The term “market value” referred to in the preceding paragraph shall mean normal transaction price in the market.

the expropriated zone. Furthermore, the government fails to fulfill its obligation of resettling residents of informal settlements. In practice, middle- to low-income households and residents of informal settlements usually only receive monetary compensation.

(3) **Excessive zone expropriation:**

Taiwan has an excessive amount of land designated for urban planning. In 2011, the Control Yuan corrected the Ministry of the Interior, which is the competent authority for urban planning, and state that there is a difference of six million between the forecasted population for urban planning and Taiwan's actual population, which indicates a severe oversupply of urban planning. However, government agencies on various levels continue to prepare for large forced evictions on the grounds of developing new urban projects, such as the Danhai New Town Development Project and Taoyuan Aerotropolis Project.

**216. Expropriation for the Purpose of Building Industrial Parks [Paragraphs 230 and 232 of the State Report]**

- (1) According to the selection procedure, as stated in Article 33 of the Statute for Industrial Innovation, joint selections are only to be held by competent authorities, public and private businesses, and business persons responsible for building on the expropriated land. The owner of the land selected for expropriation cannot participate in the selection process. A feasibility report is drafted after land is selected; however, no regulations require the inclusion of stakeholders' opinions as reference in the feasibility report. The so-called public hearing lacks regulations and thus is more of a briefing session held by government agencies that need land. Stakeholders' petitions have no binding power, which severely violates stakeholders' right to procedural participation.
- (2) Concerning the principle of proportionality, although the Ministry of Economic Affairs has instructed local governments to confirm industry demand, local governments are often insincere in their investigations and claim the existence of industry demand based solely on manufacturers' surveys without confirming whether manufacturers are truly planning to build or expand plants. As manufacturers' demands are mistakenly treated as industry demand, lowly-developed and unnecessary construction projects have sprouted around Taiwan. For example, 631 hectares of land were expropriated for the 4<sup>th</sup> phase of the Central Taiwan Science Park Development Project, which resulted in the disintegration of the local

community and the displacement of residents. After the residents had been forced to evict, the manufacturers broke their promise of moving into the new site, and legal proceedings are ongoing to this day.<sup>64</sup>

## 217. An Overview of Individual Cases that Violated the Two Covenants

### (1) Danhai New Town Development Project [Paragraph 229 of the State Report]

A briefing session was held by the Ministry of the Interior. However, government officials gathered citizens who supported the project and rehearsed the briefing, in which opposing citizens were pictured as the enemy. In addition, the Ministry of the Interior also contracted a survey company to directly request residents to write down what they agreed with on the survey.

### (2) Zone Expropriation of the Taoyuan Aerotropolis Project [Paragraphs 233, 234, and 235 of the State Report]

The Taoyuan Aerotropolis Project expected to expropriate 3,155 hectares of land, which affects more than 30,000 people. However, stakeholders had no opportunity to participate fully in decision-making prior to July 2014, which is when the content of the project was approved. The government held a hearing in May 2016. However, the nature of the hearing failed to achieve the basic requirement of genuine consultation, because no conclusions were made, and the debated content was not binding towards the Land Expropriation Deliberation Team. To resolve this problem, the Ministry of the Interior should immediately amend Paragraph 3, Article 11-1 of the Enforcement Rules of the Land Expropriation Act. In addition, building temporary housing areas (THA) prior to demolishing buildings is not applicable to all legal buildings within the expropriation range (e.g., Hongjhu Village, which was designated as a THA). Furthermore, the government does not guarantee adequate housing for economically disadvantaged households and tenants within the project.<sup>65</sup>

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<sup>64</sup> At the time, the government determined that AU Optronics Corp. intended to establish a plant in the park. However, AUO later retracted, and large pieces of land originally vacated for the 4th phase of the Central Taiwan Science Park Development Project remain idle. However, the Changhua government continues to plan to launch the 352-hectare Erlin Precision Machinery Industrial Park in a nearby area. This example indicates that the Ministry of Economic Affairs' instruction of "first confirming whether existing industrial land is available in the surrounding areas" has not been properly executed by local governments.

<sup>65</sup> The government only provides "one sum amount of housing aid, and timely and adequate welfare assistance, employment consultation, and referral to needed services and resources" to

**(3) The Expropriation Case of the Underground Railway Project in Tainan [Paragraphs 236 and 237 of the State Report]**

Approved by the Executive Yuan in 2009, this project plans to build an underground railway beneath existing housing. Approximately 5.4 hectares of land and 323 households are to be expropriated. However, the government did not seek stakeholders' opinions when formulating the project, and intentionally avoided certain protesting residents during communications. During the public hearing, a large number of police officers and staff limited the residents' speech, and the government continuously refused to hold hearings according to Article 107 of the Administrative Procedure Act. In addition, the government did not carefully consider alternative projects, such as substituting expropriation for requisition. Although the government provided substitute housing for expropriated households to purchase, the prices of the substitute housing were higher than that of the expropriated houses, and the life functions of the substitute housing were significantly inferior to that of the expropriated land.

**218. Suggestions**

**(1) Abolish the Zone Expropriation System**

Zone expropriation often involves development plans that require a large amount of land. Taiwan currently exhibits a severe oversupply of industrial land and land for urban planning; thus, the zone expropriation system is redundant. If not abolished, the system will lead to numerous large-scale forced evictions due to unnecessary land development plans proposed by the government.

**(2) Prohibit the Expropriation of Special Agricultural Districts:**

Special agricultural districts are excellent farmland designated and protected by competent authorities. As food safety has become an issue of national concern, the expropriation of special agricultural districts should be prohibited.

**(3) Practice Purchase Price Agreement:**

To reinstitute fair price negotiations and to only use expropriation as a last resort, specific regulations should be stipulated to require genuine

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economically disadvantaged households. Please see page 8 to page 126 of the 2014 Report for Formulating Projects in Taoyuan International Airport and Adjacent Areas.

consultation between parties that need the land and owners, and expropriation is prohibited unless this criterion is met.

**(4) Enhance Public Interest Purpose and Necessity Evaluations:**

Land expropriation refers to a government executing its public power and forcefully expropriating land that belongs to the people. Thus, the government must stipulate specific standards for determining public interest purpose and necessity, which are used to examine the legality and legitimacy of agencies that need land depriving the people of their right to property as protected by the constitution.

**(5) Enhance the Deliberation Mechanism:**

The original deliberation mechanism of the Land Expropriation Act is overly simple. Detailed reasons for the approval of expropriations should be specified. Central authorities should establish a land expropriation deliberation committee with citizens comprising two-thirds of the members. Furthermore, the members should be recommended by public/private schools and NGOs, and include professionals in agriculture and Indigenous culture. The committee should have the right to approve, the right to reduce the expropriation range, and the right to discretionarily increase the amount of subsidies.

**(6) Ratify the Hearing System:**

Currently, public hearings are held in cases of land expropriation. However, public hearings have low efficiency and a lenient due process. Often, agencies that need land deliberately create obstacles in the process. Thus, based on the Administrative Procedure Act, we request the establishment of comprehensive hearing procedures for land expropriations, which deprive people's right of property, thereby highlighting Taiwan's emphasis on the rule of law.

**(7) Practice Complete Compensation:**

Currently, compensation for expropriation is only applicable to structures above land and the land itself. However, residents' emotions and survival conditions are severely damaged after the loss of land and houses. Thus, additional laws on complete compensation should be ratified, thereby providing comprehensive protection of the rights of expropriated households.

## **Urban Land Consolidation**

219. Urban land consolidation is an important comprehensive development method used in urban planning in Taiwan, and is often used for constructing new areas or renewing old areas within extant urban plans. In recent years, large areas of urban land consolidation projects have been conducted, which has led to many controversies regarding right to housing. However, these controversies have not been mentioned in the State Report. Urban land consolidation deprives people's right to housing, employment rights, and right to property. However, the procedural protection (proper due process) and practical protection (resettlement measures) for those affected by urban land consolidation are severely insufficient. Urban land consolidation can be further classified as public urban land consolidation and private urban land consolidation, which respectively violate right to housing in the following aspects:

220. Owners' and residents' consent are not required for public urban land consolidation, which only requires the approval of competent authorities. In practice, this approach is similar to zone expropriation. The only difference is that residents receive a higher proportion of allocated land. Nevertheless, the procedural protection for public urban land consolidation is significantly insufficient. Aside from a civil participation system mandated in the urban planning procedure, no civil participation system exists in the process of urban land consolidation, and citizens are unable to examine the public interest purpose and necessity of the consolidation through proper due process. The threshold for civil objections is extremely high, yet the people have no voting power. In addition, public urban land consolidation plans lack resettlement measures. The limitation of minimum lot size excludes small landowners within the project from receiving allocated land and further deprives the right to housing of residents without property rights.

221. Currently, relevant laws mandate that private urban land consolidation projects shall be approved by more than half of the landowners who own among themselves over half of the total area of the lands,<sup>66</sup> which is equivalent to depriving the right to property and right to housing of objecting households upon majority vote. Similar to public urban land consolidation projects, resettlement plans or reconstruction plans for structures above land are not mandatory for private urban land

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<sup>66</sup> Paragraph 3, Article 58 of the Equalization of Land Rights Act: "...shall be approved by more than half of the landowners who own among themselves over half of the total area of the lands..."



consolidation projects. Under the limited legal framework, the consolidation committee (and its general assembly and board meeting) can determine the course of consolidation based on the assembly regulations and resolutions. Similarly, resolutions are reached based on the majority vote, which excludes affected parties from practical procedural protection. Although competent authorities are accountable for approving or rejecting relevant projects, disputes that arise during the process are often perceived as private right disputes between the consolidation committee and the plaintiff. As a result, objecting residents who are at a social and economic disadvantage often bear the burden of proof in the litigation process.

