Independent Opinion on the Third National Report on the ICCPR and ICESCR

NATIONAL HUMAN RIGHTS
COMMISSION, TAIWAN

Preamble

The establishment of the National Human Rights Commission (NHRC), founded on August 1, 2020, is evidence that human rights protection in Taiwan is reaching a new milestone. It is an autonomous national human rights authority established in conformance with the Paris Principles of the United Nations; and it is the keystone to the protection of human rights in Taiwan.

After enduring nearly forty years of martial law that violated the very essence of human rights, and with the fortitude and painstaking sacrifices of many pioneers of democracy, Taiwan finally in the 1990s achieved a national legislature with full popular representation, and then in 1996 direct presidential elections as well. Since then, it has fulfilled the promise of rule by the people and instituted a system of constitutional democracy that ensures basic human rights.

On December 10, 2010, the predecessor of the NHRC, the Presidential Office Human Rights Consultative Committee, was established in response to advocacy since 1999, a persistent call from civil society partners, experts, and scholars, for creation of a national and autonomous human rights authority. Concurrently, legislation was enacted for the purpose of bringing domestic law into compliance with the several human rights covenants of the United Nations, and a national mechanism for reviewing and reporting such compliance was also instituted. Finally, the relevant legislation obtained support in the Legislative Yuan and was fully set into law, such that this much-anticipated national-level independent human rights institution was realized, manifesting Taiwan’s belief in and determination to move towards becoming a nation that is based in principles of human rights.

Now and again our government has carried out assessment of Taiwan’s compliance with the international standards on human rights, as seen now in the Third National Report regarding the Taiwan government’s implementation of the United Nations’ human rights covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR);

this report was compiled by the Executive Yuan and issued in June 2020. The goal of this assessment is to facilitate a better understanding of Taiwan's current human rights conditions, and to acquire pertinent reviews and recommendations from the international experts.

In turn, our newly-established National Human Rights Commission resolved to issue our independent review and opinion on the issues discussed in said Third Report, in accordance with the authorization in subparagraph 8, Article 2 of the Organic Act of the Control Yuan National Human Rights Commission; this review, referred to below as "the Opinion," was released in December 2020, ex officio.

Nevertheless, given the insufficient time, materials, and human resources that could be devoted to the task at this moment, the Opinion now issued by the NHRC cannot serve as an exhaustive assessment on the entirety of the rules and systems addressing human rights in Taiwan. The Opinion has been compiled primarily based on those issues proposed by the Members of the 5th Control Yuan,[1] based on cases relevant to the ICCPR and ICESCR, as investigated during their term that ran from 2014 to 2020, and assigned to the categories addressed by the two covenants. Through this process, with our supervisory force that is autonomous of other government agencies, we expect to discover any deficiencies in the current systems, and in that oversight capacity we urge administrative agencies to improve. We also follow up on the improvements made in these administrative agencies after presentation of investigative reports, and provide the relevant details thereof, so they may continue to finetune their performance.

I have personally participated in and witnessed the process of democratization of Taiwan. Over the past half century, I have devoted myself without respite to the struggle for and defense of human rights. As Taiwan is moving toward a new milestone in human rights standards, I am honored to serve as the Chair for the first six-year term of the National Human Rights Commission, newly-established under the Control Yuan.

[1] The Control Yuan is an ombudsman-like independent branch of government in Taiwan defined in the Constitution; its 29 Members (10 of which are also NHRC members) are allotted autonomous powers to receive citizen complaints and to investigate all government operations.

I will continue to strengthen our exchange and cooperation with civil society groups, international organizations, and national human rights authorities from other countries. Meanwhile, I hope to follow human rights trends throughout the world even more closely, and to conduct our work in accordance with international human rights standards and with compassion as well. In doing so, I hope to achieve the mission of the National Human Rights Commission, to realize the highest ideals of human rights, and to ensure that social fairness and justice are practiced accordingly in Taiwan.

President of the Control Yuan

Chair of the National Human Rights Commission

December, 2020

Table of Contents

Introduction

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) (hereafter the "two Covenants") are the two most programmatic and dominant covenants related to human rights that have been codified under the United Nations; these two Covenants encompass and detail the precise substance of the Universal Declaration of Human Rights. Moreover, the importance of the two Covenants to Taiwan is self-evident due to the fact that in the legislation of the "Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights" this Act is given precedence of application if domestic law is in conflict with it; so when compared with other domestic laws, the Act has priority. Although Taiwan is not a member of the United Nations and is thus excluded from the national report review process undertaken by the United Nations Human Rights Committee, Taiwan has managed to promote the protection of human rights and incorporate international human rights standards by designing a national report review system which resembles that of the UN mechanisms.

Starting from 2013, international human rights experts have been invited to Taiwan to evaluate Taiwan's compliance with the two Covenants and to make conclusive observations and recommendations every four years. Not only is this review model ground-breaking and unique, it is also significant to both Taiwan and the international community. The aim of composing human rights reviews and reports is to provide governments with an occasion for self-examination and reflection. Apart from expanding the scope and accuracy of human rights investigations through existing policy indicators and statistics, the process of human rights reporting also helps to enhance the government's capacity for human rights review, as well as assisting in the mobilization and learning functions of implementation in the public sector. In addition, the national report review process stimulates governments to examine their existing human rights systems and to further bring to light the challenges and difficulties in enforcing human rights protections, as well as to identify the scenarios which are disadvantageous to specific or vulnerable groups. Self-examination of government departments and entities at all levels helps to verify whether the related policies and administrative actions taken by the government have obstructed the fulfillment of obligations to human rights. If obstructed, possible resolutions should be proposed. Through constructive dialogues with appraisers, civil society, and stakeholders, benchmarks to be achieved prior to the next national report are thus set.

Given that the submission and review of national reports form part of the government's obligations and accountability in human rights protection, aside from conforming to the basic requirements for rigor and credibility, the report contents

and data should also be strongly relevant to the context of human rights protection and stand the test of critique from all parts of society. In June 2020, the Executive Yuan published the "Third Report on the Implementation of International Human Rights Covenants" (hereafter the "Third Report"), in which the process of implementation of and the achievements in human rights protection over the last four years were affirmed. This achievement should be recognized, but clarification is required in the following matters for discussion.

For example:

A. In the Demographic Indicators (Point 16) of the core document of the Third Report, it is stated: "The proportion of people with disabilities in the total population increased slightly from 4.52% in 2008 to 4.81% in 2013 and to 4.98% in 2018." However, as people with disabilities in Taiwan are defined with respect to Article 5 of the People with Disabilities Rights Protection Act, not only does the person need to pass the medical evaluation conducted by a professional medical team, but the person also needs to already hold a certificate of disability as well; with such relatively narrow requirements for definition of disability, the actual number of disabled in the population has clearly been underestimated. As this result is far below the international average of 10-15%, the rights and interests of many disabled people are not protected. Therefore, the Review Committee of the Second Report previously recommended that the government of Taiwan conduct a national census to determine the actual number of disabled, including the elderly.
B. In the Criminal and Judicial Indicators (Point 67) of the core document of the Third Report, it is stated: "Both the national crime rate and the number of victims declined between 2015 and 2019." However, we see the number of suspects has gone up from 269,296 persons in 2015 to 279,074 persons in 2019; the number of suspects increased by nearly 10,000. Explanations are clearly needed.
C. According to Point 52 of the National Report on ICCPR Implementation regarding Torture in Article 7 of the ICCPR, "The document Directive for Audio and Video Recording for Suspect Interrogation by the Police requests all police officers to continuously record the entire process of suspect interrogation, including video recording where necessary. Between 2015 and 2019, no complaint against the police concerning forced confessions was reported." This directive has long been implemented, but even as late as 2015, it was still unable to prevent the police from obtaining forced confessions. So we must ask this question: Does not getting any reports of confessions been forced through coercion by police departments during 2015-2019, really mean that there haven't been any in that period? Aside from audio and video recording, the government of Taiwan should further disclose if other measures are being applied to stop the police from seeking forced confessions.

D. Continuing from the preceding issue, Point 53 states, “Prisoners alleging torture may submit complaints to the prison or its supervisory authority. Between 2015 and 2019, the Corrections Departments have received 1,945 complaints of this kind…” Accordingly, we can see that a large number of complaints have been filed; however, what is the ratio of verified to submitted cases of alleged torture, as calculated after investigation? What is the actual condition of the practice of torture in prisons? As information about the true status of torture and the disciplinary action and improvements to be adopted by the Corrections Departments are omitted in the report, the actual condition of the human rights of prisoners is thus inconclusive.

E. Regarding labor rights protections in Article 7 of the ICESCR, the Taiwan government provides no statements on whether the remuneration for the daily work of prisoners meets the basic living requirements.

In the publication of the Third Report, the Executive Yuan claims that the legalization of same-sex marriage and adultery decriminalization mark Taiwan’s significant progress in human rights protection in recent years. Although Taiwan is the first Asian country to recognize same-sex marriage, non-governmental organizations in Taiwan have struggled for more than 30 years to reach this point. In Judicial Yuan Interpretation No. 748 of 2017, the Justices of the Constitutional Court ruled that the related regulations in the Civil Code are unconstitutional and represent “inadequacy” due to their failure to allow two people of the same sex to establish an intimate and exclusive permanent relationship for the purpose of common living. The Judicial Yuan decided that this violated the right to freedom and equality of marriage prescribed in the Constitution. As for the decriminalization of adultery, in Judicial Yuan Interpretation No. 791 of 2020, the Justices of the Constitutional Court ruled that criminal punishment for those committing adultery as defined under Article 239 of the Criminal Code was unconstitutional. This was ruled because women in adultery cases are much more often prosecuted than men through these suits, thus causing indirect gender discrimination. Article 239 of the Criminal Code was eventually abolished by the Judicial Yuan, to realize substantial gender equality, some 80 years after it was last amended in 1934.

Reviewing issues of human rights protection in Taiwan over time, relief from the injustice will not be achieved until the rights of the people involved have been long affected, as judicial rights are “passive” and “retroactive” by nature. Relief is only achieved after a long judicial procedure and a huge investment of labor, time, and expenses by many parties. Therefore, it is a major issue for the government at all levels to design mechanisms for the active, proactive, and efficient prevention, as well early warning indicators, of potential human rights violations.

In addition, in Point 78 of the Second Report, international right experts have reminded us that there are unfulfilled aspects to human rights in Taiwan; these include the active promotion of domestic legislation to meet the three core United Nations human rights treaties, the implementation of suitable and effective education and training on human rights, the legislation of comprehensive anti-discrimination legislation, and the government's assurance of the full and equal participation and representation of indigenous peoples in Taiwan.

The present Independent Opinion on Taiwan's implementation of the two Covenants has been compiled by the National Human Rights Commission, established on August 1, 2020. It has used as the main reference in the previous cases investigated by the Control Yuan that are relevant to the two Covenants, and finally it has also advanced emerging human rights issues that impinge on the current situation of Taiwan. We wholeheartedly hope that the Independent Opinion of the National Human Rights Commission can provide a reference for the Third Report presented by the Executive Yuan, to reflect the reality of human rights protection in Taiwan and to facilitate the work of international human rights experts in reviewing and making recommendations for Taiwan's implementation of the two Covenants. Through this process, Taiwan can improve its overall environment for human rights protection and assure compliance with recognized international human rights standards.

International Covenant on Civil and Political Rights

Article 1 National Self-Determination and Development Protection

The Peoples' Right to Self-determination

1. Since the amendments to the Referendum Act came into effect on January 3, 2018, the threshold for a valid referendum proposal and for the number of signatures needed for the proposal petition have been relaxed significantly, thus effectively strengthening the people's right to self-determination. Subsequent to this, when national referendum proposals were to be voted on in conjunction with local elections in 2018, a total of 38 proposals were received and 10 of them were approved. This created complications in the actual election process, wherein about 40% of polling stations nationwide failed to complete the ballot count by the scheduled deadline on the election day. Some voters were still in the process of casting their votes while the ballot count was being announced elsewhere in other localities. The fairness of this election was therefore disputed, since voters who had yet to enter the polling station could have learned about the number of votes won by the various candidates and their voting inclinations could have been affected thereby. Upon investigation of this and subsequent follow-up by the Control Yuan, the Central Election Commission lowered the threshold of the number of constituent voters set per polling station, i.e. decreasing the burden of voters to be processed at each station, and implemented it into the 2020 Taiwanese Presidential Election.
2. In the aforementioned 2018 national referendum, several proposals "on the same issue but with opposing positions" were approved to be put to the vote, without consideration of the potential conflicts in the outcomes. After the vote created such uncertainties, the Executive Yuan prepared a draft amendment with an additional paragraph to Article 29 of the Referendum Act, but this amendment is still pending for review at the Legislative Yuan. Therefore, prior to its finalization, the Executive Yuan has instructed the Central Election Commission to exercise caution when determining the referendum results.
3. Reactions from all sides to the proposed 2019 Amendment to the Referendum Act showed that the Amendment overemphasized the technicalities and details, and failed to provide an effective remedy for the substantive issues to be dealt with under the Act, which still is an inadequate mechanism for the referendum process. In order to avoid the excessive and spurious proliferation of referendum proposals and the rampant spread of disinformation, which are detrimental to the positive development of the referendum process, the Executive Yuan and the Central Election Commission were advised to consider requiring the proposer of a referedum proposal to ensure the accuracy

of its claims; and moreover that the relevant government organ should assert the right to fact-check the proposal and to establish suitable mechanisms for this purpose. It is necessary to expressly stipulate that public hearings must be held for each referendum proposal, and that referendum proposers, stakeholders (or their representatives) and other third parties can participate in the hearings, in which all attendees should understand their rights and obligations. The relevant government organ should be obligated to further clarify the referendum proposals, and provide, or have a fair third party provide, detailed evaluation and analysis reports on the benefits and effects posed by any adopted proposals, with the hoped-for outcome that the referendum process can win the trust of all sides.

The Advancement of Indigenous Peoples

4. Point 27 of the Concluding Observations and Recommendations adopted by the International Review Committee for the Review of the Second Report, dated 20 January, 2017,

> …recommends the effective enforcement of Taiwan's Indigenous Peoples Basic Law (IPBL) and the implementation of revised policies and administrative measures undertaken by the Government in connection with the 2013 Concluding Observations and Recommendations. In particular, the Committee recommends that the on-going identification and recognition of traditional lands and territories by the Council of Indigenous Peoples be carried out in consultation with, and with the direct participation of, indigenous peoples.

The Control Yuan was concerned about said issues and, therefore, specifically conducted an investigation on the matter, and based on the findings, recommended improvements to be made by the competent authority. The findings provided upon the investigation are stated as follows, some of which have been adopted by the competent authority, which is proactively working on them.

5. Self-governance and economic land rights, as well as the conservation and preservation of their traditional culture, are at the core of the lives of indigenous peoples and central to the protection of their interests and rights. The Indigenous Peoples Basic Law expressly provides that it is necessary to establish (enact) laws and regulations governing said issues, and requires that various authorities should review the amended laws and regulations to assure they adhere to the principles upheld by the Act. However, most of them clearly still fail to do so. For example, there is still considerable delay in establishing (enacting) or amending several laws and regulations critical to indigenous peoples' self-determination and lives, including the Indigenous Peoples' Self-Government Act, Protective Regulation for Preserving Indigenous Cultural

Knowledge and Bio-Diversity, and the Indigenous Peoples' Land and Maritime Area Act, et al. The Executive Yuan should urge its subordinate units to coordinate with the competent authorities in order to establish (enact) and amend these laws and regulations.

6. The investigation and identification of traditional indigenous territories are critical to what is disclosed in Paragraph 12 of Article 10 of the Additional Articles of the Constitution of the Republic of China and Article 26 of the United Nations Declaration on the Rights of Indigenous Peoples: that the nation should protect and recognize indigenous peoples' land rights, and guarantee and provide assistance to realize their advancement. The same also serves as the basis for the handling of indigenous peoples' affairs referred to in Articles 20 and 21 of the IPBL. In addition, Paragraph 2 of Article 20 of the Indigenous Peoples Basic Law (IPBL) expressly states that the government must establish a committee to investigate and deal with the knotty issues of indigenous peoples' land rights, and that its organization and other related matters should be stipulated by law in order to ensure not only the committee's fairness and impartiality, but also the allocation of sufficient administrative resources. Instead, an internal unit of the Council of Indigenous Peoples was charged by the Executive Yuan with the task of dealing with the issues. Clearly, this is in contravention of the requirements stipulated in the IPBL. After the Control Yuan investigated this matter and marked it for enforcement, the Executive Yuan has expressly defined in the draft Indigenous Historical Justice and Recovery of Rights Act the legal basis for the establishment of an "Indigenous Historical Justice and Land Investment Committee" under the Executive Yuan, and that the Committee may be exempted from the restrictions imposed by the Basic Code Governing Central Administrative Agencies and Organizations. The subsequent legislative procedures shall continue to be proactively facilitated by the Executive Yuan.

7. After the indigenous peoples have in the future recovered the land historically reserved for them, the subsequent transfer or sublease of land rights to non-indigenous individuals not only seriously deviates from the existing policy of preserving their traditional lands for indigenous peoples, but also violates current laws and regulations. It also leads to the crisis of the actual loss of the rights to said reserved land, and further to disputes between indigenous and non-indigenous peoples over the ownership of the reserved land. In order to implement the policies and decrees for preservation of tribal land, the central and local competent authorities themselves have the responsibility to propose countermeasures and deal with the situation proactively. Notwithstanding, for many years, several county/city governments have failed to investigate in detail or carry out their work with due diligence. And the Council of Indigenous Peoples responded to the situation through educational promotion and persuasion only, and failed to seek improvements in the legal system or

law enforcement, or urge the county/city governments in question to respond to the misconduct proactively. As a result, misconduct persists, and is becoming increasingly serious. Upon investigation and subsequent follow-up by the Control Yuan, the Council of Indigenous Peoples is reinforcing the legislation with the draft Act Governing Recovery of Rights, Management and Utilization of Land Reserved for Indigenous Peoples.

8. The key reason behind the loss of reserved land caused by illegal transfer or subleasing is the failure to resolve indigenous peoples' financial diffculties, which compel them to do so due to poverty. Notwithstanding, the Council of Indigenous Peoples has continued to ignore the situation, as it has provided no adequate alternative financial measures that could help indigenous peoples develop business on their own lands to satisfy their livelihoods. Upon investigation and subsequent follow-up by the Control Yuan, the Council of Indigenous Peoples has, since 2015, introduced the "Indigenous Peoples' Lean Start Guidance Program" and the "Indigenous Peoples' Comprehensive Development Fund Loan Power-Up Program," in order to increase the funds to be made available to indigenous peoples wishing to start or engage in any business.

9. For the dispute over the reserved land involving Techi Reservoir and the Highland Experimental Farm operated by National Taiwan University, please refer to the Future Prospects chapter (Points 256 and 257).

Pingpu Indigenous Peoples Identity Movement

10. The Pingpu Indigenous Peoples Identity Movement has been seeking to achieve official recognition of Pingpu tribal identity for almost three decades. However, it has so far received no attention or recognition from the Government. According to Point 33 of the Concluding Observations and Recommendations adopted by the International Review Committee for the Review of the Second Report, dated March 1, 2013, "It has come to the attention of experts that the nine Pingpu lowland aboriginal tribes have failed to be granted recognition as indigenous peoples by the Government of Taiwan despite evidence of their distinct history and culture, language, customs, and traditions." Point 34 of the same document states that "Experts recommend that the government should clarify its policy of identifying indigenous peoples, based on international human rights standards set out in the two Covenants as well as in the UN Declaration on the Rights of Indigenous Peoples, and the ILO Convention No. 169 on indigenous and tribal peoples, and to apply a human rights-based approach in its engagement with the various indigenous groups in the country." In order to properly pursue equality in human rights, national self-determination, and respect for diversity, culture, and language in Taiwan, no Pingpu peoples should be left behind as the nation pursues transitional justice. The Government should respond to these issues more proactively.

Article 2 and Article 3 Protection of All Rights to Equality

11. The legislative intent of National Pension Insurance aims to ensure the economic security of the disadvantaged in old age. Notwithstanding, statistics gathered by the Bureau of Labor Insurance show that up to 25,681 prisoners may be affected upon expiration of the 10-year grace period for payment of their overdue premiums (namely on January 31, 2019). As it is impossible for prison inmates to pay the National Pension Insurance premium, they may become ineligible for enrollment in the insurance program after missing out on the 10-year grace period for payment of overdue premiums. Clearly, this is counter to the principles of impartiality. Upon investigation and subsequent follow-up by the Control Yuan, the Agency of Corrections of the Ministry of Justice (hereinafter referred to as "Agency of Corrections") on May 23, 2018 amended the Directions Governing Disbursements of Non-Discretionary Labor Compensation for Prisoners to allow prisoners to pay the National Pension Insurance premium with their income from their labor done while in prison. On September 3, 2019, the Bureau of Labor Insurance enacted the Standard Operating Procedure for Payment of Premiums Overdue for More than Ten Years Requested by the Insured for National Pension Insurance to broaden the definition of causes "not attributable to" the insured. Therefore, any prisoner who fails to pay the National Pension Insurance premium within the 10-year grace period because they are in jail is still eligible to apply for payment of the overdue premium with the Bureau of Labor Insurance if it is done promptly after their being released from prison. Meanwhile, the Ministry of Health and Welfare and Agency of Corrections shall communicate this information to all prisoners.

12. Under the work-outside camp prison system (low security environment, usually working on farms, family visits allowed) implemented by the Ministry of Justice, the quota for the maximum number of male inmates allowed assignment to these camps has increased, while the number of female inmates in the work-outsidecamps has remained unchanged. As a result, the percentage of male inmates in work-outside camps as part of that in general prisons has remained constant at 3%, while the same percentage for female inmates declined from 2% to 1.9%. The failure of the Ministry of Justice and Agency of Corrections to adjust the number of female inmates in these camps has created inequality between the two sexes in the opportunity for serving their sentence in such low-security camps. Upon investigation and subsequent follow-up by the Control Yuan, the Agency of Corrections has established a female work-outside camp under Yilan Prison, and authorized the transfer of 50 inmates thereto on September 1, 2019.

13. Through the two amendments made to the Prison Camp Act in 1978 and 2014, the "gap" between the sentence mitigation applicable to the same grade of prisoner in work-outside camps and general prisons has widened. Unlike work-

outside camps, general prisons follow a 10-point scoring system, and they have stricter requirements for the beginning and accruing credits for good behavior, a system which varies across prisons. Therefore, most of the inmates in general prisons would only qualify for sentence mitigation at a later stage of their imprisonment. As a result, the difference in the actual sentence mitigation applicable to the two types of prisoner can be huge. Such an imbalance in the sentence mitigation mechanisms applicable to the two types of prisoner should be remedied, to avoid deviation from the goal of substantial equality.

14. Article 29 of the Special Education Act stipulates that the Ministry of Education, may arrange for college or unversity admissions for students with disabilities by assigning additional quotas each year, aside from the general admission process, Colleges or universities would then decide on approving additional admission quotas and the types of students with disabilities they would accept, and define related requirements at their sole discretion. Since its implementation, however, issues such as insufficient departments/institutes recruiting students and uneven admission quotas, high uncertainty in admission quotas offered by each department/institute each year, flawed difficulty discrimination indices in examination questions, and insufficient examination rooms have emerged, and created inequality among students who fall under different disability categories. The Ministry of Education is advised to review the necessity for the system of categorizing disabilities, as well as the problem of uneven recruiting by departments/institutes and admission quotas.

Article 6 The Right to Life

Death Penalty

15. Points 58 and 59 of the Concluding Observations and Recommendations adopted by the International Review Committee for the Review of the Second Report, dated January 20, 2017, mention that

> Despite the fact that international law is increasingly recognizing the death penalty as contrary to the rights of human dignity, the number of executions has remained roughly the same in recent years and the Government continues to justify its rigid attitude with opinion polls, allegedly proving that a large majority of the population remains in favor of the death penalty. The Review Committee urges the current Government of the Republic of China (Taiwan) and President Tsai Ing-wen to take the lead in raising public awareness against this cruel and inhuman punishment, rather than being exclusively concerned with public opinion. To this end, the Committee strongly recommends that the Government take decisive steps by immediately introducing a moratorium on executions with the aim of a full abolition of the death penalty in the near future.

The Control Yuan has been concerned about said issues and, therefore, conducted a death penalty-related investigation, and recommended the competent authority to review this issue. The findings of the investigation are as follows:

16. According to Paragraph 49 of the General Comments No. 36 on the ICCPR, the death penalty should not be imposed on individuals whose serious psycho-social and intellectual disabilities impede their capacity to make an effective defense or diminish their ability to understand the reasons for their sentence; nor on those who have suffered serious human rights violations in the past. For example, in the case against Wang Chun-chin in 2015, information pertaining to the mental condition, medical treatment and counseling records of the prisoner was not provided to the review team until after his death penalty had become final and irrevocable. In the case against Weng Jen-hsien in 2020, whether the case is pertinent to Paragraph 49 of the General Comments No. 36 on the ICCPR remains doubtful, despite the assessment report on his mental and physical condition submitted to the Ministry of Justice by the examining physician. The Ministry of Justice should properly and with caution conduct an assessment of the physical and mental condition of the prisoner before his or her execution.

17. Before the death penalty is completely suspended or repealed, press releases from the Ministry of Justice should be carefully worded. In the past these press releases were used to justify the death penalty, that it should be applied as a measure to uphold justice as well as human rights. But it has been demonstrated that the practice of carrying out the death penalty creates a myriad of problems. For example, inmates might be informed of the sentence too late, and thus have no time to challenge it; additionally, flaws in the systems of prison officers and judicial police, as well as in relevant laws and regulations, still remain. In order to maintain a spirit of humanity and perfect the legal system, the Ministry of Justice should review the problems in such practices thoroughly.

Prisoners Sentenced to Death Seeking Pardon or Commutation

18. The Constitution of the Republic of China (Taiwan) provides that the right to exercise the power of remission of sentences remains vested in the President. To meet the purpose of subparagraph 1, Paragraph 3 of Article 2 and Paragraph 4 of Article 6 of the ICCPR, before a pending application for pardon is approved or rejected by the President, or the relevant remedy sought by the applicant against the ruling rejecting the application for pardon is concluded properly, there must be a stay of execution. This is required for compliance with Paragraph 47 of the General Comments No. 36 on the ICCPR and Point 57 of the Concluding Observations and Recommendations adopted by the

International Review Committee for the Review of the First Report. It must be cautioned that for the time being the death penalty practices adopted by the Ministry of Justice and the Supreme Prosecutors Office are not adequately designed to protect any prisoner whose application for remedy against the denial of his/her application for pardon is still pending. Such practices appear to deviate from subparagraph 1, Paragraph 3 of Article 2 of the ICCPR, Paragraph 47 of the General Comments No. 36 on the ICCPR and Point 57 of the Concluding Observations and Recommendations adopted by the International Review Committee for the Review of the First Report of the Government of Taiwan on the Implementation of International Human Rights Covenants.

Prevention of Excessive Police Force

19. When apprehending burglars on August 31, 2017, the police offiers sent by Fenggang Police Station in Hsinchu County apparently applied excessive police force, firing 9 shots within 12 seconds at very close range at a migrant worker named Nguyen. The shots were concentrated on the migrant worker's back and between his waist and belly. The migrant worker subsequently died as a result. The officers should be held responsible for exceeding the necessary degree of force defined under the Act Governing the Use of Police Weapons. The flurry of shots fired by the police caused massive bleeding to the migrant worker, resulting in his death; this excessive use of force was far out of proportion. Moreover, when the first Shanchi ambulance team of the Hsinchu County Government Fire Bureau arrived on the scene, the firefighters sent a civil guard, whose nose had been broken, to be given treatment first. They sent the migrant worker Nguyen for treatment in the second ambulance, which arrived at the site 14 minutes later. The migrant worker died of his severe injuries before arrival at the hospital. The procedures applied could hardly be considered appropriate.

20. The investigation found that most entry-level police officers responsible for frontline patrols and duties in police stations have graduated from Taiwan Police College, and usually they have a high likeness of using guns and also having to deal with more complicated situations in their work. However, unlike the current training programs adopted by the Central Police University, which contain a 216-hour firearms training program, Taiwan Police College only provides a 140-hour firearms training program, and it does not include the Computer Firearms Simulation Training class. Consequently, the entry-level police officers' knowledge about firearms, as well as their skill and accuracy in using them, might not afford them the tools to respond to an on-the-spot situation properly.

Article 7 Prohibition of Torture

Torture

21. In October 2019, there was an incident in which prison guards at Kaohsiung Prison abused a prisoner named Chen severely enough to result in his death. The Control Yuan conducted an investigation on its own initiative and found that the prison guards, together with other prisoners serving as "attendants," kicked and hit Chen. As a result of the beating, he was badly injured and died of his multiple injuries later, after being neglected and then receiving delayed medical treatment. Kaohisung Prison should have immediately conducted an in-depth investigation into the case, *ex officio*, but failed to do so. The Agency of Corrections also failed to keep up with the situation in a timely manner. Both the prison and Agency of Corrections should be considered as being derelict in their supervision and management. On August 24, 2020 Taiwan Kaohsiung District Court sentenced the two prison guards and four accomplices to terms of imprisonment ranging from 10 years and 6 months to 3 years and 10 months for the death of the prisoner. The Agency of Corrections also strengthened its training and promotion of human rights under the two Covenants to prevent torture, pursuant to the Control Yuan's investigation findings.

22. In the last 10 years, at least 12 cases of inmate suicide have taken place in Taiwan's Green Island Prison. The prison was also accused of actions constituting abuse and torture, such as the illegal use of police weapons, use of physical restraints, confining prisoners to solitary cells, implementation of disciplinary punishments, beating prisoners, and the use of electric shock to control inmates. The Control Yuan investigation found that Green Island Prison had been using physical restraints on inmates for long period of time. After investigation and listing for continued oversight by the Control Yuan, the situation has begun to improve, and the Ministry of Justice acknowledged the need to continue strengthening its prison supervision.

23. Prolonged confinement to solitary cells can cause inmates to suffer severe mental stress. Several international human rights organizations believe that under special conditions, confining prisoners to solitary cells may constitute "cruel or inhuman treatment" as referred to in Article 7 of the ICCPR. Therefore, these organizations demand that each country should make their best efforts to avoid confining prisoners to solitary cells. Notwithstanding, in women's prisons where fewer prisoners are held, sometimes it is inevitable that inmates are confined to solitary cells, and in a few cases this has led to solitary confinement for several months. This could cause physical and mental harm to female inmates, and could even constitute discrimination. There was even a case of a prisoner being held in a solitary cell for 14 years. Upon investigation and subsequent follow-up by the Control Yuan, Paragraph 4 of Article 4 of the Detention Act and Paragraph 5 of Article 6 of the Prison Act

were amended on January 15, 2020, in order to prohibit the confinement of prisoners to solitary cells for more than 15 days; and also to include a mechanism for health assessment by medical personnel.

Corporal Punishment

24. In 2017, the Humanistic Education Foundation received 29 complaints lodged by students in the Greater Tainan area, and reported them to the Control Yuan. The Control Yuan's investigation found that most schools in Tainan City tended to accept the teachers' subjective accounts of their motives when investigating those accused of "illegal punishment," and usually misidentified "corporal punishment" as "improper discipline." Therefore, teachers who were suspected of exercising corporal punishment would not be punished by law, nor would they receive additional supervision or proper counselling. The Bureau of Education of Tainan City Government failed to supervise the schools within its jurisdiction, and adopted the schools' decisions across the board. It can be seen through this case that children in elementary schools or younger in Taiwan, who are still developing both physically and mentally, and require due care, inconceivably accounted for a majority of the objects of corporal punishment in schools. And as the statistics concerning corporal punishment in schools were all as verified and reported by schools themselves, the actual numbers might be worse than those published by the Ministry of Education. The Ministry of Education was clearly aware of said circumstances and related disputes, but failed to resolve or improve the situation proactively. After investigation and listing for continued oversight by the Control Yuan, the Ministry of Education made systematic adjustments to the prevention and treatment of corporal punishment incidents in the Teacher's Act amended on June 30, 2020, and its sublaws thereto, to uphold the educational principle of "zero corporal punishment" promulgated in the Education Basic Law.

25. In 2018, National Chiayi Special School was found to have tolerated teachers' abuse of students. Some students were forced to eat red peppers, beaten with hot melted glue sticks or toilet plungers; pulled by their hair and banged against the wall, forced to wear paper diapers on their heads all day, deprived of food all day as punishment, or ordered to cut up their favorite puppets to make pencil bags for their classmates, and so on. Upon investigation and subsequent follow-up by the Control Yuan, the Ministry of Education supervised the school-in-question to come up with an improvement plan, and paid monitoring visits. It also disciplined those teachers and the principal who acted in contravention of their duties, and amended related laws and regulations governing discipline of incompetent teachers. It further improved the mechanism dedicated to following up on transfer students and reviewing their files. The Ministry of Education should continue supervising schools *ex officio*, in order to prevent these corporal punishment cases from re-occurring.

26. As many cases of improper discipline of students have occurred in juvenile reform institutions, the Control Yuan has initiated an investigation of these institutions. The findings prompted the Agency of Corrections to not only augment human resources, equipment and facilities, but also to establish procedures to regulate the use of physical restraints, and to provide medical equipment and student medical treatment. The agency introduced special educational resources, and enhanced the guardians' knowledge about special education and counseling skills. Furthermore, it also integrated the procedures in both the judicial and administrative branches to resolve juvenile cases, as well as facilitate teamwork among the sectors of education, health, social welfare, labor administration, and prison administration. In 2019, juvenile reform institutions were reorganizí into a branch of Juvenile Correctional Schools, and future improvements are to be expected.

Article 8 Protections Against Slavery

Prevention of Human Trafficking and Labor Exploitation

27. Foreign boat crew members hired abroad are identified as the lowest-level laborers working in high-risk, critical environments. Despite having a standard labor contract, the protection of their rights and interests provided therein is still akin to a dead letter. As Taiwan's laws and regulations do not apply to them, they cannot be protected under these laws and regulations. Given the poor labor conditions and insufficient protection of their interests and rights, foreign crew members are often forced to work overtime and accept poor meals and medical care, and are even exploited or subjected to situations of human trafficking and abuse. According to international media, they are generally described as "slave labor" and "slaves." As a country upholding human rights while making massive harvests in distant water fisheries, Taiwan cannot ignore the protection of foreign crew members' basic rights. Upon investigation and subsequent follow-up by the Control Yuan, the Council of Agriculture enacted and promulgated the Act for Distant Water Fisheries and amended the Fisheries Act on July 20, 2016. It then promulgated and enforced the Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members on January 20, 2017, in order to regulate employment brokers, expressly define the assurance of a minimum salary, enhance the personal and medical protection for foreign crew members, and take more robust measures to improve fishing workers' labor conditions.

