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**National Human Rights Commission Investigative Report:  
Discriminatory Tuition Subsidy Policy for Permanent Residents  
and Their Children in Senior High School and Above**



國家人權委員會  
NATIONAL HUMAN RIGHTS  
COMMISSION, TAIWAN

## Table of Contents

<b>I.</b>	<b>CASE BACKGROUND AND ORIGIN.....</b>	<b>1</b>
<b>II.</b>	<b>CASE SUMMARY.....</b>	<b>1</b>
<b>III.</b>	<b>FACTS OF THE CASE.....</b>	<b>3</b>
<b>IV.</b>	<b>REASONING AND EVIDENCE.....</b>	<b>3</b>
	<b>A. APPLICATION OF LAWS .....</b>	<b>3</b>
	I. INTERNATIONAL HUMAN RIGHTS COVENANTS .....	3
	II. RELEVANT DOMESTIC LAWS.....	4
	<b>B. PRELIMINARY PREPARATIONS .....</b>	<b>5</b>
	I. RECEIPT OF COMPLAINT.....	5
	II. BEGINNING THE INVESTIGATION.....	6
	<b>C. Investigation Scope .....</b>	<b>6</b>
	<b>D. EVIDENCE COLLECTION .....</b>	<b>7</b>
	I. CONSULTATION WITH EXPERTS AND SCHOLARS .....	7
	II. FORMAL INQUIRIES TO AUTHORITIES.....	7
	III. REVIEW OF GOVERNMENT DATA.....	8
	IV. CONSULTATIVE MEETING ON INVESTIGATIVE REPORT.....	8
	<b>E. LIMITATIONS.....</b>	<b>8</b>
	<b>F. RESPONSES FROM AUTHORITIES.....</b>	<b>8</b>
	I. THE MINISTRY OF EDUCATION .....	9
	II. THE MINISTRY OF FINANCE.....	10
	III. THE MINISTRY OF LABOR.....	10
	IV. THE NATIONAL DEVELOPMENT COUNCIL .....	11
	V. THE MINISTRY OF THE INTERIOR NATIONAL IMMIGRATION AGENCY .....	11
<b>V.</b>	<b>INVESTIGATION AND ANALYSIS .....</b>	<b>11</b>
	<b>A. DIFFERENTIAL TREATMENT IN ELIGIBILITY FOR TUITION SUBSIDIES .....</b>	<b>12</b>
	<b>B. CAN NON-CITIZENS CLAIM PROTECTION OF FUNDAMENTAL RIGHTS? .....</b>	<b>13</b>
	I. ICERD.....	13
	II. CONSTITUTIONAL PROTECTION FOR NON-CITIZENS.....	14

<b>C. RIGHT TO EDUCATION IN INTERNATIONAL HUMAN RIGHTS COVENANTS</b> .....	18
I. PROTECTION OF THE RIGHT TO EDUCATION IN INTERNATIONAL HUMAN RIGHTS COVENANTS.....	18
II. THE GOVERNMENT’S FULFILLMENT OF NATIONAL OBLIGATIONS UNDER THE COVENANT .....	20
<b>D. IS DIFFERENTIAL TREATMENT IN TUITION SUBSIDIES REASONABLY JUSTIFIED?</b> .....	22
I. TUITION SUBSIDIES SHOULD ADHERE TO PRINCIPLE OF EQUALITY .....	22
II. THE MOE’S JUSTIFICATION FOR DIFFERENTIAL TREATMENT LACKS REASONABLE RELEVANCE .....	23
<b>VI. CONCLUSION AND RECOMMENDATIONS</b> .....	<b>25</b>
A. CONCLUSION .....	25
B. RECOMMENDATIONS .....	25
I. TUITION SUBSIDIES FOR SECONDARY EDUCATION SHOULD BE THE SAME FOR NON-CITIZENS WITH PERMANENT RESIDENCY AND TAXPAYERS AS FOR CITIZENS.....	25
II. THE GOVERNMENT MUST ENSURE RATIONALITY AND NECESSITY IN EDUCATIONAL POLICIES INVOLVING DIFFERENTIAL TREATMENT. ....	26
III. THE GOVERNMENT SHOULD AMEND EDUCATION-RELATED LAWS TO GRADUALLY ALIGN WITH THE STANDARDS OF INTERNATIONAL HUMAN RIGHTS COVENANTS.....	26
IV. SECONDARY EDUCATION MUST BE AFFORDABLE FOR ALL AND THE GOVERNMENT SHOULD GRADUALLY IMPLEMENT A FREE EDUCATION SYSTEM. ....	27
V. THE GOVERNMENT SHOULD STRENGTHEN EDUCATION AND TRAINING ON INTERNATIONAL HUMAN RIGHTS COVENANTS. ....	28
VI. THE GOVERNMENT SHOULD INVESTIGATE THE EDUCATIONAL STATUS AND NEEDS OF NON-CITIZEN RESIDENTS AND THEIR CHILDREN.....	28
<b>APPENDIX 1: STATISTICAL DATA AND EXPLANATIONS</b> .....	<b>30</b>
TABLE 1: STATISTICS ON BIRTHS, DEATHS, AND NATURAL POPULATION INCREASE IN TAIWAN OVER THE PAST 10 YEARS .....	30
TABLE 2 TAIWAN’S LABOR FORCE AND ANNUAL GROWTH RATE .....	31
TABLE 3 ESTIMATED POPULATION AGED 65 AND ABOVE AND THEIR PROPORTION OF THE TOTAL POPULATION .....	31
TABLE 4 NUMBER OF VALID WORK PERMITS FOR FOREIGN PROFESSIONALS.....	32
TABLE 5 NUMBER OF VALID WORK PERMITS FOR SPECIAL FOREIGN PROFESSIONALS .....	32

TABLE 6 STATISTICS OF NON-CITIZENS HOLDING VALID PERMANENT RESIDENCY PERMITS (INCL. THOSE IN AND OUT OF TAIWAN) .....	33
TABLE 7 STUDENTS AND CHILDREN UNDER 15 YOA HOLDING VALID PERMANENT RESIDENCY PERMITS .....	33

## **I. Case Background and Origin**

“J” has submitted a complaint asserting that her daughter, “K,” who was born in Taiwan to foreign parents holding permanent residency, has been subjected to discriminatory practices. “K” has received all her schooling in Taiwan since kindergarten. However, when she enrolled in a private vocational high school, she was deemed ineligible to receive tuition subsidies from the government due to her lack of Republic of China (R.O.C.) citizenship. “J” contends that this treatment is discriminatory. In response, the National Human Rights Commission (hereafter referred to as the Commission) launched an investigation into the matter during its 50<sup>th</sup> meeting of the 1st session on February 27<sup>th</sup>, 2024.

## **II. Case Summary**

This case examines whether the refusal to provide tuition subsidies to individuals lacking R.O.C. citizenship—specifically, permanent residents and their children—based on nationality infringes upon international human rights covenants and amounts to discrimination.