222. Overall, we believe that Taiwan's urban land consolidation system violates General Comments No. 4 of the ICESCR, which mandates "the right not to be subjected to arbitrary or unlawful interference," "individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors," and "conferring legal security of tenure." Furthermore, the system also violates General Comments No. 7 of the ICESCR, which require "an opportunity for genuine consultation with those affected," "the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available," "guarantee legal protection," "provision of legal remedies," and "provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts."

#### 223. Suggestions

- (1) The government should gather personal information on residents who have been forced to evict or who will be forcefully evicted due to urban land consolidation projects, and stipulate policies on resettling residents who have been forcefully evicted, and prevent future evictions from occurring.
- (2) The government should review and amend regulations on private urban land consolidation that allow the deprivation of residents' rights based on majority votes and examine unequal and inefficient deficiencies.
- (3) The government should review and amend deficiencies in the due process of public interest purpose and necessity of consolidation projects.
- (4) The government should review urban land consolidation and amend relevant laws, enhance information transparency and genuine counseling mechanisms for public participation, reinforce the protection of right to

housing for small landowners or residents without property rights, and prohibit forced evictions in urban land consolidation projects.

## Urban Renewal

224. The public interest purpose mentioned in Paragraph 223 of the State Report is an expectation rather than a reflection of the current system. The current urban renewal system emphasizes a continuous increase in building volume and lacks a comprehensive planning vision, which often leads to and overdevelopment of urban spaces. This, in turn, damages ecological resilience and makes cities vulnerable to major disasters, which contradicts the concept of public interest purpose.<sup>67</sup>In addition, urban renewal that is volume-oriented provides incentives for the enforcers of urban renewal to force residents to evict. Practical problems are described as follows:

### (1) **Insufficient Public Participation Mechanisms in Urban Renewal Projects**

Currently, the public can only participate in public hearings and hearings held after projects have been approved. Due to incomprehensive laws, the latter is identical to public hearings, which are essentially one-way policy announcements. As a result, residents who feel that their rights have been violated cannot effectively object, not to mention influence the content of the project.<sup>68</sup>This is a violation of the ICESCR's General Comment No. 12.<sup>69</sup>

### (2) **The Rights Transformation Mechanism Forces Current Residents to Leave Their Houses**

Article 31 of the Urban Renewal Act states that the rights transformation value shall be used as the criterion for exchange before and after renewal. However, appraisals are conducted by the executor of the project, which indicates a lack of information transparency. Additionally, the land value after renewal will exceed that of before renewal. Thus, residents are often burdened with mortgages that are millions of NTD and eventually displaced

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<sup>67</sup> Refer to the Control Yuan's 2012 annual project survey report "Regulations on Current Volume Transfer, Purchase/Sales, and Total Amount Control;" Nei-Zheng-Zi-Di No. 0040 issued in 2010 (Link: <http://goo.gl/mNWZeO>)

<sup>68</sup> Refer to Directions for Urban Renewal Hearing Proceeding of Ministry of the Interior, which lacks comprehensive procedures, mechanisms, and room for debate for those with conflicting opinions. The hearing for Youngchun's urban renewal project serves as an example, please refer to the following website: <https://www.youtube.com/watch?v=IXrhYdkr1BI>

<sup>69</sup> Refer to Item 20 of the Concluding Observations and Suggestions in the 2013 First State Report on ICESCR and ICCPR.

even after retrieving compensation for urban renewal. This is a violation of Paragraph 3, Article 2 of the ICCPR and Paragraph 13, General Comment No. 7 of the ICESCR.

**(3) Informal Settlements in Areas Designated for Urban Renewal are Not Protected**

Contradictory to descriptions in the State Report, the current urban renewal system does not specify that the executors of urban renewal projects are obligated to resettle residents of informal settlements. The current system requires executors to propose resettlement plans; however, in practice, these residents usually only receive monetary compensation. In certain cases, executors have used civil suites to forcefully evict residents of informal settlements prior to proposing a resettlement plan and to request the return of unjust enrichments, which is a clear violation of Paragraph 8, General Comment No. 4 and Paragraph 8 and Paragraph 9, General Comment No. 7 of the ICESCR.

**225. Suggestions**

- (1) Suspend all forceful demolitions that pose no immediate public danger in urban renewal projects.
- (2) The government should withdraw all civil suits that involve informal settlements in urban renewal cases founded on claims of demolishing buildings and returning land and unjust enrichments.
- (3) Abolish the current Urban Renewal Act. After having comprehensive discussions with the people and civil groups on renewal policies, stipulate relevant laws with the premise of not violating the Two Covenants. Relevant laws should provide adequate right to housing that protects tenants, households in informal settlements, and other affected parties.

**IV. Residents without Property Rights and Those that are Susceptible to Violations**

**Informal Settlements**

226. According to government statistics, there are at least 37,794 informal settlements that formed prior to 1963 due to historical reasons.<sup>70</sup> The State

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<sup>70</sup> Data source: Monthly Report on Construction Statistics by the Construction and Planning Agency, the Ministry of the Interior - [Statistics on the Demolition of Illegal Constructions](#) (as of August 2015)

Report failed to mention any problems related to informal settlements. However, in many major development plans (e.g., urban renewal, land expropriation, and urban land consolidation), residents of informal settlements are not legally recognized as stakeholders. Thus, no systematic channel of participation is provided for these residents. This leaves them susceptible to forced evictions, which is a severe violation of General Comment No. 4 and General Comment No. 7 of the ICESCR. Without conducting any genuine consultation, administrative agencies have quoted the Principles for the Disposal of Occupied National Public Use Real-Estate Managed by Administrative Authorities, the Disposal Guidelines for Occupation of State-Owned Real Estate not in Public Use, and regulations on local government-owned property management and autonomy to file civil suits against residents without property rights who are living on public land. Administrative agencies have further requested the demolition of buildings and the return of land and unjust enrichments while the residents cannot claim any legal protection. Numerous cases have occurred in Taiwan, some involving the government previously making oral commitments and guaranteeing to settle residents, such as the Huanmin New Village Case, Wolong Street Case, Huaguang Community Case, Shaoxing Community Case, and Liu's Family Case in Sanxia. In other cases, residents were forced to sign rental contracts with the government and continue to dwell in areas designated for development plants. These contracts stated that the leasing agency can terminate the contract anytime for reasons of development without giving tenants any compensation or resettlement assistance, such as the Guishan Dahu Private Urban Land Consolidation Project.

## **227. An Overview of Individual Cases that Violated the Two Covenants**

### **(1) The Liu's Family Case in Longpu Village, Sanxia**

The Liu family has dwelled by Sanxia River since the Qing Dynasty. The family farms for a living, and currently includes more than 30 family members. The working age men in the family work as farmers and are all illiterate. In 1977, the Liu family missed the opportunity to register their land and acquire property right. In late 2013, the Liu family received a demolition notice, which required the family to return the land and unjust enrichments.

### **(2) The Huaguang Community Case**

For further details, please refer to the *Review of the Initial Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants*.<sup>71</sup>

**(3) The Shaoxing Community Case**

For further details, please refer to the *Review of the Initial Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants*.

**(4) The Guishan Dahu Private Urban Land Consolidation Project**

The Dahu Private Urban Land Consolidation Project covers seven hectares of land in Guishan District, Taoyuan City. The consolidation committee sent demolition notices to the residents in late 2014. Currently, residents dwelling in several informal settlements have been forcefully evicted, yet ten households in informal settlements and ten households that rented public land remain on site. The residents were unable to take part in the decision-making process of the project (please refer to the aforementioned details on urban land consolidation), and were accused of being greedy when asking for reasonable compensation. The residents repeatedly petitioned for the city government to redefine the boundaries of the project in vain. Currently, there are no laws that protect these residents' right to adequate housing, and forceful eviction is a highly likely outcome.

**(5) The Huanmin New Village Case**

With more than 60 households, the land rights in this case are complex. In 1999, National Taiwan University of Science and Technology signed a Resident Resettlement Agreement. On December 24, 1999, the Urban Planning Commission, Taipei City Government held a project meeting and reached the solution of "development can only occur after resettlement has been completed." However, the government's policies changed in 2000, the construction of public housing ceased, and land designated for resettlements was withdrawn. In 2014, the entire site was designated as a cultural landscape by the Department of Cultural Affairs, yet National Taiwan University of Science and Technology filed a lawsuit against some of the

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<sup>71</sup> Related English news articles:

["MOJ under attack for brutal treatment of its own people."](#) The China Post. 2007.Dec.

["Government sues Huaguang Community residents - Mayor Hau reneges on resettlement promise."](#) Peopo Citizen Journalism. 2013.Jan.

["Huaguang residents want a plan."](#) Taipei Times, 2013.Feb.

["My Days at Huaguang: From 'Good Citizen' to 'Disobedient Activist'."](#) Thinking Taiwan. 2014.

residents on claims of demolishing buildings and returning land [A46] and unjust enrichments.

## 228. Suggestions

The government of the Republic of China (R.O.C.) has not used appropriate means to practice the protection of rights as stated in Paragraph 1, Article 2 of the ICESCR. Rather, the government uses rash administrative rules, such as “based on the government’s need” as a basis for forced evictions, which opposes the ideology of the ICESCR. To improve this situation, we request the following:

- (1) Suspend all current litigation procedures related to forceful evictions: Provide affordable housing for all forcefully evicted households.
- (2) The government should immediately conduct a comprehensive investigation on the distribution, location and number of houses concerning informal settlements, and reference the structure of the Spatial Planning Act to stipulate corresponding laws on improving the housing environment and protecting the right to housing.
- (3) Review the National Property Act, the Principles for the Disposal of Occupied National Public Use Real-Estate Managed by Administrative Authorities, the Disposal Guidelines for Occupation of State-Owned Real Estate not in Public Use, and other regulations on local government-owned property management and autonomy that cause forceful evictions, and stipulate adequate laws and regulations based on the previous point to protect the right to housing.
- (4) Stipulate security of tenure in the Civil Code to ensure that all citizens have the basic right to adequate housing.

