

## Responses to the List of Issues for the Third ICCPR and ICESCR Review

### International Covenant on Civil and Political Rights (ICCPR)

2. With reference to the *Third Report* (§§ 1-6, 276-280), bearing in mind the *Indigenous Peoples Basic Law*, please provide information on the measures taken to ensure that (1) any plans concerning the development of the ancestral lands and other resources of indigenous peoples respect and comply with the principle of prior, free and informed consent from indigenous peoples; (2) categorization of indigenous peoples is based on their self-identification; and (3) safeguards are adopted to guarantee the political and other participation of indigenous peoples.

#### Response:

1. Ancestral lands (traditional territories of indigenous peoples) are designated and delimited in accordance with the *Regulations on Delimiting Indigenous Land or Tribal Range Land* and constitute a part of the traditional territory of indigenous peoples. The principles of free, prior, and informed consent (FPIC) originate primarily from the *Indigenous and Tribal Peoples Convention* (International Labour Organization Convention 169) and the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). Please refer to the *Regulations on Consulting for Indigenous People's Consent* for the definitions and interpretations of “consent” and “participation” in the context of indigenous peoples that appear in current regulations in Taiwan.
2. In the international review conducted in 2017, members of the International Review Committee strongly recommended that the government immediately work with their indigenous peoples to formulate an effective mechanism to seek free, prior, and informed consent for development programs and projects that affect indigenous peoples and to provide remedy procedures for indigenous peoples whose rights have been infringed. For example, during the application by Asia

Cement Corporation (hereafter referred to as ACC) to lease the Fushi and Xiulin sections of the indigenous people's reserve lands in 1974, the government failed to inform the indigenous peoples residing there that if they wrote off the farming right, both their right to life and right to property would be severely impacted. On September 16 2021, the Supreme Administrative Court revoked the extension of the ACC's mineral rights, stating that before approving the extension of the ACC's mineral rights to 2037 on March 14 2017, the government failed to consult with the local indigenous peoples and gain their consent as stipulated in Article 21, Paragraph 1 of the *Indigenous Peoples Basic Law*. However, current provisions in the *Mining Act*, such as "the mining right remains valid during the period between the expiry date of the mining right and the approval date for extension" in Article 13, "indefinite extension of a mineral right" in Article 31, and "consent of the landowner is not required during the acquisition of mineral rights" in Article 47 fail to protect indigenous peoples' right to consultation and consent. These provisions highlight the urgent need to revise the current *Mining Act*. The NHRC is closely monitoring the amendment of the *Mining Act* (please refer to §252 and §254 of the *Independent Opinion on the Third National Report on the ICCPR and ICESCR*, §28 of the *Concluding Observations and Recommendations of the Second Reports on ICCPR and ICESCR* in 2017, and §67 to §76 of the *Parallel Report of Covenants Watch*).

3. Regarding the categorization of indigenous peoples based on their self-identification, indigenous peoples are categorized based on ethnic awareness and classification. Currently, the government utilizes a "national recognition" system characterized in Article 2 of the *Indigenous Peoples Basic Law* and Article 2 of the *Regulations on the Recognition of Indigenous Peoples and Tribes*. This system contradicts the self-identification principle described in international human rights conventions and documents. Moreover, the "surname-bound identity" situation stemming from the *Status Act for*

*Indigenous Peoples* may contradict the gender equality provisions of *the Constitution of the Republic of China (Taiwan)*, the prohibition of discrimination against women in the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, and the interpretation of personality rights and consanguinity proposed in Judicial Yuan Interpretation No.587.

4. However, the issue of indigenous peoples' identity involves affirmative action. Therefore, it is necessary to clearly differentiate self-identity from the identity attached to assuming mother's surname. This is a major issue that should be examined through a different lens.
5. The establishment of safeguards to guarantee the political and other participation of indigenous peoples must be verified through the legal system. Political involvement in the central government is protected by *the Additional Articles of the Constitution of the Republic of China*, local involvement is regulated by the *Local Government Act*, and other political involvement is regulated in the *Indigenous Peoples Basic Law*. Using the resettlement of residents in Alishan Township, Chiayi, to the Veoveoana Permanent Housing Community after Typhoon Morakot as an example, the victims were required to adjust their household registration from Alishan Township to Fanlu Township, preventing them from exercising their right to vote in their original township. Based on the outcomes of a meeting held by the Executive Yuan on March 29 2013, the Pingtung County Government concluded that for residents impacted by Typhoon Morakot and relocated to permanent housing communities, household registration and the address assigning of permanent houses were matters of local governance and should be handled by the local government. Therefore, permanent housing communities for residents displaced by Typhoon Morakot were delineated based on the extension of administrative power and the principle of "townships within a township," allowing indigenous people who relocated to permanent housing communities to exercise their right to vote for their

original townships, consequently satisfying the political involvement of indigenous peoples. The NHRC recommends that other local governments examine the obstacles to people's right to political involvement in their original townships and refer to the current practices of the Pingtung County Government when formulating feasible solutions, thereby protecting indigenous peoples' right to political participation in their original townships.

9. With reference to the *Third Report* (§ 28), please provide information on the measures taken to address the COVID-19 pandemic. In particular, please specify whether any such measures derogate from Taiwan's obligations under the ICCPR, including with respect to the rights to freedom of expression, freedom of peaceful assembly/association and freedom of movement. Please give details of how the *Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens* impacts human rights, in particular in relation to the provisions concerning quarantine, control and prevention measures, and personal data collection, storage and usage.
10. If those measures derogate from Taiwan's obligations under the ICCPR, please specify whether the measures are strictly required by and proportionate to the exigencies of the situation and limited in duration, geographic coverage and material scope, as outlined by the Human Rights Committee in its statement on derogations from the Covenant in connection with the COVID-19 pandemic (CCPR/C/128/2) and whether in this regard other obligations under the Covenant have been fulfilled.
19. Has the COVID-19 pandemic led to restrictions on the right to personal liberty? If so, which?
20. Have prisoners and detainees been affected by COVID-19? If so, how many of them tested positive, how many have

suffered from the disease, and how many died? Have detainees and prisoners, including children and elderly people, been released because of COVID-19 in order to reduce overcrowding and combat the danger of clusters?

22. Has the COVID-19 pandemic led to restrictions of freedom of movement? If so, which?

41. Please provide information about limitations or restrictions on freedom of expression related to the COVID-19 pandemic, including any prosecutions of journalists and media.

Response:

6. The government claimed that it has neither declared nor lifted any measures that derogate its obligations under Article 4 of the ICCPR. However, in response to the COVID-19 pandemic, the government implemented necessary response actions or measures in accordance with Article 7 of the *Special Act for Prevention, Relief, and Revitalization Measures for Severe Pneumonia with Novel Pathogens* ratified on February 25 2020. The NHRC believes that some of these measures restrict or impact human rights. Specifically:
7. Right to privacy: The government has instated an electronic fence and smart tracking system to control the spread of SARS-COV-2. To address rising concerns about infringements on privacy, the government should inform the public of its principles with regard to accessing and managing personal data. The NHRC has also noticed "witch-hunt" or "labeling" behaviors in society and the media that have led to infringements on the privacy of confirmed cases. For example, pejorative labeling of confirmed cases and their family members and specific seat allocation of children of medical professionals at school have resulted in stigmatization and discrimination. The NHRC calls on the government to address

this situation to prevent its epidemic prevention efforts from infringing on people's right to privacy.