28. According to data from the Immigration Agency of the Ministry of the Interior (hereinafter referred to as the "Immigration Agency"), from 2012 to the end of December 2017, there have been a total of 676,142 migrant workers in Taiwan. Of this number, there have been 52,317 migrant workers who canot be traced and their whereabouts are unknown, with this number increasing year on year.

The Ministry of the Interior has failed to propose response measures effective against this problem, and it has ignored the serious shortage and unbalanced allocation of dedicated personnel in the Immigration Agency, to the point that the problem of the increasing number of untraceable runaway migrant workers has become more serious. An outcome of this is that the original employers may fall short of manpower, and the foreign worker caregivers may become unavailable to elderly who depend on them. Migrant workers working illegally can also affect the order of the entire labor market and the native nationals' interest and rights in employment. These runaway migrant workers can themselves further be easily targeted as the objects of human trafficking or transported for labor exploitation. After investigation and continuing follow-up by the Control Yuan, the Ministry of Labor proposed draft amendments to the Employment Service Act, so that offenders illegally permitting foreign workers to stay in their employment, or those acting as brokers for or retaining illegal foreign workers, may be fined repeatedly, and that the fines and criminal liability levied against agents illegally brokering foreign workers will be accrued.

29. Several Vietnamese domestic caregivers, while waiting to be transferred to new employers, were suspected of having been assigned by their employment broker to work for illegal employers and they suffered mistreatment at that workplace. They were subjected to labor exploitation, and some were forced by the broker to go to hospital due to physical and mental exhaustion. The Control Yuan made an investigation and mandated a response by the Ministry of Labor. If any migrant worker now is identified as a victim of human trafficking by the judicial police authority, the Ministry of Labor will temporarily blacklist in its information system the employer, the employer's legal representative, or the person recruiting labor on behalf of the employer; i.e. they will not be permitted to obtain more migrant workers. In the case of domestic caregivers, the person needing home care and other co-living relatives will be likewise registered in the system for restriction. This will apply unless the employer obtains a decision not to prosecute or a not-guilty ruling rendered by the court. All the same, the Ministry of Labor will strictly examine any applications filed by the said persons on a case by case basis.

30. To address the problem of schools admitting foreign students to Taiwan via a broker with the actual intent of engaging them in part-time work as interns for manufacturers, the Ministry of Labor and Ministry of Education should enhance their lateral communication, and work more closely to improve the inspection mechanism. This should prevent schools from operating through unscrupulous brokers to recruit foreign students in the name of studying in Taiwan, while actually making them do physical work, even long hours as cheap labor. A reputation of "physical work in the disguise of internship" would damage Taiwan's international image in higher education. After

investigation and supervision by the Control Yuan, the government branches have established the relevant oversight mechanisms.

31. In order to stop schools from admitting foreign students via labor brokers, the Ministry of Education has drafted several policies, and there has been considerable discussion. Nevertheless, it still should strengthen its inspections to ensure that all schools implement them. It is true that some students may bear tremendous expense or debt in order to study in Taiwan as arranged by the broker, and they are then compelled to work in order to repay the debt. They may even be willing to work overtime for extra money. Notwithstanding, since these students come to Taiwan to study and not work, and in order to prevent them from being stuck in a vicious cycle affecting the quality of their studies, the Ministry of Education should reach out to those already living in Taiwan, to understand them and help them effectively resolve the difficulties. The Ministry should also investigate if any foreign students are controlled or exploited by schools or brokers, lest such criticism about "student workers" should arise, adversely affecting Taiwan's reputation in higher education. Upon investigation and subsequent follow-up by the Control Yuan, schools have been urged by the Ministry of Education to cooperate and take all efforts to protect the interests and rights of students.

Article 9 Freedom of the Person

Personal Freedom

32. The justification for investigations labelled as "Others" and initiated by the public prosecutors is actually only based in administrative rules, not law. Nonetheless, in such investigations, prosecutors are allowed to carry out investigation measures as if they were done under the Code of Criminal Procedure, such as subpoena, search, seizure and tapping, while being exempted from the requirements to conclude such investigations under the same Code (i.e. the decision to prosecute, to not prosecute, or defer prosecution). This not only infringes upon the concerned parties' fundamental litigation rights, but also violates the principle of legal reservation (*Gesetzesvorbehalt*), or limitation of scope, under the rule of law. Despite investigation and monitoring by the Control Yuan, the draft amendments prepared by the Ministry of Justice still allow prosecutors to take actions demanding compulsory compliance, by subpoenaing witnesses. The Ministry of Justice should further deliberate on this matter by taking into due consideration the intent of the ICCPR.

33. The current investigation measures utilizing compulsory force applied to investigations labelled as "Others" not only violate the principle of legal reservation, but also deviate from the intent of fundamental litigation rights

protection as well as the principle of an impartial tribunal. They also evade the basic restraints imposed by the statutory principle for investigation and violate the principle of supremacy of the rule of law. Even if the related person or witness is raided, seized, subpoenaed, detained, or put under surveillance for a long period of time, the prosecutors are still allowed to close cases using their administrative power, rather than using statutory authority. The right to seek remedies is also controlled by the prosecutors office, which violates the concerned parties' fundamental litigation rights. Therefore, the Ministry of Justice should, based on the intent of the ICCPR, further deliberate on improving the investigation system to better protect personal freedoms.

34. The prosecutor's office, by virtue of its power to carry out investigations classified as "Others," issues notifications to "related parties" that are not expressly defined in any laws, or even subpoenas the defendants or suspects as "witnesses," in effect to deprive them of their right to silence and their right to counsel. Moreover, in order to search a third party (labelled as a "witness"), the prosecutors are allowed to issue an arrest warrant before the search. This is not only against the requirements for subpoena, but also against Article 8 of the Constitution of the Republic of China (Taiwan), which stipulates that when a person is arrested or detained, the organ making the arrest or detention shall, within 24 hours, turn the person over to a competent court for trial. Therefore, the Ministry of Justice should, based on the intent of the ICCPR, deliberate on and formulate possible amendments to the said investigation system, amendments that can provide the protection of personal freedoms.

35. Personal freedom falls under the protection of Article 8 of the Constitution of the Republic of China (Taiwan). Per the Judicial Yuan's Interpretation No. 443, the circumstances that could justify affecting a person's physical freedom should, at least, be stipulated and constrained by law. Whether a prisoner should or should not continue to enjoy parole is critical to the prisoner's personal freedom and his right to parole, and it should be defined expressly by law, and not through *ad hoc* written explanations by any administrative or judicial authorities. Though a written explanation issued by the Ministry of Justice merely "cancels" a parole, it has the same effect in practice as a revocation and results in the sentenced person being imprisoned again. Such an action violates personal freedom, and is not based on any laws or by a fair and open trial. This is clearly in violation of Articles 8 and 23 of the Constitution of the Republic of China (Taiwan). After investigation and continuing attention by the Control Yuan, the Ministry of Justice amended the Prison Act to expressly define the procedure for revocation of parole, as well as legal effects and remedies thereof. The amended Act was promulgated under the Presidential Order dated January 15, 2020.

Detention and Custody

36. In a case when the defendant is not detained by the prosecutor during investigation, but by the judge when tried, if the judge making the detention ruling allows a public prosecutor other than the original prosecutor in charge to state an opinion, the defendant's rights may not be fully protected. It is likewise questionable whether the opinion stated by the public prosecutor is indeed based on a comprehensive understanding of the case. In addition, if the investigation and trial are both based on the same criminal facts, it is not enough to convince the defendant to accept the ruling merely on the opinion given by the public prosecutor. Therefore, when dealing with compulsory measures that are in conflict with personal freedoms, the Ministry of Justice should establish specific mechanisms to allow the prosecutor in charge of the investigation to state his/her opinion. If so, conflict between the concerned party and the prosecutor may be mitigated.

Rehabilitation Treatment Under Observation

37. With respect to the continued detention for drug rehabilitation under observation, as referred to in Paragraph 2, Article 8 of the Act of Implementation of Rehabilitation Treatment, since neither the Judicial Yuan nor Ministry of Justice has expressly defined the deadline by which a court should render a ruling on whether compulsory drug rehabilitation treatment should be extended, it is possible that the court could render such a ruling after expiration of the rehabilitation treatment (usually 6-8 weeks). Such circumstances can be considered a legal loophole, making the said provision deviate from the requirements regarding the revocation of detention referred to in Paragraph 2, Article 108 of the Code of Criminal Procedure, and significantly infringing upon fundamental rights. Therefore, the relevant laws and measures should be further reviewed in response to the protection of personal freedom under Article 8 of the Constitution of the Republic of China (Taiwan) and Article 9 of the ICCPR. After investigation and subsequent follow-up by the Control Yuan, the Judicial Yuan and Ministry of Justice have amended the Act, which was passed by the Legislative Yuan on June 13, 2018.

38. As none of the existing laws expressly define the deadline by which a court should render a ruling on compulsory rehabilitation treatment ordered for any person engaged in continued drug abuse, in practice, the person may be still confined under rehabilitation treatment even if the order has already expired; the person thus fails to obtain the court's protection in a timely manner. There are a great number of such cases. This clearly results from inadequate judicial and administrative management in the practice of rehabilitation treatment. After investigation and follow-up by the Control Yuan, the Judicial Yuan, on April 14, 2017, officially informed the courts that they should take note of the completion date of the rehabilitation treatment when processing the

responsible prosecutor's request for compulsory rehabilitation treatment, and should rule promptly and in a timely manner.

39. Under the current legal system, a compulsory drug rehabilitation treatment order is given in the form of a ruling. Thus, no trial procedure is necessary other than document review. Notwithstanding, this practice appears to be in contravention of the "principles of appropriate trial and hearings" referred to in Article 8 of the Constitution and Article 9 of the ICCPR. Taiwan adheres to the rule of law. The Judicial Yuan should strive to incrementally improve on this situation, and strike a balance between protecting personal freedom and guaranteeing sufficient judicial manpower and budget.

Compulsory Labor as Judicial Punishment

40. Currently, the premises/offenses warranting punishment in the form of compulsory labor, as listed in Paragraph 1, Article 90 of the Criminal Code, items such as "habits of loitering or vagrancy," are not adequately defined. The foreign precedents for the legislation of said provision in Taiwan, such as that of Germany, have already abolished their system of punishment with compulsory labor. Given the aspects that remain unknown in this punishment, and implementation practices having no difference from those in sentencing to imprisonment, most scholars believe that "it constitutes discrimination toward specific offenders," and "not an arbitrary punishment in name, but an arbitrary punishment in reality." The Ministry of Justice should proactively consider the abolition of the compulsory labor system as a step to ensure human rights.

41. According to the Agency of Corrections' reply to Control Yuan's inquiry, the current compulsory labor practices adopted by various skill training institutes for the offenders are no different from those applied for general prisoners. But such practices do not in nature constitute rehabilitative measures that serve as a kind of "protective" sentence. Instead, the compulsory labor sentence, in practice, becomes an extended sentence rendered against the person liable to penalty, which is likely to violate the proportionality of crime and punishment. The Ministry of Justice has failed to substantively distinguish the compulsory labor measures and general sentences, and perform its administrative duties pursuant to the law.

42. Currently, courts mostly proclaim compulsory labor sentences on the grounds of the defendant's "habit of crime." While a "habit of crime" will be determined with more detailed substance during trial, it is primarily decided based on the defendant's criminal record; differing opinions are not uncommon. Some scholars have questioned the kind of evidence that the judgments of compulsory labor are based on, and it is clearly different from that which is defined in Article 3 of the Organized Crime Prevention Act;

according to the Act, any person in violation of the provisions should without exception be sentenced to compulsory labor. With regard to the said question, the Supreme Court on October 11, 2018, suspended deliberations and petitioned for a constitutional interpretation. Apparently, the criteria for a ruling of a compulsory labor sentence are not clear nor fair enough. The Judicial Yuan and Ministry of Justice should take on the disparity in the severity of these criteria and the inequalities arising therefrom. The Ministry of Justice should take them into account when deliberating on the necessity for the compulsory labor system. Upon investigation and follow-up by the Control Yuan, the Ministry of Justice, in their proposed amendments, has considered taking "loitering or vagrancy" out of the Act.

Juvenile Protection Cases

43. According to Article 19 of the Enforcement Rules for Examination of Juvenile Protection Cases promulgated by the Judicial Yuan in 2009, for minor-age youth cases which are submitted to an arbitration session instead of a formal trial, the transcript of the session may supersede a written ruling as a record of the judgment reached. This is done to implement tthe less-rigid arbitration mechanism, and it is considered to be made in good faith. However, Paragraph 2, Article 40 of the said Enforcement Rules makes the said practice applicable to major judgments in juvenile law cases that restrict personal freedom, including placement and reform education. As a result, taking the less burdensome path, most judges tend to provide a transcript rather than a written ruling. Thus, the facts and reasons are unclear in the simplified procedure, and one cannot guarantee that the judge has taken full care in the deliberation process. This flawed protection of the juvenile's interests and rights fails to achieve the purpose of implementing arbitration. The Judicial Yuan in 2004 expressed the intent to review the format and content of the judgment records when amending the laws in the future. However, no concrete actions have been taken for the past 15 years. The Judicial Yuan has clearly failed to deal with the matter proactively. In February 2019, the Control Yuan completed an investigation on the matter, and based on the findings, requested the Judicial Yuan in writing to conduct a review. When the Legislative Yuan amended Paragraph 3, Article 19 of the Juvenile Justice Act in June 2019, the Judicial Yuan, in response to the significant amendments to the said Act, amended the relevant provisions of the Enforcement Rules for Examination of Juvenile Protection Cases, to improve application of the due process of law to juvenile cases.

44. The juvenile investigation officer's pre-trial investigation is the central guide to judgment in juvenile protection cases. The investigation findings and suggestions serve as the basis and requirement for the judge reaching a judgment through arbitration. However, it was found that juvenile investigation officers of eight district courts, including the Taoyuan District

Court, attended the hearings on a schedule of rotation, instead of specifically attending the case hearings for which they had done investigations. Such practices are similar to those adopted by the public prosecutorial court system. However, the public prosecutorial court is based on the "prosecutors as one identity" principle, which is completely different from the those referred to in Paragraph 1, Article 39 of the Juvenile Justice Act, which provides that "a juvenile investigation officer should appear before the court on the hearing date to express opinions regarding the investigation and the rulings," and in Paragraph 1, Article 19 of the same Act, which provides for "…investigation into the delinquency-related behavior, character, experience, mental and physical conditions..." It also differs from the factors used as justification by the juvenile investigation officers in charge of pre-trial investigations when attending hearings to present reports and suggestions, as if the latter have independently created another "investigators as one identity" principle with no legal basis. The Control Yuan investigation shows that these customary practices have already made the requirements referred to in Paragraph 1, Article 39 of the Juvenile Justice Act, requirements which call for an investigation of the particular juvenile, a mere formality. The juvenile investigation officer on rotation does not read the related court files, and he/she would only state "all details are shown in the juvenile investigation report" at the hearing. Besides this, no adequate handover mechanism is available after hearings are concluded. In practice, if a judge disagrees with the ruling suggested by a juvenile investigation officer, he/she would discuss altering the suggested ruling with the officer before the hearing. In such cases, a written ruling is frequently replaced by the arbitration record. But without the appearance of the particular officer who did the investigation, it is very likely that judgment through arbitration actually would become a trial by interrogation instead. As the supervisory power over judicial administration, the Judicial Yuan should supervise all subsidiary courts to review and improve themselves promptly. If it is difficult for the courts to do so, the Judicial Yuan should help provide additional resources. When the Control Yuan put forward its investigation report in February 2019, it received attention from the legislators. This prompted the Legislative Yuan to amend Paragraph 3, Article 19 of the Juvenile Justice Act in June 2019 by adding a paragraph stating that "Where a juvenile investigation officer is summoned to appear before the court to give evidence on the results of an investigation or suggestions for handling a matter, the juvenile investigation officer that conducted the investigation referred to in paragraph 1 should appear before the court in person to present the findings, unless the officer provides a justifiable reason for absence." Such amendments to the Act have changed the practice at some district courts, such that the juvenile investigation officer in charge of the pre-trial investigation is no longer absent from the hearing.

Article 10 Reasonable Treatment during Imprisonment

Treatment Appropriate to Human Dignity

45. The Concluding Observations and Recommendations adopted by the International Review Committee for the Review of the First and Second Reports both indicated that the overcrowding issue in detention institutions has resulted in various disputes over human rights, which shows that the improvement program implemented to solve the overcrowding of prisons/detention centers has achieved no positive results. The Agency of Corrections is now implementing some new construction (expansion) projects at Yunlin Second Prison, Bade Minimum-security Prison and Changhua Detention Center. Although the projects will help to improve the overcrowding ratio, in the short term positive effects are difficult to quantify. In addition, the detention institutions where the new construction (expansion) projects are being implemented are all located in Northern and Central Taiwan. The same problem still persists in Southern Taiwan. Furthermore, the area of the cells is 0.7 *ping* (approx. 2.31 m^2) in accordance with the Standard Table for Detention of Prisoners by Prisons Designated by the Ministry of Justice. Due to overcrowding, the cells which inmates are confined to are actually smaller in area. The "one man, one bed" policy cannot be fully implemented. There is a dire need for the Ministry of Justice to monitor prisons/detention centers to review and relieve the overcrowding problem so as to substantively demonstrate the Government's good will to take good care of inmates' basic human rights.

46. According to a Control Yuan investigation in 2019, the Agency of Corrections estimated that the expenses needed to meet prisoners' basic cash needs in prison are NT$3,000 per inmate. However, the statistics gathered by the Agency showed that 12,496 prisoners (including both those serving sentences and those detained in protective institutions) (20.51%) came from disadvantaged families, such as low-income, low-medium-income families, or families near the poverty line. When serving their sentence, 7,832 prisoners (12.87%) received no relief at all, and 3,407 prisoners) (5.6%) needed to rely on their income from the detention institutions' labor wages, and 13,989 prisoners (22.5%) have less than NT$1,000 of money under safekeeping per person at their disposal. From 2016 until the end of July 2018, a total of 462 prisoners could not afford their own national health insurance premium payments. This shows that at least 20% of the prisoners were unable to satisfy their basic needs when serving their sentence. They clearly need aid and relief. Given this, the Agency of Corrections is held in violation of Articles 15 and 155 of the Constitution and Paragraph 1, Article 10 of the ICCPR, which provide that the prisoners are entitled to treatment appropriate to human dignity.

47. When confiscating, charging, and implementing compulsory administrative and civil payments against inmates' money under safekeeping or against their labor wages, the courts, prosecutors, and administrative enforcement authorities should leave living expenses necessary to sustain inmates' living costs for two months, in accordance with the Compulsory Enforcement Act. Notwithstanding, most implementation orders only retain one month's worth of living expenses for inmates. The Judicial Yuan and Ministry of Justice should have their subsidiary agencies deliberate on establishing specific governing principles to address this issue.

Reasonable Treatment of Detainees Denied Visitation/Communication While Awaiting Trial

48. Family rights and the right to communicate are integral to basic human rights. The General Comments No. 20 on the ICCPR demand that a country's government should allow detainees to accept visitation and communications from their family members under required supervision. As indicated by a 2018 investigation report of the Control Yuan, the current practices on detention and denied visitation in Taiwan denied detainees to receive visitation and communication from their relatives and friends, and prohibited them from reading newspapers, watching TV, and listening to the radio. From January 2012 to December 2017, there were only 14 cases where defendants were given exceptions and allowed visitation and communication from their family members. In other words, only about 1/1000 of such defendants were allowed communication. This practice, applied across the board and not adopted on a case-by-case basis as necessary, cuts off the communication between defendants under detention and their family members completely, and prohibits them from accessing information from outside (ostensibly to prevent their tampering with evidence or intimidating witnesse0073zxdg). But thus inflicting psychological suffering on the inmate far exceeds the purpose of preserving criminal evidence and the principle of proportionality. During the said investigation, the Ministry of Justice, per the suggestion of the Control Yuan, officially requested the prosecution agencies in writing to carefully consider on the "subject, scope and term" of denial of visitation and communication pursuant to Paragraph 3 and Paragraph 4, Article 105 of the Code of Criminal Procedure, abolish the out-of-date decrees and orders, and allow defendants to subscribe to newspapers, watch TV and listen to the radio. While this demand from the Ministry of Justice warrants positive recognition, since then, only one defendant during the period from January to May 2018 has been allowed to receive visitation a designated family member. In other words, there has been no visible improvement. Corresponding action has also not been taken by the Judicial Yuan. In order to protect the inmates' basic human rights, there is a continuing need for reviews and discussions.

49. For a juvenile who is under detention and prohibited from visitation and communication, the Court should, depending on the case and in accordance with the Code of Criminal Procedure, decide on the extent of visitation from their family members and teachers, and not deny it completely. After all, severing family support to the juvenile could severely impair the juvenile's physical and mental well-being, and is contrary to the intent of juvenile law to protect the young. From 2012 to 2017, there have been 11 cases in which 21 juveniles were sentenced by the court to be put under detention and also denied visitation and communication. Those juveniles were confined to small cells by themselves, denied visitation and communication from their family members, relatives, friends and teachers, and prohibited from watching TV or listening to the radio. They were also allowed outdoors every day for only 30 minutes. Clearly, these juveniles lacked social interaction and the necessary education and counseling. This disregards the basic intent of the United Nations Convention on the Rights of the Child. After investigation and continuing attention by the Control Yuan, the Agency of Corrections has, since 2019, set up a "visitation via mobile device" system in their Smart Prison Plan, under which family members may now teleconference with the juveniles via mobile phones.

Avoidance of Solitary Confinement and Related Inhumane Conditions

50. Based on Article 22 of the Prison Act before amendments, the Agency of Corrections, in a decree dated November 11, 2016, allowed juvenile detention houses to discipline a juvenile for "disturbing orderly conduct" by locking the juvenile in a "quiet room" for no more than 7 days at a time. This appears to violate Article 5 of the Detention Act before amendments and Article 36 of the Statute on the Establishment of Juvenile Detention Houses. The Agency even allowed the use of shackles, which not only inflicts severe physical and mental harm, but also seriously infringes upon the basic human rights of children and juveniles. The amendments to the Detention Act on January 15, 2020, expressly provides that any detention of a defendant in a "quiet room" should be reported to a court for approval, and the detention should not persist for more than 24 hours. Notwithstanding, such human rights centered practices were not extended to juveniles detained in juvenile detention houses. The Agency of Corrections has already begun preparing a draft of the Implementation Regulations Governing Detention Treatment in Juvenile Detention Houses and promised to suspend said decree dated November 11, 2016 within the transition period prior to enforcement of the Draft. However, no physical action has been taken by the Agency so far.

The Need for Separate Confinement of Juveniles and Adults

51. While trying to deal with the problem of inmate overcrowding and the shortage of manpower, the Ministry of Justice ignored the organizational and resource

needs of juvenile detention houses. It not only failed to supplement the manpower dedicated to juvenile detention houses, but also closed multiple independently-established juvenile detention houses. Taipei Juvenile Detention House and Tainan Juvenile Detention House are the only two dedicated facilities in the country now. The other juvenile detention houses share office and space with detention centers, prisons, and drug rehabilitation treatment centers that hold adult prisoners, and thus lose their independent spaces and professional manpower. The overall funding allotted to juvenile detention houses has been in decline from 2014 to 2017, and now represents less than 2% of the total budget allocated to correctional institutions. The overall environment in a juvenile detention house is now clearly less than ideal for the purpose of assessing a juvenile's physical and mental condition, much less correcting it. It is very difficult to help juvenile delinquents return to school and society. Upon investigation and attention by the Control Yuan, the Ministry of Justice has planned to contract external professionals, including 147 clinical psychologists and 152 professional social workers and staff, in total, from 2019 to 2022, and has prioritized the assignment of these professionals to juvenile correctional institutions.

52. Currently, 16 juvenile detention houses share office and space with adult detention centers and abuser treatment centers throughout the country. While most of these juvenile detention houses have done their best to separate juvenile and adult inmates, due to the limited available space and manpower, the environment in which juveniles are detained are still about the same as that of the adults. The rooms confining juvenile inmates are usually separated using multiple steel fences at the end of adult prison rooms, or are rooms usually used for adult prisoners for isolation, and thus the separation becomes more of a formality. Some juvenile inmates were even found to have been beaten by adult prisoners or prison guards. Furthermore, as some juvenile detention houses only detain a small number of young women, there is a lack of adequate facilities and educational resources for them. Under such conditions, the juveniles are likely to self-condemn or be influenced by bad habits. The Agency of Corrections should improve on this situation promptly. The Judicial Yuan should also request its juvenile courts (or authorities) to monitor such improvements.

53. The juvenile courts and juvenile detention houses should improve their control over knowledge of, and communication mechanisms regarding, juvenile inmates' physical and mental condition. Furthermore, certain courts exercise supervision merely as a formality. Kaohsiung Juvenile and Family Court failed to verify the correctional institution's practices regarding transfer of juveniles to adult cells; nor did they report the same to the Juvenile and Family Department of the Judicial Yuan. It also did not put any mention of this on the agenda for coordination meetings of the government organs. Most of the

judicial police officers at the court and district prosecutors office are used to handcuffing and confining both juvenile and adult inmates in the same vehicle to bring them to court. This not only fails to separate adults and juveniles, but also severely impairs the juveniles' self-respect. After investigation and subsequent follow-up by the Control Yuan, Article 3-3 of the Juvenile Justice Act was amended on June 19, 2019, to forbid handcuffing and confinement of juvenile and adult inmates in the same vehicle.

54. Children found breaking the law are in need of a family living environment and the formation of secure relations with family members. However, according to Article 85-1 of the Juvenile Justice Act, where it is necessary to detain children who are more than 7 years old but less than 12 years old for violations of the law, they should be detained in juvenile detention houses. From 2012 until the end of August 2017, about 178 children have been sentenced to detention in juvenile detention houses. Considering that juvenile detention houses primarily detain juveniles over 15 years of age and no adequate alternative education program is made available to them, it is questionable whether these institutions are able to act in the best interests of the children. After investigation and follow-up by the Control Yuan, Article 85-1 of the Juvenile Justice Act was deleted when the Act was amended on June 19, 2019.

Treatment of Juveniles

55. Paragraph 3, Article 9 of the ICCPR provides that any detainee should be entitled to detention prior to trial that is limited to a "reasonable period". Subparagraph 2, Paragraph 2 of Article 10 of the ICCPR provides that the cases of accused juveniles "should be brought as speedily as possible for adjudication." However, according to the Juvenile Justice Act, the juvenile courts are allowed to detain juvenile offenders in a juvenile detention house for up to six months. Where a juvenile protection case is transferred to a prosecutor and becomes a a criminal case, the juvenile offender becomes a defendant, and he/she may be put under detention by a ruling given in accordance with the Code of Criminal Procedure. The juvenile offender may then be put under detention for up to four months. As a result, the juvenile may be subject to detention authorized for ten months (six months + four months) in total prior to trial. The total time is longer than the time limit for which an adult defendant may be put under detention prior to trial, i.e. four months (maximum four months allowed for the investigation). On January 17, 2020, certain provisions were added to Article 19 of the Enforcement Rules for Examination of Juvenile Protection Cases, recommending that a juvenile court, when considering rendering a ruling on detention, should take the necessities of the case as well as the doctrine of ultima-ratio (minimal application of legal coercion) into account, and may renew the detention, subject to the relevant procedures.

Nonetheless, this amendment still did not address the problem of prolonged detention time for juvenile detainees prior to trial.

56. So far, the Ministry of Justice has yet to establish or promulgate any relevant regulations governing the management of juvenile inmates. Each juvenile detention house, whether established independently or not, adopts a prison-like and high-security guard approach toward juvenile inmates. Some juvenile detention houses even directly apply the management and security for adult inmates under the Detention Act and Prison Act to incoming juvenile inmates, as well as visitation controls and life management. While these related practices have their legal ground, and can effectively prevent incidents, such as fighting and escape, they are still contrary to the idea that juveniles should be taught, not punished, and against international human rights standards. After investigation and subsequent follow-up by the Control Yuan, the Agency of Corrections has taken into account the international practices in juvenile corrections and the United Nations Convention on the Rights of the Child to deliberate on a draft amendment to Implementation Regulations Governing Detention Treatment of Juvenile Detention Houses.

57. The current policy directing the decentralized establishment of juvenile detention houses is used with the intent of providing convenience for family visitations and court trials. For the true purpose of protecting children and juveniles, however, assignment of dedicated professionals in special education, psychological counseling and medical care should be the first priority. It is also necessary to provide resources in education and welfare. Recently, there has been a sharp decline in the number of juveniles held in various juvenile detention houses. The decentralized establishment of juvenile detention houses cannot effectively utilize judicial resources any longer. The Judicial Yuan and Ministry of Justice should explore the feasibility of concentrating inmates into regional detention houses. For the mid-term/long-term goals, the legislation in Japan and Korea may serve as a reference, and these establish open school-like detention houses, with visitor-friendly facilities, in line with international human rights standards.

58. The statutory causes allowed in a ruling rendered under the Juvenile Justice Act include cases where “the juvenile cannot be committed to custody” and where “an order for custody is clearly inappropriate.” This in actual operation also involves cooperation with other agencies and issues such as referral and counseling. Therefore, some divide still exists between theory and practice in the actual process of a trial. In order to implement the specialized trial of a juvenile court, the Judicial Yuan should exercise its powers as the supreme judicial administration authority to integrate resources and set forth relevant operating procedures as reference for the juvenile court judges. It should also consider whether the compulsory assistant system, i.e. allowing a person to accompany and argue for a defendant with diminished capacity, should be

included in a ruling against the detention or custody of a juvenile. Alternatively, it may establish the Guardian *ad Litem* system to enable professionals with experience and knowledge in protection of children to participate in the procedure to assist the court, seek a reasonably limited detention period, and add management and evaluation mechanisms in order to ensure the protection of the best interests of children and juveniles who are charged as offenders. Upon investigation and subsequent follow-up by the Control Yuan, Article 3-1 and Article 3-2 of the Juvenile Justice Act were amended on June 19, 2019, to provide that assistants, parents and experts may be present with the juveniles at trial.

59. While Taiwan's juvenile justice prosecution have expressly defined the required tasks, organizational framework, staffing and operations pursuant to the law, given the difficulties in the facilities and the insufficient manpower and funding, many juvenile detention houses share offices with adult prisons, and adopt the same thinking and disciplinary models as in adult prisons. In other words, they fail to exercise functions, such as counseling, evaluation and medical care, to deal with a juvenile's physical and mental condition. Some courts have failed to consider commiting the subject juvenile to the custody of another agency, or adopting alternative measures, before ruling to detain delinquent juveniles. The documents from the detention also provide no details about the subject juvenile's physical and mental condition. The courts do not communicate with the juvenile detention house about the case, and do not follow up in assessing the necessity for detention either. The Control Yuan's on-site visit found that many juveniles were suffering from mental disorders or disabilities, yet there were few special education resources available. Not only do these juveniles have no way to receive adequate medical care; they are often punished and confined to a disciplinary room, or an observation ward to enforce behavioral conformity, because they have trouble controlling their emotions. Sometimes, they are even locked into a "quiet room" (protective ward) because of serious behavioral disorders. This appears to violate the ICCPR, United Nations Convention on the Rights of the Child, and Convention on the Rights of Persons with Disabilities, thus highlighting the inadequate protection of the child/juvenile's human rights. Upon investigation and subsequent follow-up by the Control Yuan, Subparagraph 3, Paragraph 1 of Article 42 of the Juvenile Justice Act was amended in 2019 to add a requirement that a juvenile may be sent to an appropriate institution that implements measures for placement and counseling services. Paragraph 5 and Paragraph 6 were added into the same Article, providing that a juvenile court, where necessary, may consult the opinions of appropriate agencies or institutions, schools, organizations, or individuals, to jointly tally, integrate and utilize the resources needed by the children and juveniles in any individual case, at various stages of a trial.

60. Juvenile detention houses are accustomed to using assignment to particular wards as a means of discipline, in order to compel the delinquent juveniles to engage in self-examination. While they also have done their best to improve the facilities inside these wards, the assignment to so-called "delinquency wards," "observation wards" and such penalties cannot be seen as disciplinary models developed based on an educational philosophy, but come from a disciplinary management and punishment perspective adopted by adult prisons. This is against the intent of the Statute on the Establishment of Juvenile Detention Houses which expressly defines that the measures to be imposed on juvenile inmates violating disciplinary rules of the detention house should be limited to reprimands and labor services. Furthermore, the availability of a delinquency ward or observation ward, length of period for confinement in an observation ward or delinquency ward, and mode of observation vary across juvenile detention houses. Some juvenile detention houses even decide the length of the confinement period based on a score system. When being confined to a delinquency ward or observation ward, the juvenile cannot attend classes in school. His/her interest in and right to learning is deprived. Therefore, such practices could hardly be appropriate. Upon investigation and follow-up by the Control Yuan, the Ministry of Justice issued a decree on October 23, 2019 to its subsidiary units to strictly prohibit any punishments other than those defined by the Statute on the Establishment of Juvenile Detention Houses.

61. In consideration of the nation's obligation to provide special protection and education to juveniles, the Agency of Corrections should provide a separate system for juveniles to fully attend to their living needs. However, with respect to juveniles, the correctional institutions still apply the same practices applicable to adult inmates. The Statute on the Establishment of Juvenile Detention Houses even says that juveniles should "prepare clothes, quilts and procure daily necessities on their own." As juvenile inmates are not paid to work, many of them struggle when serving sentences if their family is poor or they have received no relief from others. The Agency of Corrections should review and improve this situation promptly.

62. Juvenile detention houses often detain juvenile offenders currently under trial. However, these juvenile inmates are often excluded from those who receive reimbursement of the national health insurance premium, and thus they need to bear the cost by themselves. They are often unable to pay the national health insurance premium, and they owe for medical expenses as a result. The Agency of Corrections should consider adequate reimbursement of medical expenses incurred by juvenile inmates so that they may be protected under the national health insurance.

63. The Juvenile Justice Act of Taiwan aims to construct the nation's protection mechanism for delinquent juveniles based on the "concentric circle theory"

(i.e. from Park and Burgess of the Chicago School of Sociology, that environment and social position shape behavior), demanding that the judicial and administrative systems should work in tandem to provide the necessary protection and supportive resources to juveniles whose families may be dysfunctional. However, the Juvenile Justice Act fails to expressly define the transition mechanism for different types of protective treatment; and moreover the Judicial Yuan does not have the budget to cover the expenses incurred within the transition from probation/parole supervision into alternative placement. Accordingly, a juvenile inmate under probation/parole supervision who needs placement due to changes in circumstances can often only be transferred to another prison to undergo "reformatory education," instead of "placement guidance." This is in contravention of the principle of "utmost avoidance of imprisonment" in juvenile justice protection.