## The Homeless

229. The State Report Failed to Mention Policies Regarding the Homeless; Policies Should Be Focused on the Four Following Issues:

### (1) **There is a Severe Shortage in Taiwan’s Homeless Shelters and a Lack of Diverse Counseling Mechanisms**

The government responded to Point 162 of the Concluding Observations for the State Report and stated that from January 2015 to September 2015, a total of 2,644 people in Taiwan were registered as homeless. The Ministry of Interior entrusted Professor Li-Zen Zheng and Professor Wan-Yi Lin from Department of Social Work, National Taiwan University to conduct a

research, which indicated that the ten homeless shelters in eight counties/cities in Taiwan with the largest homeless populations had a total of 340 beds for recurring accommodation. The maximum capacity was 415 beds, which indicates a severe shortage. In addition, homeless shelters in Taiwan primarily provide accommodation, yet lack comprehensive plans that involve tiered services.

**(2) Using the Household Registration System to Limit Welfare Services and the Provision of Resources**

Many county/city governments only provide emergency resources and services or short-term settlement services when personal safety concerns arise for homeless people that are not registered in that particular county/city. For other welfare resources, county/city governments request the homeless to return to the county/city that they are registered under, which will provide assistance to the homeless. Certain counties/cities even send the homeless from their jurisdiction to other counties/cities to reduce the stress caused by an increase in services and resources for the homeless and show no willingness or action in providing counsel to the homeless.

**(3) Evicting the Homeless**

The homeless have no location to store their personal objects, which affects their work and daily lives. Currently, the government only provides two storage facilities, which is a severe under supply. In recent years, the government has treated the homeless without dignity for the reason of environmental protection. In 2015, numerous scandals erupted, where the homeless were evicted and their personal items repeatedly removed, which eventually lead to the homeless committing suicide.

**(4) The Homeless Face Obstacles in the Rental Market**

In 2016, the government responded to Point 163-3 of the Concluding Observations for the State Report, which details life-rebuilding services, and stated that the homeless must list their rental address as their household registration address to apply for rental subsidies. When the homeless seek houses for rent, they often face obstacles such as expensive rent, rejection from landlords, and an excessive distance between the house for rent and their work location, which obstruct the homeless from successfully renting houses.

**230. Suggestions**

- (1) The central government should be responsible for establishing a national homeless integration project and transcend the welfare localism that is based on the household registration system.
- (2) The government should stipulate policies that prioritize housing for the disadvantaged and establish long-term settlement services and measures that fulfill the needs of the homeless. Furthermore, the government should establish timetables, raise finances, and conduct performance evaluations. Obstacles that prevent the homeless from receiving housing resources as subjects of social housing in the Housing Act should also be eliminated. The Housing Act should be in line with regulations on providing counsel and services to the homeless, and supplementary measures should be established to fulfill the homeless' short-, mid-, and long-term housing demands.
- (3) The government should provide employment opportunities, and provide life-rebuilding measures such as employment support, medical care, and psychological health care.
- (4) The government should prohibit evicting the homeless or reporting them to the police, and proactively provide public services that fulfill the practical needs of the homeless in terms of housing.

## **Other Groups Susceptible to Violations**

### **231. Tenants**

The current housing system exposes tenants to various forms of forced evictions. For example, in cases of forced evictions caused directly by development, tenants generally are not given alternative housing or compensation, and the government has not conducted surveys or collected statistics on the persons or groups with affected security of tenure. Article 37 of the Urban Renewal Act states that for leased lands and buildings within the urban renewal area, the tenant can request compensation equivalent to two months of rent. [A49] However, tenants still have to move, and the compensation is insufficient for the tenants to relocate back to their original house after the urban renewal project has been completed. Additionally, resettlement measures such as leasing priority are not offered, which results in tenants being unable to rent houses in their areas of choice. Furthermore, gentrification in cases of indirect forced evictions caused by urban renewal, land expropriation, and urban land consolidation causes tenants living in



adjacent areas to relocate unwillingly because of rising house prices. These conditions violate General Comment No. 4 and General Comment No. 7 of the ICESCR.

### 232. The Losheng Sanatorium Case

Losheng Sanatorium, founded in 1930, is located in Xinzhuang District, New Taipei City. In the past, the government used Losheng Sanatorium to quarantine people with leprosy. Losheng Sanatorium was Taiwan's only leper colony, but over the years, the residents have come to see Losheng Sanatorium as a home and a place where they wish to spend the rest of their lives.<sup>72</sup> However, Losheng Sanatorium was designated as a machine room by the Department of Rapid Transit Systems, Taipei City Government in 1994, and construction commenced in 2002. The tenants have protested for 11 years. Currently, the 140 remaining residents face a construction project with safety concerns on a daily basis. Practical errors in site selection,<sup>73</sup> an absence of communications during the site selection process, and forcing the residents to relocate to the medical wing violate the residents' right to adequate housing and right to health. In the Losheng Sanatorium's preservation movement, three requests were proposed based on the right to housing: impartial safety inspections, the immediate repair of the buildings and restoration of water and electricity, and to rebuild at the original site. Nevertheless, the government's response to the Losheng Sanatorium Case has failed to comply with the standards as stated in the Two Covenants. In the 2012 ICCPR State Report,<sup>74</sup> the government acknowledged its mistakes in the Losheng Sanatorium Case, yet employed no voluntary action to rectify these mistakes. We request the government and competent authorities to immediately respond to the requests of Losheng Sanatorium's residents, and to resolve problems pertaining to the right to health, such as an insufficient

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<sup>72</sup> Tian-Pei Li, honorary president of Losheng Self-Help Association, stated that "back then (when I was forced to move in), I wish I could disappear from this place like a puff of smoke, but now, I'm more attached to this place than anyone else."

<sup>73</sup> In 2012, the Control Yuan conducted an investigation and found that the MRT Xinzhuang Station machine room construction project had been postponed for 88 months, and the budget had been increased by NTD \$8.5 billion. Improper construction schedules led to cracks forming in the new Losheng Sanatorium building. The government's critical mistake was poor site selection. Regarding this issue, the Control Yuan corrected the New Taipei City Government, the Department of Health and Welfare, and the Department of Rapid Transit Systems, Taipei City Government.

<sup>74</sup> Item 183 of the 2012 State Report on ICESCR

number of caregivers<sup>75</sup> and medical facilities that do not satisfy patients' needs.<sup>76</sup>

## V. Other

### Tax Justice

233. In response to Paragraph 195 of the State Report, the ratio of income share has seemingly decreased; however, the effectiveness of decreasing the ratio of income share via transfer income (welfare subsidies) is significantly higher than that of transfer expenditure (direct tax). In 2014, the effectiveness of transfer income accounted for 89% of total redistribution, when in actuality, transfer income was only 11%. This indicates that the government uses transfer income to redistribute income, yet discards tax policies, which have direct effects. In 2014, Taiwan's tax incidence was only 12.3% (less social security contribution), which is among the lowest rankings in the world. However, welfare subsidies are mainly provided in cash, which is easily canceled by an increase in commodity prices. As a result, aggregate expenditure exhibits an increase, yet improvements in living conditions are limited.

234. The government's method of increasing expenditure and reducing income to achieve income redistribution causes further fiscal strain. Since 2007, the central government's average annual debt has reached NTD \$322.5 billion, which accounts for 12% to 16% of the government's total budget. Thus, the government's claim of effective income redistribution is in fact achieved by using resources designated for future generations.

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<sup>75</sup> Item 3 and Item 4, Article 3 of the Act of Human Rights Protection and Compensation for Hansen's Disease Patients states that the medical rights of patients include the allocation of sufficient medical and administrative manpower, lifelong treatment and care, and rehabilitation and nursing services. However, the caregivers at Losheng Sanatorium are currently understaffed, which violates the promise stated in Item 3 of sufficient manpower. Furthermore, a shortage of caregivers also leads to a violation of rights to nursing services, as stated in Item 4.

<sup>76</sup> Item 3, Article 3 of the Act of Human Rights Protection and Compensation for Hansen's Disease Patients states that the medical rights of patients include the establishment of medical facilities and equipment that meet the special physical and mental needs of Hansen's disease patients. However, rather than making improvements and establishing needed facilities at Losheng Sanatorium, management at the sanatorium request residents who need special care or who become ill to relocate to the new medical wing.

235. We propose the following suggestions for stipulating practical policies: The effectiveness of tax policies must first be improved to achieve comprehensive income distribution. Equity transactions, property transactions, and rent income should be taxed for capital gains tax. The partial deduction of the integrated income tax system, where corporate income tax can be used to offset income tax, should be discontinued.

### **Tax Deductions for the Disadvantaged**

236. In response to Paragraph 196 of the State Report, elevating tax deductions does not reduce, but rather increases the wealth gap. Taiwan has a lenient tax system, thus, the economically disadvantaged and the working class have low tax burdens. However, increasing tax deductions under a progressive tax rate system benefits the rich and further widens the wealth gap. Although Taiwan's Tax Income Act offers deductions or exemptions for all types of income, different types of income are offered with significantly different deductions. For example, savings income and dividend income receive far higher deductions than other types of income. Currently, the Tax Income Act provides a special deduction of up to NTD \$270,000 for savings and investments, which is significantly higher than the deduction of NTD \$128,000 for wage income. In addition, although the integrated income tax system replaced full imputation with partial imputation, those who hold a large number of shares remain to receive the benefit of large tax deductions, which benefits capital gains and results in unfair taxations.

237. We propose the following suggestions for stipulating practical policies: Limit and reduce deduction measures for all types of income tax, thereby expanding the tax base and tax sources, investing tax income on public services and care policies for the disadvantaged, and creating a comprehensive social security network.