8. Freedom of movement: To cope with the fluctuating severity of the pandemic, the government updates its border restrictions on a rolling basis. The Control Yuan launched an investigation into the border restrictions on Chinese spouses and their children in 2021 and found that the period of entry for Chinese spouses and their under aged children was different from that of other groups. The investigation also revealed differential treatment in terms of border restrictions towards children of different ages. The government has failed to provide a reasonable explanation for these discrepancies, and its decision-making process lacks transparency. Moreover, the opinions of human rights experts, stakeholders, and children were not included in the formulation of these measures. This lack of review of human rights norms made it impossible for the government to judge the rationality of the abovementioned differential treatment, which severely impacted family reunification and children's right to education. Therefore, the NHRC calls on the government to adopt transparent measures that do not encourage discrimination, be the least intrusive, and to provide reasonable explanations for the differential treatment of different groups of people. After the investigation by the Control Yuan, the Central Epidemic Command Center established a database of human rights experts. The NHRC will continue to monitor the mechanisms adopted by the government to collect the opinions of various groups on the impact of its epidemic prevention measures on human rights.
9. Rights of migrant workers: The Control Yuan launched an investigation into the living environments of migrant workers and found that the living quarters provided by employers and labor agencies were extremely overcrowded. Some environments were not partitioned and had shared bathroom facilities, washing machines, and kitchen appliances. After the outbreak of COVID-19 in early 2020, some enterprises required their migrant workers to relocate to designated

dormitories or housing complexes and forbade them from leaving arbitrarily, constraining them to overcrowded environments for extended periods of time. These measures not only violated the personal freedoms of migrant workers, but also increased the risk of community spread, and there are concerns that they violate the principle of equality that prohibits discrimination.

10. Human rights of prisoners: Currently, over 50,000 inmates are not yet eligible for vaccination. The Agency of Corrections, Ministry of Justice, stated in July 2021 that inmates were not included in the national vaccination program because the risk of infection of inmates (including prisoners) was relatively low and that vaccinating prison staff could indirectly protect inmates from getting infected. The NHRC reminds the government that prisons are highly populated environments. Over a hundred inmates work in the same workshop during the day, and over a dozen inmates share a cell at night. Moreover, vaccinated prison staff are still susceptible to the Delta variant, which could be passed on to inmates. Inmates are also at risk of infection when they leave the prison for medical treatment, work, or hearings. One infection could easily lead to an outbreak within a correctional facility. Therefore, the Agency of Corrections should include inmates characterized by the CECC as older or critically ill into the national vaccination program to protect inmates' right to survival, medical treatment, and health.
11. Freedom of expression: Persons who disseminate rumors or false information about the COVID-19 pandemic on social media and other online platforms resulting in harm to others are to be sentenced to not more than 3 years of imprisonment, or detention, or a fine of up to NT \$3 million under Article 14 of the *Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens* ratified on February 25 2020. These penalties are far greater than those for disseminating rumors under the *Communicable Disease Control Act* and *Social Order Maintenance Act*. The Taiwan High Prosecutors Office established its Pandemic

Anti-Disinformation Taskforce at the height of the pandemic on May 19 2021 while instructing district prosecutors' offices to establish their own anti-disinformation taskforces. In the meantime, the National Police Agency also ensured that its law enforcement agencies actively investigate potential sources of disinformation to nip the spread of disinformation in the bud and prevent public panic. The NHRC recommends that the government clearly delineate censorship from freedom of expression and assess whether penalties can curb the spread of disinformation.

12. The government must ensure that its epidemic prevention measures meet the requirements and conditions outlined by the Human Rights Committee on ICCPR and ICESCR in its statement on derogations from the Covenant in connection with the COVID-19 pandemic (please refer to § 247 of the *Independent Opinion on the Third National Report on the ICCPR and ICESCR*, § 28 of the *Third Report on ICCPR*, and §6-§8 of the *2020 Parallel Report of Covenants Watch*).

13. In § 57 of the *Third Report*, it is stated that “the Control Yuan will be designated as the National Preventive Mechanism (NPM) to inspect related sites and facilities where public authorities have deprived people of their personal freedoms allowing it to play a greater role in preventative monitoring”. Could you please explain whether such an NPM has already been established? If so, does this NPM comply with the requirements enlisted in OPCAT, above all its independence? Who appoints the members of the NPM? How many visits to detention facilities has the NPM conducted since its establishment? Were these visits unannounced? What were the findings and recommendations of the NPM?

14. In 2013 and 2017, the Review Committee recommended that all allegations or suspicions of torture shall be thoroughly and promptly investigated by an independent and impartial body with full criminal investigation powers. In its



*Response* (§ 166), the Government reaffirms that the ordinary prosecutors are “independent and impartial judicial authorities”. Since torture is a special crime usually committed by law enforcement authorities (police, prosecutors etc.), the investigation and prosecution of allegations of torture is only effective if it is conducted by authorities fully independent from such law enforcement authorities, including prosecutors. Could you please explain whether the Government has taken any efforts to establish a truly independent specialized body responsible only for the investigation and prosecution of torture and similar misconduct by law enforcement authorities?

Response:

13. The Executive Yuan passed the *Implementation Act of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Its Optional Protocols (Draft)* on December 10 2020 and sent it to the Legislative Yuan to begin the review process. The Draft recommends that the NHRC establish a dedicated torture prevention mechanism. In response, the NHRC introduced the NPM Pilot Program in 2021. Initial preparations included inviting a Czech human rights attorney in November 2020 to share his thoughts on the effects of the Czech NPM on detention centers for foreign nationals; inviting relevant government agencies in April and June of 2021 to discussion meetings to establish an NPM framework; and organizing the Forum on the International Practice of OPCAT-NPM and the Human Rights of Fishermen in June 2021, in which experts shared the operational experience of New Zealand’s NPM. Thereafter, scheduled NPM visits to eight juvenile detention centers were arranged, and as of October 15 2021, visits had been made to three institutions affiliated with the Agency of Corrections (including juvenile detention centers and correctional schools). A number of the above visits will be

unannounced as per UN requirements, and reports on the visits will be proposed. This program is ongoing.

15. This high incarceration rate results from “tough on crime” policies (see also Covenants Watch, §§ 375 ff) and leads to overcrowding of prisons and inhuman prison conditions, which have been strongly criticized by the Review Committee in 2013 and 2017. In § 46 of its *Independent Opinion*, the Taiwan National Human Rights Commission (NHRC) concludes that “at least 20% of the prisoners were unable to satisfy their basic needs when serving their sentence.” This would amount to a violation of their right to human dignity, as stipulated in the Constitution of Taiwan and Article 10 ICCPR. The *Third Report* acknowledges again prison overcrowding (§ 95), a serious shortage of prison staff (§§ 112 ff) and other problems related to imprisonment. Which measures have been taken to address this problem?

Response:

14. Regarding the issue of overcrowding in correctional facilities and detention centers indicated in § 95 of the *Third Report*, the overall approved capacity of detention centers nationwide was 57,573 before the pandemic in December 2019. The number of detainees in the same period was 60,956, which was 3,383 detainees over the approved capacity, for an overcrowding rate of 5.88%. A survey conducted by the Control Yuan concluded that as of 30 June 2021, the approved capacity was 58,517, and the number of detainees had been reduced to 52,070. Therefore, no overcrowding was observed. The judicial authorities are consciously reducing the number of detainees due to COVID-19 by delaying prosecution and sentencing.
15. However, as of the end of 2020, 10,536, or 20.1%, of detainees were incarcerated for drug trafficking, drug use, and driving under the influence. Although incarcerations have dropped compared to the previous year, prisoners incarcerated

for drug use serve an average sentence of 439 days. Yet, the effectiveness of incarceration on rehabilitation and social reintegration remains unclear. Therefore, medical professionals believe that people detained on drug or alcohol abuse charges should be deemed patients needing rehabilitation rather than felons. The Executive Yuan has yet to amend Article 4, Paragraph 7 of the *Rules on the Administration of Prison Affairs by the Agency of Corrections, Ministry of Justice* to in state prison segregation and issue treatment-based sentences when necessary, even though segregation could relieve overcrowding and other inhumane conditions.