64. In order to establish comprehensive policies to guide children and juveniles, the 1987 Protection of Children and Youth Welfare and Rights Act of Taiwan defined welfare services, such as placement and guidance, as one link in social control. However, delinquent juveniles have complex and diverse needs, and institutions often face difficulties, such as inadequate resources, professional response mismatched to needs, and manpower that falls short of that required by law. The Ministry of Health and Welfare should guide the educational welfare institutions to minister to the needs of different groups and seek diversified development. Placement counseling was included through the amendments to the Juvenile Justice Act in 1997, and the Judicial Yuan and Executive Yuan have since negotiated measures to establish a platform to integrate resources. Although the number of juveniles in placement under the judicial system has declined significantly in recent years, it is still necessary to establish an optimally cooperative model to provide treatment and bridge services that serve the best interests of children and juveniles.

65. While "placement counseling" constitutes part of community treatment, it nevertheless takes the juvenile away from his/her family of origin, and this is detrimental to the bond between the juvenile and his/her family/community. It is also considered as a penalty that restricts personal freedom. In addition, issues such as insufficient institutional capabilities and inconsistent internal management, cannot be overlooked. Given the rise in sexual assault and incidents of violence in institutions recently, the Judicial Yuan should supervise its courts to give attention to the internal management, disciplinary practices and complaint channels of certain contracted institutions. In fact, it is currently very difficult to carry out the compulsory parenting counseling mandated by the Juvenile Justice Act and Protection of Children and Youth Welfare and Rights Act. The Judicial Yuan is should complement study of individual cases and successful examples with theories from social work to research how to enhance the willingness of parents to cooperate through the

judicial procedure, and furthermore establish a model such that both the juvenile and parents can work to improve the environment the juvenile is growing up in. Meanwhile, the parenting courses referred to in the Juvenile Justice Act focus on establishing the first-layer protection. It may warrant deliberation and discussion if the participants in the said courses may be expanded to "persons currently engaged in protecting the juvenile."

Treatment of Persons with Mental and Physical Disabilities

66. Some cooperative mechanisms have been established between the welfare-oriented legal system and welfare-oriented administrative system under the Juvenile Justice Act. If a juvenile with mental disabilities is detained in a juvenile detention house, there could be difficulty in mobilizing resources. Lacking both medical and special education resources and specialists, juvenile detention houses are unable to deal with juveniles with mental disabilities, and can only provide psychosomatic medicine services. In order to prevent these juveniles from disrupting order in these institutions, high-security guard management models from adult prisons are adopted. Juveniles with mental disabilities are frequently found to be permanently confined in "quiet rooms". This is not only inhumane treatment but also of suspected discrimination. As a matter of fact, the psychiatric treatment and counseling services available in prisons/detention centers tend to focus on the delinquent juveniles abusing drugs or committing sex offenses, instead of those juveniles with mental disabilities. Many juveniles with mental disabilities have been detained in various juvenile detention houses. The amendments to the Juvenile Justice Act made on June 19, 2019 also aim to improve assessment of juvenile detention houses. Therefore, the Judicial Yuan and the Ministry of Justice should re-think the orientation of detention under the legal system, and introduce relevant specialists to develop a comprehensive model of psychological assessment and evaluation, as well as special education and medical resources.

67. Persons with mental disabilities have not undergone any psychiatric assessment during investigation and trial. After being detained in prisons/detention centers, no dedicated psychologists performed any assessment or made any classification. Guarding and caring for these inmates created significant pressure on the personnel. Due to limited medical resources, the prisons/detention centers have no capacity to treat these patients effectively or help them return to society. After investigation and follow-up by the Control Yuan, the relevant authorities (including the Ministry of Justice and Ministry of Health and Welfare), have discussed the establishment of dedicated hospitals based on the intent of the ICCPR for treatment of persons with disabilities.

68. A careful assessment of and community support for inmates with mental disabilities prior to their release from prison are critical to their interests and

rights. The Ministry of Justice should thoroughly discuss the establishment of evaluation mechanisms to determine the possibility of re-offending, and strengthen community support (for those with and without physical or mental disabilities) in order to meet the intent of establishing a sound social security net.

69. The correctional institutions fail to investigate the medical records of inmates with disabilities with due diligence to serve in categorization of disability and provide reasonable accommodation. There is also no referral mechanism to obtain the inmates' medical records before they were detained, and the psychiatric assessment information available at trial is also not passed on to the prisons/detention centers. As such, no mitigating treatment can be provided to them in a timely manner, and it is not until the outbreak of their disabilities (e.g. mental disability) that they can be diagnosed conclusively. Clearly, this is at odds with the intent of the Convention on the Rights of Persons with Disabilities and Taiwan's own human rights-related statements.

70. Protective custody after an offender has served a sentence is known to be an important bridging mechanism for integrating offenders with mental disabilities into society. Given the many types of mental illness, complicated risk factors emerge from case to case. Some cases are not followed up on properly and the individual suffers unfair treatment after being released from hospital, or is found to be involved in substance abuse, or lacks family support. As a result, the person becomes a ticking time bomb, putting social safety in peril. The government could, based on the systems and evidence-based examples in Germany or Japan, evaluate the possibility for the establishment of judicial mental hospitals equipped with secure facilities and manpower to guard special and high-risk criminals with mental disabilities, or to manage dangerous patients with mental disabilities, proportionate to the danger. Upon investigation and subsequent follow-up by the Control Yuan, the Ministry of Justice amended the Directions for Prosecuting Apparatus' Execution of Custody of Inmates with Mental Disability or Mental Deficiency on March 17, 2020, in order to strengthen their management of core cases. It also worked with the Ministry of Health and Welfare to develop diversified detention centers and intermediate treatment centers and consider special treatment for those who require it.

Prison Labor

71. All inmates in correctional institutions are required to participate in work activities unless otherwise specified by law or for reasons such as illness or being under rehabilitation. Notwithstanding, statistics show that a total of 35,758 (58.4%) prisoners (or detainees) in 45 correctional institutions throughout the country are engaged in subcontracted processing work, but earn very low monthly income. (The highest average monthly remuneration for the subcontracted processing work, NT$5,821, is paid in Zihciang Minimum-

Security Prison, in Hualien County on Taiwan's remote east coast, and the lowest, NT$126, is paid in Kinmen Prison located on a small distant island; 33 prisons were found to pay a monthly remuneration of less than NT$500, and among these 8 prisons pay monthly remuneration of less than NT$200.)In comparison, a total of 3,692 (6%) prisoners are engaged in self-employed processing work and earn a monthly income much higher than the remuneration earned by those engaged in subcontracted processing work. (The highest average monthly remuneration earned by the inmates engaged in self-employed work, NT$13,174, is paid at the Taichung Detention Center, and the lowest one, NT$256, is paid at the Hualien Detention Center; only 5 prisons were found to pay monthly remuneration of less than NT$500, while 32 prisons were found to pay monthly remuneration of more than NT$1,000.) The huge gap in the remuneration paid to different prisoners marks inequality among them, and is also in contravention of Point 76 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, which states that the correctional institutions must have a system of equitable work remuneration for prisoners in place.

72. For example, in 2017, the monthly revenue at Tainan Prison was NT$833,691 in total on average, after deducting its operating expenses, 37.5% of which was revenue for prisoners, i.e. NT$312,634. Dividing this by the number of prisoners in 2017, i.e. 3,178 persons, the "monthly income" earned by each prisoner was only NT$98.37, and the "yearly income" only NT$1,180. Notwithstanding, the amount of NT$1,180 does not represent the money earnable and expendable by the prisoners. According to the Statute of Progressive Execution of Penalties, the remuneration available to prisoners is classified into four levels; prisoners are free to expend their remuneration for work activities subject to their status. For example, level-4 prisoners may freely expend only one-fifth of the remuneration they earn. That is, if they earn NT$236 a year, they can only receive NT$19.6 per month, virtually nothing. The hostage situation in Kaohsiung (Daliao) Prison in February 2015 shocked our entire nation. One of the claims made by the six prisoners initiating the hostage-taking was exactly related to the difficulty in living due to the underpaid remuneration by the Prison. After investigation and follow-up by the Control Yuan, the Agency of Corrections amended the Prison Act and Detention Act to increase the portion of profits (surplus over the operating costs) given to prisoner remuneration from 37.5% to 60%.

Education Continuing in Correctional Institutions

73. The Agency of Corrections has set up supplementary schools in four correctional institutions including Taipei Prison, Changhua Prison, Tainan Prison and Hualien Prison to conform with and provide the 12-year Basic Education as well as continuing education. Some schools have set bars for

prisoners' admission to preparatory examination, disqualifying prisoners who have made two or more violations of discipline when serving their sentence and those who have made a violation within one year of their application. Given this, there have been some prisoners who wish to continue their education but have been denied the opportunity. After investigation and follow-up by the Control Yuan, the Agency of Corrections sent a decree to the schools in various prisons on January 11, 2018, demanding that as of the 2018 school year, their admissions policy should be amended by excluding only those who are reprimanded within the last six months prior to their application for admission. This would relax the admissions qualification to some extent, still encourage prisoners to keep up proper behavior, and provide them with fair learning opportunities.

74. The practices adopted by the Ministry of Justice, its Agency of Corrections, and the Ministry of Education with respect to Juvenile Reform School failed to satisfy the requirements laid out in the Constitution and Educational Fundamental Act, namely "All citizens should have equal opportunity to receive an education" and "Special protection should be given to disadvantaged groups," as they excluded the inmates' education in juvenile correctional institutions from the basic education system and instead set up supplementary schools tied with vocational programs. These practices also deviate from the general educational system, which results in students detained by juvenile correctional institutions being unable to acquire a diploma for senior high school. As many as 57.3% of the juveniles faced being set back a grade or had to change their major after their release. Many, when transferring to normal schools or seeking recognition of educational level, are rejected from resuming their studies, set back a grade, forced to go back to school, or unable to advance their studies, and even suspended from their schooling. These students' interests and rights were thus severely damaged. Upon investigation and follow-up by the Control Yuan, the Ministry of Justice and Ministry of Education set up the "Juvenile Correctional Education Steering Committee" to incorporate the juvenile reform school under their range of supervision.

75. According to survey, 61.43% of the students in juvenile reform schools were willing to seek employment, and more than 80% aim to attend vocational training programs after being released. As 70% of the detained students come from disadvantaged families, it is therefore more important for them to learn vocational skills than it is for general students. This signifies the high demand for vocational training by students detained in the juvenile reform schools. However, the vocational training programs organized by these institutions have an insufficient array of subjects and are out of touch with the real world. This becomes a disadvantage to students who wish to advance their studies or make an independent living after release. The Agency of Corrections should

work in tandem with the Ministry of Education and Ministry of Labor for a solution to enhance the vocational training programs of the juvenile reform schools in terms of quantity and quality, and help these students successfully and smoothly reintegrate back into society.

76. The Agency of Corrections has for a long time ignored the needs of female students in reformatory education, excluded them from the correctional school system, and placed all of them at Changhua Reform School, which has adopted a prison-style management model. According to statistics gathered by the Agency of Corrections, 52.3% of female student inmates are willing to take up a vocational training program as their major in school. However, the supplementary school attached to Changhua Reform School is their only option, and the said school only uses a general course system. They are also only provided study until the second year of the three years of senior high school (year 11 of 12 years basic education). This results in that about a quarter of the female students who resume studies after being released are set back a grade in studies or forced to change majors. They have trouble resuming their studies, and are thus deprived of the right to education.

77. For students detained in the juvenile reform schools who wish to continue study in any ordinary/vocational senior high school after release, in practice, their applications must be negotiationed with individual schools on a case-by-case basis as the juvenile reform schools are not nationally-recognized educational institutions. As such, multiple obstacles may then arise in the process of negotiation. It is also common to see admission applications filed by the said students rejected by some schools, which claim they are lacking the resources or specialists to accept them. Therefore, these juveniles' right to education is undermined; this is also contrary to the spirit of the Taiwan basic educational principles and the intent to extend the period of compulsory education to 12 years.

Healthcare and Medicine

78. The World Health Organization (WHO) and relevant international norms have expressly stated that there should be no discrimination between the medical services made available to prison inmates and community residents. According to a Control Yuan investigation in June 2020, the ratio of inmates detained in Taiwan's correctional institutions to the number of medical professionals available in the said institutions was 246:1, while the same ratio was 91:1 among the community residents in Taiwan, a difference of 2.7 times. This ratio is also higher than that in other countries, such as the United States. As the said tally for correctional institutions included part-time medical professionals, if such personnel are excluded, the actual inequality between the medical professional services available to the inmates in the correctional institutions and community residents is bound to be bigger. The Ministry of

Justice and its subordinated agencies shoudl proactively seek improvement, and work with the Ministry of Health and Welfare to improve the medical rights of those inmates in the correctional institutions of Taiwan.

79. Recently, the Agency of Corrections has worked with the competent health authorities to amend laws to incorporate prisoners into the national health insurance program, establish relevant regulations governing prisoners' medical care, and add the requirement that prison/detention center clinics should satisfy the institution's medical care needs. It will also amend the Reference Principles for Determination of Emergency Medical Service Available to Inmates. However, some correctional institutions still fail to offer outpatient services such as dentistry, dermatology, and infectious disease centers, or the outpatient services offered by them lack the specialties or volume capacity to meet the needs of the inmate patients. There are also problems of contracted hospitals not having enough secure wards for prisoners, some medical centers needing to set up guarded zones, and even some prisoners found to be seeking outpatient services too frequently. After investigation and subsequent follow-up by the Control Yuan, the Ministry of Justice promulgated the Standards for the Establishment of Guarded Wards of Entities Subsidiary to the Agency of Corrections in August 2019, a regulation which shall serve as the legal ground for the establishment of secure wards by the Ministry of Health and Welfare.

Aging of Prisoners

80. The percentage of prisoners in Taiwan over 65 years old has increased from 1% in 2009 to 2.8% in 2019, i.e. an average annual increase of 11.2%, which is even 8.5 times faster than the increase in Japan. This shows a sharp increase in the aging of inmates in correctional institutions in Taiwan. The Ministry of Justice should direct its subsidiary agencies to prepare the necessary policies and facilities for senior medical care, education and everyday living as early as possible, with professional assistance provided by the Ministry of Health and Welfare.

Commutation of Sentence, Parole and Term Mitigation

81. Concerning whether decrease of a sentence may apply in the circumstances where part of several consecutive sentences has already been served while the others are still running, the Judicial Yuan and Ministry of Justice reached different opinions based on the 2007 Criminal Commutation Act. Addressing one such application, the Prosecutor General of the Supreme Prosecutors Office filed an extraordinary appeal with the Supreme Court (under 2019 Fei-Shang-Zi No. 236). However, the Supreme Court rendered its judgment, under 2020 Tai-Fei-Zi No. 69, holding that according to the resolution made by the 4th meeting of its Criminal Division in 2008, the ruling without question

should be considered unlawful, and cannot be considered unfavorable to the defendant thereof; moreover, no significant dispute over the legal opinion arose and no uniform law issue was involved. Therefore, there was no necessity for an extraordinary appeal, and it should be rejected accordingly. The Control Yuan considered that the ruling, having a binding effect as a substantive judgment, had the same effect as violating the law; in addition, the concerned party filed a complaint therefor, which, if sustained, would accordingly impair judicial credibility. Therefore, it submitted investigation opinions and other practical related opinions and reasons to the Kaohsiung District Prosecutors Office via the Ministry of Justice to request a retrial and consideration for correction.

82. Paragraph 1, Article 21 of the Enforcement Rules of the Statute of Progressive Execution of Penalties sets forth the procedural requirements to restrict personal freedom, although no authorization is expressly defined under its parent act. As a result, prisons under the Agency of Corrections set up their own rating standards, which deviate from the requirements provided under the parent act. This is contrary to the principle of legal reservation. The prisoners can only involuntarily accept the varying rating standards governing progressive execution of penalties depending on which prison they are placed under. This is clearly unfair and unjust.

Protections for Return to Society

83. Currently, there are multiple laws and regulations restricting the employment of ex-offenders, and these involve multiple competent authorities. Statistics show that about 60% of ex-offenders are primarily engaged in labor or serve as technicians. Therefore, the current system which allows certain industries to exclude ex-offenders increases their difficulty in seeking employment. The Control Yuan proposed that the Ministry of Justice should continue soliciting opinions on this and collecting statistical data, and urge the said competent authorities to review the relevant regulations based on current societal conditions, to strike a balance between social safety and the protection of peoples' right to work.

Multinational Mutual Legal Assistance

84. As the competent authority in charge of foreign affairs, the Ministry of Foreign Affairs should, based on humanitarian considerations, respond to international calls for human rights, and demonstrate the government's care for Taiwanese nationals who are serving sentences or are detained for trial abroad. This may be advanced by strengthing the exchange of intelligence and information and through multinational judicial cooperation.

85. The Ministry of Justice should be recognized and appreciated for enacting and amending laws and regulations governing multinational mutual legal assistance; it has convened meetings or conducted assessments where

required. Such examples include: the Mutual Legal Assistance in Criminal Matters Act, which was passed by the Legislative Yuan after the third reading and promulgated by the President in 2018, and the Review Meeting of the ROC's Initial Report under the United Nations Convention Against Corruption convened in August of the same year. The aforementioned examples help Taiwan carry out its mutual legal assistance with other countries and regions more successfully. Notwithstanding, there are still certain foreign-related laws and regulations (such as the Law of Extradition) that urgently need to be amended, especially those involving the restraint of personal freedom. They must be expressly defined and governed by laws to contribute to a positive outlook for future multinational mutual legal assistance.

Article 12 Freedom of Movement

86. The Code of Criminal Procedure expressly provides that alternatives to detention include to be released on bail, to the custody of another, or to be restricted to a particular residence. The limitation on residence often has to be executed together with bans on leaving the country by exit through airports or seaports, in order to prevent offenders from escaping. The latter two alternatives impose greater restrictions on personal freedom, and even freedom of movement. However, the Code of Criminal Procedure provides no express provision for them, and that is likely to violate the principle of legal reservation. In addition, the limitation on residence has actually been rather ineffective in preventing escape. The Judicial Yuan and Ministry of Justice should consider amending or supplementing the relevant regulations to strengthen their effectiveness. Upon investigation and subsequent follow-up by the Control Yuan, the Amendments to Certain Provisions of the Code of Criminal Procedure and Amendments to Article 7-15 of the Implementation Rules of the Code of Criminal Procedure were passed by the Legislative Yuan on May 24, 2019, which added a new chapter governing restrictions on transits through airports and seaports.

Article 13 Prohibition of Discretionary Sentences to Deport Foreign Nationals

87. When the Ministry of Labor proceeds to revoke an employment permit, order migrant workers with criminal offences to depart, or prohibit them to work in Taiwan ever again, the Ministry clearly fails to exercise due diligence in determining the seriousness of the violation pursuant to subparagraph 6, Article 73 of the Employment Service Act, and give humanitarian consideration to the migrant workers' right to work. It is also in violation of Article 2 of the ICCPR and Articles 2 and 7 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) which prohibit

discrimination towards migrant workers' right to work. While the Ministry has set forth certain factors to be considered and the principles for their internal review, these have not been publicly disclosed.

88. The written decisions by the Ministry of Interior revoking the stay permits of Mainland Chinese spouses only specify the details set forth in Article 14 of the Management Regulations Governing Interviews with Mainland Chinese People Applying for Entry to the Territories of Taiwan. In other words, these decisions are rendered without specifying the reasons therefor. This is contrary to the provision stipulated in subparagraph 2, Paragraph 1 of Article 96 of the Administrative Procedure Act. The Ministry also refuses to provide access to the statement or audio/video records of the interview with the Mainland Chinese spouse, and this should be considered a violation of said persons' fundamental litigation rights and also contrary to the institutional protection provided by the Constitution.

89. The adverse administrative dispositions rendered by the Supreme Administrative Court denying family union or residence/stay permits of foreign and Mainland Chinese spouses hold that the native spouses should have no right to challenge the disposition in an administrative litigation. This is in contravention of Article 2 of the Administrative Litigation Law, and also in violation of the fundamental litigation rights and the principles of due legal process.

Article 14 Impartial Tribunal

Presumption of Innocence

90. A criminal prosecution is initiated by the Government in order to discover the truth and exercise the national powers of criminal punishment, while it also has the duty of protecting the people from the pressure of prolonged and repeated trials with the anxiety of reversals of "guilty" and "non-guilty" verdicts. These should be identified as the intentions of criminal prosecution in a modern society that is ruled-by-law, and also the true intent of Article 16 of the Constitution protecting the people's right to litigation. The current legal system, under which in minor cases an appeal is commonly filed by the prosecutor against a not-guilty verdict in the lower court, is suspected of violating the principles of the presumption of innocence defined in Paragraph 1 of Article 154 of the Code of Criminal Procedure and Paragraph 2 of Article 14 of the ICCPR, as well as the basic principles of criminal actions referred to in Article 161 of the same Code, requiring that the public or private prosecutor should bear the burden of proof as to the facts of the crime. The prosecutor exercises criminal prosecution on behalf of the nation and has strong power to investigate and bring an indictment; most defendants, in comparison, are relatively

disadvantaged. Prosecutors who insist on conviction and raise the case to an appeal court at all cost should not be allowed in litigation in a modern country under the rule of law. The Judicial Yuan should consider the legislative intent of Articles 8 and 9 of the Criminal Speedy Trial Act to "restrict the appeal against a not-guilty judgment" in order to protect the defendant's right to seek a fair, valid and speedy trial under Article 16 of the Constitution.

The Principle of Lawful Designation of Judges

91. As related criminal cases may be indicted successively, assigned to different judges for trial, and then combined for a joint trial, there can be a change of the presiding judge, and this affects the parties' litigation right that is protected under Article 16 of the Constitution. Since the court's procedure for a combined trial is not disclosed to the public and no remedy mechanism is available, some may speculate that these cases are very likely under the influence of a specific person and assigned intentionally to a specific judge for ruling. This situation casts a doubt as to whether there has been violation of the principle of lawful and unprejudiced designation of judge (*gesetzlicher Richter*). Based on the requirements for combining cases referred to in Article 6 of the Code of Criminal Procedure, it is not allowed for a concerned party to state an opinion before the decision to combine cases is rendered. After the cases are combined, there is no interlocutory appeal for remedy available either, according to Article 404 of the same Code. Therefore, the Judicial Yuan should thoroughly discuss amendments to the laws and regulations involving combining related cases for trial, such as the Code of Criminal Procedure, in order to protect the people's constitutional litigation rights and to ensure the constitutional basis by which judges should conduct trials independently, as referred to in Article 80 of the Constitution.

Defense Attorneys

92. Currently, no relevant requirements or procedures are expressly defined to allow prosecutors to restrict or prohibit any attorney-at-law for the defense from being present onsite or recording notes during an investigation. Nonetheless, there is a need for the Ministry of Justice to further clarify these requirements and procedures so that when prosecutors issue restrictions or injunction orders, they record in the statement precisely what facts cannot be made public. This will provide express specifications helping both prosecutors and attorneys-at-law perform their duties. Upon investigation and subsequent follow-up by the Control Yuan, the Ministry of Justice amended and promulgated Point 28 of the Cautions for Prosecutors in Bringing Criminal Actions, on March 20, 2019, which in principle allows defense attorneys to be present, state opinions, and record the questioning, and expressly provides that the record should not be seized, unless otherwise provided in the law.

93. Currently, the potential remedies available to defense attorneys-at-law to resist restrictive orders or injunctions set by prosecutors during investigation remain uncertain. The Judicial Yuan should review the definitions on the scope of quasi-interlocutory appeals filed pursuant to Article 416 of the Code of Criminal Procedure, in order to seek effective protection of the defendants' right to defend themselves.

94. When inspecting the correspondence transmitted between inmates and defense attorneys (agents *ad litem*), with the purpose of checking for contraband, the prisons/detention centers should only "open but not read" the correspondence in question. If inmates need to deliver anything during visitation from their defense attorneys, and the item is confirmed free from any contraband upon inspection, the guard on duty should specify the inspection result and type and quantity of the articles in the "Inmate's Defense Attorney Visitation Record" and allow delivery. However, they are prohibited from confiscating the inmates' articles at their discretion, and should promptly transfer them to the defense attorney forthwith.

95. According to the Code of Criminal Procedure, where a defense attorney is found to have destroyed, forged, or altered evidence, or conspired with a co-offender or witness, the judge may issue a restriction order to the defense attorney and prohibit him/her from visiting or communicating further with the defendant. Notwithstanding, restriction of free communication between defense attorney and defendant damages the integrity of the defendant's right to defense. Therefore, it is still necessary to evaluate with care how to protect the defendant's litigation rights and devise alternative measures for related sanctions, when the defense attorney is reasonably suspected of committing misconduct. Upon investigation and subsequent follow-up by the Control Yuan, the Judicial Yuan has proposed a draft of amendments to certain provisions of the Code of Criminal Procedure. The draft adds the provision that when a defense attorney is believed to have accessed the recorded evidence and case files for improper purposes, the prosecutor may petition the presiding judge either verbally or in writing during the investigation and trial to prohibit the defense attorney from further participation in the case. The draft is still being deliberated.

96. Ever since the Legal Aid Act was amended, it has been alleged that legal aid resources have been abused, due to the absence of wealth-exclusion clauses, plus a lenient review mechanism. Clearly, the Judicial Yuan has failed to effectively communicate and promulgate that under the Legal Aid Act only "persons who are indigent" and "unable to receive proper legal protection" are to be aided by the Legal Aid Foundation. Currently, the Judicial Yuan's policy goal in contracting public defenders appears to be ambiguous. Therefore, it is still necessary to discuss the entire criminal defense system and allocation of relevant resources.

Interpretation Services

97. When the judicial police authority is processing cases requiring interpretation services, interpreters act as the only communication channel between the investigators, concerned parties, and others. The interpreters play a critical role in the clarification of facts for the entire case. The substance of interpretations provided by the interpreters is critical to the case and to the concerned parties' interests and rights, be they freedom, property, or personal rights. The interpreters required by the judicial police authority should be proficient in two languages and also familiar with the related proceedings, terminology, and have competence in evaluating the equivalence of terms in translation. The interpreters are also required to act professionally, fairly, and impartially. The National Police Agency of the Ministry of the Interior is advised to strengthen its evaluation and training mechanism when using interpretation services; they must also pay sufficient remuneration in order to ensure the accuracy and quality of the interpretation service, and maintain the principles of due legal process in a democratic country ruled by law.

Forensic Science

98. Concerning the doubts raised by the Judicial Reform Foundation during the past cases against Chiang Kuo-Ching and Su Chien-Ho, among others, evidence was indeed not investigated thoroughly during both the investigations and trials. The judicial personnel appeared to lack competence in determining scientific evidence and were, therefore, unable to verify any omissions. The Judicial Yuan and Ministry of Justice should develop a standard threshold for the efficacy of evidence under forensic science. Upon investigation and subsequent follow-up by the Control Yuan, the Judicial Yuan is currently discussing amendments to the provisions regarding forensic science under the Code of Criminal Procedure.

99. The investigating agency is advised to select expert witnesses, or organizations commissioned to provide expert testimony, independently from those selected or ordered by the court, in order to protect the defendant's right to confront witnesses. Meanwhile, it is also advised to take the merits of the expert witness system used in the United States into consideration, and to provide the defendant with the right to select the expert witness. In order to prevent excessive commercialization and increasing costs from delayed litigation or abuse of the system, which makes it difficult for the judge to verify the truth, it is advisable to retain expert testimony from a neutral organization. This expert testimony may be exempted from cross-examination, and engaged upon mutual agreement by the judge or concerned parties, in order to protect the concerned parties' interests in procedure and substantive examination. After investigation and subsequent follow-up by the Control Yuan, the Judicial Yuan is discussing

amendments to the provisions regarding forensic science under the Code of Criminal Procedure.

100. The forensics and expert testimony system should keep updating its kinds of methods for assessing evidence in order to keep up with technological developments. This is to respond to the needs of investigation and trial, help to establish levels of scientific authority and diversified forensic science systems, and enhance the impartiality of expert testimony organizations. This impartiality can be facilitated if expert testimony and evidence assessment organizations are compiled into a list that courts can select from to find expert witnesses or relevant organizations. As a judge is fully responsible for the accuracy of the his/her verdict, and a prosecutor should bear the burden of proof toward the facts, it is necessary to improve their competency through forensic science training, and set up a rapid and appropriate expert testimony review system (re-check system) to maintain the principle of an impartial tribunal. Upon investigation and subsequent follow-up by the Control Yuan, the Judicial Yuan is discussing amendments to the provisions regarding forensic science under the Code of Criminal Procedure.

101. In sexual assault cases, expert testimony regarding a victim's post-traumatic stress disorder (hereinafter referred to as "PTSD") is often used as supporting evidence. The difference in intensity and strength of supporting evidence might affect the predictability of a judgment and the people's trust in judicial verdicts. Therefore, the criminal division of the Supreme Court is recommended to state its reasons in the ruling when examining such cases, and refer these cases to the Grand Chamber of criminal divisions for discussion and to seek uniformity in legal opinion.

102. Some psychiatric institutions, when performing PTSD assessment, sometimes proceed beyond their authorization to provide professional evidence and opinion only, and provide also their determination of the cause-and-effect. The Ministry of Health and Welfare should evaluate this problem, or discuss the feasibility and necessity of developing a PTSD expert testimony guide book to improve the quality of PTSD assessment, meeting the requirements of being professional, accurate, and credible. Upon investigation and subsequent follow-up by the Control Yuan, the Ministry of Health and Welfare will work with the Taiwan Academy of Psychiatry and the Law to discuss the related guidance applicable to PTSD assessment.

Polygraph Examinations

103. Unlike DNA forensic science investigation results, polygraph examination results are not reproducible, and they rely on multiple factors, such as the expertise, intelligence, personality, experience and attitude of the examiner. In the past, only three major agencies in Taiwan specialized in polygraph

examinations, namely the Investigation Bureau, Criminal Investigation Bureau, and the Military Police Command. But these agencies do not have uniform standard operating procedures for polygraph examinations, and there is no mechanism to review the results. As a result, many of their polygraph examination results have varied widely. The Executive Yuan should set forth consistent criteria for the training, qualification and the audit of polygraph examiners to ensure and improve the accuracy of polygraph examinations. Upon investigation and subsequent follow-up by the Control Yuan, the three major agencies have coordinated to set forth standard operating procedures.

104. In criminal cases, the results of polygraph examinations requested by the defendant or those of a key witness to prove innocence are decided by a judge or prosecutor *ex officio*. For this, no specific judgment criteria is currently applicable. Under the circumstances that the defendant is allowed to request such an examination and the polygraph examination agency is allowed to reject the request, the decision regarding whether the polygraph examination results should serve as evidence appears at the same time to be both discretionary and contradictory. If there is a lack of direct evidence, such as physical evidence and exhibits, the authorities in Taiwan generally adopt the polygraph examination (in which results are often disputable) as evidence to determine criminal facts. This appears to be contrary to the Code of Criminal Procedure for the discovery of truth and protection of human rights. Upon investigation and subsequent follow-up by the Control Yuan, the Judicial Yuan proposed a draft of amendments to the laws. Presently, the draft is still under review at the Legislative Yuan.

105. The polygraph examination adopted in criminal procedures is can be defined as an examination on what is known, thought, or believed in one's mind, and so the examination can be considered, in nature, to be a psychological examination, and as such it infringes upon an individual's inner freedom and intentions and violates the individual's personal rights even more so than the violation of the defendant's right to silence. In a criminal procedure, the defendant is the party subject to the compulsory participation in the polygraph examination. When facing search, detention and pursuit of criminal liability by force of government power, the defendant under the huge pressure derived therefrom is likely to agree to the judge or prosecutor's demand for a polygraph examination. Therefore, the examination result may not be entirely genuine. If a prosecutor or judge asks a defendant to agree to take the polygraph examination during investigation or trial, that would appear to violate subparagraph 7, Paragraph 3 of Article 14 of the ICCPR, which provides the minimum guarantee that the defendant is entitled to under the Code of Criminal Procedure (that the defendant will not be compelled to testify against himself or to confess guilt) and Article 16 of the Constitution about citizens' litigation rights. In addition, polygraph examinations are considered

to be a method to monitor mental activities. Thus they may contravene the protection of personal rights and dignity claimed by a modern country ruled by law. Therefore, it is advisable to carefully consider the enactment of written laws to prohibit such examinations. Upon investigation and subsequent follow-up by the Control Yuan, the Judicial Yuan has proposed a draft of amendments to the current laws. The draft is still under review at the Legislative Yuan.

106. According to Article 160-1 of the Draft Amendments to the Code of Criminal Procedure proposed by the Judicial Yuan, since polygraph examination results cannot be admitted as physical evidence, they should not serve as conclusive evidence to determine the facts of criminal behavior. However, the existing practices adopted by the Supreme Court in Taiwan, and those applicable in the United States and Germany, all agree that the polygraph examination may be applied as a defensive means to prove the defendant's innocence, subject to the defendant's prior approval, and may be favorable to the defendant during the investigation. Therefore, the investigating agency should be allowed to conduct an investigation based on the polygraph examination results, in order to rule out wrongdoing or verify the direction of investigation, which in turn, helps with the investigation. The Executive Yuan should set forth consistent criteria for training, qualification and audit of polygraph examiners, and integrate all procedures into a consistent standard operating procedure for polygraph examinations. This is to ensure the accuracy of such examinations and maintain the concerned parties' fair litigation rights.

Right to Confront Witnesses

107. In order to protect the concerned parties' right to confront expert witnesses, the expert witnesses should be subpoenaed in the process of a trial, and their qualifications, expertise and impartiality, as well as the assessment process and results thereof, be inspected rigorously through cross examination. The Executive Yuan and Judicial Yuan should protect the concerned parties' rights of confrontation with the expert witnesses, insofar as the feasibility and practicality of such expert testimony is taken into account.

Appeal

108. As provided in Paragraph 1 of Article 351 of the Code of Criminal Procedure, where a defendant in a prison or detention center submits a written appeal to the officer in charge of the prison or detention center during the period of appeal, they will be deemed to have appealed within the period of appeal. In this regard, the Ministry of Justice should clarify the definition of the "officer in charge of the prison or detention center," the officer's rank, and whether the definition of "officer" includes any service worker other than the public servant (management personnel) working for the prison/detention center. It is

also necessary to expressly define how the appeal should be sent from the prison/detention center, how it is accepted or registered, and when it is sent, accepted or registered, in order to set forth a standard procedure.

109. The correctional institution should record and report the time of receipt of any appeal sent by a defendant under detention to the court, and deliver the appeal promptly. As no additional formalities are required, the relevant person in charge should not reject receipt of the appeal, return the appeal, or ask for corrections, e.g. with the excuse that the defendant's service of the appeal is defective procedurally, or by alleging that the defendant's appeal fails to satisfy any legal requirements, or is not permitted pursuant to laws, or the defendant forfeits his right to file an appeal.