### **Commodity Tax**

238. In response to Paragraph 197 of the State Report, the government has always perceived commodity tax as a tool for saving the economy. The government anticipates that employing tax reductions or exemptions will increase consumption. However, a reduction in commodity tax for imports is not guaranteed to be reflected in cost. As a result, the end consumption price

remains constant after commodity tax is reduced, and tax deductions only benefit importers. The Commodity Tax Act was amended in 2015, exempting wheelchair accessible vehicles from commodity tax purchased within five years of the date of amendment. Although this amendment reduced the prices of wheelchair accessible vehicles, only a small portion of economically stable people with disabilities were beneficiaries. In practice, this amendment did not benefit the disabled who were economically disadvantaged, who remained unable to afford wheelchair accessible vehicles.

239. We propose the following suggestions for stipulating practical policies: As commodity tax deductions and exemptions do not benefit those who are disabled and also have an economic disadvantage, the government should maintain a reasonable tax, and use tax incomes to expand the accessible public transportation network in metropolitan areas and rural areas, thereby increasing convenience and proximity.
240. Please refer to Paragraph 27 to Paragraph 31 in the [Special Chapter on Indigenous Peoples of the Covenants Watch ICCPR Shadow Report](#), “In response to Paragraph 220 of the State Report,” to further understand issues pertaining to the right to housing of Indigenous people dwelling in urban areas.

## Article 12 Right to Health

The States Parties to the ICESCR recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

### Basic Social Factors of Health (Health Inequality)

241. Violations of the right to health are not simply associated with the lack or improper allocation of medical and healthcare resources. Rather, these violations are extensions of numerous structural problems, such as improper social policy planning, unfair economic arrangement, and other factors, including material resources (e.g., finance and medical and healthcare equipment), power, opportunity, and other social determinants. According to the information presented in the second draft of the State Report, the difference between the life expectancy at birth of people in the regions with the weakest and strongest socioeconomic conditions is over 20 years. Based

on the State Report, the government remains focused on the allocation of medical/material resources to maintain the right to health. In addition, public health policies remain centered on medical subsidization, establishment of medical facilities, and medical services, neglecting crucial social determinants of health.

242. Although citizens receive adequate medical protection under the National Health Insurance Framework and medical resources, and fees are consistent in urban and rural regions, Taiwan still exhibits significant health inequalities, particularly concerning the disaggregation of people with disabilities, Indigenous people, income class, degree of urbanization, senior citizens, and nationality, where different groups receive different resources and medical care. The State Report fails to present data concerning the disaggregation of health data based on the suggested human rights indicators. Thus, the State Report does not accurately reflect the severity of health inequality in Taiwan.

### **Trade Agreement and Human Rights**

243. Taiwan's economic is heavily reliant on international trade. During the evaluation of the social impact of *Free Trade Agreements*, the government failed to highlight the effects that trade agreements have on social health. For example, the effects that the Trans-Pacific Partnership Agreement (TPP) has on health rights have been widely discussed. One discussion centers on the higher level of protection that the TPP has on intellectual property than agreements on trade-related intellectual property rights (TRIPs) proposed by the WTO, such as the request that member countries adopt the patent linkage system and prolong the data exclusivity period for pharmaceutical products, which may defer the release of generic drugs in the market and significantly reduce the amount of affordable drugs available to the public.
244. Another discussion highlights the failure to include the tobacco industry into the "Prohibited Industries for Foreign Investment Due to their Impact on Human Health" proposed by the Executive Yuan in accordance with Article 7 of the *Statute For Investment By Foreign Nationals*, enabling foreign tobacco companies to easily establish operations in Taiwan through investment trade agreements (Report No. 1040800152 issued by the Control Yuan).

245. We urge that the government reference the *Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements* (A/HRC/19/59/Add.5) published by a UN reporter on the right to food to evaluate the influences that major trade agreements and investment protocols have on human rights, particularly health rights. In addition, the government should define key human rights indicators during the formulation of major administrative plans, policies, and legislature to assess the impact that these formulations have on human rights.

### **Health Issues of Indigenous People**

246. The health inequality of the Indigenous people in Taiwan reflects the bias and mainstream ethnocentric hegemony of the government on the political and socioeconomic aspects of Indigenous people. According to extant government statistics, the life expectancy of Indigenous people is lower than non-Indigenous people in Taiwan in all age groups. Subsequently, poor life expectancy is closely attributed to the structural violence caused by the failure to secure the rights of Indigenous people. Severe health issues that are prevalent in the Indigenous community include women's health, newborn mortality rate, accident fatality rate, alcohol abuse, suicide, tuberculosis, chronic hepatitis, cirrhosis, and metabolic syndrome. However, government departments intentionally medicalize, generalize, and individualize these health issues during the formation of health policies for Indigenous people, deferring the draft for the *Health Act for Indigenous People* – a draft based on Article 25 of the *Indigenous Peoples Basic Law* – from entering first reading. Moreover, the newly announced *2025 White Paper on Health and Welfare Policy* omitted the Special Chapter on Indigenous People originally included in the *2020 White Paper on Healthy Citizens*, severely violating the health rights of Indigenous people.

247. The government should define health rights concepts based on the guidelines suggested by WHO. It should plan and establish meet systems and life improvement measures that are culturally safe and meet the needs of Indigenous people in Taiwan. Moreover, the government should expedite the ratification of the *Health Act for Indigenous People*, thereby ensuring that health and wellbeing of Indigenous people in Taiwan.

## Universal Health Care System

### 248. Overburden of Health Care Workers [Paragraph 238 of the *State Report on ICESCR*]

Government statistics show an increasing number of medical workers per million people in recent years, including physicians, dentists, nurses, and occupational therapists. However, numerous medical and nurse groups have successively emerged to bargain for more reasonable work conditions, suggesting that the allocation of medical human resources can still be improved, including the nurse-patient ratio – a highly discussed problem by the TWNU. We recommend that:

- (1) The MOHW should disclose the medical resources trends of all counties and cities in the recent five years to illustrate the allocation of medical resources.
- (2) The MOHW and the National Health Insurance Administration should maintain a reasonable nurse-patient ratio to ensure the rights of both laborers and patients. According to research conducted in the United States, a reasonable nurse-patient ratio is 1:4. European research outcomes indicate 1:6, while Japanese research recommends 1:7. Statistics released in 2013 show that the nurse-patient ratio in Taiwan was 1:13, clearly showing that the burden of nurses in Taiwan far exceeds those in other countries.

### 249. Disabling of Health Insurance Card [Paragraph 239 of the *State Report*]

Statistics released by the National Health Insurance Administration show that roughly 800,000 people default on their National Health Insurance (NHI) payments each month. Among these people, 770,000 are financially incapable of payment. Article 37 of the *National Health Insurance Act* stipulates that insurance coverage may be temporarily suspended for subscribers unwilling to make payments. This regulation is commonly known as “card disablement.” Although the applicability of this provision has been limited and the National Health Insurance Administration has implemented various relief measures, such as loans and installment plans, to help people in need, the poor propaganda of information and complexity of the application process have hindered the maximization of these measures. For example, homeless and unemployed persons remain hesitant to seek medical attention when their NHI cards have been disabled. The MOHW eliminated the regulation concerning card disablement after three consecutive defaults one week after the inauguration of President Tsai, benefiting 42,000 people. However, we believe that:

- (1) The MOHW should honor the J. Y. Interpretation No. 472 issued on 29 January 1999, which stipulated that card disablement is a breach of people's constitutional right and that assistance must be provided for people in financial hardship without discrimination.
- (2) Amendments should be made to Article 37 of the *National Health Insurance Act* to eliminate card disablement regulations, instating other means to encourage payment from "those with the ability to make payment but choose not to do so."

### **Health Inequality [Paragraph 242 of the *State Report*]**

250. The State Report indicated that health inequality remains on health care and nursing care levels, neglecting the effects that the imbalance in income, wealth, labor conditions, social services, and political involvement have on people's health. Although the NHI system in Taiwan has resolved the majority of health inequality issues, an analysis of the distribution of disease clearly shows that health inequality remains prevalent in Taiwan. The *Annual Report Promoting Your Health* published by the MOHW lacks health and survey statistics on people with mental and physical disabilities. The publication only targets disease treatment when discussing people with mental and physical disabilities. No discussions are centered on approaches to improve their social environments or socioeconomic status, resulting in the continuation of health inequality.

251. We recommend that the government

- (1) reinforce its statistics and indicators. According to Items 32 to 39 of the core documents, current health rights indicators comprise maternal mortality rate, infant mortality rate, family fertility rate, and the mortality rate of major death and diseases. These statistics illustrates a macro-perspective of current public health conditions, yet they are unable to indicate health inequality conditions clearly. Indicators that show the health gap between urban and rural areas, among different socioeconomic statuses, and among different ethnics should include. Health rights indicators should reflect more than simply disease statistics. Rather, they should constitute a complete 3A1Q framework in Taiwan. In addition, the social factors of substance addiction and obesity should also be elucidated to prevent stigma.
- (2) We also recommend improving government hierarchies. Although the MOHW has announced a report on health inequality, this report was



composed by an overseas team, and the composition process did not include domestic public participation. A report that aims to eliminate inequality yet dismisses citizen participation implies that the government remains oblivious of basic human rights principles. Moreover, eliminating health inequality is a transministry endeavor, similar to how different ministries are responsible for employment and labor conditions, housing, and environmental pollution. Therefore, the Executive Yuan should be tasked with composing health inequality reports and implementing policy suggestions.