16. Regarding the severe shortage of prison staff, the Control Yuan corrected the Ministry of Justice in a document issued on 14 September 2016 and requested that the Executive Yuan conduct a review and implement relevant improvement measures. The letter alleged that there were 4,567 prison staff and 62,899 prisoners in Taiwan's correctional facilities in 2015, for a staff-to-prisoner ratio of 1:13.77, much lower than in other countries such as Hong Kong (1:2), Macau (1:2.1), the United Kingdom (1:3), South Korea (1:3.35), the United States (1:5.3), Japan (1:5.5), and Singapore (1:6.4), suggesting that the workload, stress, and risks born by prison workers in Taiwan are far higher than in other countries. Furthermore, the ratio of prison chaplains (who are tasked with prisoner education and reform) to prisoners was 1:246, indicating an extreme shortage and the failure of the educational function of prisons. These issues are the main reasons for prison riots. Although the Executive Yuan agreed to increase prison staff by 400 in July 2016, this action is still inadequate to reach the 5-year target of the Ministry of Justice to reach a staff-to-prisoner ratio of 1:5. Therefore, further improvement is needed.
17. Roughly 80% of prisons engage in commissioned processing work. Prisoners receive a monthly salary of between NT \$200 and \$500, which is far lower than the basic monthly cost of living for prisoners of NT \$3,000 determined by the Agency

of Corrections in 2018 and which fails to meet the fair wage regulations for prisoners stipulated in the *United Nations Standard Minimum Rules for the Treatment of Prisoners*. This has resulted in extremely challenging situations for prisoners who do not have financial support from family or friends. During the Kaohsiung prison riot that occurred on 11 February 2015, the main complaint of the six inmates was the loss of dignity due to having to rely on the financial support of family and friends. This occurrence highlighted the fact that Taiwanese prisons fail to meet the requirements stipulated in Article 1 of the *Prison Act* and Article 10, Paragraphs 1 and 3 of the ICCPR stating that prisoners shall be treated humanely and with dignity to assist them in reform and social reintegration (see Letter No. Shi-Zheng-Zi-Di No. 3 issued by the Control Yuan in 2016).

18. The Ministry of Justice proposed a draft to amend Article 37 of the *Prison Act* to adjust the distribution of work surplus as labor wage from 37.5% to 60%, which subsequently passed the third reading and took effect on 15 July 2020. However, this amendment only increases the monthly salary of prisoners earning NT \$500 by NT \$112.5, which remains far lower than the basic monthly cost of living for prisoners of NT \$3,000 determined by the Agency of Corrections in 2018. The Control Yuan corrected the Ministry of Justice in a document issued on 14 September 2016, claiming that the Agency of Corrections failed to provide inmates with clothing and other necessities as stipulated in Article 45, Paragraph 1 and Article 46 of the *Prison Act*, resulting in inmates having to purchase these items themselves and making life in prison extremely challenging. To this day, the Agency of Corrections refuses to pay for inmates' necessities, citing that these actions would attract negative public sentiment and cause a crowding-out effect. This refusal not only violates the regulations of the *Prison Act* but also disregards Article 10, Paragraph 1 of the ICCPR, which states that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

19. Regarding deaths of inmates suffering from severe illness shortly after being released for medical treatment, § 108 of the *Third Report* published in June 2020 highlighted that the mortality rate of inmates granted compassionate release between 2015 and 2019 was 24.7%, which is significantly lower than the mortality rate of 50% to 60% between 2006 and 2011 presented in the survey report released by the Control Yuan on 18 February 2013. A possible reason for this difference may be that inmates were included in the second-generation National Health Insurance in 2013. A review conducted by the Control Yuan on the cases of compassionate release approved by the Agency of Corrections, Ministry of Justice revealed irregularities in the releases of critically ill inmates for compassionate release. For example, among the 500 inmates who died during compassionate release between 2006 and 2011, 33 died within one day of being approved for compassionate release, 90 died within 10 days, and 66.6% died within six months, clearly violating inmates' right to seek external medical assistance when prison medical care is inadequate under Article 58 of the *Prison Act* and their right to be transferred to a specialized hospital or private hospital if professional treatment is required under § 22 of the *United Nations Standard Minimum Rules for the Treatment of Prisoners*. Although the mortality rate of inmates during compassionate release has seen significant reductions in recent years, the Ministry of Justice must regularly release statistics on the survival rate of inmates after compassionate release for public review in order to maintain public trust and protect the right to health and survival of inmates.

21. Since the *Second Report*, new legislation has been introduced to deal with the exploitation and inhumane working conditions of foreign crew on Taiwanese flagged vessels. Adoption of the new legislation amounts to recognition that there was a serious problem. Please explain how the legislation has been implemented. In particular, have there been prosecutions or other enforcement measures to address the

violations of Article 8 ICCPR?

Response:

20. Please refer to § 9 and § 10 of the *Independent Opinions* for the ICESCR.

23. In its *Third Report*, the Government reports a significant increase in the number of rejected visas (Table 14: from 4,934 in 2016 to 11,817 in 2019), in the number of expelled foreigners (§ 141: from 9,296 in 2015 to 16,577 in 2019) and in the number of foreigners held in large detention centres (§ 142: from 8,526 in 2015 to 13,585 in 2019). What is the reason for these rapidly growing numbers? What is the precise number of children (unaccompanied minors up to the age of 18 years and children with their families) who were expelled and/or detained in these years?

24. Covenants Watch reports (§§ 526 and 527) that stateless children are often excluded from access to primary and other forms of education and national health insurance benefits, in violation of Article 24 ICCPR. Can you please explain whether this allegation is correct and which efforts the Government is taking to provide stateless children with equal rights aimed at satisfying their basic needs?

Response:

21. There are many cases of children born to migrant workers with expired visas in Taiwan who lack access to medical, social, and educational resources. Recent cases include a baby boy of migrant workers who died from suspected abuse by his babysitter, the deaths of five infants in two years due to "poor environment and lack of proper care" at Taipei Harmony Home (an organization that cares for vulnerable pregnant migrants and their children). A major controversy centered on government intervention in 140 instances of undocumented babies born to migrant workers, among others. Although undocumented infants can gain residency on a per-case basis

and receive benefits under the *Protection of Children and Youths Welfare and Rights Act*, most of these measures are transitory and do not guarantee social welfare in the long term. When these babies turn 18 or 20 and are no longer minors, they lose their umbrella of protection. The NHRC recommends that the Taiwanese government amend the *Nationality Act* to conform with the recommendations of the Convention on the Rights of the Child by providing infants born to migrant workers in Taiwan with the same medical, social, and educational resources as Taiwanese infants and guaranteeing care equality. The NHRC also holds that all infants, regardless of whether they are born in or out of wedlock, deserve equal care and social protection under Article 25, Paragraph 2 of the Universal Declaration of Human Rights, Article 24 of the ICCPR, and Article 10, Paragraph 3 of the ICESCR (please refer to the §§ 148-150 of the NHRC *Independent Opinions on the Third Report of the ICCPR and ICESCR* and §§ 525-527 of the 2020 Parallel Report of Covenants Watch).

26. In the *Concluding Observations* of 2017, §§ 38-39, the CRPD International Review Committee has found that many laws in Taiwan deprive persons with disabilities of the right to justice. In addition, the Committee has found that a failure to distinguish between legal capacity and mental capacity deprives persons with disabilities of the right to access to justice. In both relations, they have found a violation of Article 12 of CRPD. The Government is requested to give information on what has been done with respect to the findings of the CRPD Committee and comment on whether they likewise constitute a violation of the right to an equal access to court and a fair trial under Article 14 ICCPR.

Response:

22. The National Human Rights Commission (NHRC) noted that the Government had promoted Communication Access Realtime Translation (CART) services in the courts. However,

the number of cases where the services are employed has not been disclosed, nor is there a comprehensive schedule for constructing barrier-free environments and facilities in courts. This has prevented any assessment of implementing practices that can ensure the right to access to justice for persons with disabilities.

23. In addition, in a 2019 inquiry, the Control Yuan found that when investigating cases involving suspects with disabilities, judicial and law enforcement agencies had failed to recognize these suspects' inability to give testimony. The Control Yuan also discovered that these agencies failed to make suitable procedural adjustments and to provide assistance by taking into consideration the suspects' physical and mental condition and their ability to distinguish reality from fantasy. This has affected judgments made in the investigation of such cases.
24. Therefore, despite the formulation of provisions regarding guardianship over adults by agreement in the 2019 legal amendment that allows for the self-appointment of guardians, such practices are still a form of substituted decision-making. The NHRC noted that Taiwan lacks a diverse range of supported decision-making models to replace the more commonly found substituted decision-making models. This is especially detrimental to the rights of mentally disabled adults, particularly considering that the current system of "ordering commencement of guardianship" determines legal capacity based on mental capacity, and that the "best interest principle" as upheld by judicial agencies does not conform with Article 12 of the CRPD, which demands the recognition of the personal will and preferences of persons with disabilities. Furthermore, the Judicial Yuan never kept track of the number of persons with disabilities under assistance or subject to the order of commencement of guardianship (please refer to § 64 and § 65 of the NHRC's *Independent Opinion on the Second National Report on the CRPD*). The NHRC considers this as non-conformity to Article 12 of the CRPD.
25. In a press release issued on October 20, 2021, the NHRC focused on the treatment system for mentally impaired



lawbreakers and stressed that if a maximum number of years for the disposition of custody is revoked in future legal amendments, then restrictions on the number of extensions allowed should be clearly stipulated and the frequency of judicial review should be increased based on the extended length of disposition of custody, in accordance with the due process of law. Supplementary measures should also be formulated based on the United Nations *Guidelines on the Right to Liberty and Security of Persons with Disabilities* and *International Principles and Guidelines on Access to Justice for Persons with Disabilities*. The opinions of persons with disabilities and their representative organizations should also be taken into consideration.