The *International Covenant on the Elimination of All Forms of Racial Discrimination* (ICERD) and General Recommendation No. 30 from the Committee on the Elimination of Racial Discrimination (CERD), stipulate that the protections offered by the covenant apply to all individuals within a country, irrespective of citizenship. Both citizens and non-citizens alike are entitled to protection against discrimination. Article 13 of the *International Covenant on Economic, Social, and Cultural Rights* (ICESCR) and General Comment No. 13 affirm that all individuals have the right to education. Furthermore, Article 28 of the *Covenant on the Rights of the Child* (CRC) and General Comment No. 23 stress that the right to education must be exercised on equal opportunity, including children from international migrant backgrounds.

Permanent residents and their children are denied tuition subsidies when attending senior high school and above under Article 56 of the *Senior High School Education Act* due to their nationality, which means being subjected to differential treatment compared to R.O.C. citizens. This difference in eligibility represents a clear instance of discriminatory practice.

While certain fundamental rights, such as voting, may be exclusive to citizens, the basic right to life, health, and education should be universally guaranteed. States must ensure that citizens and non-citizens enjoy these rights equally per international law. Foreigners with quasi-national status, including foreign spouses of citizens or permanent residents, should be regarded as de facto nationals.

The current differentiation in subsidy eligibility between R.O.C. citizens and permanent residents, along with their children, is inconsistent with international human rights covenants. The following recommendations are proposed to help address this issue and to serve as a reference for the reassessment and modification of policies in upholding the principles of equality and non-discrimination as mandated by international agreements:

- (1) Children of permanent residents who contribute to the tax system should be entitled to the same tuition subsidies for secondary education as their Taiwanese counterparts.
- (2) Any variations in educational policies must be substantiated by valid reasoning and necessity.
- (3) Educational laws and regulations should be revised to align with international human rights norms.
- (4) The State should work towards implementing a free education system to ensure that secondary education remains affordable for everyone.
- (5) Strengthen education and training related to international human rights covenants.
- (6) The government should conduct assessments to understand the educational conditions and requirements of non-citizen residents and their children.

### **III. Facts of the Case**

- A. “J,” the complainant, stated: “My child was born in Taiwan, and the education laws here are unfairly biased against her. Our family has permanent residency in Taiwan, and my child has been enrolled in school here since kindergarten.” She elaborated, “Very few children are in a situation similar to my daughter’s. Taiwan’s regulations do not offer financial support for foreign students in high school. My husband and I pay taxes, and we, along with my daughter, are permanent residents. Why is she being discriminated against?”
- B. The complainant argues that Article 56 of the *Senior High School Education Act* needs to be revised. Her main appeal is that in Taiwan, every child has the right to receive a high school education. Her daughter, “K,” was born and raised in Taiwan and deserves the same rights as her Taiwanese peers. The law clearly states that discrimination based on race, nationality, skin color, gender, ethnicity, disability, age, or sexual orientation is prohibited.
- C. In summation, the central issue in this matter is whether the unequal treatment of individuals born and raised in Taiwan, who hold permanent residency but are ineligible for tuition subsidies in senior high schools due to their lack of R.O.C. citizenship, infringes upon international human rights standards and constitutes a form of discrimination.

### **IV. Reasoning and Evidence**

#### **A. Application of Laws**

##### **i. International Human Rights Covenants**

1. Article 13 (the Right to Education) of the ICESCR and General Comment No. 13 from the Committee on Economic, Social, and Cultural Rights (CESCR), as outlined in Paragraphs 6, 7, 31, 34, 37, emphasizes that contracting states

acknowledge the right to education for all individuals. To fully realize this right, it is essential that secondary education, including technical and vocational options, is made available and accessible through all appropriate means, mainly through the gradual implementation of free education.

2. Articles 1 and 2 of the ICERD and General Recommendation No. 30 from the Committee on the Elimination of Racial Discrimination (CERD) emphasize that contracting states must refrain from discrimination based on race, color, descent, or national or ethnic origin. Any differential treatment by the government must be substantiated by legitimate, reasonable, and necessary justifications. Furthermore, adequate measures must be taken to amend, abolish, or invalidate any laws or regulations that could result in racial discrimination—wherever they may exist.
3. Article 5 of the ICERD stipulates that, in compliance with the basic obligations outlined in Article 2 of Taiwan’s Constitution, the state commits to prohibiting and eliminating racial discrimination in all its forms. They must ensure that every individual, without distinction based on race, color, or national or ethnic origin, enjoys equality before the law, particularly concerning the following rights: (d) Economic, social, and cultural rights, especially: (5) The right to education and training.
4. Article 28 of the (CRC) and Paragraph 59 of General Comment No. 23 of the CRC Committee emphasize that children have the right to education. The exercise of this right must be based on the principle of equal opportunity, including children with an international migrant background.

## **ii. Relevant Domestic Laws**

1. Articles 7, 21, 23, and 159 of Taiwan’s Constitution.
2. Article 8, Paragraph 2 of the *Educational Fundamental Act* stipulates that

the state must guarantee students' rights to learning and education.

3. Article 56, Paragraph 1 of the *Senior High School Education Act*, which states. "Senior high school students may be enrolled tuition-free if they meet certain requirements. However, this will not be applicable to students without Taiwanese nationality, to those who return after dropping out, and to students at private schools that meet the provision in Paragraph 1 of Article 36. The tuition waived in the previous Paragraph shall be compiled and included in the government budget."
4. Article 21 of the *Regulations Regarding International Students Undertaking Studies in Taiwan* specifies that permanent residents of Taiwan are subject to the **same tuition standards as Taiwanese students** at their respective schools. Like Taiwanese citizens, they are exempt from tuition fees when attending public elementary and junior high schools. Other foreign students, however, must adhere to the **tuition standards set by their schools for foreign students**, which must be at least the tuition standards of private schools at the same level.

## **B. Preliminary Preparations**

### **i. Receipt of Complaint**

1. The Commission received a complaint letter from "J" on November 6<sup>th</sup>, 2023. The Commission then reached out to both the complainant and the school through email and phone communications on November 22<sup>nd</sup>, December 4<sup>th</sup>, and December 12<sup>th</sup>, 2023, to verify the specifics outlined in the letter—including the name of the school, the type of fees charged by the school, and whether any remedies had been sought.
2. Next, the Commission dispatched letters No. 1124131624 and No. 1124131628 on December 27<sup>th</sup>, 2023, to the Ministry of Education and the

private vocational high school attended by “K.” These letters sought clarifications regarding the adherence to Article 56, Paragraph 1 of the *Senior High School Education Act* to international human rights covenants, the nature of the fees levied by the school, the justification and necessity for imposing different fees on nationals and foreigners, as well as the support and remedies available to “K.”