Judicial Protection of the Socially Disadvantaged and Minorities

110. Article 30 of the Indigenous Peoples Basic Law (IPBL) stipulates that the government respect the tribal languages, traditional customs, cultures and values of indigenous peoples when dealing with indigenous affairs, making laws or implementing judicial and administrative remedial procedures, notarization, mediation, arbitration or any other similar procedure for the purpose of protecting the lawful rights of indigenous peoples. Despite this stipulation, under current judicial practices, the prosecutor, police, or even a defense attorney legally appointed by the Legal Aid Foundation, all cannot voluntarily provide substantial and effective assistance and defense in a legal action against weapons possession, for a defendant who is an indigenous person, despite the provision that an indigenous defendant may be exempted from criminal punishment if the self-made harpoon guns are used as tools for making a living, as referred to in Article 20 of the Act Controlling Guns, Ammunition and Knives. This actual situation demonstrates that our nation's judicial practices generally fail to recognize the regulatory intent of the Constitution, the IPBL and the International Human Rights Covenants that mandate respect for the indigenous peoples' traditional customs and cultures, or the significance of a modern democratic country ruled by law while upholding decriminalization of its indigenous peoples' practice of hunting. Instead, the courts just increase the felony punishment of persons other than indigenous peoples who are found with guns, easily punished as a serious offense according to Article 8 of the same Act, thus continuing to arouse resentment and engender rifts in ethnic relations. Therefore, these regulations must be discussed and improved upon promptly.

111. In line with Paragraph 1, Article 13 of the Convention on the Rights of Persons with Disabilities (hereinafter referred to as the "CRPD"), the Ministry of Justice and Judicial Yuan should provide an optimal legal procedural protection mechanism and carefully review whether discrimination against people with dementia exists during the investigation and trial of a criminal

action, or in civil procedure involving only property, administrative litigation, and in family cases due to obstacles arising within the judicial environment. This review should be done in order to assure the rights of people with dementia and to apply the judicial system equally.

112. The Ministry of Justice and Judicial Yuan should continue to strengthen their staff's competence through training to improve their understanding of dementia and to raise their awareness in protecting the rights of people with dementia. There should be concern to save people with dementia from civil disputes arising from the transactions they engage in, or help them make claims to defend themselves when they are suspected of committing a criminal offense; some literature indicates that it is possible to help people with dementia claim their rights or avoid disputes through various means, e.g. notes of caution attached to registration of real estate, memoes on financial records, petitions for guardianship or assistance, and application for legal aid. Upon investigation and subsequent follow-up by the Control Yuan, the Judicial Yuan has organized courses to improve the judicial staff's awareness of the rights of those with dementia. Notwithstanding, amendments are still pending for the regulations governing the trust policy supported by the guardianship system, and determining if the judicially disadvantaged are able to stand trial.

Article 15 Principle of No Law, No Penalty

113. The term "securities with monetary value" is an element referred to in Article 6 of the Securities and Exchange Act in reference to criminal liability for securities fraud, manipulation of markets, and insider trading, all of which incur severe punishment including restrictions of personal freedom, i.e. imprisonment. The "other securities approved by the competent authority" referred to in Paragraph 1 thereof, which are legal, should therefore be authorized on the most clear and specific basis possible. The Financial Supervisory Commissions (FSC) identified the public notice made by the Ministry of Finance on September 12, 1987, as the basis by which a "Taiwan Depository Receipt" (hereinafter referred to as a "TDR") may apply the certifications referred to in Paragraph 1 of Article 6 of the Securities and Exchange Act. Subsequent to this, said public notice was found to supplement the interpretation of the general powers referred to in Paragraph 1 of Article 6 of the Securities and Exchange Act through the general requirements regarding "foreign (or)…other investment-based securities." Obviously, this brings up some circular argument issues. The discretionarily expanded scope of securities has created the major dispute over whether TDR has been authorized by the competent authority through exercise of its powers. It is not only difficult for the general public to understand such disputes, but also disjunctures amongst the academic theories and judicial practices have been

instigated by this ambiguity. Such discretionary expansion is contrary to the "Principle of the Explicit Delegation," "Principle of Legal Reservation" and "Principle of No Penalty Without a Law" set out by the Constitution, and could hardly be appropriate. Upon investigation and subsequent follow-up by the Control Yuan, the FSC indicated that it will assess the nature of any new type of financial instruments and authorize these instruments on a case by case basis, balancing the development of the securities market with the protection of investors' interests and rights.

114. The FSC indicated that the Regulations Governing the Offering and Issuance of Securities by Foreign Issuers may serve as the basis for the presumption that TDR has been authorized by the competent authority through the exercise of its powers. Notwithstanding this contention, the authorization given by said Regulations is found to have actually been based on Paragraph 1 of Article 22 of the Securities and Exchange Act, which aims to regulate "offering and issuance," obviously differing from the purposes stipulated in Paragraph 1 of Article 6 of the same Act, which aims to regulate "types of securities." In addition, subparagraph 7, Article 3 of said Regulations only defines the TDR nominally. Therefore, the FSC's statement that the Regulations may serve as the basis that TDR has been authorized by the competent authority through exercise of its powers comes under suspicion of standing in contravention to the Constitution, as it is beyond the scope authorized by the law. Upon investigation and subsequent follow-up by the Control Yuan, the FSC indicated that it will assess all new types of financial instruments by balancing developments in the securities market with the protection of investor interests and rights, and will establish the related decrees authorized by the Securities and Exchange Act based on the authorized legal intent and by weighing the overall purpose of the regulatory activity.

115. Paragraph 1 of Article 21 of the Health Food Control Act expressly states that "Those guilty of manufacturing or importing health food without official approval or violating the first paragraph of Article 6 hereof should be imprisoned for not more than three years and may additionally be fined no more than NT$1,000,000." But the Act does not expressly stipulate how a party in violation of Paragraph 2 of Article 6 of the same Act should be punished. The competent authority, the Ministry of Health and Welfare, holds that the penalty imposed in Paragraph 1 of Article 21 of the same Act may also apply to a violation of Paragraph 2 of Article 6 of the same Act governing "any food that is labeled or advertised as food furnishing specific nutrients or specific health care effects." As a result, many cases brought to court by local health authorities based on the opinions given by the Ministry of Health and Welfare have been rendered to be in conflict with the law and the principle of no penalty without an applicable law has been encountered in multiple court judgments, and it is difficult for the courts to impose sentences in these cases.

With respect to this longtime dispute in the legal system, the Ministry of Health and Welfare has agreed to amend to the law, but has yet to face or solve the problem proactively. The court judgments therefore lack provision of the legal certainty and predictability for the food dealers. Given this, the Ministry of Health and Welfare should discuss the solution promptly to settle the dispute

Article 17 Privacy and Reputation/Credit Protection

Privacy and Reputation

116. To punish with an order to submit to physical examination is an order that infringes upon the sense of privacy and intactness of the body; it is an order which may only be rendered when complies with the principle of legal reservation and proportionality required under Article 23 of the Constitution. On February 20, 2017, 53 packs of amphetamines were found at Ching-Chuan-Kang Air Force Base. To clear the reputation of the military and respond to public opinion, all those on the base, including 2,554 military officers and soldiersof the 427th Squadron, as well as dozens of contract workers, were ordered to take urine tests. Clearly, this was in contravention of Article 33 of the Narcotics Hazard Prevention Act, Point 3 of the Regulations Governing Drug Abuse Urine Testing Operations for National Military Officers and Soldiers, and a response that was out of proportion. Of those tested, ten individuals who tested positive for level-1 drug opioid metabolites (including morphine and codeine) were handed over to the legal authorities by the military police. The investigation results released a few months later by the prosecutor found that these ten individuals tested positive for drugs simply because they were taking medications for the common cold. Such findings still could not clear the public doubts about drug abuse in the military. There is also no way to seek a remedy for the damage to personal reputation of those individuals. The Ministry of National Defense should draw a lesson from this case, and carefully review the urine testing mechanism applied to the military forces, so as to comply with the law and human rights. Upon investigation and subsequent follow-up by the Control Yuan, the Ministry of National Defense reflected that, when deciding the response in similar cases in the future, it would take into account factors such as “necessity,” “expectation of reasonable privacy,” “public interest,” and “national defense security” with due diligence, to adhere to the intent of human rights protection under the Constitution.

117. Following resolution of a complaint of sexual harassment in 2017, and in order to prevent similar cases from arising in the future, the Taitung Drug Abuse Treatment Center installed a video surveillance system in its office and at the entrance. However, this may have invaded the the privacy of the Center’s officers and employees by continuously watching, monitoring, eavesdropping on them on the office premises and therefore violated the provisions of privacy

protection under the Constitution. The Executive Yuan should, in reference to the intent of the Judicial Yuan's Interpretations No. 603 and No. 689, carefully discuss whether the remedial measures, such as the installation of the video surveillance system in a government agency's office to prevent sexual harassment, adhere to the principle of proportionality and of human rights protection under the Constitution.

118. How the video surveillance data of MRT stations and trains are stored and maintained is critical to passenger privacy. In order to prevent passenger privacy from being violated, the Taipei Rapid Transit Corporation should store the video surveillance data with extreme care. The Taipei City Police Department should also check on the management of, access to, reproduction and utilization of the video surveillance system, as well as the holding of relevant audio/video data, to ensure the safety of the video surveillance data and protect privacy. Upon investigation and subsequent follow-up by the Control Yuan, the Taipei City Police Department has prepared related programs in accordance with the Self-Government Regulations Governing the Setup of Video Surveillance Systems in Taipei City, in order to check on and manage the agencies utilizing video surveillance systems and ensure the safety of their data.

Personal Data Protection

119. Concerning foreign nationals who are prohibited from leaving the country upon the order of a prosecutor, when the prosecutor decides not to prosecute them and revokes such orders, the Immigration Agency should determine if the relevant records may be used in the future consideration of approval for border entry or exit. Upon investigation and subsequent follow-up by the Control Yuan, the Immigration Agency has deleted the remark "under suspicion of committing an offense against sexual autonomy" from the record for foreign nationals, but retains other data concerning other possible prior offences in its archives.

120. Paragraph 1 of Article 16 of the Convention on the Rights of Children provides that no child should be subjected to arbitrary or unlawful interference regarding his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation. However, the Consumer Debt Clearing Act, ostensibly using the "information disclosure" principle to protect creditors' rights, expressly provides that the 15 kinds of documents it uses to determine credit worthiness, including reports on the debtor's property and revenue and rehabilitation programs, should be published online in lieu of being delivered by post. As a result, when a court publishes related information, it also often discloses the name, date of birth, address, and even the schools the debtor's minor children attend. This severely infringes upon

the child's privacy. Upon investigation and subsequent follow-up by the Control Yuan, the criteria for publication of debt clearance cases was discussed. It will now only disclose the number of minors supported by the debtor, and in the event of any dispute, any stakeholder may access the court file in person for clarification.

121. Some scams are based on fraudulent use of an individual's personal data; it is difficult to validate the authencity of the data use, and eventually some people are cheated. As no positive result has been achieved by the counseling and inspection given by the Ministry of Economic Affairs to the online retailers concerning confidentiality of personal data, the Executive Yuan, as the superior authority overseeing the industry authorities as expressly defined in the Personal Data Protection Act, should work with the competent authority in charge of the Act (the National Development Council) to raise the awareness of information security and personal data confidentiality in entities other than government agencies, and also to rectify their misuderstanding of the Act. Upon investigation and subsequent follow-up by the Control Yuan, the Ministry of Economic Affairs inspected and identified the suppliers with poor records in maintaining information security, and made public a list of these suppliers. Meanwhile, it directed various competent authorities to set forth their own regulations to improve on personal data protection.

Article 19 Freedom of Speech

Freedom of Speech

122. Paragraph 1 of Article 309 of the Criminal Code provides that "A person who publicly insults another should be sentenced to short-term imprisonment or a fine of not more than three hundred dollars." The definitive element constituting the offense of an "insult" is an undetermined legal concept, for which no specific and objective criteria is available in a court's judgment. Therefore, it is impossible to envision any applicable criteria, and offenders are held in violation of the law at the discretion of the court. Some uncertainty exists in the penalty to be imposed under the Criminal Code. The definition of "insult" may be extremely broad. Therefore, people risk taking blame and being assessed penalties whenever expressing an opinion. Under these circumstances, freedom of speech is prevented from exercising the full range of its functions, such as supervision of the government by a citizenry, self-realization, and promotion of democracy. While the restrictions under the Article could conceivably apply to abusive expression of personal opinions or emotional outbursts to others, the said circumstances are nontheless better considered a type of freedom of speech protected under Article 11 of the Constitution. The so-called offense of "public insult" impinges on people's personal freedom and freedom of speech. Therefore, it should be subject to a high criteria in

examination. It is still necessary to review it against the principle of proportionality expressly defined in Article 23 of the Constitution and the principle of legal certainty, as well as the current trends in human rights protection.

Media Independence

123. Professional and independent news coverage serves as the foundation of a healthy democracy. All private and public groups, as well as government agencies, should do their best to establish and ensure that the news media play a critical role and act as a monitoring mechanism dedicated to preventing the government from abusing its powers and becoming corrupt. The Hualien County Government in 2017 and 2018, with the excuse of setting up the county government's database of promotional materials for showcasing the county government's resources, contracted individually with 15 local journalists from 14 press media at negotiated prices between NT$147,000 and NT$283,000 (US$4,900-9,450). As a result, the press media became loud sycophants of the county government agencies. Such a development can damage the public trust in the independence, impartiality and reliability of the news media, and it also impairs the news media's independence and diligence in government monitoring. It was even worse than placement marketing, because it was tantamount to buying-off reporters. These contracts clearly distorted freedom of speech as protected under Article 11 of the Constitution, and the intent of Judicial Yuan's Interpretation Nos. 509, 613, 678 and 689, that the public opinion formed by freedom of press is what sustains a healthy, democractic and diverse society. The Executive Yuan, in response, should deliberate on adding relevant requirements to the Budget Act, Radio and Television Act, Satellite Broadcasting Act, and Cable Radio and Television Act.

Article 21 Freedom of Assembly

Assembly and Parade

124. Article 14 of the Constitution protects the people's fundamental rights to freedom of assembly and association. After all, active public participation in the formation of important national policies is also a basic requirement in a democratic country ruled by law. All the same, in practice, the police will often arrest and hand over the people participating in an assembly to legal authorities for persecution actually according to their protest demands and gestures, though ostensibly on the grounds of obstructing an officer in discharge of his duty, in accordance with Paragraph 1 of Article 135 of the Criminal Code. Prosecutors and judges habitually also expand the interpretation of elements constituting "violence" in an offense of obstructing an officer in discharge of their duty, and indict at their discretion. These observations should lead to

some rethinking. When public servants exercise government powers, the people usually are the disadvantaged. This is against the law makers' intent and also substantially restricts the people's freedom of assembly, thus violating the freedom of assembly protected under Article 14 of the Constitution and the proportionality defined in Article 23 thereof.

125. The case of the protest against eviction by Daguang Community members at the inauguration ceremony of the National Housing and Urban Regeneration Center on August 2, 2018, and the case of the protest raised by the same members at Jiangcui Elementary School on August 4, 2018 both incidentally impinged on the President's security on those days. Therefore, the police authorities in the area, the Taipei City Police Department and the Haishan Precinct of the New Taipei City Police Department, not only monitored the assembly and march in accordance with the Assembly and Parade Act and Police Power Exercise Act, but also confined the people participating in the assembly to a pre-defined and circumscribed zone to state their opinion, in accordance with Article 12 of the Special Guard Service Act. However, the setup of the zone was not communicated to the protesters prior to the assembly and march. The zone, for which its location, area and time was inconsistently defined, not only restricted the protesters' personal freedom, but also made it very difficult for the protesters to communicate their claims to the authorities effectively, thus impeding the public's exercise of freedom of assembly. If the National Security Bureau and National Police Agency wish to set up an "opinion zone," they must alert the public in advance of the location, area and time applicable to such a zone. Meanwhile, the area and time made available to this zone should also be proportionally adjusted to strike a balance in preventing the people's fundamental rights from being restricted and allowing channels for expression of objections, while at the same time mitigating the conflict in law enforcement between the President's security and the people's freedom of association. Upon investigation and subsequent follow-up by the Control Yuan, the National Security Bureau and National Police Agency now publish the details of opinion zones in advance, in order to reduce any unnecessary misunderstanding and conflict and inform the protesters of the defined scope, time and controls.

126. In order to execute the Multi-functional Commerce Park urban plan, Kaohsiung City Government evicted the residents in the area "Special Trade 4B" and demolished their housing. When the people supporting the residents made a public petition on April 13, 2018, the Cianjhen (Chien Chen) Precinct of the Kaohsiung City Police Department exercised excessive police force to stop the public petition and this precipitated intense resistance and physical engagement. The police exercised coercive force to remove the protesters and take them away in police cars and put them "under protective custody". Clearly, the police authority exercised excessive restraints on the public

freedom of assembly and parade. Upon investigation and subsequent follow-up by the Control Yuan, Kaohsiung City Government will set up an "opinion zone" to let the public exercise their freedom of speech. The prosecutors' opinions will also be solicited should there be any questions about the use of enforcement, to prevent excessive force and ensure the people's interests and rights are not affected adversely.

127. On December 23, 2017, Taipei City Police Department used force to limit the movement of three attorneys-at-law who had identified themselves as helping the public and took them away from the site when dealing with the assembly and parade for "Objection to Unjust Amendments to the Labor Standards Act and Protection of Labor Interests and Rights". However, if the attorneys-at-law were participating in a legal assembly and march to express their opinion, or provide legal advice onsite to help the public protect their interests and rights, and were free from any misconduct, the competent authority should not allow the police to exercise discretionary coercive force on them. Upon investigation and subsequent follow-up by the Control Yuan, the Taipei City Police Department added related operating procedures for dealing with crowd activities on January 18, 2018.

128. The Assembly and Parade Act was enacted to govern the necessity and boundaries of the intervention of public powers in the peoples' freedom of assembly as provided under the Constitution. The Act also confers on the police authority certain discretionary powers to make decisions and implement measures at the time and place of the assembly, provided that it should be subject to the proportionality referred to in Article 26 of the same Act. Uncertainties created in incidents such as the police "ordering the dispersal" of the whole assembly before "stopping" a few incidents of misconduct, as well as protesters not being allowed to raise objections against the police using excessively forceful measureat the time and place they occur, should be subject to further discussion. Upon investigation and subsequent follow-up by the Control Yuan, the Taipei City Police Department amended the related operating requirements and strengthened the educational training on human rights and rule of law for police officers.

129. The Special Rapporteur on Agenda No. 3 of the 20th Meeting of the United Nations Human Rights Council, Mr. Maina Kiai, mentioned in his report that "A nation should ensure that the administrative personnel and law enforcers have already undergone adequate training on the freedom of peaceful assembly," in order to protect the public engaging in protest movements under the regulation exercised by law enforcers in line with international human rights norms. When planning educational training concerning assembly and march, the police authorities usually adopt their habitual practices of control, and fail to integrate human rights principles. From 2016 to 2018, there were more than 100 protest assemblies involving the special guard service, yet the National

Security Bureau still has made no plan for related courses. Clearly, it has not provided training of the special guard service in both law enforcement and human rights in assembly and march. The National Police Agency and National Security Bureau should focus on the human rights issues related to freedom of assembly, increase law enforcers' awareness of human rights, and work jointly to create a fair and friendly assembly environment for public actions.

130. The police are used to encircling protesters with their superior police force, and then taking them away from the site by force in police cars and releasing them in a remote place. This is a new model adopted by the police to deal with important assemblies and parades in recent years. This model is less invasive than high-pressure water spraying and forced expulsion with police batons. All the same, it not only asks the crowd to disperse or prohibits them from entering specific areas, but also acts against their free will by restricting the protesters' personal freedom for a considerable time and taking them to another place by coercion. To some extent, it intervenes in personal freedom more broadly defined, and as such falls within the scope of "arrest or detention" referred to in Article 8 of the Constitution. This said model creates major doubts over the legal basis for law enforcement, and its applied timing, requirements, targets, ejection locations and remedy measures remain uncertain. These have all been the source of public doubts over the police's arbitrary behavior in law enforcement. Upon investigation and subsequent follow-up by the Control Yuan, the Taipei City Police Department amended the Operating Procedures for Execution of Prevention Treatment Against Mass Assemblies and Treatment Upon the Protester's Refusal to Disperse on August 14, 2018. Meanwhile, the Department also invited the former United Nations Special Rapporteur on the rights to freedom of peaceful assembly, Maina Kiai, a human rights defense attorney, to share his experience in dealing with assemblies and marches.

Article 22 Freedom of Association

Freedom of Association and Right to Join a Labor Union

131. After restrictions on nationality of the Labor Union Act were relaxed on May 1, 2011, Yilan Migrant Fishermen Union became the first labor union formed by migrant workers in the nation. After the recent Nanfang'ao Bridge collapse incident (the port dock bridge collapsed on October 1, 2019, crushing three fishing boats and killing 6 Filippino and Indonesian fishermen as well as seriously injuring two), the Yilan Migrant Fishermen Union reportedly was suppressed. This demonstrates that the authorities lacked measures to guide migrant workers in forming their labor unions and assisting their development. The authorities fail to take into account the barrier in language and words encountered by migrant workers, and provide no translation of official

correspondence and related laws and regulations. As a result, it is difficult for migrant workers to work together to strive for equal rights for themselves in an environment in which they are already socially disadvantaged. The Ministry of Labor and Yilan County Government should recognize that migrant workers constitute an indispensible part of society in Taiwan. The related laws and regulations and counseling on interests and rights should take the migrant worker group's needs into account, in order to disseminate information equally and protect migrant workers' interests and rights.

Article 23 Marriage and Protection of Family

Family

132. The marriage immigrant interview system refers to a homeland security management policy established to verify the authenticity of marriage and prevent human trafficking and stop foreign nationals from engaging in illegal (wrongful) activities or jobs which might cause harm to social and national security. However, according to the existing laws and in practical judgment, whether or not a true marriage is determined by the reality of the couples' co-habitation is a question that is not the same as the "reality" of the regulations. There seems to be no inherent, justified and reasonable connection with the "authenticity" requirements regulated by the law. Therefore, it is against the principle of prohibition of coupling (*Kopplungsverbot*), an administrative principle concerning conflating different functions. The interview system is also suspected of infringing on the Taiwanese national's right to family reunion with the partner he/she has married. It is advisable to review whether there is a violation of the protection of equality under Article 7 of the Constitution.

133. Under implementation of the "Regulations Governing Inspection Visits and Information Registration of Alien Residence or Permanent Residence," many Mainland Chinese spouses or foreign spouses who had already passed their marriage immigrant interviews have had their residence approvals revoked after surprise visits and inquiries into the authenticity of their marriages, during investigations conducted by the National Immigration Agency, Ministry of the Interior. The Ministry failed to distinguish the difference in the intents of Article 70 and Article 71 of the Immigration Act, and conducted investigations with unscheduled visits from time to time pursuant to Article 71 of the Act and Article 3 of said Regulations. As a result, these spouses are put in uncertainty about their cohabitation and life together in the territory of Taiwan. This differs from the system and framework regulated by the parent act, namely, Article 70 and Article 71 of the Immigration Act. It is against the due process of law, affects the protection of the rights to family reunion, and deviates from the equality applicable to other domestic families.

Divorce and Protection of Children

134. While the divorce rate of new immigrants is on the decline now year by year, it still appears to be high, compared with that of nationals. The government should focus on this problem, beginning with prevention of divorce as the first priority; it should strengthen understanding of the cross-national marital relationship, provide explanations to the public through information and messages, and intervene earlier to provide services and assistance. Moreover, the government should provide related information channels and establish support systems for new immigrants after divorce, to solve the difficulties they face, such as economic burdens, child care, and education, in order to help multi-national single parent families.

135. According to the statistics on domestic violence rates gathered by the Ministry of Health and Welfare, domestic violence rates for foreign spouses were more than those of native spouses by 4 times from 2006 and 2015. This signifies serious domestic violence suffered by foreign spouses, especially women. If a foreign female spouse suffering domestic violence wants a divorce, she is not allowed to stay unless she has delivered a biological child in Taiwan. If not, her stay permit will become null and void. Under these circumstance, foreign spouses often must tolerate abuse and torture, the grief and sadness of which are self-evident. The Ministry of the Interior should focus on this problem, and by taking foreign legislation into consideration, add domestic violence prevention clauses to the Immigration Act to allow foreign spouses to be free from the peril of domestic violence.

136. Even if new immigrants are allowed to continue staying in Taiwan after a divorce if they are granted guardianship of their biological minor children, they have to go through multiple difficulties in the process of claiming guardianship, and at high cost. Even if new immigrants are granted guardianship for minor children after a divorce, or are allowed by the court to continue their stay on the grounds that the divorce was unavoidable due to domestic violence, they may still be forced to leave the country and separate from their children when their children attain the age of 20 years old, if they are not yet naturalized or in possession of a permanent resident permit. This indicates that the existing laws and regulations are flawed in the protection of the stay permit and right to family reunion of new immigrants after divorce. The government should amend laws promptly to settle this dispute ethically and justly.

Other Matters Involving the Right to Family Reunion

137. In order to recruit foreign talent to Taiwan and award incentives to foreign nationals who have made special contributions to Taiwan, the Immigration Act has relaxed the threshold for foreign nationals who apply for a permanent alien

resident visa. However, with the exception of investor immigrants, the Act does not permit the application for a permanent alien resident visa filed by foreign professionals' minor children. Clearly, this regulation is flawed in the protection of the right to family reunion. Upon investigation and subsequent follow-up by the Control Yuan, the Executive Yuan drafted the Act for the Recruitment and Employment of Foreign Professionals, which was passed by the Legislative Yuan on October 31, 2017 and came into force on February 8, 2018. In contrast, Article 23 of the Immigration Act provides that the migrant workers referred to in subparagraphs 8–10, Paragraph 1 of Article 46 of the Employment Service Act (blue-collar workers) are not allowed to apply for resident visas for their spouses and minor children.

138. In order to ensure homeland security, the Immigration Act provides the requirements for prohibition of foreign workers from entering the country, and authorizes the Operational Directions for the Entry Ban on Foreign Nationals to set forth a time limit on the entry ban. Said Directions do set forth requirements on applications for shortening the entry ban or lifting the entry ban by taking into consideration the right to family reunion. According to the Directions, those holding an illegally obtained, counterfeit, or altered passport or visa, should be subject to an entry ban for 10 years, irrelevant of whether the counterfeit or illegally obtained passport or visa was a result of intention or negligence. Even if the requirements regarding a shortened entry ban are satisfied, in some cases the concerned parties must still suffer a 5-year entry ban. Accordingly, their fundamental rights to family reunion, co-habitation and joint raising of children are denied. In order to maintain homeland security, the Immigration Agency takes charge of management of borders where entry to and exit from the country occur, but it is also obligated to protect immigrants' human rights. It is supposed to review the changes in international conditions, review related laws and regulations thoroughly, make rolling or contingency plans for adjustments to changing conditions, and consider entry bans for a reasonable time frame on a case-by-case basis. This is necessary to meet Taiwan's basic national policy of upholding itself as a state established on the basis of human rights. Upon investigation and subsequent follow-up by the Control Yuan, the Ministry of Interior has amended the Operational Directions for the Entry Ban on Foreign Nationals as of May 28, 2020, in order to relax the related control and time limit requirements.

Article 24 Child Protection

Child Protection

139. The "physical and mental abuse" referred to in subparagraph 2, Paragraph 1 of Article 49 of the Protection of Children and Youth Welfare and Rights Act and "other misconduct" referred to in subparagraph 15, Paragraph 1 of Article

49 of the same Act have always lacked specific identification criteria. The "hindrance to the physical and mental health of children" referred to in subparagraph 1, Article 83 of the same Act confuses first-line social workers. The investigation results also hardly convince victims' family members. The Ministry of Health and Welfare claimed that it has issued an interpretation in writing to explain the elements constituting the physical and mental abuse on October 2, 2014, but the interpretation is still ambiguous. Considering that the legal definition or identification criteria for "physical and mental abuse" and "hindrance to the physical and mental health" still remain undefined, it is difficult to expect consistency in the law-enforcement standards adopted by various social welfare authorities. Upon investigation and subsequent follow-up by the Control Yuan, the Ministry of Health and Welfare has recommended various social welfare authorities invite regulatory units and relevant departments to convene meetings for discussion of this before rendering any administrative decision. The Ministry of Health and Welfare also makes the "Juvenile and Child Abuse and Neglect Crisis Diagnosis Form" available to social workers of various counties/cities. In order for various local governments to reach an agreement on the practices referred to in Article 49 of the Protection of Children and Youth Welfare and Rights Act, the Ministry will work with local social welfare workers to continue improvements through education and training.

140. When news broke of the two blatant cases of binding young children with adhesive tape and confining them to seats for a prolonged period of time in Chiayi and Taichung, the local social welfare authorities all thought to consider whether such behavior was repeated or not to determine if it fell under the "physical and mental abuse" requirements defined in the Protection of Children and Youth Welfare and Rights Act. The amended Criminal Code already expressly provides that repetition does not constitute a prerequisite for "abuse." Even if the prerequisites defined for administrative versus criminal rules are not necessarily identical, it is questionable when social welfare authorities attach higher requirements to illegal administrative cases, which are usually considered minor, than the criminal cases, which are usually considered major; and whether the same practice may be applied to all child abuse cases uniformly warrants further discussion. Upon investigation and subsequent follow-up by the Control Yuan, the Ministry of Health and Welfare has directed the local social welfare authorities to render judgment based on factors that include the offender's violation, the subject perpetrating the abuse, the motive of the abuse and the results of the abuse, as well as academic theories and practical experience, on a case-by-case basis prior to rendering any administrative decision. They are to do this when dealing with any of the complicated types of child abuse, and to refrain from judging whether the "physical and mental abuse" can be evaluated simply on the grounds of the "frequency of occurrence."

141. According to the Convention on the Rights of the Child, General Comment No. 5 on the general measures of implementation, state parties should establish first-class and independent coordinating and monitoring bodies, and collect comprehensive data to formulate and implement adequate policies. Child abuse cases have been appearing frequently in recent years. According to the statistics gathered by the Ministry of Health and Welfare, the youth and child protection cases verified upon investigation from 2016 to 2018 include 45 caregiver abuser cases. The Protection of Children and Youth Welfare and Rights Act has been amended on April 24, 2019, by including Paragraph 8 to Article 81 therein concerning the authorization to collect and search for information concerning unfit personnel. Upon investigation and subsequent follow-up by the Control Yuan and the Social and Family Affairs Administration, the Ministry of Health and Welfare has established a care system integrated with the information technology system, which has gone live in September 2020. Meanwhile, it also worked with the Ministry of Education to establish a database collating and crosschecking information about unfit personnel in the national caregiver service institutions in order to prevent unfit personnel from working again in kindergartens and infant care centers.

Special Judicial Protection for Children

142. The statistics gathered by the Ministry of Health and Welfare show that the number of sexual assault cases reported within the welfare institutions have been increasing year by year. According to the Convention on the Right of the Child and Juvenile Justice Act, the juveniles and children with cases of statutory offenses or tending towards offenses or touching on potential violations of law should be transferred by means of judicial proceedings back to the social welfare placement, lest they be sent through punitive legal proceedings prematurely. The juvenile and child placement institutions are identified as the last line of defense against prosecution for statutory or petty offenses. It should be noted that the placement institutions have about 5,200 beds in total throughout the nation, of which more than 3,000 beds are already occupied, i.e. a 63% bed occupancy rate. Theoretically, 63% occupancy can accommodate supply and demand. But in consideration of the insufficient number of caregivers retained by the various placement institutions, the number of juveniles that can be housed by the institutions is actually far less than the authorized number of beds. The institutions therefore do not show a high willingness to accept placement of juveniles and children under judicial order, in consideration of their carrying capacity, professional personnel and facilities. Currently, the placement institutions willing to detain judicial juveniles have insufficient resources and lack effective control measures to deal with sexual assault cases. The Executive Yuan is should advise its subsidiary units to discuss concrete and feasible solutions to this problem.

143. The documents made public by judicial agencies referred to in Subparagraph 4, Paragraph 1, and Paragraph 2 of Article 69 of the Protection of Children and Youth Welfare and Rights Act should not disclose information that can lead to the identification of the juveniles and children. However, since the said legal protection of identity does not yet extend to the cases where juveniles violate the Social Order Maintenance Act, this Act is deficient in this respect. Upon investigation and follow-up by the Control Yuan, the Judicial Yuan has already ordered that courts not disclose information that can lead to the identification of any juveniles and children in the judgments they render under the law, irrelevant of the type of case.

144. According to Paragraph 2 of Article 69 of the Protection of Children and Youth Welfare and Rights Act and Article 22 of the Enforcement Rules thereof, the family case documents released by judicial authorities to the public should not disclose any information that can lead to the identification of the juveniles or children, except for the relevant legal documents to be served to juveniles or children personally by public notice,. Notwithstanding this regulation, certain cases with the disclosure of minor children's personal data are still found in the current online query system of the Judicial Yuan's judgment documents. Upon investigation and subsequent follow-up by the Control Yuan, the Judicial Yuan has amended the Directions for Disclosure of Judgment Documents, performed a thorough review, and completed program updates of the judgment documents system.

Protections for Children Lacking Normal Family Life

145. The Ministry of Health and Welfare should recognize the seriousness of the problems of deficient resources in foster families and frequent transfer of juveniles and children among different placement institutions. It should proactively develop resources for foster families, establish statistical data related to transfer of juveniles and children among different institutions, and work with local governments to discuss both parties' cooperation to prevent frequent transfer and enhance the development of character for juveniles and children. Upon investigation and subsequent follow-up by the Control Yuan, the Ministry of Health and Welfare has added the "counts of placement" section in the "National Juvenile and Child Placement and Follow-up Cases Management System" in 2018. It has also expanded subsidies to various city/county governments, increasing each year since 2019, in an effort to help them obtain the resources needed to care for juveniles and children with physical and mental disabilities or special needs, and to match caregiver service resources, thus reducing the chance of repeated transfer placement.

146. Most of the juveniles and children detained in the juvenile and child placement institutions come from dysfunctional families, or have not been raised or cared for by their families adequately. Some were even abandoned by their parents,

abused physically and mentally or treated unfairly in other manners. Therefore, some of them suffer from developmental delays, emotional disturbance or PTSD, or abnormal behavior. The life counselors in institutions who have to deal with such cases with multiple problems are engaged in difficult and high pressure work. When facing problems themselves, the life counselors lack the channels to seek consultation and emotional support and, therefore, are unable to deal with these problems immediately. Under these circumstances, confrontations may easily arise between students and life counselors. The Ministry of Health and Welfare should discuss the relevant corrective actions. Upon investigation and follow-up by the Control Yuan, the Ministry of Health and Welfare has already widened the proportion of subsidies for special caregiver personnel and raised the level of subsidies, in order to provide the juvenile and child placement institutions with more manpower and higher budgets.