31. Please explain how the problem of birth registration of children born in Taiwan is being addressed in light of the circumstances of birth mothers who have an irregular immigration status. What measures can be taken to ensure that all children born in Taiwan are registered? Civil society organisations have proposed that addressing this issue requires a more relaxed policy with respect to migrant women who give birth in Taiwan. Is this proposal or similar measures being considered?

Response:

26. As pointed out in a previous investigation conducted by the Control Yuan, the Government has failed to address these urgent issues with its slow implementation of measures to protect and improve the rights of undocumented children of migrant workers in Taiwan. Statistics show that from January 2007 through December 2019, 878 undocumented and vulnerable children were born in Taiwan to unaccounted-for migrant workers; 236 of these children are missing. However, the border restrictions imposed by many countries during the pandemic have stranded these unaccounted-for migrant workers in Taiwan, as they cannot be cleared for departure. This difficulty, coupled with the Government's epidemic

prevention measures that discouraged outdoor activities, made it even more difficult to locate unaccounted-for migrant workers. Statistics up to May 2021 show a growing number of undocumented children born in Taiwan to unaccounted-for migrant worker mothers, with the number of missing children increasing to 293. These children are faced with the urgent issues of being undocumented and a lack of access to health insurance, social benefits, and education. The NHRC once again urges the Government to confront the issues of unaccounted-for migrant workers' inability to register their children's resident status and the legal restrictions that prevent the national welfare authorities from helping the children of migrant workers with the obstacles to naturalization unless they are adopted by Taiwanese nationals or have reached 20 years of age. The Government is urged to eliminate these obstacles by amending the *Nationality Act*, so as to protect these children's right to identity and to conform with Article 24 of the ICCPR, which states that every child shall have the right to enjoy the special protection of their family, society, and the State, as well as the right to have their name registered and acquire a nationality (please refer to §§ 148-150 of the NHRC's *Independent Opinion on the Third National Report on the ICCPR and ICESCR* and §§ 502-505 of the 2020 Parallel Report of Covenants Watch).

33. With reference to the *Third Report* (§§ 183-194), please provide information on (1) facial recognition technology being used in Taiwan, and (2) the new E-Identification (EID) system, with implications for surveillance and limitations imposed on the right to privacy. Please indicate whether those innovations are in accordance with the law and are strictly required by and proportionate to the exigencies of the situation, as well as in compliance with the principle of non-discrimination.

34. Please specify further whether there are any measures to prevent personal data from being misused by the public and

private sectors; an effective system for conducting risk assessment concerning those innovations and monitoring of their operationalization; and a mechanism to receive complaints and ensure corrective action in conformity with human rights. Please provide information on incidents of abuse about the scope, use, access and storage of such data, and related remedial measures.

Response:

27. From 2017 through 2019, the Government's plan to implement a smart video surveillance system with facial recognition capability at train stations sparked concerns about infringement of privacy. Moreover, an investigation conducted by the Control Yuan in March 2021 found that during the planning for the new eID system, the Government disregarded several issues—including the lack of legal authorization and a suitable virtual digital environment—and attempted to roll out the new ID cards without fully communicating with the public or conducting a risk assessment of the system's potential for privacy infringements, cybersecurity issues, and personal data breaches. These incidents show that the Government's awareness of cybersecurity and privacy protection and its development of virtual digital environments still leave much to be desired. One of the more significant issues lies in administrative measures that utilize new technologies in ways which potentially result in surveillance that violates privacy. As the Government has yet to formulate a clearly stipulated set of regulations to prevent the abuse of such measures and establish a competent authority for privacy and personal data protection, the implementation of these protective measures requires further attention from the Government.
28. The Government has also experienced several personal data breaches in the past. Examples included a leak of the personal data of approximately 580 thousand civil servants across Taiwan, the public disclosure of the personal data of underage children in some cases under the Judicial Yuan's judicial

system, and a personal data leak (including titles names, account numbers, payroll information, etc.) involving 2,313 local government employees. These incidents also showed that there is room for improvement in the Government's cybersecurity and personal data protection efforts.

29. In an investigative report published in July 2020, the Control Yuan pointed out that the Government's large-scale, compulsory collection of National Health Insurance (NHI) data and creation of a database for research purposes in medicine and other fields of study are only subject to the *Personal Data Protection Act*, *Organic Act for the Ministry of Health and Welfare*, and other relevant regulations, noting the insufficient legal basis for these measures. The Control Yuan urged the Government to formulate a special law on medical data and to develop comprehensive and concrete procedures for legal authorization and other matters involving due process, while also ensuring the public's right to refuse or withdraw their consent in order to secure public trust. In addition to ensuring the confidentiality of the public's personal medical data, the Government can also utilize the NHI database to greatly improve the quality of Taiwan's medical technology, thereby benefiting the entire world and achieving a win-win.

36. With reference to the Review Committee's 2017 *Concluding Observations*, the Committee recommended the provision of explicit legal recognition of people's freely chosen gender identity, without unnecessary restrictions (§ 72). Bearing in mind the work of the UN Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity, and the international position that the gender identity of transgender persons should be recognized without coerced surgery and psychological assessment, please indicate developments concerning the preparation of a law to recognize gender identity in this respect.

37. Regarding intersex persons, please indicate whether there are developments to prevent surgery concerning their sex characteristics from being imposed on them from a young age and to ensure their autonomy of choice in relation to those characteristics, bearing in mind the evolving capacities of the child.
38. Concerning gender markers, please provide information on developments to promote non-discrimination and measures to foster empathy for gender diversity.

Response:

30. On September 23, 2021, the Taipei High Administrative Court ruled that the Government's baseless requirement for transgender people to pay for psychological assessments, undergo sex reassignment surgery, and obtain proof of these procedures before they are allowed to apply for gender reassignment is a failure to protect human dignity, the free development of personality, personality rights, and the right to gender self-determination. The court therefore ruled that the Government shall abolish the requirement to provide proof of sex reassignment surgery. Regarding this matter, the NHRC strongly urged the Government to stop delaying the legalization of gender reassignment registration.
31. Although the Government released a set of guidelines recommending surgical and medical procedures related to underage intersex persons in October 2018, data obtained by the NHRC shows that the Government did not disclose the number of underage individuals among the 17 intersex persons who underwent genital removal surgery between 2016 and 2019, making it difficult to verify the implementation of measures that protect underage intersex persons' right to gender self-determination.
32. Furthermore, the NHRC has noted that transgender students are still subject to biased and unfriendly treatment on school campuses. In August 2021, the Control Yuan received a complaint stating that a transgender student applying for

dormitory housing was the target of inappropriate and discriminatory remarks from university personnel. The personnel, who made the inappropriate remarks in a meeting, were subsequently ruled by the district court as having violated the student's personality rights and right to gender identity, and shall compensate the student for the emotional distress caused. This case shows that there is room for improvement in awareness of gender equality at academic institutions and their gender-inclusive campus facilities (e.g., restrooms, dormitories, etc.). The Control Yuan has accepted the complaint and is currently investigating the case. The NHRC hereby urges the Government to make an effort to ensure respect for transgender persons in schools and in society (please refer to §§ 152-155 of the NHRC's *Independent Opinion on the Third National Report on the ICCPR and ICESCR* as well as § 50 of the *Concluding Observations and Recommendations Adopted by the International Review Committee on January 20, 2017*).