## **ii. Beginning the Investigation**

1. After receiving responses from the Ministry of Education on January 17<sup>th</sup>, 2024 (Document No. 1130003912), and from the private vocational high school attended by “K” on January 10<sup>th</sup>, 2024 (Document No. 11370012600), the Commission found that the Ministry of Education cited reasons such as national economic and fiscal conditions and the effective utilization of educational resources. However, it did not adequately explain the reasonableness or necessity of the differential treatment, nor did it provide supporting evidence. As a result, during a Human Rights Petition and Complaint Review Group meeting on February 6<sup>th</sup>, 2024, and the 50<sup>th</sup> session of the 1<sup>st</sup> Committee on February 27<sup>th</sup>, 2024, the Commission decided to initiate a formal investigation.
2. On April 11<sup>th</sup>, 2024, the commission presented an investigation plan for the complaint case titled “Discriminatory Tuition Subsidy Policy for Permanent Residents and Their Children in Senior High School and Above.”

## **C. Investigation Scope**

The Commission consulted with scholars, experts, and NGO representatives to clarify the investigation's scope and direction. In this case, the complainant is a foreign national, excluding those from China, Hong Kong, and Macau. Article 25 of the *Immigration Act* stipulates that “An alien, who has legally and continuously resided in the State for consecutive five (5) years and for one hundred and

eighty-three (183) days or up each year, or the alien spouse and/or children of a national with household registration in the Taiwan Area who have legally resided in the State for ten (10) years, during which period they have actually resided in the State for one hundred and eighty-three (183) days or up each year for five (5) years, may apply to the National Immigration Agency for permanent residence if they meet the following requirements. Considering these factors, the investigation primarily targets non-citizens holding permanent residency and their children enrolled in senior high schools or higher educational institutions. The inquiry does not encompass individuals from China, Hong Kong, and Macau, nor does it address rights beyond the right to education. The investigation means to determine whether the children of non-citizens with permanent residency encounter discrimination based on variables such as their duration of residence in Taiwan or age limitations that may hinder their ability to satisfy the requirements for permanent residency.

#### **D. Evidence Collection**

##### **i. Consultation with Experts and Scholars**

A consultation was held on May 24<sup>th</sup>, 2024, to ensure the investigation's scope and direction were appropriate to the case. Two scholars and three NGO representatives attended the meeting. They provided theoretical insights and shared their experience on related issues, which encompassed the content of the complaint, the convergence of educational policies, and the principles outlined in international human rights covenants.

##### **ii. Formal Inquiries to Authorities**

Following the advice and recommendations gathered during the expert consultation meeting on May 24<sup>th</sup>, 2024, the Commission formulated a series of inquiries. It sought information from pertinent authorities, including the Ministry of Education (MOE), the Ministry of Finance (MOF), the National Development Council (NDC), the Ministry of Labor (MOL), and v. The Ministry of The Interior

National Immigration Agency (NIA), requesting their responses within a designated timeframe.

### **iii. Review of Government Data**

The Commission reviewed publicly accessible government data to gain insight into statistics such as birth and death rates in Taiwan, labor force figures, trends in population aging, and the current tally of valid permanent residency permits.

### **iv. Consultative Meeting on Investigative Report**

The Commission finalized a draft of the investigative report after assembling domestic literature, pertinent educational regulations, international human rights covenants, and feedback from government entities. Subsequently, on July 9<sup>th</sup>, 2024, a consultative meeting with experts was convened to evaluate the draft and propose avenues for its revision.

## **E. Limitations**

The investigation was significantly limited by time, which hindered a comprehensive understanding and examination of the rights and responsibilities of non-citizens residing in Taiwan. Furthermore, several requests for information directed at pertinent agencies and specific inquiries must be addressed adequately. Consequently, the investigation was restricted to the parameters of the complaint and concentrated on formulating a report that explores the relationship between Article 56 of the *Senior High School Education Act* and international human rights covenants.

## **F. Responses from Authorities**

The Commission recognized several critical authorities involved in the investigation, including the MOE, the NDC, MOL, NIA, and MOF. Inquiries were dispatched to these entities, seeking their feedback and relevant statistical information. The summarized responses received from these agencies are detailed as follows:

**i. The Ministry of Education (MOE)**

Article 21 of *Regulations Regarding International Students Undertaking Studies in Taiwan* stipulates that students who are permanent residents in Taiwan shall pay tuition and other fees per the standard fees that their educational institution applies to domestic students. This regulation acknowledges the unique connection foreign individuals with permanent residency have with the country. Nevertheless, individuals holding permanent residency are not eligible for tuition reductions or subsidies for those pursuing education at the senior high school level and beyond. This exclusion is based on the premise that the financial resources for these subsidies are derived from taxes contributed by citizens, aiming to safeguard the educational resources allocated for domestic students.

Furthermore, referring to Article 56, Paragraph 1 of the *Senior High School Education Act*—which omits nationality as a factor for tuition exemption—legislative history indicates that when this provision was established, lawmakers did not raise any concerns regarding the exclusion of non-citizens with permanent residency from receiving tuition exemptions, nor did they contemplate their inclusion in this context.

The central competent authority, specifically the MOE, allocates the financial resources necessary for tuition exemptions. Currently, the ministry is deliberating the potential expansion of tuition subsidies to encompass students enrolled in private high schools that implement independent admissions as stipulated in Article 36, Paragraph 1 of the *Senior High School Education Act*. In this regard, they are soliciting feedback from various stakeholders to foster a social consensus. Nevertheless, there remains to be more agreement on including students who do not possess R.O.C. citizenship in this initiative, which means this aspect is not under consideration at this time.

The MOE concluded that exempting students from tuition fees in senior high schools, while domestic students have not yet fully benefited from tuition subsidies, and excluding non-citizens (including those without permanent residency and their children) does not violate the right to equality or education. They regard this approach

as a justifiable form of differential treatment.

**ii. The Ministry of Finance (MOF)**

The MOF explained that the criteria for determining the recipients of general cash distributions were based on the guidelines used to distribute the Triple Stimulus Vouchers and Quintuple Stimulus Vouchers. The total amount distributed was within the surplus budget of 2022, and the purpose was to share economic gains with the entire population to stimulate post-pandemic economic development without negatively impacting the country's finances. Data from the NIA at the start of 2023 indicated that around 160,000 non-citizens qualified for the distribution, with approximately 140,000 receiving it, representing 0.6% of the overall recipients.

Furthermore, the MOF's data on individual income tax contributions from 2018 to 2022 revealed that the proportion of total tax payments made by non-citizens, including residents from Hong Kong and Macao, fluctuated between approximately 2.93% and 2.18%. In 2022, the cumulative tax contributions from these groups surpassed NT\$10.4 billion, within a broader context of total tax revenue amounting to NT\$478.9 billion.

**iii. The Ministry of Labor (MOL)**

The MOL released data concerning the number of foreign professionals holding permanent residency, the retention rates of mid-level skilled labor as part of the migrant worker retention initiative, and the educational requirements of their children residing in Taiwan. As of the end of April 2024, there were 48,766 authorized work permits for white-collar foreign employees in Taiwan, as stipulated in Article 46, Paragraph 1, Subparagraphs 1 to 6, and Article 51, Paragraph 3 of the *Employment Service Act*. It is important to note that this figure does not include foreign educators as the Ministry of Education manages their permits.