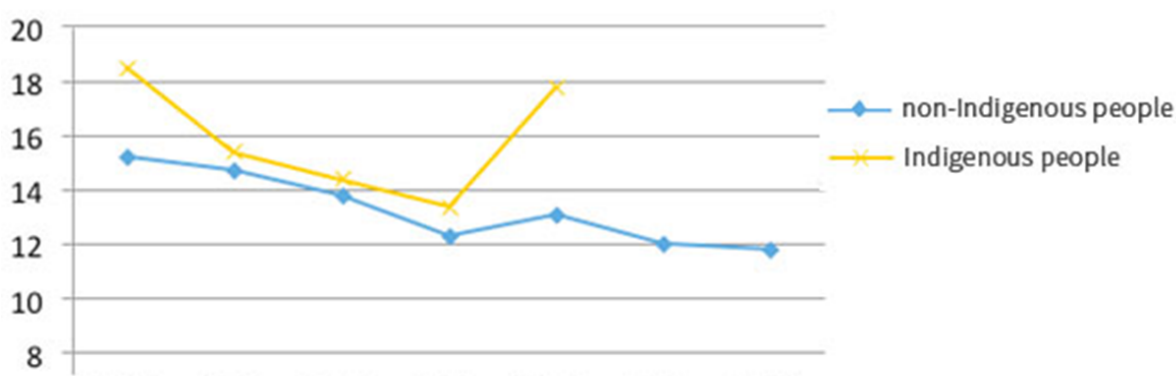
### **Treatment and Prevention of Rare Diseases and Relevant Health Care [Paragraph 244 of the *State Report*]**

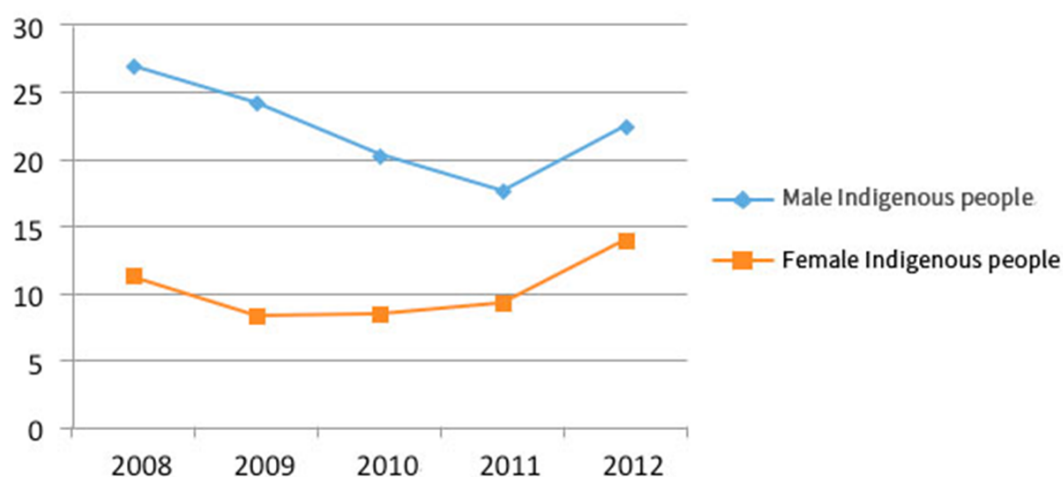
252. The ratification of the *Rare Disease Control and Orphan Drug Act* in 2000 failed to stipulate the provision of information to rare disease patients and their family members. Article 8 of the *Rare Disease Control and Orphan Drug Act* was amended in 2015, stating “When the central competent authorities are notified of the preceding items or when patients with rare genetic diseases are discovered, a designated professional should be assigned with the consent of the patient or legal guardian to provide disease information and effects to the patients and mental support, maternity care, and care counseling to the patient’s family members.” However, regulations to support this amendment have yet to be implemented.
253. The designated professional can apply for a permit license for uncertified drugs used to treat patients with rare diseases to claim for compensation from the NHI. Approved cases must acquire domestic a domestic drug license within three years to continue receiving compensation from the NHI. However, the lack of clinical trial data in Taiwan greatly increases the difficulty of acquiring drug approval. Even with the provisions of the *Rare Disease Control and Orphan Drug Act*, central competent authorities (FDA and MOHW) have not allocated a budget to encourage domestic pharmaceutical companies to conduct clinical trials and research, which indirectly and negatively influences the affordability of drugs used to treat rare diseases and patient survivability.

**Mental Health [Paragraph 246-7 of the *State Report*]:**

254. Homeless people: Different mental health promotion plans should be formulated to satisfy the diversity of Taiwan’s society. For example, social workers providing care to homeless people indicated that although a mental health network has been implemented, they have found that many homeless people with symptoms of mental illness have not been diagnosed by a physician, and therefore do not hold a disability card and are not monitored in the social welfare network.
255. Migrant workers: Currently, Taiwan accommodates close to 600,000 industrial and social welfare migrant workers. They are uprooted, isolated, and lack support. Although they are covered by the NHI, they are challenged with numerous limitations when seeking medical attention. The number of cases of migrant worker suicides has increased in recent years. However, they are unable to acquire immediate mental health assistance. The Ministry of Labor should aim to provide mental health services promptly to migrant workers via different management systems.
256. Indigenous people: The standardized mortality rate (SMR) of Indigenous people is far higher than non-Indigenous people (Fig. 4). Among Indigenous people, male suicides far exceed female suicides (Fig. 5). The suicide SMR of non-Indigenous people shows a gradual declining trend in recent years. By comparison, no such trend can be confirmed for Indigenous people because health statistics for Indigenous people have only been updated to 2012. Notably, a sudden spike in suicide rate can be observed in 2012 due to an increased number of Indigenous women suicides in that year. Suicide rates of Indigenous people across the world continue to rise. This trend is attributed to the degradation of their cultures, social structures, and socioeconomic situations. A similar problem is exhibited in Taiwan. The government is obligated to provide relevant information for confirmation.

**Figure 4 SMR of Indigenous and Non-Indigenous People in Taiwan**





**Figure 5 Suicide SMR of Indigenous Men and Women  
People with Disabilities [Paragraphs 243 and 250-3 of the *State Report*]:**

257. Paragraph 243 of the *State Report* only mentioned an older-adult health promotion plan and an age-friendly environment and services plan, with no mention of a health plan for people with disabilities. People with disabilities are less active than healthy people and are at higher risk of developing hypertension, hyperglycemia, and hyperlipidemia. Therefore, the government should not only establish a comprehensive database to serve as a basis for policy formulation but also formulate a plan for people with disabilities similar to the age-friendly environment and services plan.
258. Among older adults over the age of 65, 19.6% more women require long-term care than men. Moreover, among older adults over the age of 80, 62.1% more women require long-term care than men; of which, people with severe disabilities account for 74.7%. The likeliness of women becoming disabled is higher than men. Therefore, the government should provision a larger proportion of resources to women's care.
259. Medical service utilization: The proportion of people with disabilities that use adult preventative health services account for roughly 15% to 16% of the overall number of people with disabilities in Taiwan, which is half the 32% utilization rate of healthy adults. The government has neither established health care policies/objectives for people with mental disabilities nor implemented effective measures to increase the utilization rate of preventative health services for people with disabilities.
260. Accessibility of medical institutes: A survey report released in 2011 on the living conditions and demands of people with disabilities shows that 99.71% of people with disabilities are subscribed to the NHI. However, 57.27% were

unable of independently seeking medical attention. A total of 20,245 community clinics is not included in the hospital accreditation system. Determining whether the facilities and services provided by these clinics meet accessibility standards is extremely difficult. Challenges for people with disabilities include:

- (1) Physical obstruction: Many community clinics contain barriers or steps, making them difficult to access by people in wheelchairs. Mothers in wheelchairs are forced to wait outside when they accompany their children to the clinics.
- (2) Lack of transport: During emergencies, such as the sudden onset of acute gastroenteritis, patients are unable to call a rebus to large hospitals immediately, and community clinics are inaccessible.
- (3) Medical equipment or facilities fail to meet the needs of people with disabilities: For example, mobile community health examination and screening stations contain stairs, making them difficult for women with disabilities to access. In addition, doctors and nurses often request that patients stand for x-rays, which may be difficult for people with severe disabilities or spinal injuries.
- (4) Inability to acquire information: Medical institutes fail to provide physical or audio assistance to people with visual impairment, and their websites are not accessible to people with visual impairment. Moreover, health information and medical documents (incl., treatment instructions and survey consent forms) are not provided in a simple form or in braille, resulting in the ineffective delivery of the content to people with visual, mental, or learning disabilities.

261. The pregnancy and childbirth processes of women with disabilities are more complicated than those of healthy women. The delivery of prenatal health information and postnatal childcare information are especially difficult for women with disabilities because of physical limitations. We recommend that assigning a dedicated midwife to pregnant women with disabilities to deliver relevant health and childcare information, such as appropriate exercises for pregnant women, weight control, risky symptoms of pregnancy, postnatal care, and breastfeeding methods. In addition, maternal health booklets for women with disabilities should be more detailed and reader-friendly than those for healthy women and provide additional services items. Audio manuals and other appropriate formats should be available for pregnant women with visual impairment.

262. Comprehensive oral care plans for people with special needs: Currently, 1,148,936 people with disabilities are residing in Taiwan. A comprehensive oral care plan for people with special needs primarily targets people that are difficult to administer dental treatment, those with severe and extremely severe disabilities (approx. 333,746 people), and older adults with disabilities. A total of 6,856 dental clinics and hospitals are currently registered with the NHI. Only 14% of these clinics and hospitals provide specialized dental services for people with disabilities, most of which only for people with mild to moderate physical disabilities or those with visual impairment. Many dental hospitals and clinics fail to provide accessible spaces, medical facilities, and support services, hindering people with disabilities from utilizing immediate oral care and treatment services.