33. The general public perceives gender-diverse persons as individuals suffering from a psychological disorder that results in gender identity confusion. To combat this multiple discrimination against gender-diverse persons, the Government should review its current educational, employment, and healthcare policies, and strive to create a gender-inclusive environment that ensures the rights of these individuals. Moreover, outside of homosexual persons, who now enjoy the right to marry, the rights enjoyed by other genders are still uncertain. The Government should re-examine the rights of all gender groups and verify that they conform to the interpretations made in the ICCPR and ICESCR.

<p>51. It is commendable that Taiwan has legalised same sex marriage through <i>Judicial Yuan Interpretation No. 748</i>. Investigating the de facto situation, has there been monitoring of the implementation of the law to ascertain whether there are circumstances that would impede certain</p>
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individuals or couples from benefitting from this law? If so, please explain such circumstances and whether there are plans to circumvent them.

Response:

34. The *Judicial Yuan Interpretation No. 748*, promulgated on May 24, 2017, ruled that same-sex marriage must be legalized in Taiwan within two years. On May 24, 2019, the *Act for Implementation of J.Y. Interpretation No. 748* was promulgated and enacted. The NHRC would like to reiterate its concern over the competent government agencies' failure to amend the relevant laws or implement supplementary measures in time. This has prevented many transnational same-sex couples from registering their marriage in Taiwan due to Article 46 of the *Act Governing the Choice of Law in Civil Matters Involving Foreign Elements*, which requires same-sex couples to both be from countries where same-sex marriage is legal in order to register their marriage; this has prevented same-sex couples from obtaining dependent visas and residing in Taiwan, and has caused other issues related to the right to family reunification. Furthermore, same-sex couples who have registered their marriage in a third country or whose marriage registration is protected by that country's laws are still not considered legally married in Taiwan and are unable to obtain dependent visas and reside in Taiwan. These restrictions are considered to be violations of Article 16 of the *Universal Declaration of Human Rights*, Article 23 of the ICCPR, and Article 10 of the ICESCR, which state that same-sex couples have the right to marry and to family reunification, and are entitled to protection by society and the State. Such issues are currently under investigation by the Control Yuan.
35. According to Taiwan's existing *Act for Implementation of J.Y. Interpretation No. 748*, same-sex couples are only allowed to make a "stepparent adoption," which means that one partner may only adopt the other's biological child to establish a legal parent-child relationship and raise the child in the same-sex family. However, this restriction had resulted in a predicament

for same-sex couples in which one partner had previously adopted a child as a single parent before same-sex marriage was legalized. Although these couples can now legally marry since the same-sex marriage law has officially entered into effect, the adopted child cannot enter into a legal parent-child relationship with the partner of their adopted parent.

52. Numerous initiatives have been reported which are addressing violence against women in Taiwan, especially domestic violence. Please indicate whether the impact of the various initiatives has been assessed, and on the basis of this assessment, whether a comprehensive plan has been developed to address domestic violence by adopting an interdisciplinary and multi-sectoral approach.

Response:

36. Regarding this issue, the NHRC notes with concern that women and children with disabilities are at greater risk of violence, yet the Government has failed to show any recognition of the double disadvantage that women with disabilities have and their special needs by taking preventive measures, providing shelters for placement assistance, or proposing other assistive and protective measures. The *Concluding Observations and Recommendations Adopted by the International Review Committee on January 20, 2017* recommended that the Government should pay more attention to the needs of disadvantaged women (e.g., women with disabilities). However, in its *Response to the Concluding Observations and Recommendations Adopted by the International Review Committee on January 20, 2017*, the Government did not detail any protective or assistive measures for women with disabilities nor did it mention any comprehensive plan to provide concrete solutions to violence in all its forms (please refer to § 11, § 26 and § 79 of the NHRC's *Independent Opinion on the Second National Report on the CRPD*).



55. With reference to the *Third Report* (§§ 275-280), please provide information on access by persons belonging to minorities and by indigenous peoples to healthcare and other social, cultural, political and economic supports interfacing with the COVID-19 pandemic.

Response:

37. Indigenous health issues are mainly presented on two aspects: healthcare issues in remote areas and the impact of indigenous peoples' environment (including culture, education, society, customs, behaviors, etc.). These issues are reflected in the standardized mortality ratio of Taiwan's indigenous peoples and their lower life expectancy.
38. To improve medical care for indigenous peoples, the Government should focus on creating supportive environments suited to local conditions and incorporating cultural inclusivity into its health policies. An indigenous health database should also be built to allow the monitoring of basic health data of indigenous peoples. The ultimate goal for indigenous health should be self-determined goals set by indigenous peoples who are most aware of their own needs, so as to establish autonomous systems in indigenous communities.
39. An assessment of indigenous medical care policies such as the Offshore Islands Medical Care Project, Indigenous Township Health Center Hospital Information System (HIS), Picture Archiving and Communication System (PACS) Project, Comprehensive Long-Term Care Service Location Project, and Township Daycare Center Project. In 2016, long-term care for indigenous peoples was officially included in a special chapter in the Ten-Year Long-Term Care Plan 2.0.
40. However, the issue of indigenous health inequities has long existed in Taiwan. Although the Government has noted the issues concerning indigenous peoples' right to health and environmental safety, and has established Cultural and Health Stations to provide basic health care, promote health information, and offer COVID-19 vaccination to certain

priority groups during the pandemic, the NHRC must still point out the insufficient infrastructure and shortage of medical resources and care service personnel in indigenous townships. Moreover, it was estimated in 2018 that the number of indigenous peoples with disabilities had exceeded 10,000. The NHRC recommends that the Government should promptly adopt effective strategies to include elderly indigenous people with disabilities in its long-term care system (please refer to §§ 81-85 of the 2020 Parallel Report coordinated by Covenants Watch).

## International Covenant on Economic, Social, and Cultural Rights (ICESCR)

7. Considering the significant gap in the employment rates of women as compared to those of men in the general population as well as among indigenous peoples and persons with disabilities, please discuss the measures that are in place if any, to close this gap.

### Response:

1. Regarding this issue, the NHRC has been paying close attention to the barriers to employment faced by indigenous women and women with disabilities. Although the difference in labor force participation rate between indigenous men and women has gradually decreased over the years, the gender pay gap in non-agricultural industries is still the highest in the entire country. Indigenous women have fewer employment opportunities due to disadvantages in education, limited local industries, and dual discrimination against ethnicity and gender. A general study “*the effectiveness of the Government’s employment assistance for indigenous peoples,*” conducted by Control Yuan in 2020 found that the percentage of indigenous peoples employed in the manufacturing and construction industries is still high compared to other groups. Moreover, there is a significant difference between the average pay of indigenous workers and that of non-indigenous workers, with the former susceptible to changes in the economic environment and economic policies. The NHRC suggests that the Government should actively study the employment needs and expectations of indigenous women and initiate a long-term plan to develop vocational training, employment counseling, and other supplementary measures accordingly, so as to remove the barriers to employment of indigenous women and help them improve their employability, employment stability, and employment quality.
2. The NHRC has also noted the long-existing issues of low

labor force participation rates, high unemployment rates, and low wages faced by women with disabilities. These issues prevent women with disabilities from achieving financial security and can easily plunge them into poverty. The NHRC urges the Government to address the issue of multiple discrimination against women with disabilities in job search and in the workplace, and to identify the underlying causes—including employment discrimination, stereotyping, unequal pay, difficulties in job redesign, and limited employment options—and their impact, in order to develop affirmative action and employment assistance measures that meet the needs of women with disabilities (please refer to *General Comment No. 3* [2016] of the CRPD and § 31 of the *Independent Opinion of the National Human Rights Commission on the Second National Report on the Convention on the Rights of Persons with Disabilities*).

8. In addition to §§ 72 to 75 of the *Third Report*, please provide more relevant and concrete information that directly responds to the repeated calls by the International Review Committee for the Government to pass the *Domestic Workers Protection Act* without further delay. Please indicate the timeframe within which the work of the Domestic Workers Task Force referred to in § 76 of the *Third Report* will be completed.
9. Please provide detailed information on the measures undertaken by Government to protect the human rights of migrant domestic workers during the period of waiting for the adoption of the *Domestic Workers Protection Act*.