The MOL has approved 27,939 migrant workers to advance to mid-level technical roles by the end of April 2024 as part of the migrant worker retention initiative, which has been operational since April 30, 2022.

Furthermore, the MOL indicated they need more information regarding these foreign workers' marital status, fertility rates, or child-rearing circumstances, as such details are not mandated for their documentation. The NIA oversees the management of non-citizens who subsequently acquire permanent residency under the applicable provisions of the *Immigration Act*.

**iv. The National Development Council (NDC)**

The NDC released data concerning foreign professionals who hold permanent residency in Taiwan. As of the end of April 2024, 56,613 valid permits had been issued to foreign professionals, with 14,525 permits designated for special foreign professionals, including 9,942 gold cards.

The NDC has stated that marriage, birthing, and educational requirements of the children of these foreign professionals pertain to personal privacy and the freedom of education. Additionally, these details are optional in the applications for work or permanent residency in Taiwan, resulting in the unavailability of this information.

**v. The Ministry of The Interior National Immigration Agency (NIA)**

The NIA has clarified that Article 31, Paragraph 6 of the *Immigration Act* does not require permanent residents to disclose the schools their children attend. Additionally, the application forms for residence or stay in Taiwan do not require applicants to specify the types of schools or educational levels, indicating that such information needs to be systematically recorded.

Additionally, those with permanent residency status in Taiwan and their children are not covered under the care services provided for new residents regarding their educational needs in Taiwan.

## **V. Investigation and Analysis**

The primary issue to be clarified is whether current regulations that apply differential treatment to individuals with permanent residency in Taiwan and their

children regarding eligibility for tuition subsidies constitute discrimination against non-citizens, thereby violating international human rights covenants.

#### **A. Differential Treatment in Eligibility for Tuition Subsidies**

The petitioner, “J,” has a daughter, “K,” who was born in Taiwan to parents who are permanent residents but have yet to naturalize. “K,” a foreign national, has received all her schooling in Taiwan since kindergarten. “J” argues that despite both parents paying taxes and holding permanent residency status, “K” is subjected to discrimination under Taiwanese law, which denies tuition subsidies to non-citizens and prevents her from enjoying the same rights as other Taiwanese children.

At the time of the petition, “K” was a minor attending high school who may continue her education in Taiwan by attending public or private higher education institutions. Article 3 of the *Nationality Act* states that only adults can apply for naturalization voluntarily, while minors can only naturalize alongside their parents. From the perspective of her rights as an individual, as a minor, she cannot independently choose to naturalize to obtain eligibility for tuition subsidies.

The MOE sent its response through its letter dated January 17<sup>th</sup>, 2024 (No. 1130003912), explaining that the K-12 Education Administration provides full tuition subsidies for students enrolled in high school vocational programs based on specific guidelines. However, as “K” is a permanent resident and **does not possess R.O.C. citizenship, she does not qualify for tuition subsidies.** She must pay tuition, miscellaneous fees, and other costs according to the standards set by the school, in line with Article 21, Paragraph 1, Item 1 of the *Regulations Regarding International Students Undertaking Studies in Taiwan*.

The fees for foreign students are managed according to the *Regulations Regarding International Students Undertaking Studies in Taiwan*. Suppose the student has legal residency, is enrolled under a special program, is recommended for and awarded a Taiwan Scholarship by the Ministry of Foreign Affairs (MOFA), or holds permanent residency. In that case, their tuition is calculated based on the rates

for Taiwanese students. Other foreign students are charged according to the rates set by their school for foreign students, which must be at least those charged by private schools of the same level.

In summary, non-citizens with permanent residency or their legally residing children are exempt from tuition fees when attending public elementary and junior high schools in Taiwan, just like Taiwanese citizens. However, when attending high school or higher education institutions, they are excluded from tuition subsidies based on Article 56, Paragraph 1 of the *Senior High School Education Act*, which states, "Senior high school students may be enrolled tuition-free if they meet certain requirements. However, this will not be applicable to students without a R.O.C. nationality." This exclusion results in differential treatment where non-citizen students cannot enjoy the same tuition subsidies as citizens.

The next step is to examine whether this distinction based on nationality, as the MOE claims, constitutes reasonable differential treatment and whether it violates the principles of equality and non-discrimination outlined in international human rights covenants.

## **B. Can Non-citizens Claim Protection of Fundamental Rights?**

### **i. ICERD**

Protection under the ICERD extends to all individuals residing in a country, regardless of whether they are citizens or non-citizens, ensuring the right to be free from discrimination. Although Article 1(2) of the ICERD initially states that the covenant does not apply to distinctions made between citizens and non-citizens by states, the interpretation of this provision has evolved. Through general recommendations, ICERD has expanded its focus beyond citizens to include non-citizens, asserting that both groups should only face differential treatment if it can be justified as legitimate, reasonable, and necessary.

General Recommendation No. 30, Paragraph 3, clarifies that Article 5 of the ICERD obligates states to prohibit and eliminate racial discrimination in the

enjoyment of civil, political, economic, social, and cultural rights. While certain rights, such as voting and running for office, might be reserved for citizens, the principle that human rights should be universally enjoyed remains. States are thus required to ensure that non-citizens enjoy equality with citizens to the extent recognized by international law.

Therefore, in the context of fundamental rights like life, health, and education, states must treat non-citizens equally. Any differential treatment between citizens and non-citizens must be justified as legitimate, reasonable, and necessary in compliance with General Recommendation No. 30. Simply citing limited educational resources as a reason for differential treatment does not meet the criteria of a reasonable distinction under international human rights standards.

## **ii. Constitutional Protection for Non-citizens**

### **1. Basic Rights of Non-citizens Under the Constitution**

Article 3 of Taiwan's Constitution states: "A person with the nationality of the Republic of China is a national of the Republic of China." Non-citizens, therefore, refer to individuals who do not hold R.O.C. nationality, regardless of whether they possess single or multiple foreign nationalities or are stateless.

J.Y. Interpretation No. 708 establishes that personal freedom is a fundamental human right, the foundation of all freedoms and rights, and must be protected regardless of nationality. This principle is a common standard in modern rule-of-law states. Therefore, the Constitution's Article 8 protection of personal freedom extends to non-citizens and ensures they receive the same protection as R.O.C. citizens. However, the exact interpretation also clarifies that non-citizens do not have the right to enter the R.O.C. freely. This means that the applicability of constitutional rights to non-citizens depends on the nature of the right in question.