New Immigrant Family Child Protection

147. New immigrant families often leave their children in the care of their relatives in their home countries, in consideration of work and financial burden. This is an expedient practice called cross-national childcare. The government should deal seriously with the practical difficulties faced by the new immigrant families through discussion and integration of adequate childcare policies addressing actual needs. This is done in the hopes of providing new immigrant families with the assistance to satisfy their childcare service needs. The government is also advised to discuss giving permission for the new immigrants' parents in their home countries to reside in Taiwan and take care of their minor children as an expedient practice or special project, in order to help improve and mitigate problems derived from the new immigrants' children staying overseas as well as the difficulties in education and inclusion into society after the children return to Taiwan.

Non-Native Child Protection

148. Some female migrant workers run away or are deported, and their children born in Taiwan have to face problems such as an unknown biological father and untraceable biological mother, or they are identified as foreign or stateless juveniles and children, or their nationality cannot be identified (hereinafter referred to as "non-native juveniles and children" collectively). The children will also have to deal with multiple difficulties when applying for household registration, naturalization, resident visas, or placed in adoption and, therefore, may potentially become an unregistered population in society. These juveniles' and children's survival and development are severely adversely affected. Even if these juveniles and children acquire resident visas as special cases and receive related protection in accordance with the Protection of Children and

Youth Welfare and Rights Act, these are nothing but temporary measures which cannot help with their future development. After all, once they attain 18 or 20 years old, they will no longer be identified as juveniles or children, and they cannot enjoy protective umbrella of state care any more. The problem is getting worse because of the increasing number of migrant workers that are unaccounted for (i.e. it is known that the migrant workers entered the country, but their current whereabouts are unknown). The Executive Yuan must recognize these juveniles' and children's basic human rights in consideration of their plight, urge its subsidiary ministries to work together on solutions to protect the fundamental rights of juveniles and children under the related International Human Rights Covenants. Upon investigation and subsequent follow-up by the Control Yuan, the Ministry of Interior has discussed operating procedures and alternate measures for resolving the problems of identity and residence of the non-native juveniles and children under the various conditions of "who are identified as stateless but cannot be successfully adopted," "whose biological fathers are unknown and biological mothers already departed from the country or are deported, or with untraceable whereabouts" and "whose biological fathers are unknown and biological mothers are foreign nationals and with untraceable whereabouts in Taiwan".

149. A child should be registered immediately after he/she is born, and should have a name and is entitled to the right of nationality from birth. A child should not be discriminated against or punished based on his/her parents' identity. All of these stipulations refer to a child's basic human rights. From January 2007 to the end of June 2019, the Immigrant Agency has received into its protection a total of 9,381 non-native newborn cases, including 496 non-native children born to foreign migrant workers who are unaccounted for. Adding this number to the number of children born to foreign migrant workers without registration via hospitals or medical institutions will result in a far greater number than the official data. Their lack of nationality violates the Convention on the Rights of the Child and Article 22 of the Protection of Children and Youth Welfare and Rights Act. Moreover, the Executive Yuan has also negligently delayed in the improvement and maintenance of these children's basic human rights. Upon investigation and subsequent follow-up by the Control Yuan, the Immigration Agency re-conducted the survey, and found that children without nationality whose biological mothers are untraceable foreign migrant workers totaled 878 persons from January 2007 to the end of December 2019, including 236 children who cannot be located. The Agency will continue its search for those unaccounted-for persons.

150. The Immigration Agency failed to take into account in the "List and Procedure for Applications for Determination of Stateless Persons by Non-Native Juveniles and Children Born in Taiwan" and "Standard Operating Procedure for Issuance of Overseas Chinese and Foreign national Resident Visa to Non-

Native Juveniles and Children" the fact that it is impossible for parents who are unaccounted-for migrant workers to apply for resident status on behalf of their children, and that the social welfare authority can only help migrant workers' children complete naturalization after these children attain the age of 20 years old and no Taiwanese national has adopted them. As a result, such juveniles and children become stateless, or of unidentifiable nationality, and have to deal with multiple difficulties when applying for household registration, naturalization, resident visas, or admission for adoption. Local governments' social welfare authorities have trouble looking after them and finding solutions. The Immigration Agency argues that it is just a law-enforcement authority, and the social welfare authorities should be responsible for the migrant workers. Therefore, it disregards the problem of migrant workers' children, and of their status. This is against the Convention on the Rights of the Child and the Protection of Children and Youth Welfare and Rights Act, which provide that the children's best interests should be taken as the first priority. The Agency is obviously out of touch with reality.

Article 25 Political Enfranchisement

Help New Immigrants Engage in Public Affairs

151. Many new immigrants have limited knowledge of Taiwan's democratic practices. Due to problems such as language barriers and gaps in adaption to life in Taiwan, it is not easy for them to express and reflect their own opinions and actual needs. The government should organize civic education for them and establish relevant incentive mechanisms to train new immigrants to form their own organizations and serve as staff members of civic organizations, so that the new immigrants may have a chance to speak for themselves and engage in public affairs.

Article 26 Equality of Laws and Anti-Discrimination

Legal Dilemmas of Intersex Persons

152. An intersex person is defined as one who is born with physical or physiological sex characteristics (including genitals, gonads, or chromosomes) that do not conform to the typical definitions of the male or female genders. A relevant study estimates that 0.05%–1.7% of the human population might be born with intersex characteristics. Based on the higher estimate, there might be as many as 400,000 intersex persons in Taiwan. However, the government does not collect any relevant data about the intersex population, nor does it engage in studies about it voluntarily. The government completely ignores the physical existence of the intersex population, let alone formulate any policies to address

the concrete problems faced by intersex individuals in life, e.g. gender registration issues and the need for medical operations.

153. Some intersex children who are born with unidentifiable sex characteristics or who do not satisfy the traditional definitions of two sexes are forced to accept "normalization" surgery too early, as their parents are under pressure in birth registration and have no adequate medical guidance for reference. The Ministry of Health and Welfare has failed to prepare related medical care guidance or parent handbooks to provide assistance. As a result, intersex children are likely to be forced to undergo unnecessary surgery too early. Upon investigation and subsequent follow-up by the Control Yuan, the Ministry of Health and Welfare has on October 11, 2018, already promulgated the "Recommended Principles for Medical Corrective Surgery of Underaged Intersex People," and also put together a list of suggested referral hospitals and information about outpatient services in order to prevent intersex or genderless children from accepting non-urgent and irreversible gender surgery too early.

154. For the birth registration system, it is necessary to specifically identify gender. However, in ID cards, the Government could take into account other countries' practices and experts' and scholars' opinions and make certain amendments to the categories of gender, e.g. a registration of a third gender, or genderless, or other notation. Under the birth registration system, the gender of intersex people is often "decided" prematurely by their parents or due to social influence. Intersex individuals often need to alter their gender registration when they come to puberty or adulthood. The Government has convened multiple meetings on the gender alteration registration issues, but still has yet to come to any conclusion. Current practices still require that intersex people are only allowed to register alteration of their gender if they present diagnosis certificates issued by two psychiatrists and a certification of removal of their reproductive organs. Such requirements fail to comply with Point 50 of the Concluding Observations and Recommendations adopted by the International Review Committee for the Review of the Second Report, stating that it should "conduct research into the situation of intersex people, and formulate policy guidance, including the prohibition of medically unnecessary operations of removing otherwise healthy reproductive organs."

155. The traditional binary gender categorization has caused troubles for intersex people in all respects of their adaptation to society. The government is lacking in knowledge of and support for the intersex community. Intersex people are often discriminated against in education, or when engaging in any type of work. No related laws and regulations have been enacted to deal with the problems intersex people face when participating in sports competitions. Social support measures are clearly insufficient. The government should proactively acknowledge the physical existence of intersex people. It is also

advised to conduct an in-depth study on the problems faced by intersex people in all respects, and to encourage society to recognize the inherent diversity of the intersex community. It is crucially important for the government to prevent the social pressure derived from "normalization" from destroying the human dignity, survival needs, and future development of persons whose inherent characteristics are inconsistent with traditional values.

Article 27 Retention of Cultures, Religions and Languages Particular to Minorities

156. Considering that an indigenous peoples' language is the foundation of their culture and a prerequisite of their identity, and some indigenous languages are going extinct, it is critically urgent to enact independent special laws regarding their preservation. Paragraph 11 of Article 10 of the Additional Articles of the Constitution of the Republic of China and Article 13 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) both expressly state that a nation should use its best efforts to preserve indigenous languages. Article 9 of the Indigenous Peoples Basic Law (IPBL) also stipulates that the development of indigenous languages should be set in law. Upon investigation and subsequent follow-up by the Control Yuan, and through the efforts of the government administration and legislation agencies, the Indigenous Languages Development Act was enacted on June 14, 2017. However, written law alone will not be enough. The competent authorities should, pursuant to laws, deal promptly with the imminent extinction of some indigenous languages.

157. Senior high schools or below are required to implement ethnic education for indigenous peoples when any indigenous students are admitted to the school. If the schools are identified as key indigenous schools, they should retain indigenous teachers at the specific proportion as prescribed. These teachers should be dedicated to promoting ethnic education for indigenous peoples, as expressly provided in Article 14 and Article 25 of the Education Act for Indigenous Peoples. Notwithstanding these regulations, said ethnic education requirements were found to not be implemented. The indigenous teachers retained by the indigenous key schools actually were less than half of the authorized quota (the gap was as high as 1,215 teachers in the school year 2017). This meant a significant negative impact on the promotion of ethnic education for indigenous peoples. Upon investigation and subsequent follow-up by the Control Yuan, the Ministry of Education has increased the quota of trainees to become indigenous teachers, and amended and then promulgated the Regulations Governing Selection, Reservation, Training, Transfer, and Retention of Elementary School/Junior High School Principals, Directors and Teachers on June 8, 2018. It will also ask the administration agencies to promote ethnic education for indigenous peoples more proactively.

158. Hunting constitutes a part of traditional indigenous culture. *Mangayaw* refers to a very important traditional worship ritual for the Puyuma Community. According to Paragraphs 11 and 12 of Article 10 of the Additional Articles of the Constitution of the Republic of China, and Articles 10 and 19 of the IPBL, the Government should use its best efforts to maintain the development and inheritance of indigenous peoples' hunting cultures, in order to prevent these cultures from disappearing for lack of hunting areas.

159. Hunting within specific hunting areas is held as satisfying the tradition of the indigenous peoples' hunting culture. The definition of and compliance with hunting boundaries may help identify dangerous areas and also help forestry competent authorities assess and maintain the ecological environment within these specific areas. The relevant hunting areas should be identified in detail in the application and review procedures, and after its approval oversight of hunters' compliance should be maintained. The existing practices and measures still have room for improvement. Upon investigation and subsequent follow-up by the Control Yuan, the Forestry Bureau of the Executive Yuan, and its forest administration divisions have organized multi-party information and presentation conferences, reinforced actions against infractions, and also implemented a pilot project for 8 indigenous tribes throughout the nation. They will then promote the implementation of administrative contracts to create a self-governing management mechanism for indigenous peoples' hunting activities.

International Covenant on Economic, Social and Cultural Rights

Article 1

(Please refer to the International Covenant on Civil and Political Rights)

Article 2

International Cooperation and Development Aid

160. According to the 2008 White Paper on Foreign Aid Policy announced by the Ministry of Foreign Affairs in May 2009, the total budget of the R.O.C. (Taiwan) government Official Development Assistance (ODA) was initially estimated to be approximately USD 430 million for the year, accounting for 0.11% of the gross national income (GNI) of Taiwan. This was substantially lower than the average assistance budget of 0.28% of GNI for the countries of the Organization for Economic Cooperation and Development (OECD), and far from the United Nations' standard of 0.7%. In addition, this budget was further decreased in 2019 (approximately USD 310 million, accounting for only 0.051% of Taiwan's GNI). Considering Taiwan's foreign policy of "Fulfill international responsibilities, undertake international obligations, expand international cooperation, develop the nation's international social influence," the foreign aid budget of the government should be consistent with international standards and demonstrate that it intends to fulfill the international social responsibility of our nation.

Anti-discrimination Measures

161. Reasonable Accommodation for Persons with Disabilities

(1) Reasonable accommodation ensures that persons with disabilities can enjoy equal right to take examinations and work as others do. In 2018, during the Civil Service Special Examination for the Persons with Disabilities, there was an incident where an examinee with a visual impairment submitted a request to enlarge the examination paper print to font size 20 before the examination; however, the Ministry of Examination (MOEX) was only willing to provide the "enlarged examination paper of fixed specifications," such that the disabled person's equal right to take the examination was affected. The MOEX, which oversees the national examinations, should provide fair and non-discriminatory examination assistance measures in order to satisfy the individual needs of persons with disabilities. It should protect the right of persons with disabilities to take examinations with its best efforts, and the current examinees' rights protection mechanism should be reviewed in order to establish procedures for reasonable accommodation, thereby preventing disputes arising from discrimination against persons with disabilities.

(2) There are numerous National General Scholastic Ability Tests, Joint College Entrance Tests, Advanced Subjects Tests, and others held annually. In the examination instructions, despite the examination service item allowing examinees to apply for an extension of the examination time according to their physiological disabilities, the General Scholastic Test nonetheless requires that all extensions are limited to 20 minutes (2021 Syllabus indicates an extension of 30 minutes), Similarly, the Advanced Subjects Test states that extensions are limited to 50 minutes, which seems to illustrate that there are no reasonable accommodations made based on the level of disability and the difference in individual needs. It is recommended that the Ministry of Education (MOE) conduct an overall review on all examination affairs units and schools in order to determine whether reasonable accommodation for examinations for disabled people are actually provided for entrance examinations. This review should aim to preclude any adverse impact on fair and reasonable opportunities for students with disabilities in examinations and higher education.

(3) To reduce the difference in work adaptation for civil servants with disabilities, the examination instructions for the Civil Service Special Examination for the Persons with Disabilities should provide a detailed job description for the examinees so they can evaluable the suitability of their exam applications. For government agency workplaces with reasonable spatial accommodations for persons with disabilities, the disabled should be invited to participate in defining the core job skills and examination standards for the jobs. In addition, vocational rehabilitation professionals should be invited to provide assistance in the formulation of operational guidelines and manuals. Presently, the employment measures currently adopted for various types of civil servants with disabilities, to help them adapt reliably to the office environment, rely on each particular employing agency's setting up its own plan and allocating their own budget; there is no organizational unit dedicated to coordinating such measures and budgets uniformly. Accordingly, there is a need for all human resources agencies together with the Ministry of Labor (MOL) and the Ministry of Health and Welfare (MOHW) to proactively engage in a discussion to establish a dedicated support and guidance system for the government agencies, with the goal of providing a professional team, a resource contact system, and a service window to assist and guide personnel with disabilities and their prospective employers.

162. New Immigrants

(1) With the introduction of migrant workers and large international capital movements, our nation has entered the era of frequent cross-national/cross-strait (i.e. China-Taiwan) marriages.[2] From 1998 to 2019, there were 608,071 such marriages, accounting for 18.47% of the total number of married

[2] In Taiwan's current society, these immigrants by marriage, overwhelminly women, are often called "new residents," recognizing that they become a long-term part of families and society in Taiwan, but hereafter they will be referred to as "new immigrants".

couples in Taiwan. In addition, by the end of August 2020, the number of new immigrants had reached over 560,000.[3] The number of children of new immigrants for the same period also increased to 413,853, accounting for 8.64% of the total number of births in Taiwan. All of the above indicates that households of new immigrants have become an important part of our nation's population structure, and we have truly become a multicultural society. The government must face this and adjust its traditional immigration policy that mainly focuses on restrictive control of immigration, as well as crime prevention, and it should envision a plan for policy that will emphasize multiculturalism and facilitate the successful integration of the new immigrants into Taiwan's society.

(2) At present, Taiwan society still has some prejudice against new immigrants; there are some situations where discrimination against new immigrants' families still exists. The children of marriage immigrants also face similar discrimination due to their parents' foreign identity. The government should proactively review all measures to promote substantial benefits for the cultural rights of new immigrants, to enhance the equal right to education for family members of new immigrants, and to implement schools' acceptance and respect for multiculturalism, thereby doing due diligence to comprehensively eliminate all kinds of discrimination faced by new immigrants and their children.

(3) New immigrants have a strong motivation to enter the job market; however, there are many obstacles for them. Consequently, new immigrants face discrimination and restriction during the job application and employment processes due to stereotypes towards new immigrants. Even those with great educational backgrounds and professional skills may still have difficulty in their career development. The government has implemented a relaxed policy on the right to work for marriage migrants; however, many employers are still unaware of the new regulations of this relaxed policy, or, due to other concerns, refuse to employ new immigrants, thus blocking their career development. Now new immigrants obtaining permanent resident certificates are permitted to work in Taiwan without applying for additional work permits; however, since explanations of this have not been provided clearly to the public, the permanent resident certificates are not seen as permission for employment, and obstacles in job hunting still exist for new immigrants. Moreover, there have been numerous incidents where new immigrants have been cheated by their employers, earning unequal salaries and welfare, particularly in the fields of catering and small-scale service industries. Such unfair treatment includes no provision of normal working benefits, such as no labor insurance (e.g. only 30% of new immigrant workers are enrolled by

[3] Taiwan has a population of about 23 million.

their employers in the national labor insurance system), no health insurance payments, and no payments into the national labor pensions system, normally paid into with monthly wage deductions and contributions by employers, among other iniquities. The government should realize the prospective benefits of new immigrants to the nation, by proactively increasing their human capital and employability through an executable inspection and audit mechanism, providing direct complaint and assistance channels, and fully prosecuting employers who engage in illegal labor practices, such that their legal rights and work interests are protected.

163. Employment Rights of Persons with Disabilities

(1) The population of persons with disabilities in our nation continues to show atrend towards increasing, and the government should properly ensure that persons with disabilities have equal opportunity in employment, allowing them to integrate into society through employment, thereby improving their economic condition and assisting them to live independently. The main reason for persons with disabilities being unsuccessful in their job search is inappropriate job content. Accordingly, the government should integrate cross-department resources to assist persons with disabilities in improving their economic conditions and living independently. In addition to the active development of diverse and appropriate employment opportunities and the creation of friendly workplaces, the government needs to focus more on education for persons with disabilities, improving their level of education to meet the job market demands.

(2) Furthermore, in view of Taiwan’s aging population, the active working population of our nation will face a trend towards significant decrease in the future. Regarding the Vocational Competency Training for the Disabled organized by the MOL, occupational training and employment matching should be further improved.

(3) At present, the availability of barrier-free environments in the public and private sectors is still insufficient, causing inconvenience to persons with disabilities. To construct a barrier-free environment, to eliminate the employment inconvenience and limitations for persons with disabilities, and to increase employment opportunities, the MOL and MOHW must engage in cross-field coordination to discuss the expansion of usable space in existing buildings to create barrier-free workplaces and provide friendly working environments to persons with disabilities.

Article 6

Employment Assistance for Middle-aged and Elderly Persons

164. The Middle-aged and Elderly Employment Promotion Act was originally planned to be promulgated on May 1, 2020, by the Executive Yuan; however, due to the recent impact of the COVID-19 pandemic, the rate of labor utilization in domestic industry has decreased, such that the implementation of the Act is currently postponed to a later date after the epidemic situation improves. The Act explicitly states that, upon the discovery of any workplace age discrimination, an administrative fine to a maximum amount of NT$1.5 million (USD 50,000) can be imposed; the Act aims for a positive impact on the promotion and protection of employment for the middle-aged and elderly. Nevertheless, if employers and workers still cannot improve their existing understanding of this issue, any type of government subsidies will not be effective in overcoming this problem. The Control Yuan recommends that the MOL not only establish policy incentives and implement legal penaltiesalso proactively educate the public and continuously track future post-law implementation effects.

165. The current retirement age in our nation is still compulsory, and flexible work schedules have not been widely introduced. Nevertheless, in view of the trends towards rapidly aging populations, most countries worldwide are now considering abandoning a compulsory retirement age and are aiming to implment partial retirement through labor-management negotiations with an adjusted model of operations. The national labor insurance old-age benefit in our nation uses the deferred pension method, the purpose of which is to give incentives for retired workers to defer the collection of their pension to a later date. To properly understand the situation in our nation, it is recommended that the MOL conduct further research on partial retirement to learn from experience in other countries, and to further examine the feasibility of various programs and measures to satisfy the actual needs of the situation.

Employment Assistance for Indigenous People

166. Since the areas where indigenous peoples reside are mostly places in the mountains, with relatively weaker economic development, the factors of educational level, employment characteristics and economic environment, among others, affect their employment opportunities. The employment problem among indigenous peoples still requires proactive action from the government, including providing sufficient employment information, temporary and long-term job opportunities, and occupational training and improvement of educational level, such that through comprehensive and active employment protection measures the employment competitiveness of indigenous peoples can be enhanced.

167. Through the Indigenous Peoples Employment Promotion Plan, a total of three phases of this government program were launched during the period from 2009 to October 2020. Implemented through the aspects of "employment service," "occupational training," and "guaranteed recruitment," among others, the objective of the program was to enhance the occupational skills and stable employment of indigenous peoples. However, the job statistics of indigenous peoples still indicates a higher percentage work in manufacturing industry and construction industry, and their employment is more likely to fluctuate according to economic environment and policies. In addition, their average wages show a monthly gap of about NT$10,000 down from the income of the general public, and this disparity has not improved. The aforementioned program has mainly focused on the short-term advance of the indigenous peoples' employment, but has not been effective in looking forward to the future needs of the industries in our nation. There is a need to establish a long-term policy plan for improving the work environment and quality of work for indigenous peoples.

168. Presently, the percentage of indigenous peoples not living in the mountain areas where their original communities are has reached nearly 60%. For indigenous youth, the percentage of those unemployed in the age group 15~24 is far greater than for the non-indigenous population, and the employment demand of urban indigenous people is increasing. In examining the main survey sources of employment information for job seekers and unemployed indigenous peoples, it can be found that they still mainly rely on job referrals by relatives and friends. The current Human Resource Website for Indigenous Peoples set up by the Council of Indigenous Peoples has not been effective in satisfying employment needs in non-indigenous areas. Accordingly, the Council of Indigenous Peoples and relevant departments are recommended to review and establish a more efficient human resources website for indigenous peoples in order to serve greater numbers.

169. The operating capabilities of indigenous worker cooperatives still require improvement. The current incentives or guidance regulations for the indigenous worker cooperatives tend to provide subsidies and guidance to those cooperatives with greater performance, which seems to have deviated from the original purpose of the indigenous cooperative development and guidance policy. It is recommended that in the future the authority involved review the guidance and subsidies for indigenous worker cooperatives in light of the goal of achieving mutual assistance, benefit-sharing, autonomous operation by tribes, and employment advances among indigenous peoples.

170. The percentage of indigenous peoples working in the construction industry and manufacturing industry is higher than percentage of the general population in these industries, and their occupational injuries, as a rate per thousand, are also twice as high as the rate for the general population. Their rates of long-term disability and deaths due to occupational injuries are likewise higher than

the general rate. Moreover, according to the estimation of the Council of Indigenous Peoples, in December 2019, the percentage of indigenous people working without enrollment in the national labor insurance program was estimated to be approximately 22.2% (55,000 people). This poses a significant concern in the social security network. The government should pay serious attention to the risk of occupational accidents faced by indigenous peoples and proactively enhance occupational accident preventive measures with government resources and assistance. Particularly for hazardous industries with high accident rates, the promotion of enrollment in the national labor insurance and industrial hazard insurance providing compensation must be increased. In addition, it is imperative to ensure that the subsidies they are entitled to will actually be given to them in case of occupational accidents, thereby protecting the safety of indigenous workers.

171. In 2019, the number of indigenous persons joining as officers and soldiers in the national army(which is now an army recruiting volunteers rather than conscripting the general population of youth) reached 15,094 people, among whom 95% were non-commissioned officers; this is indicative of the contribution and importance of indigenous peoples in protecting our homeland and defending Taiwan. Accordingly, the government should enhance the professional skills of these military personnel and help them obtain relevant certificates and licenses. Furthermore, the government should actively implement employment guidance and job matching for indigenous peoples after their retirement from the military in order to prevent an unfavorable situation of later unemployment for them.

Employment Assistance for Young People

172. In 2019, the average unemployment rate in our nation was 3.73%, a decrease of 0.45% from 4.18% in 2013. The average unemployment rate for young people of the age 15-24 was 11.88%, showing a decreasing trend, down from 13.17% in 2013. Furthermore, there were 1.23 million young people aged 5-29 in 2013 with primary incomes of less than NT$30,000 (USD 1,000) monthly, constituting 61.3% of young people with job incomes. This figure for young people with incomes under NT$30,000 was reduced to 980,000 in 2019, constituting 48.7% of young people with job incomes. The situation of unemployment and relatively low income for young people in our nation has shown signs of improvement; however, the problems of young people unable to afford houses and/or unwilling to engage in marriage, as well as the problem of outflow of outstanding talent, among other issues, still call for the government's attention and positive efforts to address them.

173. An imbalance already exists in the supply and demand for the workforce of the national labor market. For a workforce demand estimate, most of the departments in the government rely on their own planning and policies in their

professional field, while there has been no effective coordination and integration across fields for more comprehensive policy and planning. Consequently, government agencies have not been able to provide relevant workforce demand information to students, parents, and the general public, and so the educational system and specialized departments are not able to cultivate talent matching with the anticipated developments in industrial demand. As a result, uneven long term supply and demand for trained manpower, as well as the gap between the industrial and academic sectors, still exist.

174. Regarding the gap between school learning and actual practice at work in the job market, for departments and faculties showing poor employment performance, the Ministry of Education (MOE) needs to supervise universities and colleges to perform reviews of their programs and fields of study offerred, and consider transformations to effectively overcome these gaps. Furthermore, due to the insufficient occupational competency of some young people under the current school educational system, young people tend to compete over job vacancies requiring lower work skills, leading to the outcome of greater unemployment rates and low wages. An industry-academia cooperation program, a bridge between school learning and industrial needs, and a complete mechanism for career development after graduation, also for non-industry class students must be adopted by the MOE and continuously reviewed to facilitate employment for students immediately after graduation. This will also provide sufficient technical human resources to various industries, thereby improving technological and vocational education.

Article 7

Protection of Contracted Workers' Rights

175. By the second quarter of 2020, the number of contracted workers in the Executive Yuan and its subsidiary organs of government has been decreased to 204 people. In comparison with the 15,514 contracted workers employed on January 31, 2010, the number has been reduced by 98%. Nevertheless, an investigation by the Control Yuan has discovered labor irregularities in a government-funded foundation. The Indigenous Peoples Cultural Foundation is a foundation entirely supported by donations from the Council of Indigenous Peoples, and on January 1, 2014, it founded Taiwan Indigenous Television, with a 100% governmental budget. However, since 2014, the foundation began to increase the number of labor contract employees, and their number reached 71 at the end of June 2018, accounting for approximately 30% of the total number of 250 employees. 80% of these labor contract employees are indigenous peoples. Furthermore, the actual annual salary of the labor contract employees has been NT$120,000 (USD 4,000) less than the annual salary of direct full-time employees; in addition, contract employees are not accorded

relevant labor rights and benefits. Moreover, the investigation of the MOL found that the contract personnel are required to comply with the same operational rules as the full-time employees in the foundation. It is obvious that the Indigenous Peoples Cultural Foundation is attempting to avoid compliance with labor regulations through "assuming the name of temporary contract personnel but requiring performance as full-time employees." The President of the foundation has failed to manage employment properly and not fulfilled supervisory responsibilities, while the foundation continues to violate labor regulations and shortchange its employees.

176. The government should pay attention to such matters and examine the current employment practices, such as that adopted by the Indigenous Peoples Cultural Foundation and the prison system's use of professional psychiatrists and social workers. Such use of a large number of labor contracts using "natural persons" as if they were commodities in outsourcing should be considered a "deceptive contract method, and unfair employment in practice," a practice which attempts to dodge the application of relevant regulations, including the Labor Standards Act of the R.O.C. and the Government Procurement Act, and leads to insufficient protection of the labor rights and interests of the employees. Moreover, the use of contract employees generally undermines continuity, and if so neither the governance experience nor the professional service capabilities of the institutions can accumulate. After the investigation of the Control Yuan, the Indigenous Peoples Cultural Foundation has corrected its recruitment policy; it has stopped recruiting contract employees and transformed the original contract personnel into full-time employees.

Juveniles

177. Youth Employment

(1) In recent years, the Ministry of Labor (MOL) has conducted a special project investigating the labor condition of student workers, i.e. youth in work-study employment or internships. In 2014, 100 employers were inspected, and a total of 42 employers (42%) were penalized for violation of the Labor Standards Act. In 2015, 150 employers were inspected and the number of violating employers was 61 (41%). In 2016, 150 employers were inspected, and there were 39 violating employers (26%). In 2017, 150 employers were inspected, and only 9 employers (6%) were found to be in violation. Accordingly, this indicates that the number of violations has decreased, and the implementation of inspection has achieved a salutory outcome. As for violations in past years, these cases are mostly related to the violation of the provisions of Article 24 (failing to provide an overtime wages for extended working hours), Article 36 (failing to provide one day of a rest as a regular holiday for every seven working days) and Article 39 (failing to pay holiday

wages or failing to pay overtime wages for working on a rest day or holiday) of the Labor Standards Act. In addition, the MOL further increased the number of investigated employers in the student worker inspection special project to 1,500 employers in 2019. Up to August 31, 2019, a total of 1,179 employers in the special project had been inspected, and 84 employers were still found to be in violation of the regulations. The MOL further implemented regular supervisory inspection on the businesses most frequently employing student workers. As of August 31, 2019, a total of 4,243 regular employers had been inspected, and the total number of violating employers reached 850 (20%), indicating that the prevalence of violations still calls for further improvement.

(2) There have been numerous reports that vocational and technological colleges have been enrolling overseas students through human resource agencies in recent years. However, there is a lack of connection between the work content performed at the company for internships and the study in the subjects they are ostensibly learning at school, and students are in fact forced to sign illegal part-time job agreements, work overtime, have their passports held by employers, or even be exploited by the school and human resource agencies with improper deductions and other issues, significantly damaging the image of our nation's internationalism and higher education. The government must eliminate schools enrolling overseas students through illegal brokers, assuming the name of school studies for labor in practice, or even making students into cheap labor with overtime work. It must stop those making illegal profits through such improper practices that lead to the criticism "deceptive internship, unfair work treatment in practice." After the investigation and controls implemented by the Control Yuan, the MOE has established a complaint channel exclusively for overseas students, as well as a "task force for guiding universities and colleges enrolling overseas students" to integrate cross-department resources and to jointly assist overseas students in their safe study in Taiwan.

(3) The MOE's supervision and management of schools' enrollment of general overseas students are considered relatively weak compared to that of the New Southbound International Programs of Industry-Academia Cooperation organized by schools. The cases of violation of labor regulations, where overseas students enrolled by schools became "student workers" in recent years, are mostly schools for the general foreign student studying abroad in Taiwan, rather than the New Southbound International Programs of Industry-Academia Cooperation or under other new southbound policy related programs. Accordingly, to eliminate such improper cases of exploiting "student workers," the government should establish a cross-department supervisory system for school enrolling general overseas students in order to protect the rights and interests of these students in Taiwan.

Working Hours and Leave

178. Regarding the 2018 new regulations of the Labor Standards Act, related to Article 34, “intervals between work rotations or shifts,” and Article 36, “one regular leave day in each seven days of work,” both the labor and management sides expressed their different opinions during the amendment of the law. It has become a major case of disputed legislation. The Ministry of Labor (MOL) did not reserve sufficient time to allow all central authorities to review and evaluate the implications carefully. It has not carefully studied the criteria by which exemptions may be allowed to industries, nor has it provided a clear standard to integrate the opinions and methods considered by all departments. As a result, more than 60 industries raced to claim they would be given exemptions, as seen in the “pre-announcement” draft to all“the authorities governing the central business objectives”. Furthermore, for parts of the labor-management negotiation meetings, the central authorities, including the Ministry of Economic Affairs (MOEA), the Ministry of Health and Welfare (MOHW), and the Ministry of Transportation and Communication (MOTC) “clearly failed to provide sufficient preparation time for the labor representatives to attend the meeting,” “there were doubts about the industry represented by the workers attending the meeting,” in addition to there being an “uneven number of attendees from the labor and management sides, etc., and the meeting time was too short to allow both sides to express opinions sufficiently.” There were also issues of “dissenting opinions of the attending labor side that were not sufficiently evaluated,” and “examination standard for the necessity of exemptions to the application of the new law was chaotic and unclear.” All of the above indicates that for the amendment of the new regulations of Article 34 and Article 36 of the Labor Standards Act, the procedural aspects and the substantial aspects in formulating these amendments have not been considered thoroughly and adequately.

179. With regard to the four special types of industries to which the exemption to “one regular leave day in each seven days of work,” is applicable as specified by the MOL, some of the criteria for application are too vague. In addition, for the industries to which the exemption is applicable as approved by the MOL, the MOL has not performed an “overwork risk assessment” and proved a “rigorous and clear necessity under the examination standard;” whether the labor representatives attending the labor-management negotiation meeting convened by central government were actually representative of the workers, leading further to the major doubts of “why the exemption cannot be applied to industries with the same conditions,” and “whether the relaxed exemptions should also apply to the upstream, downstream and surrounding industries.”

Prevention of Sexual Harassment in the Workplace of Migrant Workers

180. As of the end of February 2018, the number of migrant workers in Taiwan reached more than 676,000. According to the statistical data of the MOHW, there were 633 migrant workers who reported sexual assault from 2012 to February 2018. Among more than a hundred cases of sexual assault reported by female workers, more than 70% of such cases were reported by home caregivers, and more than 60% of reported cases involved a superior-subordinate relationship. Female migrant workers leaving their home country and working in Taiwan have to face numerous cultural differences, living habit differences, language communication, etc. In addition, due to the reason that they may not have sufficient information before entering the country, and the workplaces for home nursing jobs are typically closed environments or private places, the pressure of environmental adaptation becomes greater. In particular, when a migrant worker intends to terminate his/her employment contract, it is necessary to obtain the consent of both the employer and the migrant worker and a certification procedure is also required. Moreover, if there are matters that cannot be blamed on the employed foreign national, then that migrant worker may not change their employer or job unless approval is obtained. Under such restrictions, it is difficult to terminate the contract at any time, and when sexual assault occurs, most of the migrant workers choose to tolerate it or run away. In practice, there are also cases where migrant workers make false reports of sexual assault for the purpose of changing their employer. In more than one hundred sexual assault cases reported by female migrant workers in Taiwan, the causes and actual facts have not been thoroughly investigated by the MOL and MOHW, and the police agency has not established an effective verification mechanism. As the number of migrant workers continues to increase, this problem is expected to become more severe.