**Women Health Policies [Paragraph 261 of the *State Report*]:**

263. To promote women's health, the MOHW has introduced a number of health services centered on women's reproductive health. However, these services are largely focused on fetal health rather than women's health. For example, the content of the pregnancy and maternity health booklets provided by the MOHW largely focuses on caring for the fetus and fails to provide information concerning the symptoms or risks of the mother. A patient-doctor co-determination mechanism is unavailable, which may result in the overtreatment of pregnant women or overexposure to unnecessary health risks. Besides maternity care and women's cancer screening, the government has yet to realize the risks of gender differences on women's health. For example, a number of empirical studies have confirmed significant differences in clinical performance and response to treatment between men and women with heart conditions.
264. Currently, gynecologists are unavailable in the majority of villages and townships in Taiwan. Moreover, the average age of gynecologists is five years older than that of other doctors. By 2022, 49% of the doctors specializing in obstetrics and gynecology would be 60 years and over. Although the *Childbirth Accident Emergency Relief Regulations* passed its third reading in 2015, which provisioned for additional funds to disperse childbirth accidents, the government has expressed a passive attitude towards the longstanding problem of inadequate payments, clearly evading the health rights of women.

265. In the recent five years, the underage birth rate in Taiwan has maintained an average of 0.4%. According to 2014 statistics, the underage birth rate in Eastern Taiwan (e.g., Hualien and Taitung) was 1%, and that in Nantou and Miaoli County was 0.7%, clearly illustrating an urban-rural gap in underage birth rate.
266. We recommend that the government formulate a reproductive care policy focusing on women, reinforce the diagnosis capability of medical staff, and take into account gender differences to prevent women from being exposed to unnecessary health risks. We also urge the government to take into account the recommendation of international experts and evaluate the effectiveness of existing sex education policies for underage persons, particularly in regions with high underage birth rates.

### **Infectious Disease Prevention**

267. Freedom of the homeless [Paragraph 262 of the *State Report*]: According to the compulsory hospitalization, quarantine, and treatment guidelines for tuberculosis, patients suffering from tuberculosis that meet discharge/transfer criteria are free to leave the hospital unless they are considered uncooperative. However, homeless people are forced to remain in the hospital until they are cured, regardless of the type of medication they require. This may constitute an over-limitation of their personal freedom.
268. According to the J. Y. Interpretation No. 690 issued by the Judicial Yuan recommend that the government promptly and comprehensively review the remedial procedures concerning the “necessary deposition” (incl., compulsory quarantine) defined in the *Communicable Disease Control Act*. Since the ratification of the *Habeas Corpus Act*, health authorities have been at risk of violating the personal freedom of patients with infectious diseases, those in contact with infectious diseases, or those suspected of carrying infectious diseases during the implementation of quarantine measures. The *Communicable Disease Control Act* has yet to be amended accordingly, leading to the emergence of disputes concerning the applicability of the *Habeas Corpus Act* in the implementation of specific measures, such as home quarantine and quarantine.
269. Stigma and Discrimination Towards HIV:
- (1) Reduced screening rate due to HIV stigma: Blood tests are the only method to test for HIV. The government should endeavor to provide friendly,

confidential, effective, and convenience screening services, and eliminate/reduce the stigma associated with HIV, thereby increasing the willingness of the public to accept screening voluntarily. The HIV screening rate in Taiwan is roughly 75%, which is lower than the United States (87%) and the UN-recommended rate (90%). The reasons for the low screening rate are attributed to the lack of independent screening awareness, which is associated with the stigma associated with HIV. The government has introduced screening policies that highlight specific groups of people, which have biased general recognition of HIV. People generally believe that only homosexual people, people that engage in anal sex, or those that practice polyamory contract HIV. Society has even coined HIV as the “dirty disease” or “trash disease.”

- (2) Inappropriate notification resulting in the dismissal of HIV carriers: Government policies consider HIV to be an infectious disease, and carriers of HIV must be tracked and managed. Notification systems fail to ensure the anonymity of HIV carriers. This has caused the National Defense University to expel a student who contracted HIV. Prior to his dismissal, the students were severely discriminated against, even prohibiting from swimming class, sharing kitchenware with others, and washing laundry with others, clearly reflecting the severe lack of health knowledge of the principle, teachers, and campus officers.
- (3) Privacy protection and health rights of HIV carriers: Existing laws and regulations stipulate the HIV carriers are obligated to disclose their condition voluntarily to medical staff when seeking medical assistance. However, these laws and regulations do not prevent medical personnel from referring or rejecting treatment. Moreover, although the generalization of HIV is conceded, subsequent operations are less than subtle. For example, the NHI Administration has actively promoted the digitalization of medical information, such as medical records in the cloud. These endeavors have indirectly increased the difficulty of HIV carriers to seek medical assistance. During the release of inmates from correction institutions, the institution is required to notify the family members and local authorities of the inmate’s health conditions (incl., HIV status), which may lead to the abandonment. These examples clearly highlight the difference in people’s interpretation of HIV generalization. The generalization of HIV is an effective approach to eliminate stigma in the long-term. However, the process of generalization should be comprehensively reviewed, planned and restructured, based on

human rights standards. Meaningful narratives should be opened with various groups to prevent sacrificing the rights of HIV carriers.

### **Post-RCA Treatment [Paragraph 270 of the *State Report*]**

270. The carcinogenic effects of the organic solvents used by the Radio Corporation of America (RCA) lead to thousands of employees later developing cancer. Numerous public hazard and occupational accident groups successively filed appeals to the government over the period of a decade. On 17 April 2015, the Taipei District Court ruled in favor of the former employees of the RCA (first instance), requesting that relevant companies, including RCA and Thompson, collectively pay a compensation of NT \$566.45 million, distributed among the former employees.

271. The Ministry of Labor announced the “*Directions for Ministry of Labor to Handle the Condolence Payment for Labor's Death from Diseases of Former RCA Taiwan Limited*” soon after the ruling in the court of the first instance. The compensation criteria were extremely stringent. The provisions limited compensation not only to employees in the Taoyuan Plant but also to the family members of employees who died of cancer as recorded in the verdict of Taipei District Court (first instance). On 23 October 2015, the Taoyuan County Former RCA Employees' Solicitude Association and Occupational Injury Association proposed the following counteroffers:

- (1) The Ministry of Labor should take into account the actual damage caused by the Former RCA, alleviating existing compensation criteria to include all affected employees and comprehensively reviewing the definition and compensation systems of occupational diseases in Taiwan.
- (2) “Consolidation payment” should uphold the ideologies of the *Act for Protecting Worker of Occupational Accidents*, eliminating thresholds and fulfilling government subrogation.
- (3) The Ministry of Labor should disclose the actual amount compensated and accept the supervision of occupational accident groups, labor unions, and the public.

### **Substance Abuse [Paragraph 271-3 of the *State Report*]:**

272. In terms of drug and alcohol abuse, efforts should not only be centered on consequential criminal punishment or forced treatment but also on abusers’



socioeconomic statuses and vulnerable family conditions. The current service systems for drug and alcohol abusers are insufficient. For example, (1) NHI coverage includes the concurrent symptoms of drug and alcohol abuse, but do not include alcohol and drug rehabilitation treatment, forcing abusers (those without mental symptoms) to cover roughly NT \$20,000 to 30,000 in treatment fees. For abusers in financial hardship, these fees are unaffordable. The budget allocated by central competent authorities only enables county and city governments to organize the “Alcohol Abuse Treatment Program.” We recommend that the rehabilitation and treatment of alcohol a drug abuse be included into the coverage criteria of the NHI.

273. The relapse rate after personal rehabilitation is extremely high without family and social support. Additional resources should be invested in strengthening community care services and establishing a case management and service model to provide psychological counseling, family support, social integration, and employment referral service to substance abusers.
274. The mental symptoms of abusers and others with mental disabilities are relatively different. Descriptions of media providers and relevant units should be clearly distinguished to prevent public confusion, compromising the rights of people with disability cards, and mitigating the discrimination or rejection encountered by people with disabilities in the community or during rehabilitation. To avoid stigma, the government should focus on enhancing abusers’ willingness to ask for or receive treatment, helping them to reintegrate into normal life. We strongly recommend that police, health, social, education, and labor units collaboratively establish a social safety network to promote positive psychological and health education, resources, and channels within communities.

**Workplace Health [Paragraph 275-6 of the *State Report*]:**

275. The burden of proof for occupational accidents and injuries is on laborers and physicians. Besides occupational accidents that immediately affect health, such as cuts, falls, and accidents, which are easily identifiable, employers often deny the association between chronic or dormant illnesses with the workplace. The definitions for occupational injuries and illnesses established in Taiwan are extremely stringent and conservative, resulting in the compensation for occupational accidents and injuries to fall below

international standards, specifically one-tenth to one-fiftieth of European countries.

276. In reference to asbestos, the mesothelioma diagnosed in 98% of male patients can be associated with asbestos exposure. 73 cases of malignant mesothelioma were reported in Taiwan in 2010 alone. However, the occupational injury and illness compensation data announced by the Bureau of Labor Insurance indicate that less than 5 cases of asbestos-related lung disease and associated symptoms are reported each year. In addition, occupation-induced cancers are not classified, with less than 10 cases on average each year. Statistics released by the German government showed that 3,626 asbestos-related cases were compensated by occupational accident insurance in 2012. Data released by the Japanese government also indicated that 1,084 asbestos-related cases were compensated by occupational accident insurance in 2013. In the past, asbestos was commonly used in Taiwan. Thus, compared to the statistics of other countries, cases of asbestos-related occupational injury and illness cases in Taiwan is severely underestimated.
277. In terms of the increasingly prevalent problem of workplace fatigue, current definitions associated with occupational injuries and illnesses are extremely stringent and mostly centered on cardiovascular disease. These definitions often exclude groups at lower risk of workplace fatigue, such as premenopausal women and younger adults, and overlook chronic illnesses, such as hypertension, metabolic syndrome, musculoskeletal disease, immune system disease, and reproductive system disease, as well as mental illnesses, such as anxiety and depression. Labor checks also use duty hours as an indicator of workload, overlooking the fact that workplace fatigue could also derive from psychosocial risks in the workplace, including labor policies, authoritarian management models, and reciprocal employee-employer relationships. The workplace health promotion plans introduced by the government largely focus on individual behaviors, such as exercise, weight loss, and diet, overlooking social risk factors. The government should review inappropriate labor policies, such as flexible hiring, and investigate the sources of work pressure at an institutional level, such as unstable hiring structures, salary structures (floating salaries), and workplace justice. In addition, the government should review the specification and implementation of duty hours, strengthen psychosocial hazards management in the workplace, and reinforce the workplace health survey at the institutional level.