Regarding whether non-citizens can claim the right to equality under Article 7 of the Constitution, some scholars have noted a distinction between the language of Article 7 and Article 3, which refers to "nationals of the Republic of China." They

interpret "the people of the Republic of China" in Article 7 as encompassing all individuals within the R.O.C., which aligns with the Constitution's intent to protect fundamental human rights and avoid conflicts with other constitutional provisions. Furthermore, Article 141 of the Constitution could serve as a reinforcing basis for this interpretation, allowing for the incorporation of international human rights law into the domestic legal order as binding norms.<sup>1</sup>

Denying non-citizens equal protection under the Constitution would not only contradict international human rights covenants and the norms of civilized nations but also undermine the value of fundamental rights protections for non-citizens. However, equal treatment does not necessarily imply identical treatment for non-citizens and R.O.C. citizens as may be justifiable distinctions based on the nature of certain fundamental rights. The key issue lies in whether such differential treatment is reasonable. Scholars argue that non-citizens are still subject to fundamental rights under the R.O.C. Constitution but are subject to reasonable restrictions per Article 23.<sup>2</sup>

## **2. Hierarchical Standards for Differential Treatment**

Taiwan's Constitution not explicitly distinguish between the basic rights of citizens and foreigners. Traditionally, constitutional scholars have categorized basic rights into three levels: human rights, national rights, and citizenship rights, with the rights enjoyed by nationals and foreigners differing based on nationality. However, globalization has led to the scope of non-citizens' basic rights protection gradually extending from human rights to national rights.

Scholars argue that human rights, which are natural and inherent rights, must not be subject to differential treatment. Since there is no fundamental difference between foreigners and nationals regarding these rights, any discrimination would

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<sup>1</sup> Li Nian-zu, "On the Equal Protection of Foreigners' Fundamental Human Rights under the Constitution of Taiwan," *Constitutional Times*, Vol. 27, No. 1, p. 95, July 2001.

<sup>2</sup> Li Zhen-shan, "On the Immigration System and Fundamental Rights of Foreigners," *Taiwan Indigenous Law Journal*, No. 48, pp. 53-56, July 1, 2003.

constitute a violation. Rights of an intermediate nature, often categorized as welfare rights (such as the right to work, property, and survival), are subject to adjustments based on each country's specific circumstances. The sincerity and attitude of a state in protecting the constitutional rights of foreigners should be evaluated against international human rights covenants to ensure that treatment **does not fall below the general standard of civilized nations**—a test for modern constitutions.<sup>3</sup>

The state must also adhere to the principle of equality when implementing welfare rights. Whether the welfare policies are mandated by fundamental national policies or not specified in the Constitution, they must be bound by the principle of equality. However, due to the limited fiscal resources of the state, J.Y. Interpretation No. 485 has clarified that identity alone cannot justify differential treatment: "Given limited national resources, social legislation must consider the economic and financial situation of the state, adhere to the principle of effective resource utilization, and ensure fair distribution of welfare resources among the general population. The determination of the scope of beneficiaries should be carefully regulated based on their financial capability, income, household burden, and the necessity of care, without solely relying on the beneficiary's specific position or identity as the sole basis for differential treatment..."

Additionally, some scholars have drawn from comparative observations of German law to point out that the principle of equality requires that there must be a legitimate and reasonable connection between **nationality** and any **measures of differential treatment**. In recent trends, social benefits are subject to more stringent scrutiny, and the European Court of Human Rights often views such differential treatment as a violation of the prohibition against discrimination. Judicial practices are increasingly inclined to reject the justification of differential treatment for foreigners who have resided long-term or frequently in a country. However, in the absence of long-term residence, it is possible to justify differential treatment among foreigners based on the length of their stay. In the realm of civil rights, nationality does not

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<sup>3</sup> Li Zhen-shan, *ibid.*, pp. 57-58.

inherently justify differential treatment between nationals and foreigners, as is self-evident.<sup>4</sup>

Justice Hsu Chih-hsiung, in his dissenting opinion on J.Y. Interpretation No. 768, discussed nationality and the subject of constitutional rights, noting: "For those who are not citizens, namely foreigners (persons without R.O.C. nationality, including stateless persons), especially foreigners residing within the territory of a sovereign state, their rights are generally recognized by constitutional law as subject to the inherent and universal nature of human rights. The Constitution's protection of rights applies to foreigners insofar as their nature allows. The issue remains the scope and extent of rights protection for foreigners, which must be determined on a case-by-case basis. In summary, constitutional scholarship has evolved from discussing whether constitutional human rights protections apply to foreigners to exploring the specific human rights and the extent to which they are protected for foreigners."<sup>5</sup>

Other studies have analyzed the "quasi-citizenship" status of foreigners and suggest that a further distinction should be made among foreigners based on whether they reside in the country, hold permanent residency, are regular residents working in the country, are short-term tourists, or are illegal immigrants. For legal residents, their rights concerning personal freedoms should generally align with those of citizens. However, regarding social rights, given that the state prioritizes the welfare of its citizens, reasonable differential treatment should be allowed. Nevertheless, **foreigners who have acquired quasi-citizenship**, such as foreign spouses of nationals or those with permanent residency, should be accorded treatment equivalent to that of citizens.<sup>67</sup>

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<sup>4</sup> Li Dong-ying, "On the Fundamental Rights of Foreigners – A Comparative Study of German Law," *Constitutional Times*, Vol. 42, No. 3, January 2017, pp. 251-253.

<sup>5</sup> Interpretation No. 768, Separate Opinion by Justice Hsu Chih-hsiung, partially joined by Justice Chen Bi-yu.

<sup>6</sup> The term "quasi-citizen" does not currently exist in Taiwan's immigration regulations; however, due to the various stages of residency and permanent residency that non-citizens go through, the NIA has used the term "quasi-citizen" in its research to refer to non-citizens who have obtained permanent residency or long-term residency permits, referencing the concept of "denizenship" proposed by Swedish sociologist Tomas Hammar.

Former Justice Lee Zhen-shan used the immigration system to argue that applicants for permanent residency have already identified with the host country and are willing to settle and live there, essentially possessing the characteristics of "quasi-immigrants." The only difference lies in their willingness to renounce their original nationality. Such individuals should not be treated as ordinary foreigners but more leniently, akin to citizens. Suppose foreigners are allowed to obtain permanent residency. In that case, their basic rights protection should be as close as possible to that of citizens, and even their political participation rights should be considered differently from those of ordinary foreigners, aligning with the legal principles related to differential treatment and the hierarchy of basic rights.<sup>8</sup>

### **C. Right to Education in International Human Rights Covenants**

#### **i. Protection of the Right to Education in International Human Rights Covenants**

##### **1. ICESCR**

The right to education is recognized as a fundamental human right and is essential for the realization of other human rights. Article 13 of the ICESCR is the most comprehensive provision in international human rights law regarding the right to education. It begins with the clear assertion that "the States Parties to the present Covenant recognize the right of everyone to education." The ICESCR then specifies that primary education should be free and compulsory for all, secondary education should be available and accessible to all, and higher education should be made equally accessible to all based on capacity.

General Comment No. 13 of the CESCR elaborates on how the right to education should be implemented by proposing a 4A framework in Paragraph 6. This framework asserts that for the right to education to be meaningful, it must have the

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<sup>7</sup> Xu Yi-bao, May 2013, "A Study on Issues Related to Foreigners as Subjects of Fundamental Rights," in *Journal of Homeland Security and Border Management*, No. 19.