181. Presently, when foreign female caregivers report sexual assault, most workers are willing to choose the protective shelter arrangement provided by the labor affairs agency. However, the protective shelter arrangement is provided to many subjects assisted by the labor affairs agency, and is not limited to those who have suffered sexual assault, and the handling unit may not be equipped with psychological counseling professionals, but may only focus on service for consultation and labor-management disputes. Consequently, the psychological trauma of migrant worker victims is often ignored. Moreover, after some migrant workers who have experienced sexual assault or sexual harassment accept the protective shelter arrangement, they still have to face the huge debt and monthly payments to brokers originally incurred for their work abroad, while during the waiting period, resulting from changing employers they have no income. Collecting their wages from before the new arrangements still requires the procedure of labor-management dispute mediation to request the employer make a payment, settle wages, retrieve

licenses, savings, sign transfer documents, etc., causing double harm to the victims of migrant workers throughout the process.

182. To prevent the occurrence of sexual assault and sexual harassment of migrant workers, the MOL implemented a pre-employment seminar system in July 2016 for the first time, requiring employers of migrant workers to participate in the pre-employment seminar; however, a proxy for the employer may be appointed to attend the pre-employment seminar. It is also required to carry out migrant worker inspection after their arrival, and special case inspection is implemented for employer categories considered at high risk of perpetrating assault. Nonetheless, in practice, due to insufficient migrant worker inspectors, the inspection process has been inadequate, and the operation still cannot effectively prevent the occurrence of sexual assault and sexual harassment.

183. According to the statistics, when migrant workers experience sexual assault or sexual harassment, most of them choose to call the MOL's 1955 hotline to file a complaint. However, most ongoing sexual harassment complaints also involve employment discrimination and employer-employee disputes, and these kinds of cases are not subject to mandatory report. Consequently, when the labor affairs personnel receive sexual harassment complaints, the personnel may be lacking in sensitivity and often classify such migrant worker complaint cases as employer-employee dispute cases, leading to improper treatment and handling of such cases.

184. In view of the increase of numbers of home caregivers, it has been important to formulate suitable regulation. Although the MOL completed the preliminary writing of the Domestic Worker Protection Act Draft on March 15, 2011, nonetheless, due to the factors such as lack of consensus from various industries disputing this Act, the implementation of long-term care systems, and others, the draft has been rejected by the Executive Yuan and returned to the Ministry for further review. To protect foreign home caregivers' labor rights and personnel safety and to establish effective mechanisms, the MOL should insert the principle of guarantee of physical safety of the person into the Domestic Worker Protection Act draft to maintain household workers' fundamental rights.

Workplace Safety and Prevention of Occupational Accidents

185. Since the official introduction of migrant workers in 1989, migrant workers have become an indispensible labor source in our society. Presently, there are 430,000 migrant workers working in manufacturing industries in Taiwan, the sector with the greatest number of migrant workers, accounting for 60% of migrant workers overall. From 2010 to 2018, the rate of occupational injuries continued to exhibit a decreasing trend, and the overall occupational injuries rate per thousand in 2019 was reduced to 2.50, reaching the target of less than

2.56 set for that year. The MOL will continue to promote relevant injury preventive measures in light of achieving the target of 2.24 set for 2020. However, the occupational injuries ratio per thousand for migrant workers in the manufacturing industry is nearly twice as high as that of Taiwanese workers. The MOL has not been able to propose effective measures for reducing occupational injuries of migrant workers. From August 2019 to April 2020, there was more than one migrant worker occupational injury case each month. In addition, the migrant worker disability incidence rate in the last decade has not been reduced effectively.

186. The current Occupational Safety and Health Act only specifies the occupational injury accidents that the employers are required to report to the labor inspection institutions as those in several categories, for one death, three kinds of injuries, and one hospitalization condition; consequently, the MOL has not been able to comprehensively obtain complete statistical data on the number of workers having disabilities due to occupational accidents. Although verification may be assessed with the labor insurance data on occupational injuries by industry, these cases are limited to occupational accidents resulting in death. For factories known to have hazardous conditions and a record of workers disabled due to occupational accidents, no labor inspection has been performed to clarify the cause of the disaster and supervise and assist the businesses in improving quickly. Moreover, merely expecting the migrant workers to file complaints to seek remedies or compensation is a passive and ineffective approach for a government agency.

187. The Control Yuan has surveyed the several factories with records of migrant worker occupational accidents in the past, and it has been found that numerous businesses, even after receiving inspection orders issued by the labor inspection agency requesting improvement within a time-limit or being listed for project guidance, still have major potential hazards, indicating that the subsequent follow-up and improvement controls still need to be improved. Furthermore, many warning signs in factories are not written in a language familiar to migrant workers, and migrant workers lack complete labor safety education and training. The situation of insufficient appropriate teaching materials and translation and mere reliance on senior migrant workers to guide junior migrant workers is common in practice. All of the above are the key factors causing the continuous occurrence of occupational accidents for migrant workers.

188. When migrant workers traveling abroad to work in Taiwan are injured due to occupational accidents, they tend to worry about being sent back to their home country such that they are reluctant to seek medical attention. During the medical treatment and compensation dispute period, some unscrupulous human resources agents and employers even force injured migrant workers to return to their home countries. For such incidents, the MOL has no relevant statistical data on which to base further study; therefore, it is necessary to

perform investigations proactively in the post-injury situation of migrant workers suffering occupational accidents in order to ensure that migrant workers can receive institutional guarantees.

Protecting the Labor Rights of Healthcare Professionals

189. School Nursing Personnel

Pursuant to Article 7 of the School Health Act, "Schools at the senior high school or lower level with less than 40 sections shall have one nurse on staff; schools with more than 40 classes shall have at least two nurses on staff." However, regarding the recruitment of school nursing personnel, there are still schools with more than 40 classes employing only one school nurse or health worker. There are also cases where nursing personnel are assigned to concurrently handle personnel or accounting jobs, which is not in compliance with the current regulations, and the school health and nursing-related services can be negatively affected by this.

190. Public Health Center with Insufficient Healthcare Personnel, and Excessive Workload for Health Personnel

(1) Various public health and preventive health care programs launched by the MOHW are mostly assigned to the personnel at the public health centers working on the front lines of service to the public. According to the Public Health Center Organization Charter Reference Standard and the Public Health Center Employee Allocation Reference Standard announced by the MOHW in 2000, duties and workforce allocation ratio for public health centers are specified. Nevertheless, each public health center has not employed sufficient employees, and in total they have less than 68% of the required employee numbers. The number of nursing personnel and maternity nurses in some public health centers is fewer than the required basic number of 6 employees. In addition, many vacancies for nursing personnel assigned by the Ministry to the public health centers are not filled. While the population of Taiwan has increased and aged, the MOHW has launched new services one after another in recent years. So the services provided by the public health centers have increased but the workforce has not been adjusted properly; the number of people serviced by each nurse at public health centers continues to increase. As of the end of 2018, the average number of people serviced by each of 92 public health centers has exceeded 10,000, and among these there are 12 public health centers that have serviced more than 20,000 people, generally public health centers centralized in the urban areas. The maximum number of people serviced at one center reached 48,702 people, much higher than the number of 5,000 people recommended by the American Nurses Association. However, on the grounds of local self-governance the MOHW fails to urge the local governments to expand the workforce in public health centers, and it has

not improved work conditions by providing a sufficient workforce. As a result, the situation at public health centers continues to worsen, virtually causing public health centers to become sweatshops.

(2) As the work items handled by public health centers increases and their service scope expands, the individual workload increases; moreover, a high standard is required for the service. Furthermore, to provide opening hours convenience to the general public, employees at public health centers often work at night or on regular holidays, or may even be requested to meet exigencies and service residents after they return home. In addition to the core services of public health centers, non-nursing public health tasks continue to expand, and nursing professionals often have to handle duties of administrative management, audit, administrative inspection, and purchase of supplies, etc. The heavy workload of employees at public health centers is mainly due to the increase of services without a sufficient workforce to support it. Under excessively long working hours, the working conditions are poor, and the occupational safety and service quality are affected.

(3) The Local Health Agency Service Evaluation Plan established by the MOHW involves hundreds of evaluation targets, and its content is complicated. Some targets are impossible to achieve; moreover, many indicators and targets may not meet the principles of policy necessity, concrete and quantifiable, and able to be objectively measured. The MOHW and each Department of Health are using irrational targets as the evaluation mechanisms for unreasonable workloads, in effect transferring the responsibility for community healthcare to the nursing personnel at public health centers, such that personnel at public health centers are under pressure of a heavy workload, and pushed to produce higher “service quantity” instead of improvements in “quality.” Consequently, public health centers cannot be optimally effective in establishing an efficient public healthcare system.

(4) Some work tasks of nursing personnel at public health centers involve considerable hazards; however, the MOHW has not established systematic protection mechanisms. It is the responsibility of the managing authorities to make a professional judgment regarding the determination of hazardous labor conditions for the nursing personnel at public health centers. Consequently, the protection of the rights and interests of nursing personnel providing services on the front line at public health centers still needs to be improved. Furthermore, the Ministry of Civil Service (MCS) has not fully grasped the actual conditions of the hazardous work performed by nursing personnel, and the MCS has excluded from consideration the situations that health personnel judge are hazardous work duties; the MCS is thus clearly in disagreement with the opinions of the majority of health departments at the level of counties and cities. The principles and criteria adopted by the MOHW in such determinations are crude and require further improvement.

Protection of Foreign Workers Doing Housework

191. Employers violating the provisions of Subparagraphs 3 and 4 of Article 57 of the Employment Service Act, assigning migrant workers to perform tasks other than those originally approved or assigning migrant workers to different workplaces without permission, should be fined an amount of at least NT$30,000 (USD 1,000) and at most NT$150,000 (USD 5,000), as described in Paragraph 1 of Article 68 of the same Act; in addition, according to Article 72 of the same Act, where improvement in the situation within a time limit is requested, but no improvement is made within such time limit, the employer's recruitment permit and employment permit shall be annulled. However, in practice, it is difficult to provide evidence of the illegal actions dealing with the migrant workers, and they tend to obey the instructions of their employers, given their disadvantaged position. Some local governments only issue warnings to illegal employers first, and there are no fines imposed directly as required by law, while some unscrupulous employers even take revenge on migrant workers for their reports to authorities.

192. As the working hours and rest time of foreign home caregivers cannot easily be verified, the regulations of the Labor Standards Act are not applicable. Consequently, non-governmental organizations have proposed the Household Service Act Draft and the Domestic Worker Right Protection Act Draft; however, the contents of these drafts are far different from the Domestic Worker Protection Act Draft proposed by MOL, and the legislation has not been passed into law even after several years. In 2014, the Control Yuan already indicated that there were incidents of overtime work and poor working conditions for foreign home caregivers; however, in view of the law's insufficient protection, such matters were not managed effectively. It is recommended that the Government implement relevant legislation procedures immediately, and that effective action should be taken even before the legislation procedure is complete, in order to allow foreign home caregivers to have reasonable working methods, appropriate working hours and sufficient rest time, and thereby detering unfair treatment by employers. In addition, according to the conclusive opinion and recommendation of the Second International Review Committee on the two Covenants, it is stated:

> "Since the First Review, ... the government has not adopted any of the actions on the Domestic Worker Protection Act that it promised to legislate many years ago. The International Review Committee, again, recommends that the government of the Republic of China (Taiwan) overcome the obstacles to the passing of the Domestic Worker Protection Act as soon as possible ... and provide detailed explanations on the progress achieved and the impact evaluation of this Act on the rights and interests of migrant workers."

However, regarding the status of such legislation, there are still no relevant explanations given in the national report of the Executive Yuan.

193. The Migrant Worker Living/Caring Service Plan Discretion Standard applicable to foreign home caregivers is still unclear, and the determination on whether the inspection result is qualified is made by each local government migrant worker service surveyor individually. Furthermore, the local competent authority inspections are not executed thoroughly such that incidents where foreign home caregivers are sleeping on balconies still occur. The MOL should establish a more explicit discretion standard or guideline, and supervise the local competent authorities in implementing the inspection service, thereby ensuring that foreign home caregivers are able to obtain reasonable living space.

Protection of Foreign Crewmen's Rights

194. Protection of Rights and Interests of Distant Water Fishermen: The Death of an Indonesian Crewman

(1) Taiwan's distant fishery operation area spans across the three largest oceans globally, and there are more than 2,000 types of boats and vessels, making our nation one of the six main countries of distant water fishing in the world. Onboard work is known to have the "4D" characteristics (Dirty, Dangerous, Difficult, and Distant). In addition, due to low birth rates and low willingness of Taiwanese citizens to work onboard fishing vessels, foreign fishing crews have become an important labor source for the fishing industry in our nation. The death of an Indonesian crew member on Kaohsiung's Fu Si Chun fishing vessel occurred during July or August 2015. Supposedly missing at sea, in 2018 it was found through the testimony of a witness, also a migrant fisherman on the boat, that he had been beaten to death by Taiwanese crew members. The competent authority, the Council of Agriculture (referred to below as "the COA") of the Executive Yuan and its Fisheries Agency have not properly handled the inspection and management responsibilities for the foreign fishing crew employed from overseas; the situation of foreign fishing crew working without experience and training has not been reviewed, and the foreign fishing crew labor criteria and guidance management strategies have not been actively studied and discussed. In addition, the inspection agency did not fulfill its obligations with due diligence. Still, it closed the case on the death of the fishing crewmen who had been subjected to abuse in a way such that the rights and interests of the victim were not protected. The investigation of this case of an Indonesian fishing crewman's death has now been reopened and is currently underway.

(2) The Indonesian fishing crewman Supriyanto of the Fu Si Chun fishing boat who died in the incident was found to have no fishing-related professional knowledge and skills, and he had not received any relevant professional training as a fisherman. Under these conditions where no learning opportunity was provided in advance, he faced a long and challenging distant

ocean journey, and he then showed exhaustion and low work output, having severe difficulty adapting to the onboard work. Consequently, the captain and other crew at the time considered that he was lazy. The fishery authorities should review the current practice of employing foreign fishing crew from overseas to work onboard, regardless of experience and training, and move forward to improve the quality of foreign fishing crewmen and ensure workplace safety. After the investigation by the Control Yuan, at present, regardless of whether an Indonesian fishermen is employed domestically or from overseas, it is necessary for him to have received 10 days of basic safety training at the FOCUS Marine Training Center of the Indonesian Ministry of Transportation and to obtain the training completion certificate in order to apply for the crew license issued by the Indonesian Ministry of Transportation. Furthermore, for Indonesian fishermen employed domestically, the human resources agency should arrange a 10-day training course (course teachings mainly focus on the operation of fishing equipment) at a private training center (TUK). Once the training period ends, and the candidate is qualified through examination, Indonesian fishermen can receive completion certificates issued by the Indonesian National Occupational Certificate Center.

(3) According to the statistics, from 2006 to 2015, there were 23 cases of Taiwanese captains of fishing boats who were subject to abuse, went missing, or were victims of bloodshed. Due to the language and living habit differences between the fishing crewmen of our nation and other nations, as well as disputes on management measures, some incidents arising from conflicts between Taiwanese captains and foreign crewmen have occurred. On the other hand, the foreign crewmen employed overseas are the bottommost workers suffering high risk and harsh working environments; moreover, their rights and safety are not properly protected by the laws of the R.O.C. Despite the standard labor contracts, relevant protection of their rights and interests is still considered a mere formality. Due to the poor labor conditions and insufficient protection of rights for the foreign crew, incidents of overtime work, poor meals, and lack of medical treatment, or even cases of crewmen being cheated, abused, or enslaved through human trafficking occur from time to time. The international media report also describes such fisherman as “slave laborer” or “slaves.” The Act for Distant Water Fisheries and revised relevant laws of the Fisheries Act was enacted and announced on July 20, 2016. In addition, the Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members was enacted and announced on January 20, 2017. Furthermore, agency institutions are incorporated into the management control in order to explicitly guarantee the minimum wage and working hours of the foreign crew, thereby increasing the personnel and medical protection, etc.

195. The Kaohsiung distant waters fishing boat Fu Sheng No. 11 violated the Work in Fishing Convention and was detained in South Africa

(1) According to the report that the Kaohsiung distant waters fishing boat Fu Sheng No. 11 violated the Work in Fishing Convention and was detained in South Africa, in the conclusive opinion and recommendation of the Second International Review Committee on the two Covenants, it is stated:

> "Although the government has provided some information on the relevant addition of provisions which came into effect at the beginning of 2017, the government still fails to exercise the laws of the R.O.C. (Taiwan) on Taiwanese fishing boats in illegal, unreported, and unregulated (abbreviated as IUU) fisheries, and according to the reports, major offenses including infringements to the labor rights and human rights of migrant workers operating such fishing boats have also occurred. The International Review Committee (IRC) urges the government of the R.O.C. (Taiwan) to investigate the actual fishing operation, recruitment, and employment conditions of Taiwanese fishing boats, and, in particular, longliner fishing boats not returning to the port after a long period at sea. The IRC further requests the government to provide detailed first-hand information in the next report with regard to... the protection of labor rights of workers, including migrant workers, employed to work on Taiwanese fishing boats, and measures adopted to ensure their work and living conditions satisfy appropriate standards."

(2) The International Labour Organization (ILO), on July 17, 2018, published the news of the Taiwanese Fu Sheng No. 11 fishing boat violating the 2007 Work in Fishing Convention (Article No. 188) and its detention in Cape Town, South Africa (with charges of the foreign fishermen's monthly salary not complying with the standard of USD 450, dirty and insufficient drinking water, extended working hours and inadequate sleep, etc.), and this is the first fishing boat in the world to be detained by the international organization. Under severe criticism by international public opinion, the Fisheries Agency proceeded to Indonesia to conduct the investigation and interviewed the fishermen again through private groups, and it was verified that the fishing boat was indeed in violation of the aforementioned convention. Consequently, the captain and employment broker were penalized severely, and the fishermen's salaries were paid in full. In addition, Taiwanese personnel involved were prosecuted for the offense of human trafficking and transferred to the judiciary for further investigation. In this case, the fishery authority lacked awareness of the crisis, and the investigation process was chaotic, leading to improper official conduct and severe damage to the reputation and image of our nation.

(3) The Marine Bureau of Kaohsiung City Government failed to register the actual number of foreign fishermen working onboard the Fu Sheng No. 11. During the period when the boat was sailing from the Republic of Mauritius

to Taiwan, there was even a major violation in that there was no Taiwanese crewman acting as the captain of the boat. The Bureau also mistakenly decided that the investigation work should not be part of its authority and responsibility. In addition, as the inspection personnel of the Labor Affairs Bureau of Kaohsiung City Government implemented the labor inspection on the fishing boat returning to Taiwan on September 13, 2018, they incorrectly determined that the Seafarer Act should take precedence to be applied to the domestic crew of the Fu Sheng No. 11 fishing boat and the Labor Standards Act should not be applied. Subsequently, after the clarification of the MOL, the Kaohsiung City Government then re-performed the inspection again on November 28 of the same year, and the shipowner of the Fu Sheng No. 11 fishing boat was determined to have violated the provisions of Paragraph 6 of Article 30 and Article 36 of the Labor Standards Act, and an administrative fine of NT$40,000 was imposed and the violator's name was made public. Regarding the Labor Affairs Bureau of Kaohsiung City Government making an incorrect determination of the applicability of the Labor Standards Act to the domestic crew, this can be traced to the fact that the MOL had not implemented labor inspection and had not previously paid attention to occupational safety and health on fishing boats of fisheries in distant waters.

(4) In view of the importance of cross-agency contact mechanism, the Council of Agriculture (COA) of the Executive Yuan has reported significant issues concerning the Execution Outcome and Subsequent Follow-up Action of Protection of Rights of Foreign Crew Members Employed Overseas Since Implementation of the Three Laws related to Distant Water Fisheries and the Fu Sheng No. 11 Fishing Boat Case Investigation Report to the meeting of the Human Rights Protection and Promotion Committee of the Executive Yuan for discussion. The European Union (EU) has recently withdrawn the yellow card warning censuring Taiwan for being uncooperative in fighting against illegal, unreported and unregulated fishing (IUU fisheries). Despite this removal of the yellow card warning, the U.S. Department of Labor still listed the catch by Taiwanese distant water fishing boats under the List of Goods Produced by Child Labor or Forced Labor for the first time on September 30, 2020. The reason for the U.S. officials' decision was the numerous investigations and media reports over the past years that indicated the persistence of forced labor in the Taiwanese distant water fisheries. Despite the government and the fishery authorities having adopted several corrective measures, the execution of these new policies and the implementation effects are inadequate to rectify longstanding practices. As the international organizations pay greater attention to the rights and interests of foreign fishermen employed overseas, the responsible agencies of our government must continue to adopt measures related to the protection of

rights and interests of foreign fishermen and actively improve the fishermen's labor conditions in distant water and coastal fisheries, including through labor inspection onboard fishing boats, increase of fishing boat information transparency, and preventing the occurrence of forced labor and human trafficking, thereby demonstrating the determination of our nation to fight illegal conduct, such that hopefully the international image of Taiwan may also be improved.

Protection of Rights of Foreign Fishing Crewmen on Coastal Fishing Boats

196. The Nanfang'ao Bridge Collapse Incident

(1) The International Labour Organization (ILO) passed the No. 188 Convention related to fishery work in 2007 (ILO C188, Work in Fishing Convention, 2007) and the No. 199 proposal (2007 fishery work proposal), which admits that in comparison to other occupations, fishing is a dangerous occupation. In addition, according to the Convention, it is expected that the rights of the fishermen working on board will be protected by providing appropriate labor conditions, accommodation and meals, medical care, occupational safety and health accident prevention and social protection. On October 1, 2019, a bridge at the port of Nanfang'ao in Yilan collapsed due to structural failure and poor maintenance, and the falling bridge sections crushed a fishing boat on its way out to sea, resulting in the deaths of 6 Indonesian and Filipino fishermen as well as serious or light injuries to 9 foreign fishermen. This incident has drawn significant public attention to the situation of fishermen. According to the investigation of the Control Yuan, foreign fishermen are subject to compulsory enrollment in the national labor insurance and national health insurance systems, and employers must enroll foreign fishermen in such insurance in order to guarantee various compensations in case of the occurrence of accidents; and their rights to seek medical attention are equal to those of citizens of the R.O.C. However, the data from the MOL indicates that up to the end of December 2019, there were more than 12,000 migrant workers in Taiwan working as fishing crew members. Originally, the MOL had not comprehensively ennumerated the number of foreign fishermen enrolled in the national insurance systems. Subsequently over 5,000 foreign fishermen have been identified as enrolled in the national labor insurance system; it is obvious that the majority of foreign fishermen working on Taiwanese boats do not have such basic protections.

(2) In the last three years, the MOL has implemented labor inspections on boats in the ocean fishery industry 129 times, equivalent to an average of only 43 times per year, and such frequency is relatively low for fishing boat labor inspection. Regarding the inspection results, in more than 80% of the inspections no violation was found; but this can hardly reflect the current conditions and the actual working environment for foreign fishermen. The

MOL further announced in May 2019 that the provisions of Article 84-1 of the Labor Standards Act, which is concerned with negotiating agreement between employer and employee on working hours, would be applicable to the crews of fishing boats. However, up to the present day, there are no Taiwanese nor foreign fishermen who have completed any applications for approval of their cases. The MOL and the Fisheries Agency under the Council of Agriculture (COA) should proactively implement measures to understand the applicable cause for the fishing crew not applying for approval, and continue to review the necessity of applying the provisions of Article 84-1 of the Labor Standards Act to fishing crews.

(3) During the docking of fishing boats, foreign fishermen are not restricted to living on fishing boats; however, since accommodation expenses may be incurred for staying ashore, fishermen still choose to live on their fishing boats. Although the MOL has in 2018 incorporated foreign fishermen into the groups of those who may benefit from the Living/Caring Service Plan Discretion Standard and has requested employers to provide a living environment complying with the standard, nonetheless, the living environments provided by some fishing boats are still considered to be an uncomfortable and harsh living environments even though they qualify under inspection by the authorities or are reported to be entirely improved as requested after inspection. Furthermore, according to the statistics of the Fisheries Agency, approximately 70% of foreign fishermen are employed to work on fishing boats or powered sampans of less than 50 tons. Since the tonnage of such fishing boats is smaller, they cannot be equipped or mostly are not equipped with shower room, such that migrant workers can only take a shower on the deck, or take a shower at the roadside of the port or public toilet, and even during cold weather hot water is not available. The Fisheries Agency subsidized the Yilan Suao Fisherman's Association to install shower facilities in 2018, and shower cards were issued. However, due to the installation location being far from the fishing boat docking port, plus foreign fishermen and fishing boat owners were not adequately informed of such service while some mistakenly believed that payment was required for the shower facility, the usage rate was low. In addition, the number of fishing boats applying for the shower card was less than 10% of the total number of fishing boats.

Article 8

Protective Measures and Restrictions Concerning the Right to Strike

197. Domestic Airline Labor–Management Dispute Incident

(1) During the period between January 2014 and October 2016, the number of times that penalties were imposed on China Airlines due to its violation of the

Labor Standards Act reached 50 cases, and the penalty fine reached NT$11.43 million (USD 381,000) in total; most of the cases were related to the violation of the provision on overtime work specified in Paragraph 2 of Article 23 of the Labor Standards Act. Accordingly, it is evident that the labor protections for employees of domestic airline companies such as limits on working hours, etc., still need to be further reviewed and improved. In addition, according to Article 84-1 of the Labor Standards Act, both the employee and employer may further negotiate their working hours individually, provided that the standard specified in the Act is still met, while the health and welfare of workers must not be damaged. In addition, it is necessary to submit written documents to the local labor authority administration for approval in order to become effective.

(2) Since civil air transportation involves the safety of citizens' lives and is a major public interest, in order to consider both the workers' right to strike and the public social interest, the MOTC should request airline companies to enhance their labor-management communication and responsiveness. Furthermore, in 2018 and 2019, the MOL consecutively held meetings entitled A System for Prior Notice of Strike in the Civil Air Transportation Industry. The conclusions of these meetings was that since the objective of the Act for Settlement of Labor-Management Disputes is to protect the right to strike, it was not appropriate to establish a prior notice of strike system, and to do so would incur greater disagreement and criticism from various sectors of society.

(3) Regarding the strike of the flight attendants' union, the MOL convened labor-management coordination meetings for negotiation and reached a consensus on the claims made by the employees of China Airlines. However, for both parties, there was still a dispute as to whether a collective agreement should be negotiated. In retrospect we may consider that the labor movement development in our nation is still in the learning stage, and the essence of strikes has its educational meaning, which is beneficial to the establishment of group labor relationships. This strike incident was a process of mutual learning between labor and management, and it should be treated in a positive manner. The resolution process of such a strike can also be provided as a reference for future labor-management dispute resolution.

198. After the Labor Union Act lifted its restriction on nationality, the Yilan Migrant Fishermen Union was the first union organized by migrant workers. However, the authorities, while giving guidance to migrant workers in organizing unions and encouraging union development, still did not providen8i supporting policies and measures. For instance, the migrant workers' language and communication differences have not been considered, and no translations are provided for official document communications and relevant regulatory requirements, causing migrant workers to have difficulty in seeking fair treatment through the right to organize.

Article 9

The National Pension Insurance System

199. To maintain the economic security of the economically disadvantaged and other people not included in the scope of various social insurance programs, the Executive Yuan established the National Pension Insurance system on October 1, 2008.[4] With the consideration that the individuals insured under the National Pension Insurance system are likely the most economically disadvantaged, the system was planned and designed to allow the insured to make up the overdue premiums within a ten-year grace period, such that disadvantaged people are able to accumulate their insurance seniority for retirement, etc., even if they are unable to pay premiums over a long period of time. Nevertheless, when the 10-year grace period for supplemental premium payment concluded in 2018, there were still approximately 50% of those insured not yet paying the premium, and indigenous peoples in particular had a high rate of non-payment of premiums, indicating that the system design of the 10-year grace period for the National Pension Insurance system was sufficient to meet the original intention of protecting the minimum economic security of the disadvantaged. Those who paid no premiums at all might lose their standing in the National Pension Insurance, and economic security protection for the elderly would also be affected. The system design was clearly not quite comprehensive. After investigation by the Control Yuan, it was found that the amount overdue the previous year but recovered in 2017 was approximately NT$5.2 billion (USD 173 million), and approximately NT$6.3 billion (USD 210 million) was recovered in 2018. The number of people successfully interviewed in 2017 was 187,636, and the supplemental premium amount received from them was approximately NT$400 million (USD 13.3 million); the number of people successfully interviewed in 2018 was 162,950, and the supplemental premium amount received was approximately NT$600 million (USD 20 million).

200. After several years of experience with the National Pension Insurance, the Ministry of Health and Welfare found that the eligibility criteria for enrollment for citizens living abroad and then returning to register residence in Taiwan at the age of 65 and younger were overly leniant. Since the burden is mainly borne by those working in Taiwan, the principle of fairness and justice was not satisfied. There were numerous incidents of the returnees excessively collecting National Pension Insurance payouts, and also poor outcomes in collecting overdue National Pension Insurance premiums. The Bureau of

[4] While the National Labor Insurance system provides retirement and disability and maternity and other benefits for the majority who have regular jobs, the National Pension Insurance system fills in for those who do not have regular jobs, either temporarily or long-term. Although the Government pays a large fraction of the premiums for the various kinds of social insurance, the person insured must still pay part of the premium.

Labor Insurance of the Ministry of Labor has indicated that it will actively screen out, year by year, those who exhibit discontinued collection of welfare subsidies, and then provide feedback to all counties and cities in order to reduce errors and omissions.

201. The National Pension Act, amended on August 13, 2008, excluded farmers from the scope of those covered under the National Pension Insurance, causing the Farmer Health Insurance and Elderly Farmer Welfare Allowance to be disconnected from the National Pension Insurance system, such that the elderly farmer allowance issue was still unresolved. After the Control Yuan's investigation, the MOHW and COA of the Executive Yuan agreed to cooperate with the National Pension Reform Committee to allow elderly farmers to obtain more comprehensive essential livelihood protection.

Farmers' Pension and Health Insurance

202. In the past, the Government was reluctant to establish an Elderly Farmer Pension Insurance system especially for those who only had farming as their profession, and it only adopted the welfare measure of issuing an elderly farmer montly subsidy as a temporary alternative; therefore, no adequate economic protection was provided to elderly farmers, and likewise young people are not attracted to participate in agriculture and increase the agricultural competitveness of our nation. After investigation and attention by the Control Yuan, the Farmers' Occupational Injury Insurance was launched in November 2018, and farmers could then enjoy the four protections of injury and disability compensation, medical treatment, and funeral subsidy. However, the total number of applicants has been only about 270,000 people, and the insurance enrollment rate is only 26%. The authorities should focus on increasing those eligible to enroll in the insurance program, increasing the rate of insurance compensation, and expansing insurance coverage, in order to provide more comprehensive occupational protection to farmers for their profession in agriculture. Finally, the Farmer Pension Act was announced on June 10, 2020. It was implemented by the government after the Farmer Health Insurance, the Farmer Occupational Hazards Insurance, and agricultural insurance for crops damaged by natural disasters, thereby completing the last piece of the puzzle for farmers' welfare. The Act specifies the establishment of individual farmers' pension accounts; and farmers and the government should each contribute a certain ratio, such that when farmers reach the age of 65, they are able to collect a monthly pension payment. The Control Yuan will continue to pay attention to its subsequent implementation progress.

Labor Insurance and Retirement

203. In 2017, there was a premium payment deficit in the labor insurance fund, and it was projected that the fund would go broke by 2026. The financial gap in

that year reached approximately NT$83.4 billion (USD 2.8 billion). If compensation to the insured citizens in retirement and other benefits continued to increase year after year, the gap would become wider, and the labor insurance fund would be in jeopardy. Despite the fact that the government promised to bear the ultimate liability for the compensation, nonetheless, due to other financial difficulties, it was not possible for the government to cover the labor insurance deficit from the current budget, and reform of the labor insurance system was finally recognized as an urgent need. Considering that if reform of the system can be carried out earlier, the financial improvement in intake/output outcome will be more favorable, the MOL should actively promote relevant reforms of the labor insurance system in order to maintain a sustainable and stable labor insurance and pension system.

Protection for Workers against Occupational Accidents

204. In the time of the original Council of Labor Affairs, under the Executive Yuan, the Occupational Safety and Health Promotion Plan was launched. In recent years, the labor insurance occupational accident payment rate indicated a decreasing trend, and the payment rate reached the target value of less than 4 cases per thousand insured in 2013. Furthermore, the payment rate further decreased to less than 3 in 2016, indicating the plan was effective. However, as for the occupational injuries rate per thousand, in comparison to advanced countries, it is still too high. The occupational accident payment rate for some counties and cities is also high, and the occupational accidents are concentrated in the construction and manufacturing industries. Most of the victims are workers in small and medium enterprises, or enterprises that have no permanent employers. This situation has not seen improvement, indicating that occupational safety and health protection for workers still needs attention.

205. According to the 2017 investigation of the Control Yuan, the labor inspection coverage in our nation is only 27.45%, and one of the reasons is the severe insufficiency of labor inspection human resources. Such severe condition has drawn international attention; in particular, there are a great number of small and medium enterprises without proper labor inspection supervision and guidance, such that they tend to take chances and are not committed to comprehensive accident prevention, leading to the repeated occurrence of occupational accidents.

206. In the construction industry, due to cost and professional qualification considerations, the physical work is subcontracted to others in multiple layers. Although the work allocation efficiency can be increased, this is not optimal for safety and health, and it can expose workers to high risk operating environments due to improper onsite facilities and inadequate occupational training. In addition, due to rapid change of the operating environment in the construction industry, many workers are “dispatched” or “subcontracted”

workers, i.e. temporary workers with a high turnover rate, a situation leading to the frequent occurrence of accidents. Merely relying on the labor inspection performed by the authorities is ineffective in achieving optimal improvement. Accordingly, it is necessary to urge the operators to heighten their occupational safety and health awareness and implement occupational safety and health practices.

207. For the manufacturing industry, occupational accidents are mostly related to accidents in improper machine operations. To prevent the occurrence of occupational accidents from the start, the MOL should proactively implement the provisions of Article 8 and Article 9 of the Occupational Safety and Health Act in order to comply with the international standards of the World Trade Organization (WTO), etc. It is also necessary to list and announce the machines, equipment, and devices requiring formal certifications as soon as possible to reduce the risk of improper operation by inexperienced workers. In addition, since temporary operation is often necessary to maintain the continuous process operations, if the operation method is different from the normal operations, operational safety regulations are likely to be overlooked due to its temporary and short-term nature, and accidents are more likely to occur. The MOL should perform an overall review, incorporate temporary operations into the labor inspection scope, and assist businesses in establishing autonomous safety management regulations.