278. In terms of occupational health management, employees are obligated to receive periodic health checks by law and employers are obligated to cover the costs of these checks. According to a survey conducted by the Ministry of Labor in 2013, the majority of employees never received health checks, and over 70% of employees in the mining, gravel mining, and construction industries failed to undergo periodic health checks. Preventative occupational health checks are available to subscribers of the labor insurance for 27 categories of hazardous operations stipulated in the *Regulations of the Labor Health Protection*. However, this mechanism is only applicable to insured employees. No tracking and management services are available for retirees, and therefore it cannot effectively prevent diseases with long dormant periods.

**Wind Turbine Noise Control [Paragraph 278-9 of the *State Report*]:**

279. Current laws and regulations are inadequate to maintain the health rights of residents in the vicinity of wind turbines. A study published by the WHO indicated that the noise of wind turbines exceeding 32 decibels affected the sleep quality of nearby resident. Private groups referenced the findings of the WHO and the specifications of various countries and proposed a revised draft of the *Regulations for Installation and Management of Renewable Energy Generation Equipment* in 2014, suggesting that a reasonable and comfortable distance from wind turbine be established for dwellings, hospitals, schools, and other public buildings. However, the government has yet to amend the suggestions into the *Regulations for Installation and Management of Renewable Energy Generation Equipment* to ensure public health rights.

280. The experimental hearing organized by the Bureau of Energy manifests no legal power in accordance with the provisions for administrative hearings stipulated in the *Administrative Procedure Act*. Since 2013, the government has not called any formal hearing procedure with legal power to regulate an appropriate distance for wind turbines, completely ignoring its policy concerning the right to citizen participation. Currently, numerous wind turbines along Taiwan's western coastline remain extremely close to private residences (some less than 100 meters away). The lack of action by the government continues to violate the health rights of citizens affected by the turbines.

## Article 13 the Right to Education

### The Plight of Gender Diverse Students

281. In Sections 300 to 302 on "Equal Education Rights" from the "Second State Report on the International Covenant on Economic, Social, and Cultural Rights", the right to education for diverse gender students and their in-school plight was not mentioned. The statement "educational opportunities for homosexual students or those with a sexual-orientation different from their biological gender should be equally respected" was, furthermore, deleted from the draft report.
282. The Taiwan government, since the 2013 initial country review report that barely commented on the education policy of the Ministry of Education which advocated respect for diverse genders and the eradication of discrimination and prejudice, has avoided the issue of persistent homophobia in the school environment and the very real circumstances of oppressive discrimination suffered by diverse gender (LGBTI) students. Government institutions, when coping with the frequent machinations of conservative church groups and parent associations to disrupt policies on homosexual education, sex education, and diverse family education, have been not merely passive in defense of the rights of diverse gender students, but have, moreover, retreated on all fronts in the face of such obstacles. There has even been an instance where the Ministry of Education hired a person openly opposed to both homosexual education and the spirit of gender equality as a member of the ministry's committee on gender equality in education, interfering with the policy and promotion of gender equality.
283. Present school environments continue to perpetrate a widespread culture of sexual discrimination and homophobia, which as a result causes students of diverse genders to frequently come under immense stress. In the past five years there has been a rising incidence of suicides amongst diverse gender students who have suffered long-term attitudes of discrimination and doubts in their relationships due to their sexual traits or orientations. The educational rights and campus life of diverse gender students have also been adversely affected by a rising incidence of sexual bullying in the form of verbal insults, prejudice, verbal attacks and harassment that have resulted in mild to severe violence. Many civic groups have been receiving increasing complaints about incidents of sexual bullying. These incidents

can all be linked to rigid policies on school campuses and the discriminatory attitudes of teachers and staff. The shortcomings of educational authorities in response to "hateful homosexual discourse by teachers and in the classroom", "compulsory dress-codes requiring skirts", and hurtful or oppressive attitudes toward minority gender or transgender students is perhaps the most severe form of oppression now confronting the entire student body.

284. A 2014 press release, "The Ministry of Education's Appeal to Implement Preventive Bullying Actions on School Campuses in Response to the 'May 17th Anti-Homophobia Day'," noted that "all levels of schools should utilize all forms of activities and educational policies to actively promote the prohibition of any words or behaviors that discriminate against people of different genders, gender traits, gender identities or sexual orientations; and, moreover, actively provide support to improve the plight of those students suffering hardships due to gender, gender trait, gender identity or sexual orientation." In order to put this advocacy into practice on school campuses, besides promoting awareness for the issue, institutionalized homophobia in schools must be investigated and rectified, educational rights and campus safety for students with non-traditional gender traits must be taken seriously, the issue of diverse gender orientations must be incorporated into gender equality education, and all members of a school must participate together in the building of an improved culture and atmosphere for all genders.
285. In order to secure the right for all to exercise their rights, without discrimination due to their identity, and to enjoy equal rights to education is the duty of the government. In this regard the country should adopt a comprehensive and concrete policy that eliminates discrimination based on sexual orientation or gender identity and guarantees the right to education for gender diverse students. The Taiwan Gender Equity Education Association (TGEEA) has issued the following list of demands:
- (1) Research of homosexual educational materials suitable to each level of education: primary, junior and senior high schools.
  - (2) Draft into the National Education Curriculum Syllabus the principles of respect for human rights, support for diversity, and elimination of discrimination, as well as the stipulation of clear specifications on the content and manner of implementation for a gender equity education syllabus.

- (3) In the Ministry of Education's "Plan to Promote Friendly Campuses", the issue of gender diversity should be incorporated, paying attention to the right to education and the campus hardships of gender diverse students.
- (4) On the job teacher training, teacher qualification training, counselor training, and community and parent education should all include subjects on the knowledge, competency and strategy of gender diversity education so as to increase respect for diversity and eliminate discrimination.

### **Work-Study Cooperative Education Students**

286. Response to Paragraphs 285-286 concerning the issue of work-study cooperative students in Article 13 of the State Report. At its conception the system for cooperative education focused on technical instruction in manufacturing industries, however service sector industries have recently become mainstream participants in cooperative education. According to data from the Ministry of Education, the number and percentage of cooperative students entering service sector jobs has been greatly increasing along with the development of Taiwan's service industries. The largest increase has been in food services which grew by 28.5% in 2008 to 33.4% in 2012; whereas a slight drop-off from 16.2% in 2008 to 14.5% was experienced by hair-care and grooming services. Transportation services made-up 6.9% and the film industry 0.4%, so that altogether service industries comprised 54.8% of cooperative student placements. Cooperative student placements in the electronics and electrical appliances industry fell from a percentage of 30.6% in 2008 to 26% in 2012, affected by the poor economic conditions of the industry as a whole in the same period. The percentage for the manufacturing industry remained stable at 18% in 2008 and 18.5% in 2012.

287. Whether having gone through a revolving or a stage-based cooperative education program and after investing the long-period of time in learning an enterprise's technology, students should of course be able to stay on at the facility and put into practice their learned competencies as official members of the workforce. This is after all the very *raison d'être* and function of such programs. However, over the three-year period from 2009-2011 the rate of new graduates staying on at cooperative education enterprises dropped from 15.89% to 13.4%. In point of fact, the original 15% is already on the low side, but gradual decline on top of this is cause for real concern as to the future outlook.

288. As a result Taiwan's de-industrialization trend toward an emerging service-based economy, cooperative education, under the influence of industry's de-technicalization wave, has had to discontinue its eponymic "study through work" technical learning program. Added to this can be the high inflationary costs of private school tuitions, stagnant wages for parents, the widening wealth gap between urban and rural areas, and the large-scale migration of central and south Taiwan cooperative students to the north. All of these have contributed to the decline of cooperative education into a supplemental labor pool for industry, lacking learned technical know-how, and a decline in the job retention rate for graduating students to around 13%. This has resulted in the gradual erosion of the cooperative education system's main mission and its transformation into a supplemental labor pool subject to the whims of industry.
289. Taking a look at the developmental trends of cooperative education it can be seen that the early stage consisted of training talent for Taiwan's state enterprises (e.g., Taipower and China National Petroleum Company), to a stage of developing basic technical staff for Taiwan's infant industries, and finally to the present day situation of providing low-wage personnel for service-based enterprises. The Ministry of Education has taken a passive role in regards to the twin demands of industry for the program: to gradually develop cooperative students and to proactively guide the country's industrial development. As a result national policy has lost out big, leading to the day-by-day "de-technicalization" of cooperative student learning and the risk of transforming their job market into a pool of temporary jobs. Moreover, the very passage of the "Cooperative Education Student Rights Guarantee Act" was done to turn back this rising tide of part-time jobs.
290. In order to change the current muddled direction of the Ministry of Education's cooperative education program, which has been led by the profit-motives of private schools and enterprises, the ministry should go back to the original motivations for the program in making a determination for the need to continue with present day enterprise applicants based on the technical content in their applications. Moreover the ministry needs to be proactive in developing participation new programs and training positions for new types of industries, and not passively accept school applications. The task of uncovering potential enterprises with real technical skills amongst the chaos of industry and persuading these employers to give cooperative students training opportunities is none other

than the responsibility of the Ministry of Education. Cooperative education is not the purview of employers to be used to their advantage; rather the meeting of real demands for labor is the mission of the cooperative education system. With this in view the program can have a new beginning.