Response:

3. Domestic workers in Taiwan, be it local or migrant workers, are currently not subject to the employee-employer relationship and workers' rights and interests enforced through labor contracts as stipulated in the *Labor Standards Act*. The Government explained in its *Response to the*

*Concluding Observations and Recommendations Adopted by the International Review Committee on January 20, 2017* that it had completed the drafting of the *Domestic Workers Protection Act* in 2011 and submitted it to the Executive Yuan in 2013 for further review, and that the draft required reexamination due to promotion of the long-term care system. However, in regard to the legislative progress made since 2013, the Government did not explain its failure to effectively resolve the legislative disputes concerning domestic workers. Without legal protection, the Government is unable to effectively resolve the issues faced by domestic workers, thus preventing protective measures for domestic laborers from being implemented. Although the Government established a Domestic Workers Protection Task Force and proposed pay adjustments, pre-employment seminars, respite care services, and other measures, the average pay of domestic workers is still less than the basic wage stipulated in the *Labor Standards Act*, and regulations on working and off-work hours are still lacking. The NHRC is compelled to point out once again that the Control Yuan's 2014 investigation report, the 2013 and 2017 *Concluding Observations of the International Review on the ICCPR and ICESCR*, and parallel reports published by NGOs have all strongly urged the Government to complete the legislative process without further delay in order to protect the work rights of domestic workers and resolve the issues of overtime work, poor working environments, and human rights violations (please refer to § 192 of the NHRC's *Independent Opinion on the Third National Report on the ICCPR and ICESCR*, § 31 and § 32 of the *Concluding Observations and Recommendations Adopted by the International Review Committee on January 20, 2017*, page 77 of the *Shadow Reports on ICCPR & ICESCR from NGOs* [2011], § 9.1 of the *Amnesty International Shadow Report* [2020], and §§ 196-204 of the 2020 Parallel Report coordinated by Covenants Watch).

4. In August 2021, claiming that the reduced number of incoming migrant workers resulting from the pandemic has

greatly affected the rights and interests of employers, the Government added a new rule stipulating employment renewals would be prioritized for migrant workers who previously worked in the same type of job. However, several NGOs have reported that the new rule restricts migrant workers' right of the employment transfer in different industries, and raises disputes due to the lack of discussion. The NHRC recommends that the Government gain a better understanding of the reasoning behind migrant workers' cross-sector job hopping and the challenges therein, and reassess the impact of this new rule on the labor rights of migrant workers.

11. Indicate the specific penalties imposed by the Ministry of Labour on employers who are found to be violating the "labour rights" of working students as mentioned in § 89 of the *Response*.

Response:

5. The NHRC has noted that teenagers in the labor market are at a stage where they suffer from occupational disadvantages and are often employed in high-risk jobs due to their age, insufficient experience and skill, and the limited recruitment channels and employment options available. Hostile work environments and discrimination can also lead to violations of the labor rights of teenage workers or exclude them from protection. There have been several reports of teenagers being exposed to bullying and abuse in recent years. For example, in 2018, a 15-year-old teenage dropout of mixed Taiwanese and Indonesian descent was subjected to workplace bullying and beaten to death in Taoyuan. According to reports, the teenager was employed in a high-risk job at a wage lower than that received by adults, was unable to submit an agreement from legal presentative for his employment, and was not enrolled in Labor Insurance or National Health Insurance. In 2020, another teenager was held captive and tortured by his employer for over three months. These cases show that the

Government has yet to create a safe environment in which teenagers can seek employment and work without fear. In addition to providing follow-up counseling help to teenage dropouts, the Government should also formulate measures for job matching, career counseling, and vocational training to help these teenagers. The NHRC urges the Government to address the differences between teenage and adult workers by ensuring special labor protections and prohibiting their employment in night jobs or high-risk jobs. The Government should also take into account teenagers' right to education, as well as their career development, physical and mental health, and social development. The NHRC asks that the Government formulate teenage labor rights protection laws and other supplementary measures so as to fully protect teenagers' labor rights.

6. The NHRC has also noted several instances of foreign students enrolled in academic institutions in Taiwan being forced to sign illegal part-time employment agreements, work overtime, and have their passports withheld. In some cases, students were even subject to having their pay illegally deducted by their academic institution and labor brokers. These incidents have occurred in at least three academic institutions.
7. Moreover, the 2017 international review on the ICCPR and ICESCR also turned its attention to the issue of underage student workers being employed in part-time jobs (mostly overnight shifts) that offer subminimum wages and no insurance coverage. In the Control Yuan's 2019 investigation of part-time employment among local and foreign students, it was found through the Government's special inspections into the working conditions of part-time student laborers that as of August 2019, 850 businesses were in violation of the law. This shows a lack of enforcement of existing laws. The NHRC urges the Government to actively follow up on the violating employers to ensure improvements, gain a full situational awareness of the current circumstances of underage part-time student labor, and demand that employers

conform to the *Labor Standards Act* and other related regulations. The Government should also ensure that the *Worst Forms of Child Labour Convention* adopted by the International Labor Organization (ILO) in 1999 is also observed, so as to prevent children from being involved in particularly bad forms of child labor. Complaint channels for teenagers should also be established and effectively promoted (please refer to § 177 of the NHRC's *Independent Opinion on the Third National Report on the ICCPR and ICESCR* [2021] and § 38 of the *Concluding Observations and Recommendations Adopted by the International Review Committee on January 20, 2017*).

12. In view of the significantly higher rates of work-related accidents among foreign workers than among those who are Taiwan nationals as quoted from a 2020 Control Yuan report, what steps are being taken to effectively reduce these accident rates? (2020 Covenants Watch Parallel Report, page 237)

Response:

8. Currently, the rates of foreign workers becoming disabled due to work-related accidents (according to data of 700,000 foreign workers in Taiwan) are two times higher than those of domestic workers. Despite government oversight and demands that manufacturing industry employers where work-related accidents that result in disabilities are prone to occur actively improve the working environments of foreign workers, their efforts have been ineffective. For example, factory warning signs have not been translated into languages that foreign workers understand, and thorough occupational safety education and training have not been provided. The NHRC is particularly concerned with the following: Foreign workers who come to work in Taiwan often bear heavy financial burdens. Thus, when they suffer injuries from work-related accidents, they do not seek medical treatment for fear



of being sent back to their home countries. Instances of foreign workers being forcibly sent back to their home countries by their agents or employers during their period of treatment or being subject to disputes about compensation are also regularly observed. Nonetheless, the government has not yet managed to collect the relevant statistical data to keep itself updated about foreign workers' status after they become disabled due to work-related accidents, and has not proposed response and assistance measures to effectively resolve the difficulties faced by Taiwan's 700,000 foreign workers (please refer to § 185 of NHRC's *Independent Opinion on the Third National Report on the ICCPR and ICESCR*).

13. In addition to the information provided in the *Third Report*, the *Common Core Document* and the *Response*, please describe what concrete measures are being undertaken by the Government to overcome the obstacles to effectively and finally put an end to the frequent and multiple human rights abuses happening on board Taiwanese vessels at sea, including in the following specific cases:

(a) In 2014, the Taiwanese vessel named "Giant Ocean" was implicated in the trafficking of more than 1000 Cambodian fishermen who were also found to be victims of deception, starvation, torture, and death threats. Six Taiwanese were convicted of human trafficking by the Government of Cambodia but only one was sent to prison while the others remain at large as the Government of Taiwan still has to convict them. It is reported that two of those convicted remain on the list of trusted intermediaries in Taiwan's Fisheries Agency and continue to actively engage in the employment of foreign crew members.

(b) In September 2020, the US Department of Labor included Taiwan's distant water fishing catches in its *list of goods produced by child labor or forced labor*. The same source also described the situation of the foreign crew members who "face hunger and dehydration, live in degrading and unhygienic conditions, are subjected to

physical violence and verbal abuse, are prevented from leaving the vessel or ending their contracts, and are frequently not paid their promised wages or have food and lodging fees illegally deducted from their wages.” (2020, US Department of Labor. *List of Goods Produced by Child Labor or Forced Labor* p. 76).