208. The reporting of occupational disease in our nation is also underestimated. The construction and integration of occupational hazard exposure reporting systems, operating environment sampling and monitoring, hazardous chemical registration/listing and labor-health correlation through databases are still inadequate. In addition, domestic and international occupational disease-related documentation has not been actively collected to serve in constructing occupational disease cause-and-effect diagnosesfor Taiwan; consequently, the diagnosis and identification of occupational diseases are difficult and time-consuming.

209. Businesses should provide onsite health services according to their scale and nature. However, according to the 2017 inspection report of the Control Yuan, the MOL's audit indicates that there are still approximately 20% of business units failing to employ medical nursing personnel according to the regulations, and among the business units that have employed medical nursing personnel, there are still approximately 20% of business units failing to perform health services for their employees properly. In addition, professional nursing human resources are in short supply, and occupational health and professional nursing knowledge and skills are inadequate. Furthermore, in the case of Taiwanese workers suffering occupational accidents, the service items given attention tend to focus on the rights and benefits consultation, the care support and the monetary subsidy. The Consultation Hotline for Workers of Occupational

Accidents project has not yet completed 50% of the planned interviews. Regarding the resources for injuried workers for their subsequent resumption of work and health recovery, occupational reconstruction, and negotiation for resuming work, the MOL should perform inspections together with the local governments to provide appropriate services to the workers of occupational accidents.

210. Employers should evaluate the workers' operational risks and provide safety and health equipment and facilities, and implement education and training for workers in order to improve workers' safety and health knowledge and skills, thereby preventing unsafe actions. Nevertheless, recently there have been numerous occurrences of major occupational accidents, and the employers seem to show weak ability to assess hazards at the workplace, as well ash limited knowledge and skills regarding the workers' safety and health. This leads to the continuous reoccurrence of unsafe actions, even causing severe injuries and deaths. Furthermore, such inadequate awareness exists across the board in state-owned enterprises, stock-listed companies, and small and medium enterprises. The MOL must supervise relevant businesses to identify potential hazards at the workplace, to strengthen the worker's occupational safety and health education, and to demand that the occupational safety and health concepts be implemented thoroughly, to try to eliminate the causes of accidents completely.

Downside of Long-term Care

211. In 2018, it was estimated there were approximately 180,000 people with disabilities under the age of 64 requiring long-term care, and there were approximately 197,900 chronic psychiatric patients holding certificates of severe disability. However, there were only 139,500 people listed under the community care of local government organs, and only approximately 125,900 people holding psychiatric or other disability certificates were listed for care. In other words, there are still many disabled and particularly mentally-disabled people who have not actually received the long-term care 2.0 service provided outside the family. Despite the government having implemented the monitoring mechanism, it is still ineffective in finding and providing timely assistance to relieve the heavy stress of the family caregivers, who suffer frustration due to the ceaseless work and their inability to perform adequately. Not surprisingly, there were five tragedies of caregiver suicide or injuries to patients occurring during the period of April to July in 2018 due to inadequate care in the families of mentally disabled people. Such incidents reflect that some people with disabilities and disadvantaged families in our nation are encountering living difficulties and facing the stress of providing care while lacking of appropriate support and assistance, and there are still deficiencies in the social security network.

212. Despite the fact that the Ministry of Health and Welfare (MOHW) has established the psychiatric care reporting system, nonetheless, due to its unfriendly user interface or data inquiry and integration function, it is unable to provide complete information content of the interfacing system, service station history, and family information. In addition, as the health authority and social affairs authority are independent of each other for their services, the actual demands and difficulties encountered by the families in these cases cannot be promptly and properly understood. In addition, it is necessary to use Big Data to perform data cross verification, comparison and analysis, and it takes more time to collect the medical histories of chronic psychiatric patients who have newly obtained the severe injury or disability certificates, since it depends on for their willingness to apply for certificates of disability or long-term care evaluation. It is important to understand their medical treatment and drug use or situation, in order to intervene early or provide relevant and timely services.

213. Regarding the problem of individual mental illness cases not being reported, as well as the diverse issues of suicide, domestic violence, sexual assault, child abuse, drug addiction alternative therapy, or relatives or patients failing to truthfully state irregular medical treatment during care visits, low cooperation in therapy, no illness awareness or unstable medical condition, etc., the local health authorities are facing difficulties in obtaining information on the actual conditions for diverse issues of individual cases and their medical treatment and drug use conditions. Consequently, the MOHW should renew its efforts to assist all county and city governments to enhance the identification of overall needs of various kinds, to actively evaluate the dependency among family members and their community and family support systems, etc., in order to prevent the occurrence of risks.

214. With family caregivers providing long-term care to the disabled, it is inevitable they face severe challenges or even mental and physical exhaustion. However, due to insufficient information about government services, their opportunities to seek assistance are bypassed, or they may consider that the government's support service is not applicable to them. Consequently, actual support and relief services for the caregivers are relatively limited. The government should enhance the support network for family caregivers. In addition to providing consultation, various support services, education, and training on care skills in order to assist and relieve the heavy burden of care, it is also necessary to assist the referral of individual cases to relevant social welfare, social aid and diverse community service resources, when it is considered necessary in order to provide timely assistance. Furthermore, the local competent authorities should be requested to increase their sensitivity to family vulnerability, and understand the needs and risk conditions in all aspects of the family through periodic evaluation, hopefully thereby reducing the stress on the caregivers.

Article 10

Childcare System

215. To mitigate the social impact caused by the low birth rate, aging population, and immigrant population in our nation, the Executive Yuan established the Population Policy White Paper in 2008; it identified the low birth rate as a national security issue. The Population Policy White Paper of the Executive Yuan also indicates that the Childcare Service Management and Childraising Subsidy Policy is an important policy to counter the low birth rate. Since the low birth rate is not merely related to social welfare policy but also population policy, consequently, the planning and promotion of the childcare policy involves various government agencies such as the MOE, MOL, Council of Indigenous Peoples, MOHW, Ministry of Culture (MOC), Ministry of Civil Service (MOCS), and National Development Council, etc. To formulate a comprehensive and feasible policy that can adequately achieve overall effects, all government agencies should enhance their lateral contacts and fully supervise the local governments to implement the policy and to meet international standards.

216. All local governments and villages (i.e. townships, cities) are not in great financial condition. However, there are resources being invested in the issuance of maternity allowances to reward childbirth, causing the birth-age population to move toward those counties and cities with higher welfare subsidies, or even causing the phenomenon of welfare ghost populations (i.e. persons registering a residence but not actually living there). Such a policy is not effective in improving the overall birth rate of the nation. In addition, the government has not been able to fully grasp the supply and demand for childcare resources for children under the age of 6, and there are still deficiencies in the family support system. Furthermore, due to the uneven distribution of resources, childcare at fair prices is still insufficient, and the universal application of the local diversity and care service model has not been achieved, especially for remote areas.

217. With regard to the childcare service, the government has only focused on infant care centers and kindergartens for care outside of families, such that sufficient public childcare resources have not been provided to most of the parents, relatives, and babysitters choosing to provide care within the households. After the investigation and monitoring extended by the Control Yuan, such a situation has been improved. As of the end of 2019, there were 71 home childcare service centers established by the local governments, following regional planning for the childcare demand in the area. In addition, a total of 26,272 people have obtained home care certificates and registration to provide childcare services in the home.

218. The outcome of the non-profit kindergarten plan launched by the MOE still needs further improvement, and this is mainly due to the insufficient incentives provided by most of the county and city governments, and the promotion outcome is still poor. Furthermore, some infant care centers and kindergartens have failed to install and provide the required standard space, such that they are not optimally set up for the growth and development of infants and children. Moreover, there is a significant difference between the salaries and welfare provided to the teachers of kindergartens and those of the preschool educators, such that the retention rate of preschool educators is low, and further review and planning are necessary to resolve this problem.

219. Maternity leave without pay for up to two years is a benefit to workers that is required by the Ministry of Labor (MOL); however, some corporate employers still violate the Act of Gender Equality in Employment and fail to provide such leave without pay to employees; or they illegally dismiss employees, leading to unfriendly workplace incidents. The MOL and relevant agencies should come up with a strategy to deal with this situation. Furthermore, the current laws only specify that employers with one hundred employees or more shall provide childcare facilities or suitable childcare measures; however, there are no penalties to disobeying such requirements. In addition, such requirements are also limited to depending on whether employers are active in cooperating with the implementation of such facilities, and whether the local government considers it an important policy for proper implementation. It is still recommended that the MOL set the annual goal and rigorously supervise the execution in order to improve the situation.

Single Parents and Children Raised by Grandparents

220. Since the implementation of the Family Policy in 2004 to the present day, for the first phase of the Promotion of Family Education Mid-term Plan (2013 to 2017), the promotion schedule was completed at the end of 2017. However, in recent years, our nation is increasingly facing the issues of low birth rate, increased aging population, continuous decline of family population, increase of female labor participation, increase of new immigrant families due to cross-border marriages, delay of first marriage age with decrease of numbers of married couples, high divorce rate, increase of families with children raised by grandparents, and insufficient income for families of lower economic status, etc. With the severe challenges of rapid change in the population structure and related social developments, instability of the employment environment and family disorganization. We can see that the family structure has become vulnerable, and family functions are gradually weakened and show a tendency towards severe dysfunction. According to the investigation and findings, the Control Yuan recommends:

(1) The 16 government agencies involved in the Family Policy and the First Phase of Family Education Mid-term Plan Promotion programs have only identified family values and their core content in a narrow sense, from the perspective related to their missions as government authorities, such that they tend to only interpret matters in a limited manner and are passive in cooperating with the execution of these policies and plans. The service-related supervisors and case handlers of these government agencies may even hold certain misunderstanding of the influences and impacts caused by various policies and services. Consequently, the family values and their core content cannot really be properly administered, leading to ineffective government commitments in the care and support of families.

(2) In recent years, the female labor participation rate in our nation has exceeded 50%. In addition, due to the tight work and time allowances in our modern society, competition and change in occupational types, etc., it seems that the work style and limited time allocations affect the family relationships and the interaction among family members, leading to a plethora of family problems and demands. To allow citizens to properly care for their families as well as their jobs, the government should integrate resources across departments to jointly establish and create a family-friendly working environment and atmosphere, and ultimately promote the balance between family and work.

(3) Given the rapid change of society and the demographic transition with historic lows of births and deaths, the household formation structure in our nation has shown significant changes, with a trend towards an increasing number of households but decreasing scale of households. The family organization continues to head toward a diverse structure, including families with a single parent, a single person (that is, living alone), children raised by grandparents, families of new immigrants, same-sex parent families, etc., and the number of such types of families are increasing. Furthermore, the numbers of disadvantaged and vulnerable families also continue to increase. Realizing this, the government should comprehensively plan and establish relevant policies and service plans in order to satisfy the needs of different types of families.

Domestic Violence Prevention and Assistance to Families

221. Under the change and diversification of family structures, family functions are weakening. In the example of the child abuse issue, under the shift and trend of low birth rate, the number of children decreases year after year; however, the number of abused children increases, particularly in the families of single parents and children raised by grandparents, and their numbers are far greater than for two-parent families. The main reasons for child abuse can be categorized as lack of parenting education and marriage conflict. Furthermore, for the type of issues in high-risk families, the rates of unstable marriage,

family conflict, and caregivers' negligence or improper education and discipline account for nearly 30% of the incidents. The government should invest appropriate resources and human resources and provide necessary support and assistance to strengthen and improve the functions of families, thereby reducing the occurrence of family social problems. According to the investigation by the Control Yuan, it was found:

(1) Totalling the individual cases of school dropouts, sex exploitation cases involving children and teenagers, and teenagers in correction agencies, the ovrall percentage of these children and teenagers coming from families of single parents or raised by grandparents exceeds 50%. Accordingly, such types of families lack sufficient resources and support systems. There is a need for the government to provide sufficient support, assistance, and protection, thereby enhancing family functions and facilitating sound physical and mental development of children and teenagers. Nevertheless, relevant competent authorities are not providing sufficient assistance to the families of single parents and children raised by grandparents, such that the economic, care, and education issues encountered by these families are not resolved through effective assistance.

(2) In the past, to meet the performance evaluations imposed under the social welfare imperatives of the central government, local governments have established various types of service centers. However, such centers have been mainly set up to provide specific services to one single population group, and they are unable to provide comprehensive and complete services to families with diverse needs. Furthermore, the resources are also distributed unevenly, and the services overlap with each other, causing a waste to the budget. The Executive Yuan should supervise its departments to integrate them properly according to the family policy and to establish family support (service) centers covering the territory of the community in order to effectively utilize resources and promote family functions.

Prevention of Sexual Exploitation of Children and Juveniles

222. There have been incidents of teenage girls being supplied with drugs by unscrupulous sex business operators to make them become addicted; the operators can then control them with the drugs. However, the authorities of the Ministry of Justice (MOJ) and the Ministry of the Interior (MOI) are not handling such issues seriously through active investigations and actions. The situation where children and teenagers are subject to sexual exploitation is worsening, and from the record indicating that more than 50% of the reports filed by child and teenager victims to the district prosecutors' offices, the worsening of such situation is evident. Furthermore, the MOJ and MOI have not integrated the analysis of relevant information. Consequently, there have been only a few children and

teenagers being rescued in each solved case, indicating that the investigation and enforcement efforts are still inadequate.

223. There are a great number of domestic pornographic websites, and they are filled with lures, online links, implicit messages, or other material promoting sex exploitation. In addition, although some host servers of internet sex exploitation are set up abroad, nonetheless, many of the perpetrators of sex exploitation operations and the places where such operations occur are in our nation. Accordingly, they should be properly investigated and prosecuted. The police agency must not simply feel content about rescuing children and teenagers subject to sexual exploitation but should proactively investigate and uncover the syndicate behind the crime, thereby eliminating such illegal operations at the source.

224. Since the investigation and prosecution of forced sex exploitation operations in our nation falls under actions against human trafficking, the law enforcement agency often considers these cases as non-cross-border human trafficking cases and they have not performed investigations proactively. In addition, as the victims in such type of cases are often unwilling to cooperate out of fear of the perpetrators, it is difficult to collect evidence, and these cases cannot be easily distinguished from general obscenity or offenses against public morality in which there is no clear victim. Furthermore, illegal sex business operators gain high profit and are extremely sneaky in dodging the investigations, and some may even coerce children, teenagers and women through debt or other disguised means; the investigation is indeed complicated and difficult. In practice, despite there being numerous records of anonymous whistleblowing cases, in most cases, nonetheless, the police have often treated such cases as general obscenity cases due to the inability to trace the perpetrators, leading to the closure of cases without conclusion. After the investigation by the Control Yuan, the MOJ has transferred relevant cases to dedicated prosecutors for investigation and handling, and they are listed in the supervisory meeting of the Taiwan High Prosecutors Office and the district prosecutors office coordination contact meeting report in order to enhance the oversight of such cases.

Abuse of the Elderly

225. According to the statistical data of the MOHW, the number of cases of elder abuse reported has increased by four times from 2007 (1,952 cases) to 2018 (7,745 cases), which is higher than the cases of children and teenagers requiring protection (1.1 times higher), indicating that the incidence of elderly abuse is worsening.

226. By the end of February 2019, our nation has certainly entered the era of an aging society. To mitigate the burden of caregivers, the MOHW has adopted the

measures of care visit, telephone inquiry, relief service, the establishment of consultation hotlines and widely-distributed supporting service stations, and so on. However, cases of murder or death due to injury caused by unbearable stress of care among family members, according to the statistical data of the National Police Agency of the MOI, were a total of 18 cases from 2012 to 2018. Furthermore, according to relevant news statistics published by the Taiwan Association of Family Caregivers, there were 76 cases from 2011 to 2018, and the statistical data indicate an increasing trend. As most family members are unwilling or unaware of how to seek help, the reporting of such cases is extremely rare, and relevant government agencies are facing difficulty in providing assistance. The underestimated numbers and the actual causes behind such issues are clearly severe. The government should establish effective strategies for dealing with type of issue, to discover early elderly that cannot be handled by their family members or individual high-risk cases of patients with long-term illness, thereby providing effective and timely support and assistance.

Care and Guidance to New Immigrants

227. In recent years, the number of cross-national (or cross-strait, i.e. China-Taiwan) married couples, the total number of new immigrants and the children of new immigrants continue to increase, and new immigrant families have become an important part of the population composition of our nation. As these new immigrants coming to Taiwan by marriage do not have sufficient official social support from their original families, relatives, and friends, in addition to the difference in language and culture and disadvantaged economic status, the satisfaction of their needs and participation in community social activities are limited in many ways. In addition, domestic violence situations often occur. Since these new immigrants are facing discrimination and unfair treatment in the official social system, or have insufficient information, or suffer inadequate regulatory protections, they tend to have problems seeking assistance and face many obstacles:

(1) The problem of new immigrants being subjected to domestic violence is severe. Despite the government having established relevant reporting systems and provided protective measures, due to inadequate support measures and insufficient resources to assist new immigrants subject to domestic violence, domestic violence prevention for marriage immigrants is also reduced. Furthermore, the divorce rate of new immigrants is also higher than the divorce rate of native-born citizens, and the government must consider such a problem seriously. Regarding the divorce of new immigrants, it is necessary to start with considering the concept of prevention and implement early intervention by providing essential services and assistance. In addition, for the needs and difficulties faced by new immigrants after divorce, such as economic burdens, childcare, education and parenting

issues, etc., relevant information channels should be provided, and support systems should be established in order to assist cross-national marriage single-parent families.

(2) After new immigrants obtain national identification certificates in our nation, they are eligible to apply for relevant social aid measures according to law in order to maintain the minimum basic living standard. However, some new immigrants still have difficulty obtaining the certificates and documents required for the application. The need to provide interpretations of the documents has also caused an economic burden to new immigrants. This deviates from the original purpose of individual case service work and interpreter resources provided by new immigrant family service centers.

(3) Although the government has established a complaint filing mechanism for new immigrants subject to discrimination, and relevant multicultural activities and cultural equality promotion measures continue to be organized annually, at present the government still focuses more on exhibitions and events. Such a method of spending a great amount of the budget organizing large and one-time events is ineffective in overcoming the problem. At present, the society in Taiwan still has some bias against new immigrants, and the situation where new immigrants are subject to discrimination in the family and in society also occurs. Moreover, their children may also be subject to discrimination due to the identity of their parents.

Article 11

Right to Adequate Housing

228. Public housing Policy

Along with the high living cost in urban areas, high housing prices have been ranked as the first of the top ten popular discontents. Many young people as well as economically and socially disadvantaged groups cannot afford to buy or rent houses, or must tolerate houses with poor living quality. Housing costs even influence the issues of people avoiding marriage or being unwilling to have children, which over the long run are major threats to social development and national security. How to overcome the housing problem in urban areas has become the administrative focus and challenge of the government. The construction of public housing is considered to be an effective solution to address the problem. As part of the Five Major Social Security Plans launched by the government, it is planned to construct 200,000 public housing units in a period of eight years, and these housing units are for rental only without sale, thereby allowing young people, middle class, single-parent families, disabled and elderly people unable to afford housing to have secure living places. After the investigation and findings, the Control Yuan recommends:

(1) According to Article 4 of the Housing Act, a specific ratio of public housing should be provided to economically and socially disadvantaged persons in the area of concern, as well as to persons who are going to school or working in the area, even if their permanent address is not registered there. Up to December 31, 2019, 8,496 units of public housing had been completed nationwide, and there are 33,907 units of public housing currently under construction or planning. However, since there are a great number of people to be looked after, at present the public housing demand is still greater than the supply. According to the general investigation and research by the Control Yuan, it is recommended that the government review the qualifications of applicants, and balance this against the political commitment to give preference to the local residents and the portion of neighborhood households involved, and apply general reasonability, in order to maintain fair distribution and living justice.

(2) The Subletting Management Scheme is able to mitigate the financial burden of local governments in the construction of new public housing. The MOI has planned to muster 80,000 private vacant houses to serve as public housing through the Subletting Management Scheme in the period from 2017 to 2024. However, since the start of the scheme in January 2018 to the end of April 2020, only 7,315 households have been successfully matched in the six special municipalities. According to the general investigation and research by the Control Yuan, it was found that the main cause for the shortfall was due to the fact that the period for tax breaks to be applied in the currently promoted release of idle houses for public housing is too short, such that the willingness of landlords to participate in such a program is low.

(3) To overcome the traditional negative image of public housing, the government continues to improve the construction standard and the public service quality in the area where public housing is located. The mixed living model is adopted to prevent labeling and stigmas as low income families. After the initial implementation, the general public’s acceptance of public housing has been significantly improved.

(4) The public housing must not only provide the function of living but should also achieve the function of social interaction in order to allow public housing to become residences embedded in a network of mutual assistance. To achieve such a goal, the public housing constructed by the government has started the planning of social welfare facilities and services in order to actively demonstrate the social cohesion and social welfare of public housing. Furthermore, the government also aims to create diversified public housing or integrate public resources in order to allow public housing to combine with social services, with the goal of creating achieving lively public housing, overcoming the traditional negative images of old, damaged, and poor quality public housing of the past.

(5) In this phase of the public housing plan, to overcome the problem of cities using part of the lands of indigenous peoples and also their illegal squatter housing in the urban areas, as well as the blighted housing and overcrowding of some indigenous peoples' housing in the rural areas, at present the MOL and the local governments will provide a portion of the public housing units for rental to indigenous people. Moreover, the Council of Indigenous Peoples can also act as the sponsor to construct public housing for indigenous people according to their policy needs, thereby allowing indigenous peoples to live in comfortable houses and to enjoy a good living environment with dignity.

Issues of Forced Relocation

229. People's right to adequate housing is protected under the provisions specified in Paragraph 1 of Article 11 of the ICESCR. It includes the prohibition of forced evictions of informal settlement residents. However, regarding the provision of the right to adequate housing, despite the fact that the announcement of the Act to Implement the ICCPR and ICESCR in our nation was made on April 22, 2009, granting domestic legal effect to the ICCPR and ICESCR covenants, common implementation and support have not been exercised or supported by the administrative departments and the juridical departments of the government. At the same time, international human rights experts have been invited to provide conclusive opinions and recommendations concerning the necessity to consider the lawsuits filed by informal settlement residents and the establishment of laws to overcome the problem of forced evictions described in the 2012 and 2016 National Report of the ICCPR and ICESCR; however, such opinions and recommendations have not been treated seriously by the government. The relevant government agencies even adopt the claim that ownership of the land takes precendence, and demand return of the owner's property described in the Civil Code, even if the owner is the government. Government agencies have applied to request relocation of informal settlement residents, and even the repayment of "illegal benefits" they received through occupying the land without rent for many years. As a result, the nation's obligation to implement the right to adequate housing as specified under the Covenants and under Taiwan law is not fulfilled. Consequently, disputes and protests continue, causing a significant amount of social cost.

230. The housing demolition and relocation case of Daguan Community at Banqiao District, New Taipei City, is an example that violates the aforementioned principle. The community was a originally a military dependents' residential quarter known as Fulien First Village, which was relocated in 1964. The village was renovated and reconstructed by the tenants left at the original site of the welfare shop there. Due to the passive management of the government over the following decades, the community persisted as the living place of tens

of households (including elderly veterans). Accordingly, it should be determined to be a community with the "right to adequate housing" as described in Paragraph 1 of Article 11 of the ICESCR and also as the subject of the legal protection of use rights as described in the general opinion of No. 4 of the ICESCR. Nevertheless, the Veterans Affairs Council ignored the obligation to fulfill the right to adequate housing under the law. Moreover, the Veterans Affairs Council directly applied the regulation of claim for return of the owner's property described in Article 767 of the Civil Code to request for demolition of the houses, return of land and to even claim the repayment of "illegal benefits" – while no consideration was given to the aforementioned historical background, and when there was no urgency in the use of such land and before any specific and feasible resettlement plan had been proposed. This was a violation of the principle of the right to adequate housing protected by the two Covenants and the purpose of the Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as had been legislated in our nation. Consequently, there were over a dozen violent protests and conflicts due to this action by the Veterans Affairs Council.

231. After the official investigation by the Control Yuan, despite the original residents of the aforementioned Daguan Community all the same being forced to relocate, the Control Yuan still submitted its opinion on the necessary protection of the right to adequate housing for the aforementioned people, and also requested the Executive Yuan to subsequently supervise all agencies to properly comply with the provisions on the protection of the right to adequate housing specified in the ICESCR, and also stipulate more detailed and effective regulations on how to implement the protection of the "right to adequate living". This should even refer to the recommendation made by the IRC to establish laws in order to properly impose resettlement obligations which should be required to be borne by the responsible agencies, integrating the resources of central and local government agencies, and in the process thereby demonstrating our nation's determination in the implementation of human rights protection. Nonetheless, it is a disappointment that according to the investigation of the Control Yuan, the Executive Yuan has not pushed for the Forced Relocation Settlement and Reconstruction Act and related laws, which should be passed according to the conclusive opinions and recommendations provided by international human rights experts on our nation's Second National Report of ICCPR and ICESCR and according to the investigation opinion of the Control Yuan.

232. Rebuilding Old Quarters for Military Dependents

(1) After the implementation of Article 22-1 of the Act for Rebuilding Old Quarters for Military Dependents, from June 2017, the Ministry of National Defense (MND) started to press the request that 243 military dependents'

quarter households who disagreed with the rebuilding of the quarter must vacate their houses and lands within six months; it was threatened that otherwise they would lose their rights to receive compensation. Approximately 60 people from 11 military dependents' quarters and eight self-help associations filed complaints to the Control Yuan to submit their claims against the forced relocation, house demolition, and return of land and repayment of "illegal benefits". After the MND met in a negotiation meeting at the Control Yuan, parts of the civil litigation and eviction procedure were stopped, and the dispute was resolved through communication and settlement with most of the households disagreeing with the rebuilding. As of October 2, 2018, there were 173 households who agreed to relocation, and 70 households who still had not cooperated with the relocation. Despite the fact that the MND thus achieved some success in the rebuilding of military dependents' quarters, there were still many deficiencies in the process, and the relatively important ones include: First, the law established had no flexibility in the definition of legal terms, such that several original households of the quarter were wrongly categorized as households disagreeing with the rebuilding of the quarter, leading to disputes and litigations. Secondly, there were no resettlement regulations established according to law, but merely arrangements with several disagreeing households that they be resettled at the Veterans Home; however, due to the disparities between the original living place and the new place, and the misfit with family living functions, the households were unwilling to relocate. This indicated that the settlement measures failed to satisfy the needs of the households, and the outcome was not beneficial. After design of plans for the rebuilding of military dependents' quarters as a whole, i.e. keeping the community together, and after the announcement of the Act for Rebuilding Old Quarters for Military Dependents in 1996, such quarters were listed under the Rebuilding Plan for Old Military Dependents' Quarters again. Although such inclusion was not illegal, many households disagreeing with the rebuilding lost their original rights and interests, such that many disputes continued to be filed, resulting in civil group litigation.

(2) After the promulgation of the Act for Rebuilding Old Quarters for Military Dependents, almost all military dependents' quarters were demolished and relocated nationwide, and only a few had the opportunity to be preserved. Nevertheless, the preservation of such quarters and subsequent re-utilization seem to have only focused on the repair of the physical buildings of military dependents' quarters, but have ignored the preservation of the original living style of the quarters and the social, economic, and cultural meaning of such military villages in Taiwan's history. The MND and relevant competent authorities should review and correct relevant laws and policies in order to preserve a microcosm of the original living style of military dependents'

quarters households and the social, economic, and cultural value of such quarters, even allowing the original households to settle in the preserved quarters as a priority, thereby protecting the living rights of the quarters' households as well as reducing civil complaints and protests.

233. Delay of Shezidao Development

(1) After Shezidao was in 1970 zoned as an area in which further construction was banned,[5] the use of its land was significantly restricted; some of the population also moved off of the island, and its overall development was clearly stopped, leading to obvious signs of decay and decline. As no detailed plan has been announced for Shezidao, the area lacks the fundamental construction of roads, utilities and common pipelines. There are no pipes for sanitary removal of sewage, and so it is the most backward area in Taipei city in terms of infrastructure.

(2) Paragraph 2 of Article 4 of the Regulations for Zone Expropriation Implementation specifies that those requesting the land use should, before the review and approval of the Urban Planning Commission of the Ministry of Interior (MOI), report to the Land Expropriation Review Team of the Ministry to explain the public interest and necessity for the use of the land. However, for Shezidao, it is planned to use the zone expropriation method to carry out the overall development of the whole area at one time. With regard to whether the MOI has reviewed and satisfied the public interest and necessity for such use, the Taipei City government and the MOI have made different statements, indicating that the review procedure of the expropriation of such area is unclear, and it is likely to cause troubles and misunderstanding to the entity requesting the use of the land and the residents in the area.

(3) Regarding the Taipei City Shilin District Shezidao Regional Development Plan organized by the Taipei City Government, as for the planning of the developmental direction of Shezidao, it has not sufficiently discussed the plan with the local residents and sought their opinions before the proposal of the plan, such that the operational procedure for development is clearly inadequate. In addition, to comprehensively survey the local social and economic status of Shezidao residents and to understand the resettlement needs of the residents for the planned expropriation to be implemented, the city government carried out a survey of households to find out the response to the Shezidao resettlement plan and their willingness to relocate. The household survey was performed based on the assumption that the Shezidao residents had understood the necessary resettlement after the land

[5] This ban was set because Shezidao is a low sandbar about 3 kilometers long at the confluence of large rivers that drain the Taipei basin, and so subject to serious flooding of the existing villages; but with land at a premium in the metropolitan area, it has for decades been under pressure for development.

expropriation. However, in fact, the residents might not have completely understood such a matter. In addition, the survey completion rate was low, and the statistical analysis of the results was poor. Furthermore, all of the settlement measures planned by the city government only focused on the goal of resettlement for all households. Moreover, most of the residents of the households visited and questioned were unclear about their annual income, such that the survey result could not be further statistically analyzed rationally in terms of the compensation criteria. Regarding the public hearing on the questionnaire survey held by the city government, many such notices were supposedly issued, but they failed to inform the local village chiefs and residents to attend the meeting, such that only a small number of people attended the meeting. All of the above indicates that there are numerous flaws in the survey operation on the willingness of Shezidao residents to relocate, as well as in the public hearing organized by the city government.

(4) According to the investigation of the Control Yuan, many Shezidao residents do not satisfy identification as persons with a relevant interest in the area, i.e. residents registered in Shezidao, owners of legal buildings and lands in Shezidao or living in Shezidao but citizens of Taipei City registered in areas outside Shezidao. Many of the residents have moved in from other counties and cities to live and work in Shezidao, such that they are also the residents or interested parties that will be forced to relocate due to the Shezidao development. Nevertheless, the Taipei City Government fails to provide the opportunity for such residents to vote and to express their expectations, and so it has not fulfilled the principle of Open Government, Participation of All Citizens, and the human rights of those that may be forced to relocate have not been treated seriously.

Article 12

Medical Service for Persons with Disabilities

234. Placement Referral and Care for Persons with Mental Illness

To implement the tracking and care for community psychiatric patients, the MOHW has requested the Department of Health units of all counties and cities to monitor the accepted cases of those with mental disability through the Mental Care Information Management System, and has requested the public health nurses of district public health centers or community mental care visitors to perform subsequent follow-up and care. However, according to investigation by the Control Yuan, the workload of the public health nurses is heavy, and the turnover rate of the community care subjects is also high, and such type of personnel have limited professional knowledge concerning mental illness prevention and care, such that the follow-up visit and evaluation

operation are merely to satisfy the formality of monitoring. The Control Yuan recommends that home visits should be performed by professional psychiatrists and psychiatry nurses in order to be effective. Accordingly, the MOHW must properly plan and introduce professionals to provide the visit service, to thoroughly evaluate the condition and living function status of psychiatric patients and to provide appropriate assistance and referrals for such patients.

235. Barrier-free Facilities in Medical Clinics and Hospitals

Most of the clinics in Taiwan are not equipped with barrier-free facilities, and the disabled are unable to equally obtain medical services through these. If clinics cannot fully present barrier-free facilities, the medical care division of labor cannot be launched, and disabled patients can only seek medical attention at hospitals and clinics with barrier-free facilities and planning, which affects the rights of the disabled to seek convenient medical attention. The government should adopt appropriate measures to ensure that the disabled should be able to access the physical environment and use hardware and software facilities and equipment without obstacle, meeting the principle of equality of the disabled with others. According to the investigation and finding, the Control Yuan recommends:

(1) According to the survey of the MOHW, among the 9,237 modern medicine clinics recognized by the national health insurance system, there are 3,298 clinics equipped with barrier-free access, and only 2,488 clinics equipped with accessible toilets, accounting for 35.7% and 26.9% of all clinics, respectively, overall. Such data indicate that the percentage of clinics equipped with barrier-free access and accessible toilets is still low.

(2) In addition, it should be noted that the aforementioned data is based on information provided by clinics themselves, and their accuracy and whether they comply with the Design Specifications of Accessible and Usable Buildings and Facilities are yet to be verified.

Healthcare for Children and Juveniles

236. According to the data from the Department of Statistics, MOI, there were approximately 3,000 teenage girls between the ages of 15 and 19 giving birth annually in Taiwan during the period from 2006 to 2016, and there has been a tendency of decreasing age for teenage pregnancy. However, due to the girls' immature physical and mental development, they face various difficulties in their family, social, economic, educational, physical and mental conditions; in addition, there is also a higher risk of death of newborns, premature birth, and low weight of newborns. According to the investigation and findings, the Control Yuan recommends:

(1) The number of teenage girls giving birth in Taiwan has still been high in the past decade. The MOHW and MOE have not fully understood the exact number of pregnant teenage girls, leaving them unable to establish relevant verification and comparison mechanisms. Cross-department service resources lack an integrated platform and critical performance indicators. The physical and mental health and the right to education of children and teenagers are significantly affected. After the investigation and attention by the Control Yuan, the MOHW has started to establish the Teenage Girl Pregnancy Service Procedure to provide relevant resources and welfare services to pregnant teenage girls. Up to the year 2019, there have been 2,099 juveniles referred to all network units.

(2) The number of pregnant teenage girls choosing to keep and raise their children is increasing in Taiwan. However, the local governments' service resources for the teenagers and their children are encountering difficulties due to the fact that the pregnancies and births are relatively few and spread over a large area, and so the rights and interest of teenagers choosing to keep and raise their own children cannot be effectively protected. For followup services to be provided to such teenagers and their children and the newborn placement status, the government must review and discuss relevant improvement measures to satisfy the actual needs.