### **The Right to Equal Education: the Issue of Student Loan Obligations and the Inequitable Allocation of Higher Educational Resources**

291. For the 2014 academic year (August 2014 to July 2015), 17,590 high school students nationally still had a need to apply for educational assistance loans in spite of the policy already in place to promote free high school education. Although the Ministry of Education has already established standards on the charging of incidental fees by public and private high schools, however the collection and payment of fees for private institutions remain inconsistent with all sorts of concocted and exorbitant fees being charged: e.g., school uniform fees, dormitory expenses, water and electricity fees, transportation fees, extra-curricular tutorial fees, etc. These additional educational expenses pressure disadvantaged students to apply for loans that compound their financial burdens.
292. Among students entering colleges and universities in 2015 301,664 applied for student loans of which 59,768 (19.8%) were at public institutions and 241,866 (80.2%) were at private institutions. The total number of students in private schools is twice that of those in public schools, nevertheless, the number of students at private schools under the burden of student loans exceeds that of public schools by a magnitude of four. From this it is evident that total financial burden for educational costs is not equally shared, falling disproportionately on the shoulders of private institution students. If recent graduates are added to this, then nationally about 940,000 young adults have yet to repay student debts and more critically 33,000 of them, due to an inability to make payments, have applied for loan deferments. Clearly, under the trend of higher education commercialization, supplemental student loan obligations have already become a heavy burden on the younger generation.
293. In Taiwan, generally speaking public universities in comparison to private universities enjoy more government support, for instance comparatively lower tuition costs, and moreover greater value placed on their degrees in the labor market than those of private institutions. However, among the



220,000 disadvantage students, 170,000 (77%) study at private institutions. Students attending public universities come mainly from socio-economic households ranked as upper-middle class, whereas students at private universities come mainly from lower-middle class households or those below the poverty line. Comprehensively speaking, Taiwan's system of higher education exacts a higher proportional cost on the lower-middle class and disadvantaged, resulting in an unreasonable burden on the underprivileged for unfairly exorbitant educational costs, providing them comparatively lower cultural capital and essentially recreating another unequal social class. Although the Ministry of Education prepared to alleviate the burdens of those with student debt through "extension of student loan repayment period" to 5 years, however these methods merely postpone repayment periods and do little to help resolve the financial burdens of young graduates nor the institutional exploitation suffered by the poor.

294. Recommendation is for a comprehensive review of standards for the assessment of miscellaneous fees by private high schools and the setting of a duly considered system regulating the charging of miscellaneous expenses by private schools, so as to preclude the impact of exorbitant charges on the rights to education for underprivileged students.
295. The Ministry of Education those applicants for deferred loan repayments who have just entered the labor market so as to proactively understand the reasons for an inability to make payments. The resources of relevant labor and social government departments should be integrated so as to better assist newly employed student loan holders in stabilizing their employment, raising their income and increasing their capacity for repayment.
296. In order to raise the quality of higher education and lighten unreasonable student debt, the Ministry of Education should expedite the promotion of higher education publicization policy, including: the exit system for private schools and review of the publicity efforts of schools for their advanced studies public relations, as well as how community colleges and non-profit organizations can be incorporated into efforts to promote higher education publicization.

## Students Withdrawing from Senior High School

297. Due to the promotion of the 12-year national education and the impact of declining birth-rates, the number of school drop-outs has been gradually decreasing. However, there is a group of senior high-school students withdrawing mid-stream prior to graduation that warrant special attention. The reason this merits attention has to do with the statistics from the Ministry of Education for the three year period from 2012 to 2014. In these three years 74,036 students withdrew from senior high school for a yearly average exceeding 20,000. Of those withdrawing from school, the majority, 45,422 (61%), left to stay at home, 17,035 (23%) left to go to work, and 4,587 (6%) left both school and home. From these numbers it can be surmised that 77% of those withdrawing from school are unemployed. A major reason for this is that this group of students leaving school mid-stream belongs for the most part to the difficult to employ population. Therefore, if this group of students who have withdrawn from school do not receive appropriate coaching and transitional services then they will fall into that group of "doubly lost teenagers" having no educational and no employment prospects.
298. In summary, the issue of middle-school withdrawals requires at the very least the setting up of a diverse system of coaching for students who have withdrawn from schools, in addition to the Ministry of Education and educational institutions building a more complete construct of research on the tracking of individuals and the analysis of their backgrounds. Explanation of these reasons as follows:
299. In the Ministry of Education's plan for students withdrawing before graduation, "Implementation Plan for Senior High School Student Stable Employment and Counseling Mechanisms for Students Withdrawing Mid-studies"[SF2], the focus was on the provisions of counseling for student stable employment, however concrete measures for referrals to relevant employment services resources and other more diverse development opportunities were lacking.
300. The crux of the matter is the need for the Ministry of Education to plan out protocols on diverse counseling and transition mechanisms as well as counseling targets, besides just stable employment, to be directed at those students withdrawing in the middle of their schooling. For those students who do not desire [SF3] employment then Articles 34 and 36 of the "Child

and Teenage Rights and Welfare Guarantees Act" should be referenced. Education and Labor authorities should integrate relevant social government departments and link the resources of relevant civic bodies with the measures and resources of relevant employment referral services.

301. The K-12 Education Administration of the Ministry of Education has so far only devised a notification system on senior high school student withdrawals. Measures on counseling also mention the need to provide these students with training and referrals to training resources. However, at present only online resources<sup>77</sup> are being provided that do not yet introduce the public and private system employment resources employment offered by the Ministry of Labor, the Ministry of Health and Welfare and various county and city level governments. Therefore the Ministry of Education's K-12 Education Administration, the Ministry of Labor's Workforce Development Agency, and the Ministry of Health and Welfare's Social and Family Affairs Administration, in accordance with Articles 34 and 36 of the "Child and Teenage Rights and Welfare Guarantees Act" and by means of scheduled meetings that exchange findings and take stock of integrated education, social and labor systems as well as links to the resources of relevant civic bodies, should mobilize relevant employment referral resources and policies for the provision of support to students withdrawing from high school before graduation. In this way the relevant authorities and institutions will be able to better observe the true needs of these students and not merely mouth encouragement for their return to school or passively await to open a case on their 18th birthdays when they become adults.

## Article 15 Culture Rights

302. Reference to the Special Chapter on Indigenous Peoples of the Covenants Watch ICCPR Shadow Report, Paragraphs 11 to 27 of the Indigenous Peoples Act on discrimination and discriminatory incidents concerning cultural hunting rights, cultural fishing and harvesting rights, advanced technology usage rights, and legal self-determination rights.

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<sup>77</sup> hyperlinks to [the Juvenile On Light Program](#)

303. Reference to Paragraphs 53 to 55 of the Indigenous Peoples Act on urban Indigenous culture equity rights.

### **Migrant Spouse Care and Counseling Fund Issues**

304. Although the Migrant Spouse Fund has had some impact in the fields of Chinese language learning, parental education, marriage adjustment, care visits, medical and welfare assistance, job training, and nurturing of second generation immigrants; however, in the ten years of the fund's existence it has been unable to resolve the following three major issues<sup>78</sup>:

- (1) About 80% to 90% of the funds from the Migrant Spouse Fund that government agencies apply for yearly mix together both policy and assistance needs, making it difficult for government agencies to establish long-term policies that coincide with the actual requirements of their immigrant areas.
- (2) The application process provides hidden incentive for organizations with available capabilities (government agencies with direct jurisdiction, large-scale charitable foundations, or large for-profit enterprises) to enjoy a greater share of assistance by mastering the application and evaluation system to garner more funding, whereas organizations of comparably smaller scale or lacking familiarity with the application and auditing procedures (remote government agencies and grass-roots groups focused on immigration) face institutional discrimination. This makes certain organizations, which have the means to take advantage of loop-holes into long-term dependents of Migrant Spouse Fund subsidies.
- (3) For community based groups the overly complicated and burdensome application process for the Migrant Spouse Fund impacts their willingness to undertake the process. Even the regulation's standardized hourly teaching rates vary according to the level of education of the teachers. These types of assistance methods violate the spirit of empowering new immigrants to participate.

305. In order to ensure conformity to the spirit of Paragraph 1 in Article 15 of the "International Convention on Economic, Social and Cultural Rights",

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<sup>78</sup> Year 2013 Research Report on subsidy planning for the Migrant Spouse Care and Counseling Fund: research on the results of the system for migrant spouse care and counseling <http://ppt.cc/CF4p0>

guarantee full economic, social and cultural development for all ethnic groups, determine whether 90% of the Migrant Spouse Fund granted over the past 10 years has gone to both the central and local governments, and check whether the majority of assistance goes towards medical and social needs, legal services or household assistance,<sup>79</sup> we recommend the elimination of the fund's "short-term special case" pattern of subsidization. In its place local governments or relevant organizations should have control over normal operations so as to fully resolve issues of resource misallocation, waste and less-than-proportionately-fair sums going to local areas.

### **Child Rights on Access to Culture**

306. Response to Paragraph 318 of the State Report. Taiwan's Ministry of Culture addresses only minors less than 12 years of age in the "Ministry of Culture Policy on Organizations Responsible for Culture and the Establishment of Child Discount Tariffs" for the provision of discounts and incentives based on age. However, for juveniles aged 12 to 17 no promotional measures for access to culture are listed. It is recommended to set out a concrete policy for access to culture for juveniles aged 12 to 17 as well as to consider including transportation expenses for those living outside metropolitan areas.

### **Participation in Cultural Activities for People with Disabilities**

307. The national policy on providing access to television for people with mental and physical disabilities relies too heavily on the broadcast obligations for public stations. Although review items for evaluation and change related to media access for those with vision and aural disabilities are set-up and classified as industry operations, however the review item "matters for other supervisory agencies" is only one small item amongst the lot, and the National Communications Commission has yet to set relevant policy planning for target values for fees, technology, and programming hours related to the promotion of television access.

308. The National Communications Commission should expedite establishment of short/ mid/long-term policy programs on television access.

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<sup>79</sup> Summary table of Migrant Spouse Care and Counseling Fund yearly audits from 2005 to 2015  
<http://ppt.cc/RTbix>