Response:

9. In February 2021, the NHRC passed a resolution to draft the *Foreign Fishermen Human Rights Project Report* and organized several Forums on International Practice of OPCAT-NPM & Human Rights of Fishermen. In an interim report submitted in August of the same year, the NHRC released information including investigations conducted by the Control Yuan to identify cases of forced labor among foreign fishermen that had occurred over the years. This included information about the long-term abuse and death of a foreign fisherman working on the fishing vessel Fu Tzu Chun in 2016, fishing vessel Fuh Sheng 11’s violations of the Work in Fishing Convention and subsequent detention as an international sanction in 2019, the domestic employment of foreign fishermen in 2020, the USA’s inclusion of Taiwan’s distant water fishing catches in its List of Goods Produced by Child Labor or Forced Labor in May 2021, flag of convenience ships Da Wang and Chin Chun 12’s forced labor practices, and foreign fisherman agent systems and management.
10. Interviews conducted during the aforementioned investigations showed that foreign fishermen continue to suffer from embezzled salaries, long working hours, confiscated identity documents, being forced to sign exploitative contracts by their intermediaries, and violence. Nonetheless, the Government has yet to reach a consensus on what constitutes a human trafficking-related labor exploitation case, and there are still an insufficient number of personnel assigned to inspect foreign fisher labor as well as a

lack of professional knowledge on human trafficking. Accordingly, the NHRC launched a fisher's human rights collaboration platform to help Executive Yuan offices promptly engage in activities such as perfecting management mechanisms that prevent labor exploitation from occurring on flag of convenience ships, conducting labor inspections on fishing vessels, improving living conditions on fishing vessels, strengthening assistance systems, and increasing fisher's salaries as well as the transparency of fishing vessel information. The goal is to ensure that foreign fisher's rights are protected (please refer to § 194 and § 195 of NHRC's *Independent Opinion on the Third National Report on the ICCPR and ICESCR*).

14. What is the extent of illegal underage employment in Taiwan? What measures does the Government envisage to effectively stop this practice?

15. Please provide updated statistics disaggregated by sex of the actual numbers of the youth 16 to 18 years of age working full-time or part-time, as distinguished from those who are out-of-school youth working full-time or part-time.

Response:

11. Please refer to § 5 and § 7 of NHRC's *Independent Opinion on International Covenant on Economic, Social and Cultural Rights*.

19. Please provide an estimate on the scale of the informal settlements in Taiwan and the measures the Government is undertaking to improve their security of tenure.

20. Please indicate whether the *Urban Renewal Act*, the *Land Expropriation Act*, and the *Urban Land Consolidation Act* are consistent with international standards including the General Comments No. 4 and No. 7 of the ICESCR, and the UN Basic Principles and Guidelines on Development-based

Displacement and Evictions. Please clarify why the Government has not adopted the *Forced Relocation Settlement and Reconstruction Act* as stated in § 231 of the 2021 NHRI *Independent Opinion*.

Response:

12. International reviews of the 2017 Second National Report on the ICCPR and ICESCR indicate that forced evictions should be temporarily suspended until forced relocation settlement and reconstruction laws that comply with international human rights stipulated by the Government have been enacted. However, the NHRC notes that the *Response to the Concluding Observations and Recommendations Adopted by the International Review Committee on January 20, 2017* indicated that different laws are already in place to govern different relocation circumstances, and that formulating specific laws applicable to all circumstances is relatively unrealistic. Also, the Government has failed to explain how current laws protect the right to adequate housing at times of building demolition and resident relocation. The NHRC has witnessed how the government continues to ignore its legal obligations to enforce the right to adequate housing, resulting in repeated protests and steep social costs. Incidents involving building demolition and resident relocation include the Lo-Sheng Sanatorium and Hospital incident, Huaguang Community incident, Miaoli Dapu incident, Dagan Community incident, and Ljavek incident (please refer to § 231 of the NHRC's *Independent Opinion on the Third National Report on the ICCPR and ICESCR*, and § 39 of the *Concluding Observations and Recommendations Adopted by the International Review Committee on January 20, 2017*).

22. Please describe the steps that the Government has taken to establish free, prior, and informed consent for indigenous peoples regarding development plans and programmes that affect them as indicated in § 28 of the *Response*.

23. Please provide further information on what policies the Government has implemented to ensure the housing rights for the indigenous peoples who live in the urban area, in indigenous settlements within non-indigenous regions, and in the post-disaster reconstructions notably in the case of the Morakot disaster.

Response:

13. (Identical to § 2 of the NHRC’s Question List Independent Opinion on the ICCPR) After the Typhoon Morakot disaster, two major issues related to the housing rights of indigenous peoples living in post-disaster reconstruction areas came into play: forced evictions from hometowns and reconstruction in other locations. Although the *Response to the Concluding Observations and Recommendations Adopted by the International Review Committee on January 20, 2017* stipulated that reconstruction in other locations following disasters in indigenous peoples’ hometowns must comply with the law; that the decisions made and actions taken must adhere to the Indigenous Peoples Basic Law and the principle of “leaving behind the disasters but not the villages”; and that complete communication be made with indigenous peoples to ensure that true consensus is reached and disputes are avoided, the NHRC once again reminds the government to consider the following questions: Have indigenous peoples’ right to freedom of relocation been violated as instances of them being relocated from their hometowns due to natural disasters repeatedly occur? Do the post-disaster reconstruction policies formulated by the government respect and take into account the different cultures and lifestyles of indigenous peoples? And how can indigenous peoples participate in the planning of permanent housing development plans? Years ago, the government’s demolition of permanent housing built after the Morakot disaster resulted in protests and even self-immolations among indigenous peoples, creating an uproar. The Control Yuan is currently conducting an investigation to answer these questions.

14. The NHRC has noticed that the increasing number of victims of natural disasters has resulted in insufficient permanent housing space, and that permanent home tripartite contracts have led to a number of issues, such as prohibiting victims from returning to their hometowns, building houses, or inheriting the permanent home. Additionally, non-governmental organizations have pointed out that the relocation and resettlement measures implemented by the government following the Morakot disaster resulted in victims dealing with inconvenient living environments, difficulties making a living away from home, and cultural inheritance disruptions. The NHRC once again reminds the government to consider the living or ecological spaces of indigenous peoples, quickly assess whether it is safe for them to return to their hometowns, grant them the right to go back home, and comprehensively examine regulations that prohibit them from returning home (please refer to § 251 and § 252 of NHRC's *Independent Opinion on the Third National Report on the ICCPR and ICESCR*, § 44 of the *Concluding Observations and Recommendations Adopted by the International Review Committee on January 20, 2017*, and § 87 of the 2020 Parallel Report of Covenants Watch).
15. Regarding permanent housing for victims of Typhoon Morakot, the Executive Yuan and related ministries established the Permanent Housing Policy Task Force in February 2021 and (1) discussed collaborating with city and county governments to determine whether the 161 hometowns were safe and functional so that indigenous peoples could return to them, (2) clarified the future use of permanent housing and evaluated the feasibility of plans for indigenous residents to own land for permanent housing, and (3) issued letters indicating that indigenous residents may return to their hometowns to engage in agricultural production, and that local governments could alter their development plans to use public land for facilities that will increase employment opportunities near permanent house communities, thereby ensuring that indigenous peoples can

make a living. The Council of Indigenous Peoples has formulated a set of instructions for indigenous people to apply for subsidies to construct housing and make improvements and repairs titled “Forward-looking Infrastructure— Urban and Rural Construction— Construction Plans for Indigenous Peoples”. The goal was to make improvements to indigenous peoples’ living environments and their quality of living. However, the aforementioned improvement plans are mostly in their assessment or preliminary stages, and whether they can promptly resolve problems such as unsuitable permanent housing environments, people having to live away from their hometown industries or being unable to make a living, and disruptions to their cultural inheritance remain to be seen.

16. Although the Special Act for Reconstruction following Typhoon Morakot was abolished in 2014, its regulations are still thought-provoking and draw attention to important matters. For example, Paragraph 1 of Article 20 stipulated the following: “Define specific areas, restrict residence, or exercise forced relocation before the deadline.” Additionally, the Five Principles Governing Indigenous Peoples’ Relocation and Land Use following Typhoon Morakot stated the following: “...prohibited from using land in dangerous areas,” “returning home to build houses is prohibited,” and “possessing ownership of hometown land but not the right to habitation there.” These principles violated indigenous peoples’ rights to relocate as well as their right of residence and right to informed consent. Moreover, the forcible evictions of indigenous peoples from their hometowns led to gradual disruptions to traditional culture.