Preventing Communicable Diseases

237. The local public health centers assist a majority of the state-funded influenza vacination programs in Taiwan in administering the vaccines. Accordingly, the competent health authorities should provide sufficient human resources to facilitate such operations. Since 2016, the MOHW has doubled the state-funded influenza vacinations from 3 million to 6 million doses; however, the workforce at all public health centers has not received any corresponding support. In view of the performance evaluation standard based on the vaccine administration rate and coverage, it has certainly increased the workload of all public health centers, and the physical and mental stress of nursing personnel providing services at the front line is overly high. After the investigation by the Control Yuan, the MOHW is urged to request its Centers for Disease Control (referred to as CDC) to enhance relevant promotion and education measures in order to instruct the general public to proceed as well to the contracted private medical clinics and hospitals to receive influenza vacinations, thereby reducing the workload of vaccine administration at the public health centers.

238. To effectively reduce the hazard of enteroviruses, the CDC started to develop an enterovirus vaccine twenty years ago, and has listed it as one of the important tasks for disease control in the Sub-plan of Enteroviruses Control in Phase 1 of the Acute Infectious Disease Epidemic Risk Monitoring and

Management Plan (2011 to 2015). However, for the self-development of the enteroviruses vaccine, the domestic biotechnology companies are still facing problems in the technical development, regulatory inspection and vaccine purchase/market expansion, etc. In addition, at present the higher level vaccine policy guidance and decision platform of the Executive Yuan has still not yet been set to determine the vaccine development policy in our nation and to perform cross-department integration; consequently, all issues and difficulties faced by the domestic vaccine development industry are yet to be fully resolved.

Substance Abuse

239. Teenager Drug Abuse

With the progressive development of criminal law and psychiatric medicine, and the gradual understanding of the deep factors in substance addiction, the drug control policy of our nation in recent years is heading in an enlightened and practical direction, and anti-drug tasks have been expanded and transformed into the four main sectors of drug prevention, drug abstinence, drug detoxification and drug law enforcement. The central government has established the anti-drug monitoring team program with five main anti-drug teams. In addition, drug hazard control centers have also been set up in all counties and cities in order to assist the promotion of drug control. However, the teenage drug abuse situation is not yet effectively controlled. According to the drug monitoring of the Taiwan High Prosecutors Office, it is found that at present there are three main problems associated with drugs: (1) Among the second-grade drugs, the number of users of amphetamine drugs is increasing, and the source of such drugs is mainly from various areas in China. (2) The abuse of ketamine among the third-grade drugs continues to show a high percentage of use, and the age of drug users is decreasing, and users only have a weak awareness that usage is a criminal matter. (3) New mixed types of drugs with appealing packaging are emerging in the market rapidly, such as toxic coffee or milk tea bags, liquid drugs, popping candy, etc., and these are starting to circulate among the youth groups. All such drugs have the characteristics of appealing packaging, and most of them are random mixtures of third-grade and fourth-grade drugs with psychoactive effects; therefore, their fatality rate cannot be estimated easily. According to the investigation and findings, the Control Yuan recommends:

(1) The competent authority in education must actively adopt measures to guide dropouts from elementary and junior high schools to resettle at school and should also jointly cooperate with the MOL to guide junior high school graduates choosing not to pursue higher education to receive occupational training and to assist them with employment, in order to reduce and eliminate the risk of campus teenager drug abuse. In addition, all local drug hazard

control centers should enhance the functions of the Young Counseling Committee and Juvenile Affairs Division, integrating with the off-campus counseling associations and the internal guidance systems, in order to construct a campus safety protection network, preventing gang groups from infiltrating the campus, and so making our best efforts to create a drug-free and healthy development environment for teenagers.

(2) The MOE should carry out tracking and statistical analysis of the re-occurrence of offenses, following the individual cases of the Youth-Support Guidance program, in order to examine the implementation outcome of the guidance system, and further proposing improvements. The MOHW should also actively develop detoxication guidance measures for all grades of drugs, and should also learn from the teenager street demonstration models adopted overseas in order to effectively assist the prevention and control of teenage drug abuse.

(3) The government should integrate the drug and drug abuse reporting system databases already established by all agencies and properly verify the drug abuse-related data in order to understand the domestic drug and overall drug abuse status. Furthermore, through Big Data in-depth analysis, the analysis results can be converted into specific policy recommendations, with the goal of effectively reducing the dark spectre of drugs and deficiencies in their control.

(4) For the criminal behavior of teenage drug-taking or engaging in drug sale or smuggling issues, such as vocational students acting as the drug distributors, etc., the government should consider such issues seriously and implement effective prevention and control programs. In addition, during the execution of drug law enforcement on the campus, the police agencies should properly utilize the contact and reporting mechanisms within the educational institution in order to facilitate the tracking of the upstream drug sources. Furthermore, for drug manufacturing cases uncovered, if controlled drugs and active pharmaceutical ingredients are found, as well as industrial raw materials of precursor chemicals, or if there is any suspected use of the aforementioned ingredients in the manufacturing of drugs, to eliminate the source and to stop the supply, the judicial police and industrial, food and drug authorities should properly report to each other according to the law in order to jointly fight against the drug cartels.

Assistance in the Case of Health Rights Violation

240. Delay in Relocation of Nuclear Waste in Lanyu

(1) Even before starting the Chin-Shan Nuclear Power Plant No. 1 operation in 1978 to 1979, Taiwan Power Company (also called Taipower) generated tens of thousands of barrels of low-grade nuclear waste. In 1982, such waste was

transported to the poorly-designed storage trenches in Lanyu[6] for temporary storage and supposedly for subsequent ocean disposal. The London Convention which became effective in 1975 already banned all countries from dumping nuclear waste into the sea, but Taipower still continued to transport nuclear waste to such sites for temporary storage. Over the years, the quantity of waste has reached more than a hundred thousand barrels. The waste barrel storage trench on Lanyu has exceeded its useful lifetime as originally designed, the corrosion of the storage barrels is severe, and relevant inspection operations have not been properly performed, such that the physical and mental health of local residents in Lanyu has been in danger for a long period of time. After investigation and followup by the Control Yuan, the Executive Yuan established the Guideline for Compensation for Use of Indigenous Peoples' Reservation Land at the Nuclear Waste Lanyu Storage Site on October 18, 2019, in order to compensate the residents in Lanyu. In addition, Taiwan Power Company will complete the re-packaging operation of all the low-level radioactive waste barrels completely by April 2021.

(2) The government must supervise Taiwan Power Company to perform by itself or entrust operators with the technical capability for final radioactive waste disposal in order to be responsible for effectively compressing the quantity and volume of radioactive waste, and to assist various radiation monitoring and environmental survey works in the region of Lanyu, thereby fulfilling the responsibility of protecting the health of the local residents and properly handling the Lanyu nuclear waste storage site. If so, the trust of the general public can be recovered, and the successful launch of the final disposal plan can be facilitated.

241. Lanyu residents' health examination and medical resource status: To fulfill indigenous peoples' historical justice and transitional justice, the Executive Yuan has in October 2016 already established the truth investigation team for the Lanyu nuclear waste storage site.And to protect the rights and interests of Lanyu residents, the Lanyu Health Examination Project Plan was approved on July 24, 2018; however, the MOEA and MOHW did not start the health examination operations until November 14 of the same year. Up to December 6 of the same year, only 249 people had completed the examination, reaching a completion rate of less than 5%, which was far different from the plan which anticipated completing the examinations by the end of 2018. After the tracking of the improvement status by the Control Yuan, the Executive Yuan re-established the Lanyu Resident Health Examination Project Compensation Plan on July 24, 2018, and up to the end of August 2019, there were a total of 2,490 people who had completed the health examination, though the completion rate was still only approximately 50%.

[6] Lanyu is also known as Orchid Island, a small volcanic island 64 km. off the southeast coast of Taiwan.

Article 13

Cooperative Education and Protection of Interns' Rights

242. Industry–academia cooperation programs are occupational education programs capable of allowing students to study general subjects and professional academic courses at school and to also receive skill training from relevant industries at the same time, in order to facilitate students' career development. For both sides, the students and the institution in the cooperation program, such programs have deep educational meaning. Since 2004, the number of cooperation program students has started to increase year after year in our nation. However, as some organizing schools and business institutions under the cooperation program abuse the system, many problems have subsequently appeared, affecting the rights and interests of students under the cooperation program. According to the investigation of the Control Yuan, it is recommended:

(1) The MOE has not properly supervised the process; the evaluation stage should be performed by an expert and scholarly evaluation team.Approvals have been widely issued to schools and institutions applying for the cooperation program service; in addition, the training contracts have not been reported to the labor affairs authority for recording according to the law, and such contracts have not been managed properly. Furthermore, since students under the cooperation program cannot choose their employers as regular employees can, the situation where some unscrupulous schools are assuming the name of promoting the educational cooperation program sending students to enterprises having no educational concept continue to occur, such that the students' rights and benefits are being denied.

(2) Students under cooperation programs are not merely a source of cheap labor, but the MOE widely lowering the barrier for institutions to apply for the cooperation programs has caused an altered situation of providing cheap labor to business under the name of school-business cooperation programs, which may affect the reputation and employment of regular graduates. The MOL has not requested the local labor administrative authorities to protect the rights and interests of students under cooperation programs, and has not laterally contacted the MOE to jointly stop enterprises from illegally infringing on the rights and benefits of the students; therefore, there is still room for further review and improvement.

Reduction of the Dropout Rate

243. Since August 2014, the 12-year national basic education policy has been fully launched in our nation. The first nine years of national compulsory education has been implemented according to the regulations of the Primary and Junior

High School Act and the Compulsory Education Act. The later three years of senior high school education is not mandatory education; however, its main content includes the meaning of "common" and "voluntary without compulsory education," and the 12-year national education emphasizes the notions of teaching according to the student's individual aptitude, nurture by nature using a diverse approach, etc. Consequently, for students with different performances, aptitudes and interests, it is expected to guide students to understand their own capacities and interests through different courses, teaching methods and adaptive counseling, to assist them to develop diverse abilities and to find their own path. This is done in the hopes of facilitating their continuing education or successful employment. The findings and recommendations resulting from the investigation by the Control Yuan are as follows:

(1) Since the implementation of the 12-year national education, each year, there are still about 20,000 students failing to complete the 12-year national education due to family, economic, or personal reasons. The scope of the school system includes senior high school dropouts, students graduating from junior high schools without continuing education but not entering the job market, students who have dropped out of junior high schools and elementary schools and students exceeding their mandatory education age due to continuous dropouts, among others. As Taiwan is facing the impacts of a low birth rate and a rapid decrease in the number of children and teenagers, the MOE has not been active in understanding the cause for the great number of domestic students leaving schools and dropping out, and no overall planning and responsive supporting measures have been implemented, such that the local governments and schools have no guidelines to overcome such issues. This is in clear violation of the provisions of the Educational Fundamental Act aiming to protect the right to education and the principle of the 12-year national education.

(2) In 2018, the dropouts from the domestic senior high schools were mainly ascribed to personal reasons, accounting for 61.4% of the total number of dropouts. The main reason among these was incompatible interests, accounting for 53.40%. In the last five years, the overall data indicates that the percentage of students leaving school in their first year of senior high school, 54% to 64%, was the highest, and this percentage is most prominent for students leaving schools under the school system of private vocational high schools. The research indicates that stimulating students' interest is the main driving force attracting the dropout students to return to schools. In other words, the development of students' adaptive learning is still able to achieve a certain pulling force in stabilizing student performance in school. According to current relevant regulations, when there is a vacancy in the number of class enrollments in a school, the school may then perform student

subject (program) transfer or enroll transfer students from another school, and this procedure should be performed using an open method. But this method is considered to be inflexible and lacking in substantial efficiency.

(3) For the 2014 to 2018 academic years, the total numbers of dropouts from junior high schools and elementary schools across the nation were 4,214 students for 2014, 3,934 students for 2015, 3,446 students for 2016, 3,134 students for 2017 and 3,137 students for 2018. Such data indicates a decreasing trend; however, the total reentry rate still fails to show any obvious increase, which should be monitored continuously.

Right to Education for Persons with Disabilities

244. There are indeed needs for special education in practice. However, for individual cases where students have not yet received an evaluation test, since the current laws do not mandatorily require parents to apply for an evaluation of the student, and due to parents' worry over the effects of their child being stigmatized with the label of special education, they tend to refuse to accept the evaluation, causing the educational institutions to have limited ability to provide assistance to those students with special educational needs who have not received an evaluation. The local governments have not been active in supervising schools in reporting cases where students are suspected to be special education cases, while the parents disagree with the evaluation; the MOE should not allow these situations to continue without taking any action.

245. Provide Necessary Assistance to Students with Disabilities

(1) Despite the MOE having announced on February 14, 2018 the Regulations for MOE's Subsidies to Governments of Special Municipalities and Counties (Cities) as Budgets to Implement Education for the Disabled in order to expand the subjects receiving the subsidies and to increase the subsidy amount, it nonetheless still fails to sufficiently reflect the actual needs of students with disabilities. When most of the local educational administrators review the service hours required for assistants to special education students, they have not discussed the actual needs in the student's individual education planning (IEP) meeting, and the service hours approved do not satisfy the principle of adaptive and individual treatment. The MOE should assist the local governments to review and improve the workforce difficulty faced by the assistants to special education students in order to allow the disabled to receive the assistance they need in the education system.

(2) The learning of children with disabilities requires extensive support and assistance, and their parents are often required to accompany the students during their studies, causing the family of the disabled to be unable to have full-time employment, while facing heavy economic pressure at the same time. Local governments, together with the social administrative agencies of

the MOHW and others, are recommended to jointly overcome the problem of insufficient support services from the assistants to students of special education, and to improve the situation of parents being requested to accompany students during their studies.

Article 15

Protection of Indigenous Culture

246. Local Indigenous Culture Center Use Effectiveness

In recent years, the Council of Indigenous Peoples has proactively assisted all local governments to improve and activate indigenous culture centers, and has achieved a promising outcome. The Control Yuan recognizes this achievement; nevertheless, the following is recommended:

(1) It is recommended that the Executive Yuan increase relevant budgets for the Council of Indigenous Peoples in order to facilitate the activation and utilization of the indigenous culture centers. In addition, regarding the positioning, research and exhibition of such centers, clear and specific planning direction should be provided. After investigation and control by the Control Yuan, with the assistance from experts, scholars and research institutions of national or civil museums, among others, the philosophy and historical heritage functions of the centers can be improved. In addition, the relevant budget for the operations of indigenous culture centers should be appropriately increased in order to achieve the requirements of "active protection and development of indigenous language and culture" specified in the Constitution and the preservation and protection of the national role specified in indigenous peoples Basic Law.

(2) It is recommended that the Executive Yuan review and discuss the elevation of the position of the Taiwan Indigenous Peoples Cultural Parks, to appropriately expand their structure and invest further in their budgets, in order to overcome the problems encountered during the initial establishment and operation process. Consequently, the Taiwan Indigenous Peoples Cultural Parks can be seen as an indicator and portal for domestic and international contacts and for transmitting understanding of Taiwan's indigenous peoples' culture.

Future Prospects

As stated in the Preamble, due to time limitations and insufficient materials, this report has yet to include a complete overview of all human rights rules and relevant institutions. With an aim to protect and promote human rights, the National Human Rights Commission (NHRC) plans to get an in-depth understanding and evaluation of domestic human rights conditions by conducting systematic and comprehensive surveys or research, and to thus provide timely recommendations, project reports, and annual national human rights status reports. NHRC seeks to explore the following issues in the future:

Several human rights issues call for urgent attention from the government under the impact of COVID-19 pandemic

247. While the coronavirus outbreak hit hard on the global economy, Taiwan is one of the few countries around the globe that stands tall against the spread of the coronavirus without sacrificing economy growth. In response to the outbreak, public doubts were contained as the government took measures including imposing restrictions on people's freedom of travel, plus retrieval of personal data, monitoring mobile phones, and restricting Chinese spouses and children from entering Taiwan for a period of six months. However, the aforementioned measures adopted are closely related to the deprivation of personal freedom and privacy. The NHRC urges the government to examine the effect of those restrictive measures on people's rights in a humble manner, and to legalize such measures after the fact despite all those emergency conditions; to ensure government's exercise of power still complies with corresponding regulations and laws; and to prevent unlimited expansion of national power.

248. Under the impact of the pandemic, the nature of labor relations among the public has also gradually changed. For instance, from inspecting regulations on an innovative form of labor force known as "atypical employees," it is apparent that relevant protective measures on labor rights are also affected and challenged by the pandemic, such as the employment relationship between food-delivery riders and digital platforms, as well as rights of the working-from-home employees. To present, there have not yet been many discussions and potential responses mapped out by the Ministry of Labor. On the other hand, the NHRC also takes notice of the changing nature of contracts in government employment. Besides entry-level workers, government agencies are now hiring more professionals with service and natural person contracts; unlike regular employment contracts, service and natural person contracts render protections on employees' labor rights questionable, and contribute to the obstacles in civil servants' accumulating government governance and professional service capacity.

Multiple Discriminations against the LGBTQ Population

249. The public regards LGBT individuals as people with certain mental illnesses that lead to gender identity disorder; in fact, the LGBT community often suffers from multiple types of discrimination. The NHRC urges the government to examine policies on education, employment, health and medical care, among others, and to create a gender-friendly environment with its best efforts, thereby protecting the well-deserved rights of LGBT persons. Furthermore, aside from guaranteeing a right to same-sex marriage, there are other gender-based rights still pending or yet to be established. The government should re-examine whether all LGBT-related rights are consistent with relevant interpretations of the two Covenants.

Cyber Sexual Violence

250. With the rapid development of internet technology, our nation has entered the digital era. As people continue to venture into cyberspace, this has created vast opportunities for cybercrime. These offenses are often comprised of gender-based crimes committed via social platforms such as cyber harassment, cyberbullying, cyber abuse, or even public disclosure of private sexual images without authorization, etc. To counter the aforementioned new emerging forms of cyber sexual violence and criminal offenses, the government should carry out a comprehensive review of existing relevant legislation, policies and educational measurements, etc., to ascertain their applicability and adequacy to accord with the needs of the present. The government should further strengthen the knowledge and skills of relevant judicial personnel, social workers and educational personnel on the issue of cyber sexual violence.

Indigenous Peoples' Liberty of Movement and Freedom to Choose Residence

251. As the relocation of indigenous tribal communities following natural disasters continues to occur, there might be concerns for the indigenous peoples' liberty of movement and freedom to choose residence. For example, indigenous people were forced to leave their native tribal areas and be relocated to the permanent houses in Rinari by contract after Typhoon Morakot; however, the landownership where these permanent houses are situated belongs to the state, and indigenous peoples were granted only the right to use of the land and the ownership of the houses. Consequently, the living space of indigenous peoples was restricted and their traditionally inhabited land was lost. The government should take indigenous peoples' living space or ecospace into consideration, and grant them the right to return to their original tribe locations. In addition, the government should examine whether regulatory restrictions on the return of the original tribes violate indigenous peoples' right to freedom of movement.

Prior and Informed Consent of Indigenous Peoples

252. The right of prior and informed consent of indigenous peoples is protected by the two Covenants. Considering that possible conflicts of rights arising from mining or other economic activities may undermine indigenous people's right of prior and informed consent, we should ask the question: Should we prioritize the application of Article 21 of the Indigenous Peoples Basic Law over other administrative laws, or the other way around? Take the Asia Cement case for example. In order to secure its uninterrupted mineral rights at the mining area, Asia Cement Corporation argued on the grounds that, according to Article 47 of the Mining Act, "the mineral right holder may commence to use the land after depositing the land price, rental or compensation and filing for the reference of the governing agency." As a result, Asia Cement Corporation was once able to obtain a 20-year extension of its mineral rights. In addition, according to the Mining and Quarrying Business Statistical Report of the Bureau of Mines, MOEA, up to September 2018, there were 109 mining areas among the total of 188 in Taiwan that were located on tribal lands or in the traditional aboriginal territories, accounting for approximately 57.98% of the land involved. Which is to say, there remains a great gulf between the goal of protecting indigenous rights, for the choice of location has not been given prior and informed consent by the indigenous peoples, which in effect has substantially excluded Article 21 of the Indigenous Peoples Basic Law from application.

Indigenous Cultural Rights

253. Regarding the protection of indigenous cultural rights, it is affirmed in Article 1 and Article 27 of the ICCPR and in Article 9, Article 15 and Article 34 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). However, conflicts between existing laws and the cultural traditions and customs of indigenous peoples remain unsolved. Take the Tama Talum Hunting Case as an example. The indigenous peoples were supposed to enjoy the right to non-commercial hunting activities for ritual, cultural, or self-consumption purposes in the granted areas as stipulated in Article 19 of the Indigenous Peoples Basic Law. But an indigenous person was still arrested and convicted due to the use of "standard" firearms. In other instances, the Paiwan Tribe's traditional primogeniture system, and work allocation system according to social hierarchy, which are both very different from the "inheritance" described in the current civil code, conflict with the application of Article 30 of Indigenous Peoples Basic Law.

Indigenous Peoples' Rights to Development

254. To protect and to promote the development of indigenous peoples, the government should establish policy objectives and tools on ethnic

development; such objectives and tools should incorporate ethnic perspectives into the decision-making process and policy execution. In addition, all ethnic groups should jointly enter the public field and participate in the construction of mainstream values, which should suffice for the goal of Ethnic Mainstreaming. To be concise, ethnic policy should change to incorporate cross-departmental policies that encompass different department missions, not limiting them to department functions such as Hakka Affairs Council to Hakka affairs, the Council of Indigenous Peoples to indigenous peoples' affairs. Through ethnic mainstreaming, the previously existing ethnic hierarchy relationship can become an equal ethnic relationship with mutual recognition and respect which helps to break the existing center-periphery type of ethnic structure. Consequently, each ethnic group would stand at the center in society, and ethnic discrimination would be eliminated.

Indigenous Peoples Employment Rights

255. According to Article 21 of the UNDRIP, Article 17 of Indigenous Peoples Basic Law, and Chapter 2 Proportional Recruitment Principle (Article 4 to Article 6) of the Indigenous Peoples Employment Rights Protection Act, indigenous peoples employment rights should be protected and should satisfy the principle of proportional recruitment to a certain proportion. However, the current employment situation of indigenous peoples, to take teachers, police and military, medical personnel, etc. as examples, and their formal employment rate does not satisfy the aforementioned regulatory requirements. In addition, among the 55 mountain/plain-indigenous villages in Hualien, Taitung and other counties and cities where indigenous peoples are largely represented in the population, indigenous peoples' employment rate is still disproportionate to their population. The government should take this issue seriously, and provide policy proposals to improve current conditions.

Indigenous Peoples' Right to Live:
Disputes on Inherent Indigenous Land Rights

256. The Techi Reservoir Indigenous Land Dispute Case

(1) Indigenous peoples' reserve land system in Taiwan was mainly based on the planning policy and scope of the Takasago Reserve in the late Japanese colonial period, and was then re-established through the reform of the Regulations Governing Mountain Reserve in Counties of Taiwan Province by the Taiwan Provincial Government on January 5, 1948. The institution was established with an aim to protect the living needs of indigenous peoples; and particularly, to provide solutions: For lands that used by indigenous peoples for a long period of time and for indigenous reserves that have not yet had registered land ownership. This regulation guarantees indigenous peoples' right of free use of land for registered cultivation, and

even further to acquire private rights in land. Consequently, the inherent living space of indigenous peoples could be returned to them for use because of the land registration system.

(2) Prior to the construction of the Techi Reservoir by the MOEA and Taiwan Power Company in 1969, the reservoir flooding areas and protection zones were mostly within the scope of the Takasago Reserve of the late Japanese colonial period, i.e. the lands located at the present Chiayang Section, Lishan Section and Songmao Section of Taichung City. In addition, these lands had been used by indigenous peoples for years and were registered in the Taiwan Province Taichung County Heping Township Mountain Reserve Land Survey List since 1963; in other words, the government already recognized such lands, a total of 67.2935 hectares, belong to the indigenous reserve, and that the indigenous peoples should have certain land use rights. Nevertheless, prior to the construction of the reservoir, under the condition where no "land rights" and "surface rights/buildings" investigation and compensation operations were performed, the Taiwan Provincial Government gave an abrupt announcement on December 22, 1967 that negated indigenous peoples' right to use the land of their ancestors.

(3) The Taiwan Provincial Government and the MOI had once proposed a budget for compensation on August 27, 1991 and September 16, 1992, in order to protect indigenous peoples' land rights in the indigenous reserves. Nonetheless, the Executive Yuan later announced on October 22, 1992, that "It is a case that lacks legal basis, so no further consideration should be made." Such an act clearly misinterprets the principle of the indigenous reserve planning system, and up to the present day, no relevant alternative protection measures have been proposed.

(4) For this case, at present the Executive Yuan still refuses to issue compensation for the land rights of indigenous peoples or propose alternative remedies; it is a shame that the dispute has been pending for more than half a century without resolution. The Control Yuan will continue to monitor such issues related to the right to live of indigenous peoples, and will urge the Executive Yuan to provide a direct response.

257. The Indigenous Land Dispute Case on Highland Experimental Farm of National Taiwan University

(1) After the Ooshen Incident [7] in 1930, in 1937 the Taiwan Colonial Government abruptly classified neighboring areas (approximately 1,092 hectares, then belonging to the Takasago Reserve of the Notaka Indigenous Land, which is now the National Taiwan University (NTU) Highland Farm at Renai Township of the Nantou County) as belonging to the central

[7] The Ooshen Incident is a bloody uprising and suppression of Taiwanese indigenous people in Japanese called the Ooshen Incident; in Mandarin the Wushe Incident; in native Taiwanese the Musha Incident.

government, in the name of teaching farm research and experiments. It was a blatant infringement on indigenous peoples' land rights. The immediate change of rights ownership after the Ooshen Incident leads to suspicions of the motivation behind the planning policy. Furthermore, Taipei Imperial University, as it was called during the Japanese colonial period, was then restructured to become NTU after 1945. As for the farm, despite its name, the farm was not actually in use and no actual farm teaching research or experiments were performed there. However, during the provincial indigenous reserve measurement and boundary-setting period from 1958 to 1966, the Civil Affairs Department of the Taiwan Provincial Government failed to recognize the aforementioned facts, and the farm land was not included as part of the measurement of tribal lands according to relevant provisions of the Regulations Governing Taiwan Province Mountain Reserve Land, intended to continue the indigenous reserve registration and to restore and protect the indigenous land at that time. Consequently, the local indigenous peoples have suffered from subsequent disputes and litigations.

(2) State-owned lands are properties that belong to the people. When the state provides state-owned land to various government central agencies, such management and use should be limited only to direct needs. In this case, the Executive Yuan and MOI failed to recognize the hostorical fact that the land where NTU Highland Farm is located now once belonged to the Notaka Indigenous Reserve in the Takasago Reserve during the Japanese colonial period; as a result, this land should be prioritized for return to indigenous peoples for use and registration as an indigenous reserve. Furthermore, according to the investigation, after the establishment of NTU in 1945, the school acquired a vast amount of land of the Tokyo Imperial University Agricultural Department Taiwan Experimental Forest of the Japanese Colonial Period (i.e. the present NTU Experimental Forest with an area reaching more than 32,000 hectares) provided by the Taiwan Provincial Government in 1949. Therefore, it would be irrational to consider there exists a need for NTU to use the 1,068.28 hectares of land as the school's highland farm (the current use rate is only 6.87%). Nevertheless, in 1969, the government agreed to allocate the right to use the land to NTU at no charge, and thus NTU acquired the right of management on such farm land at that time, which was clearly illegal and inappropriate. Moreover, after the land was granted to NTU for use, some of the farmland was further contracted out for vegetable cultivation and growing seedlings for sale at profit. This has sparked dissatisfication among local indigenous people, who argue that "the government would rather provide indigenous peoples' land to the the Han people for cultivation in exchange for profit, but rather not return the land to indigenous peoples." Indigenous peoples' right to use the land has been severely infringed upon.

(3) Regarding this case, the Control Yuan has requested the Executive Yuan to deal with the issue and to supervise relevant authorities to act in accordance with provisions related to the protection of indigenous land rights as stipulated in Paragraph 12 of Article 10 of the Additional Articles of the Constitution, Indigenous Peoples Basic Law and the UNDRIP. However, the Executive Yuan and NTU still refuse to return parts of the land to the indigenous peoples. The Control Yuan will continue to monitor the following developments with an aim to realize this case's ultimate goal.

Right of the Pingpu Peoples to Restore Their Identity

258. The identity restoration of the Pingpu Peoples has been debated for years. Despite lacking legal identity, the long history of their dwelling in Taiwan is a fact that cannot be ignored. Pingpu peoples' right to restore their identity is protected by the principle of "the protection of ethnic self-determination and development" as stipulated in Article 1 of the ICCPR. In addition, the provisions of Article 3 of the UNDRIP, Article 4 of Indigenous Peoples Basic Law, Status Act for Indigenous Peoples, and Regulations for Identification on Indigenous Peoples Ethnicity, all three have stipulated relevant regulations. Accordingly, the government should protect their self-development right, based on the willingness of the ethnic groups to recognize the historical fact that the Pingpu peoples are indigenous peoples who have been living in Taiwan for a long time, and to reexamine current laws on Pingpu peoples' identity recognition. We urge that the government should take up the courage to tackle these issues and to act decisively.

Environmental Rights Issues

259. Environmental rights refer to citizens' rights to enjoy a healthy living environment, and to have controls over their living environment. The owner of such rights refers to each citizen, and its subject refers to the living environment, such as land, air, water, sunlight, quietness, landscape, etc. In1972, the Stockholm Declaration on the Human Environment was passed in the United Conference on the Human Environment in Stockholm. This Declaration points out that mankind should enjoy basic rights such as freedom, safety, and adequate living standards in an environment capable of protecting dignity and wellbeing; further, mankind should bear solemn responsibility to protect and improve the environment for present and future generations. In addition, according to the Declaration of the United Nations Conference on the Human Environment, the UN stated that the protection and improvement of the human environment is a critical imperative affecting human welfare and economic development, one which is also eagerly sought by all mankind throughout the world and is the responsibility and obligation of all nations.

260. International society's increased concerns for environmental sustainability have been evident since the publication of the Declaration of the United Nations Conference on the Human Environment in 1972, and the Paris Agreement in 2015. The international society has recognized those irreversible consequences caused by environmental damage, and the severe impact it may have on the healthy living of humankind: the depletion of the ozone layer has led to an increase of risk of skin diseases; much of the land and water resources cannot be further utilized because of the arbitrary disposal of hazardous substances; moreover, the earth's ecosystem has been severely affected due to climate change stemming from increasing greenhouse gas emissions. Environmental rights can be treated as a contract of humankind with the society and with Mother Nature, which consists of four main aspects: 1. The right to enjoy a clean environment, i.e. citizens have the right to enjoy a good (healthy, safe and comfortable) environment; 2. The right to refuse the deterioration of the environment, i.e. citizens have the right to act against damage to the environment (water and air pollution, noise, natural landscape damage, etc.); 3. The right to know the environment, i.e. citizens have the right to know their environmental resources and their ecological conditions; 4. The right to environmental participation, i.e. citizens have the right to participate in environmental protection.

261. According to Paragraph 2 of Article 10 of the Additional Articles of the Constitution: "Environmental and ecological protection shall be given equal consideration with economic and technological development." This is the first time in history since the enactment of the Constitution that it has included environmental and ecological protection issues. According to Article 11 of the ICESCR: "The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The State Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent (Paragraph 1)." Accordingly, environmental rights require the intervention of the government's public power, and the government has the obligation to form relevant policies and measures to protect the environment and to avoid people suffering from the consequences of environmental damage, and thereby facilitate an ideal living environment.

262. Take an investigation case conducted by the Control Yuan, Whether Quality Management and Protection Zone Planning Complies with Relevant Regulations: The Longen Weir Water Intake and the Manya Weir Water Intake of the Touchien River Midstream and Downstream in Hsinchu County, for example. According to this inquiry, the total length of the Touchien River is 63 km., and the catchment area exceeds 500km^2. Since 1983, according to the

Water Supply Act, the area has been classified as a drinking water quality and quantity safeguard zone. To protect the water resources, relevant government authorities should constrain relevant land development and exploitation according to relevant laws. However, according to the investigation of the Control Yuan, the Hsinchu County Government failed to conduct periodical inspection on the original polluting factories in the drinking water safeguard zones of the Touchien River according to the law for several years. It was not until 2018 that it learned of the existence of the polluting factories that are located in the safeguard zone. Such negligence is clearly inappropriate, and the government agency should clarify the impact of the polluting factories on water quality and quantity according to Article 12 of the Water Supply Act. What is even worse, the Hsinchu County Government decided to store the residential waste from villages and towns of Zhudong Township temporarily at the Zhudong Township Sanitary Landfill, for they have problems in dealing with waste disposal in the region. However, that specific location was planned to be within the drinking water safeguard zones of the Touchien River in 1982, and has been suspended and closed for use since July 2006 to present. Nevertheless, the county government still attempted to avoid the restrictive actions specified in Article 11 of the Water Supply Act on the grounds of temporary disposal or transportation of waste. Such inappropriate action has caused major risks to water source contamination.

263. After the investigation and tracking by the Control Yuan, there were still six polluting factories in the drinking water safeguard zones, and the Hsinchu County Government issued the following requirements to these factories: It advised two companies to propose relocation plans; one factory to relocate its sewage water processing plant to other area; and the other three factories agreed to reduce their production capability or increase the waste water recovery rate to improve the situation. Regarding the Zhudong Township Landfill, the county government is also actively planning the construction of an incinerator with a view to completely solve the excess waste crisis. The above describes one of the many cases related to the environmental rights of citizens with which the Control Yuan is concerned. In the future, under the leadership of the President of the Control Yuan and also the Chair of the National Human Rights Commission, Chen Chu, we will continue to spur the government's determination to tackle relevant environmental protection policies and measures in all aspects of the environment—land, air, water quality, sunlight, and landscape. These policies and measures will be put in place in order to protect its citizens from the consequences caused by environmental damage and to improve quality of life, such that it can guarantee a sustainable, high-quality living environment for future generations. By doing so, we may someday achieve the goal as stipulated in the Additional Articles of the Constitution, "Environmental and ecological

protection shall be given equal consideration with economic and technological development," thereby helping Taiwan to achieve its goal of becoming a nation looking forward to the full realization of human rights.

Independent Opinion
on the Third National Report on the ICCPR and ICESCR

Edited by: National Human Rights Commission
Published by: The Control Yuan, Republic of China (Taiwan)
Address: No.2, Sec. 1, Zhongxiao E. Rd., Taipei City 100216, Taiwan
Tel: (+886) 2-2341-3183
Website: https://www.cy.gov.tw/

Publication date: March 2021
GPN: 1011000352
ISBN: 978-986-0724-00-4 (paperback)
Chinese version: December 2020 ISBN: 978-986-5454-72-2 (paperback)