<sup>8</sup> Li Zhen-shan, *ibid.*, p. 64.

following characteristics: Availability, Accessibility, Acceptability, and Adaptability. Specifically, regarding accessibility, it includes three aspects:

1. Non-Discrimination: **Education must be accessible to everyone**, particularly to members of the most disadvantaged groups, without discrimination in law or in fact on any prohibited grounds.
2. Physical Accessibility: **Education must be within safe physical reach**, either by being geographically accessible (e.g., within a reasonable distance) or accessible via modern technology (e.g., distance learning).
3. Economic Accessibility: **Education must be affordable for all**. Affordability is grounded in the provisions of Article 13(2) of the ICESCR, which mandates that primary education be free and compulsory, while **secondary and higher education should be progressively made free**.

General Comment No. 13, Paragraph 19, distinguishes between secondary and higher education by noting that secondary education should be "widely available and accessible," while higher education does not need to be as widely available but should offer equal opportunities based on ability.

Paragraph 34 of the General Comment further clarifies that the principle of non-discrimination, as recognized in Article 2 of the CRC and Article 3(5) of the UNESCO Convention against Discrimination in Education, applies to all school-age children **residing in the territory of the State Party, including foreign children, regardless of their legal status**.

## **2. CRC**

Article 28 of the CRC focuses on the obligation of contracting States to establish an educational system and ensure children's participation in education. It emphasizes that the right to education should be progressively realized on the basis of equal opportunity, with commitments to, "(a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education, including general and vocational education, to make it accessible to every

child, and take appropriate measures such as the introduction of free education and offering financial assistance to those in need; (c) Make higher education accessible to all on the basis of capacity by every appropriate means; ..." While the CRC does not explicitly require the provision of compulsory secondary education, this does not mean that contracting states implementing 12 years of basic education can justify differential treatment based on nationality. Such actions must still comply with the non-discrimination principle outlined in Article 2 of the CRC.

Additionally, General Comment No. 23, Paragraph 59 of the CRC Committee, mentions that all children with an international migration background, regardless of their status, should have full access to all levels and forms of education on an equal basis with the citizens of the host country.

## **ii. The Government's Fulfillment of National Obligations under the Covenant**

Taiwan adjusted its original nine-year compulsory education policy and fully implemented 12 years of basic education in 2014.

In 2023, the Executive Yuan approved the plan to "Close the Gap between Public and Private Schools and its Supporting Measures," to be implemented in February 2024. This plan aims to promote educational equality by focusing on fixed-amount tuition reduction for private university students. Furthermore, it includes three supporting measures: Increased subsidies for economically disadvantaged students in both public and private universities, comprehensive implementation of tuition-free senior high school education, and improvements to student loan application and repayment measures. The goal is to ensure that every child can choose their preferred school and major without financial pressure, allowing both public and private universities to develop specialized programs and cultivate talents across various fields for the country.<sup>9</sup>

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<sup>9</sup> Executive Yuan Policy "Implementing Education Equality and Narrowing Tuition Gaps Program," dated July 18, 2023, sourced from the Ministry of Education, URL:

However, tuition-free senior high school education and fixed-amount tuition reduction for private universities—funded by the MOE—do not apply to those without R.O.C. citizenship. The MOE argues that this distinction is justified, reasonable, and necessary, considering the national economic and financial situation and the effective utilization and allocation of educational resources. Furthermore, the Ministry has indicated that it is currently considering including students from private high schools that conduct independent admissions under Article 36, Paragraph 1 of the *Senior High School Education Act* in the tuition subsidy program. They are also considering public opinion and working toward building a social consensus. However, at present, there is no consensus on including students without R.O.C. nationality in the tuition subsidy program, and it is not being considered at this time.

Article 13, Paragraph 2 of the ICESCR specifically addresses "various forms of secondary education" and "higher education," requiring contracting States to recognize that **"every appropriate means should be taken, in particular, the gradual introduction of free education."** General Comment No. 13, Paragraph 37 of the CESCR further explains that "every appropriate means" refers to the close monitoring of education, including all relevant policies, institutions, programs, funding models, and other practices, to identify and address any de facto discrimination. Education data should be disaggregated based on prohibited grounds of discrimination.

The protection of the right to education under relevant covenants is not limited to nationals but should apply to "everyone" residing within the territory of the States, as mentioned earlier. Foreign residents who have long lived in Taiwan and those with close ties to Taiwan should be treated as quasi-citizens and granted the same treatment as citizens.

Article 159 of the Constitution states, "The opportunity to receive education shall be equally available to all citizens," aiming to ensure that people have equal opportunities to receive education at all levels. In terms of equal treatment in the right

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to education, especially economic accessibility, although foreigners have formal opportunities to receive education, their substantive rights may be at risk of deprivation if they lack financial resources, which warrants further review.

While Taiwan has some discretion under the gradual implementation clauses regarding whether to elevate secondary education to basic education, compulsory education, free education, or universal education, it must still adhere to the principle of non-discrimination. The combined findings of the CRC Committee and the CESCR Committee on the principle of non-discrimination under their respective covenants suggest a violation of the principle of non-discrimination required by the covenants.<sup>10</sup>

For example, J.Y. Interpretation No. 560 addressed restrictions on foreign employees' eligibility to claim funeral allowances, without declaring them unconstitutional. However, Article 43, Paragraph 5 of the *Employment Service Act*, promulgated on May 8, 1992, which restricted foreign workers from claiming funeral allowances for the death of family members outside the territory covered by the *Labor Insurance Act*, indeed created discriminatory treatment against foreign workers who were similarly insured under labor insurance. Therefore, before Interpretation No. 560 was issued in July 2003, the relevant provisions of the *Employment Service Act* were already amended in January of the same year to remove the discriminatory provisions. This demonstrates that even when there is no violation of the *Employment Service Act* or constitutional issues, the state still has an obligation to self-examine and amend its laws to conform to the principle of equality and non-discrimination required by the covenants.

#### **D. Is Differential Treatment in Tuition Subsidies Reasonably Justified?**

##### **i. Tuition subsidies should adhere to principle of equality**

Tuition subsidies, as a form of beneficial rights, should adhere to the principle of equality. The protection of non-citizens should be examined using the hierarchical

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<sup>10</sup> Written opinion provided by Associate Professor Weng Yan-jing of National Chengchi University.

standards mentioned earlier. When the law uses nationality as a criterion for differentiating rights and obligations, it must comply with the principle of proportionality under Article 23 of the Constitution.

In this case, the tuition subsidies for private vocational high schools do not concern the survival of disadvantaged individuals or deprive individuals of the right to receive basic education. Therefore, a more relaxed standard of review may be required. However, even considering national finances with a lenient review, the MOE must clearly state the purpose of excluding long-term resident school-aged individuals from these benefits and demonstrate that the means used are reasonably related to the intended purpose.