30. What steps have been taken after 2018 regarding the prevention of HIV/AIDS and enhancing knowledge of adolescents about sexually transmitted diseases? In § 138 of the *Response*, “creative promotional campaigns” are mentioned. Please describe what types of campaigns have been carried out and what results have been achieved.

31. Please provide information on the situation of teenage pregnancy and its causes; whether abortion is available and on what conditions; whether a pregnant girl can continue her education after she gives birth; and what other assistance is provided by the Government.

Response:

17. The NHRC pointed out that the age of underage girls becoming pregnant has gradually declined. Underage mothers face family, social, economic, educational, and physical and mental health issues, and are exposed to greater health risks. The NHRC has reminded the government to continue to strengthen adolescent sex education and adolescent health care knowledge, stay updated about the number of underage pregnancies, develop effective measures for underage mother's health, welfare, and education, and improve service treatment and newborn placement measures in order to provide adolescents with the support and assistance they need and protect their rights to healthy growth and harmonious personality development. According to educational system statistics, 300–400 vocational and senior high school students or fewer report that they are pregnant annually. However, statistics released by the Ministry of the Interior indicated that there are approximately 3,000 underage mothers aged 15–19 every year, revealing the many cases of unreported minor mothers; these mothers subsequently do not have an opportunity to access their schools' guidance and assistance systems. Thus, whether schools can provide minor mothers with appropriate schoolwork assistance and counseling, build a welcoming campus atmosphere, and protect the mothers' right to education remains to be seen (please refer to § 236 of NHRC's *Independent Opinion on the Third National Report on the ICCPR and ICESCR*).

32. Persons with mental disabilities within in-patient or hospital settings have reportedly been cut off completely from the outside world. What support measures have been taken to



improve the situation of persons with physical and mental disabilities while COVID-19 prevention measures are in effect?

Response:

18. The NHRC urged the government to pay attention to the effects on human rights of the various policies that it has adopted during the pandemic, especially policies that lead to obstacles faced by vulnerable groups. Countermeasures should be taken to prevent their vulnerabilities from worsening. In the *Independent Opinion on the Second National Report on the CRPD*, the NHRC pointed out that certain measures taken by the government in response to the pandemic, such as prohibiting people from visiting persons with mental disabilities inside medical institutions, suspending psychological counseling services, and discontinuing statutory institutional and community-based support services, negatively affected the survival and safety of persons with disabilities (please refer to § 5 of NHRC's *Independent Opinion on the Second National Report on the CRPD*).

35. Please discuss in more detail the process of teacher-training for human rights education teachers and trainers in schools, and for the numerous other sectors that are briefly mentioned in § 142 of the *Common Core Document*. Include in the discussion specific information on the qualifications of professionals who teach human rights to those who are aspiring to be human rights teacher-trainers.

Response:

19. The NHRC collaborates with government departments to promote human rights education. In 2020, it worked with the Examination Yuan to promote human rights education for civil servants. In 2021, it joined the central education authorities to launch a cooperative human rights education program that introduced the United Nations' National Action

Plans for Human Rights Education to strengthen human rights education; special emphasis was placed on elevating teachers' human rights literacy. During an investigation in 2021, the Control Yuan found that a senior high school teacher had his/her students to imitate the pranks pulled on a variety show as a means to discipline his/her students. However, these 'pranks' amounted to harassment and abuse and violated the students' right to learning and education, right to develop mentally and physically, and property rights; engendered discrimination and prejudice; and violated laws prohibiting corporal punishment and gender inequality. Since the investigation, the Control Yuan has regularly monitored education departments' training plans to improve teachers' human rights awareness, placing special emphasis on improving senior teachers' knowledge and skills in the area of children's human rights. Additionally, the Control Yuan reviews the methods current teachers use to guide and discipline their students and whether teachers comply with the stipulations of the Convention on the Rights of the Child. The NHRC has reminded the government that the aforementioned incidents are not isolated incidents, and that the government should address concerns about Taiwan's human rights education that were brought up in the 2013 and 2017 international reviews, which highlighted that human rights education in the past focused more on quantity than quality. The government should continue to elevate the capabilities of front-line teachers and administrators to enhance teachers' human rights knowledge and their understanding of the rule of law.

20. Despite the government's establishment of the Human Rights Experts and Scholars Database, it has failed to clarify the human rights education and training provided and the training status of seed teachers in various agencies. The NHRC has recommended that the government plan appropriate and practical education and training for different target audiences with reference to cases involving human rights violations investigated by the Control Yuan to improve the quality of

human rights education (please refer to § 14 and § 15 of the *Concluding Observations and Recommendations Adopted by the International Review Committee on January 20, 2017*, and § 115 and § 116 of the 2020 Parallel Report of Covenants Watch).

37. What plans are there for extending support for children with all types of disabilities – not just those with physical disabilities – to enable them to participate fully in their local schools and to ensure their access to the higher education level?

Response:

21. An investigation conducted by the Control Yuan revealed that despite current national entrance exams establishing single-person or small-group examination rooms, students with disabilities who apply for special exam services are concentrated in separate exam rooms. Unlike non-disabled students, these students must overcome the issues associated with traveling further distances to take their exam and taking the exam in an unfamiliar environment. In some cases, they may even be required to stay at the exam site the night before. The NHRC has recommended that the government actively enter into talks with the various examination authorities about the possibility of having the students take their exams at the same school or an alternative location nearby to lower the burden of transportation on them and their parents. The government has implemented the College and University Entrance Exam for Senior High School Graduates with Disabilities with additional enrollment quotas reserved for such students; and colleges and universities are asked to decide whether to admit such students, determine the number of students admitted for each disability type, and set relevant conditions and restrictions. However, to date, there are still issues with inequality, such as the number of students admitted varying between different departments, inadequate

numbers of students admitted, the number of students admitted by a departments varying from year to year, exam questions featuring low item discrimination, and too few examination venues (please refer to § 161(2) of NHRC’s *Independent Opinion on the Third National Report on the ICCPR and ICESCR*).

38. How does the Government respond to attacks on “gender equity education”? What is being done to raise awareness among the wider community about the equal rights of LGBTI people?

Response:

22. (Identical to § 31 of the NHRC’s Question List *Independent Opinion on the ICCPR*) Non-governmental organizations have repeatedly reported discriminatory remarks made against the LGBTI population in the media and online. In recent years, it is alleged that parents are still requesting LGBTI equality issues to continue to be excluded from textbooks and syllabuses, violating students’ right to education. The NHRC has reminded the government to inquire into the handling of LGBTI-related gender equality issues at educational venues (please refer to §§ 171-175 of the 2020 Parallel Report of Covenants Watch, and the topics of gender equality education and LGBTI rights discussed in Awakening Foundation’s Shadow Report).

## **Emerging Issues**

### **Digital Sexual Violence**

1. With the rapid development of internet technology, numerous new forms of cybercrime have emerged, and unscrupulous individuals are using communication software to conduct forms of digital sexual violence such as cyber harassment, cyberbullying, cyber abuse, alteration and falsification of images using AI technology, and public distribution of private sexual images without consent. In response to these new, digital forms of crime, the NHRC maintains that the government needs to cultivate personnel capable of conducting investigations using the latest scientific and technological methods, comprehensively review current policies and educational measures to ensure that they are up-to-date, and actively strengthen the digital sexual violence-related knowledge and abilities of judicial personnel, social workers, and educators.
2. Based on the opinions expressed by representatives of non-governmental organization at seminars, the NHRC believes that the government should formulate a complete set of laws and regulations to control these new forms of sexually violent crime, including deep fakes generated with AI technology and other false information. The NHRC has also urged the government to promptly formulate and promote a draft *Private Sexual Image Infringement Prevention Act* in accordance with the guidelines for the protection of the right to privacy stipulated in the International Covenant on Civil and Political Rights, with the goal of responding in a timely manner to cases of digital and sexual violence, sufficiently protect victims, and effectively prevent and halt digital sexual violence.