Although tuition policies for secondary education vary across countries—some may differentiate based on public versus private institutions, household financial status, or criteria such as curriculum and language of instruction (e.g., non-national curriculum or foreign language instruction)—these policies should align with the overall educational goals of the country. Given that Taiwan’s tuition subsidies for 12-year basic education directly exclude non-citizen school-aged individuals, the MOE should explain how this exclusion is relevant to the implementation of Taiwan’s educational policy. The Ministry must provide objective evidence and data to prove that offering tuition subsidies to long-term resident foreign school-aged individuals would hinder or conflict with the execution of Taiwan’s basic national education policy.<sup>11</sup>

**ii. The MOE’s Justification for Differential Treatment Lacks Reasonable Relevance**

The reliance on immigration is critical for a country facing declining birth rates. Taiwan is currently experiencing a significant decrease in natural population growth,

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<sup>11</sup> Ibid.

particularly since 2020 when the number of deaths surpassed births. In response, the government has been exploring policies to increase birth rates and establishing a number of systems and measures, such as attracting foreign professionals and relaxing residency regulations, to retain and attract talent, thereby boosting Taiwan's demographic vitality. NIA data reveals that as of now, there are only 1,000 individuals who are students or under 15 years old among those holding valid permanent residency. Additionally, the MOF's data shows that the total income tax paid by non-citizens in 2022 exceeded NT\$10.4 billion, accounting for 2.18% of the total taxable amount. Relevant statistical data and explanations are provided in Appendix 1.

In contrast, the MOE's justification for differential treatment states that educational subsidies at the senior secondary level and above are an administrative measure funded by taxpayers to support domestic students using national tax revenue. The Ministry argues that these subsidies are meant for students of Taiwanese nationality to prevent the dilution of educational resources for domestic students. This reasoning needs to be revised to consider that non-citizens also contribute to the tax base, making it difficult to support excluding non-citizens from tuition subsidies.

In addition to actively attracting foreign professionals, Taiwan has recently relaxed regulations allowing migrant workers to transition to mid-level skilled labor positions, which can eventually lead to permanent residency.<sup>12</sup> It is foreseeable that Taiwan's reliance on immigration will only increase, and the country will inevitably have to address the systemic issue of protecting the basic rights of foreigners. Nationality can no longer be used as a legitimate justification for differential treatment if Taiwan wishes to pass the scrutiny of international human rights standards. Instead, the treatment should be tiered based on the degree of connection to the country.

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<sup>12</sup> As of the end of June 2024, the total number of foreign intermediate technical personnel approved under the "Long-Term Retention Program for Migrant Workers" was 31,074.

## **VI. Conclusion and Recommendations**

### **A. Conclusion**

The distinction in eligibility for tuition subsidies between Taiwanese citizens and permanent residents and their children constitutes discrimination and does not comply with international human rights covenants.

The petitioner, in this case, resides in Taiwan, holds permanent residency, and fulfills tax obligations like a citizen. Their child has received basic education in Taiwan from birth, following the national curriculum. Even though the child may not yet voluntarily naturalize, their family and upbringing are closely tied to Taiwan, making them effectively the next generation of our country. However, she was denied tuition subsidies solely because she failed to possess R.O.C. citizenship, which lacks sufficient justification. Using nationality as a criterion to determine eligibility for tuition subsidies does not comply with Article 13 of the ICESCR, Article 28 of the CRC, and General Recommendation No. 30 of the ICERD.

### **B. Recommendations**

- i. Tuition subsidies for secondary education should be the same for non-citizens with permanent residency and taxpayers as for citizens.**

Given that non-citizens who have obtained permanent residency and their children have been in Taiwan for an extended period, they have developed close ties to Taiwan in both their living and learning environments, effectively making them quasi-citizens. Therefore, in terms of fundamental rights such as life, health, and education, they should be treated as de facto citizens. The MOE argues that tuition subsidies do not apply to those with permanent residency because the funding comes from taxes paid by citizens, and this distinction is made to prevent the dilution of educational resources for Taiwanese students.

However, since non-citizens earning income in Taiwan are subject to the same tax obligations as citizens, and considering the aforementioned analysis that

non-citizens' basic rights should be evaluated based on a hierarchical standard, this differential treatment of permanent residents and their children cannot be justified. It is recommended that the government prioritize providing tuition subsidies for secondary education to permanent residents and their children, who have close ties to Taiwan and are considered quasi-citizens, equating them with Taiwanese students.

**ii. The government must ensure rationality and necessity in educational policies involving differential treatment.**

In light of Taiwan's declining birthrate and aging population, the government must utilize various channels and policies to enhance the population dividend. This includes not only encouraging higher birth rates among citizens but also fostering an environment where people from other countries are willing to study in Taiwan and continue to stay after completing their education.

If educational laws and regulations in Taiwan exclude non-citizens, rationality and necessity must justify any differential treatment. Such policies should consider the actual needs of individual cases and provide necessary support, such as tuition subsidies, to protect their right to education and basic human dignity. Nationality alone should not be the basis for differential treatment; instead, the degree of connection between non-citizens and Taiwan should guide a tiered approach to such policies.

It is recommended that the government, when formulating educational laws, policies, or future new immigration policies related to education, should consider the needs of people and their children who, despite not having Taiwanese nationality, have long-term residency in Taiwan and are effectively quasi-citizens. Their living needs should be met, and their basic rights as residents in Taiwan should be protected.

**iii. The government should amend education-related laws to gradually align with the standards of international human rights covenants.**

Through this investigation, it has been observed that over the past five years, the proportion of personal income tax paid by non-citizens relative to the total tax revenue does not adequately justify the exclusion of non-citizens with permanent residency and their children from tuition subsidies under Article 56 of the *Senior High School Education Act*, given their minimal impact on the national economy and fiscal conditions as of May 2024.

Additionally, the government's review of central regulations for potential violations of the ICERD includes examining Articles 2 and 4 of the *Education Fundamental Act*, particularly for failing to add "race" as a category in accordance with ICERD. The necessary amendments have not been completed since 2020, and the government has only tracked revisions to educational laws identified in 2020, without regularly reassessing regulations needing revision based on current conditions.

It is recommended that the government periodically review and revise educational laws and policies according to international human rights covenants to ensure they are updated to align with these standards. This will help guarantee equal treatment for all individuals residing in Taiwan.

The Concluding Observations and Recommendations of the first national review of the ICERD report in April 2024, specifically under point 11, suggested that the government domesticate the ICERD, similar to other core United Nations human rights covenants. Therefore, the government should promptly draft and pass specific implementing legislation to ensure that the principles of the ICERD are fully integrated into Taiwanese law.

**iv. Secondary education must be affordable for all and the government should gradually implement a free education system.**

Taiwan is currently promoting an educational equity system that offers tuition-free elementary education. However, existing tuition subsidies for secondary and higher education exclude non-citizens. Based on the principles of

non-discrimination under the CRC and the CESCR, there remains a gap in achieving the non-discriminatory equality of opportunity as stipulated in Article 13 of the ICESCR and Article 28 of the CRC.

It is recommended that when the government plans or adjusts the education system in the future, it should engage in social dialogue, communicate with relevant stakeholders, and utilize data analysis. This approach should aim to gradually meet the economic accessibility requirements of the covenants—progressively implementing free secondary education based on the country's financial situation and reasonable allocation of educational resources.

**v. The government should strengthen education and training on international human rights covenants.**

This investigation has revealed that when formulating education-related laws and policies, and even in court rulings, the government has not fully referenced the ICESCR. Consequently, some educational regulations, policies, and judicial decisions have failed to meet international human rights standards.

It is recommended that the government, in accordance with Article 7 of the ICERD and the drafted "ICERD Promotion Plan," strengthen the implementation of diverse educational training. The goal is to educate the public on the content of international human rights covenants, ensuring that when the government formulates educational laws and policies, and when courts render judgments, they fully consider the status, needs, and human rights protections of non-citizens in Taiwan, in line with international human rights covenants

**vi. The government should investigate the educational status and needs of non-citizen residents and their children.**

General Recommendation No. 29 of the ICERD advises regular investigations into the actual conditions of descent-based discrimination, with disaggregated data on the geographical distribution, economic, and social conditions of these groups,

including a gender equity perspective, to be included in reports submitted to the committee.

Given that non-nationals residing in Taiwan fall into various residency categories, there are inconsistencies in the educational assistance provided by the government to them and their children during their stay in Taiwan. It has been observed that the government currently has care services in place specifically for new residents and conducts a needs assessment survey every five years.<sup>13</sup> However, for other immigrant populations brought in through talent retention and recruitment channels, the government has not assessed whether they require educational assistance in Taiwan, citing concerns over personal privacy.

It is recommended that the government investigate the educational status and needs of quasi-citizens and their children residing in Taiwan, to implement the suggestions of General Recommendation No. 29 of the ICERD.

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<sup>13</sup> The term "new residents" refers to the spouses of Taiwanese citizens who are foreigners, stateless persons, or residents of Mainland China, Hong Kong, or Macau.

## Appendix 1: Statistical Data and Explanations

The statistics from 2014 to May 2024 show significant trends in Taiwan's birth and death rates. Over these ten years, the birth rate has consistently declined, with a 36% decrease in births by 2023 compared to 2014. In contrast, the death rate has steadily risen, with a 25% increase in deaths by 2023 compared to 2014. Regarding natural population increase, there was a decrease of 69,797 people in 2023 (Table 1).

**Table 1: Statistics on Births, Deaths, and Natural Population Increase in Taiwan Over the Past 10 Years**

Year	Births	Deaths	Natural Population Increase
2014	210,383	163,929	46,454
2015	213,598	163,858	49,740
2016	208,440	172,405	36,035
2017	193,844	171,242	22,602
2018	181,601	172,784	8,817
2019	177,767	176,296	1,471
2020	165,249	173,156	-7,907
2021	153,820	183,732	-29,912
2022	138,986	207,230	-68,244
2023	135,571	205,368	-69,797
2024 (Until May)	53,434	87,562	-34,128

Source: MOI Monthly Report

Additionally, Taiwan defines its labor force as civilians aged 15 and above who are capable of working, including both employed and unemployed individuals. Observing the changes in the labor force, the annual growth rate of Taiwan's labor

population has continued to decline, with negative growth beginning in 2021 (Table 2).

UN estimates reveal that by 2070, the global population aged 65 and above will account for 20.1% of the total population. In line with this, the NDC projects that by 2025, over 20% of Taiwan's population will be 65 years or older, marking the transition to a super-aged society. By 2070, the population aged 65 and above is expected to reach 7.08 million, making up 43.6% of the total population (Table 3).

**Table 2 Taiwan's Labor Force and Annual Growth Rate**

Year	Labor Force (Unit: K People)	Annual Growth Rate (%)
2014	11,535	0.79
2015	11,638	0.89
2016	11,727	0.76
2017	11,795	0.58
2018	11,874	0.67
2019	11,946	0.60
2020	11,964	0.15
2021	11,919	-0.38
2022	11,853	-0.55

Source: MOL

**Table 3 Estimated Population Aged 65 and Above and Their Proportion of the Total Population**

Year	Population Aged 65 and Over (Unit: K People)	Total Proportion (%)
2000	1,921	8.6
2015	2,939	12.5
2020	3,787	16.1

2022	4,086	17.6
2030	5,569	24.1
2050	7,662	37.5
2070	7,080	43.6

Source: MOL

Due to labor shortages in Taiwan, the government began introducing migrant workers, categorized into white-collar and blue-collar workers. Only white-collar professionals have the opportunity to obtain permanent residency. As of April 2024, Taiwan has issued work permits to 56,613 foreign professionals (Table 4) and 14,525 permits to special foreign professionals (Table 5).

**Table 4 Number of Valid Work Permits for Foreign Professionals**

Date	Total	Specialized & Technical Skills	Arts	Cram School Teachers	Contract Fulfillment	Overseas Chinese/Foreign Investment Managers	Coaches & Athletes	Regular Teachers
Apr 2024	56,613	32,993	2,094	3,712	6,573	3,079	315	7,847

Source: NDC<sup>14</sup>

**Table 5 Number of Valid Work Permits for Special Foreign Professionals**

Date	Total	Gold Card	Standard Work Permit
Apr 2024	14,525	9,942	4,583

Source: MOL<sup>15</sup>

<sup>14</sup> NDC, Official Letter No. 1130082001, June 28, 2024.

<sup>15</sup> Ibid.

As of May 2024, there are only 37,702 people in Taiwan holding valid permanent residency permits (Table 6), with only 1,000 of them being students or children under 15 years old (Table 7).

**Table 6 Statistics of Non-citizens Holding Valid Permanent Residency Permits (Incl. Those in and out of Taiwan)**

Year	Non-citizens Holding Valid Permanent Residency Permits (Incl. Those in and out of Taiwan)	Annual Growth Rate (%)
2016	12,268	
2017	13,164	7%
2018	15,443	17%
2019	17,947	16%
2020	21,004	17%
2021	27,798	32%
2022	31,684	14%
2023	35,731	13%
2024 (until May)	37,702	6%

Source: NIA; Compiled Independently

**Table 7 Students and Children Under 15 YOA Holding Valid Permanent Residency Permits**

Year	Students	Under 15 YOA	Total	Total Growth	Annual Growth Rate (%)
2016	162	2	164		
2017	170	2	172	8	5%
2018	253	44	297	125	73%

2019	387	96	483	186	63%
2020	483	157	640	157	33%
2021	582	232	814	174	27%
2022	597	279	876	62	8%
2023	611	353	964	88	10%
<b>2024 (Until May)</b>	<b>647</b>	<b>353</b>	<b>1,000</b>	<b>36</b>	<b>4%</b>

Source: NIA; Compiled Independently

**【24NHRC-I02】**

**National Human Rights Commission Investigative Report:**

**Discriminatory Tuition Subsidy Policy for Permanent Residents and Their  
Children in Senior High School and Above**

National Human Rights Commission

No. 2, Sec. 1, Zhongxiao East Rd., Zhongzheng Dist., Taipei City

(02)2341-3183

<https://nhrc.cy.gov.tw>

**The resolution was passed at the 55<sup>th</sup> meeting of the 1<sup>st</sup> session of the National  
Human Rights Commission on July 23<sup>rd</sup>, 2024**