

National Human Rights Commission
Opinions and Recommendations on the Executive Yuan’s Bill for the
Pingpu Indigenous Peoples Identity Act

I. General Opinions

Indigenous peoples’ rights to self-identity and self-determination must be safeguarded

1. In accordance with Article 1 of the *International Covenant on Civil and Political Rights* (ICCPR)¹ and Articles 9, 18, and 33 of the *Declaration on the Rights of Indigenous Peoples* (DRIP),² indigenous peoples should be entitled to collective self-identity and self-determination realized through legal recognition and the rectification of their names. Indeed, recognition of the status of indigenous peoples is imperative for reinstating their rights, and any restrictions to such recognition must be founded upon reasonable and objective fact.
2. In accordance with General Recommendation No. 8 on the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), such identification should, if no justification exists to the contrary, be based upon self-identification by the individual concerned. General Recommendation No. 21 on the same convention reiterates that self-determination of people is a fundamental principle of international law, and that it is the duty of States to promote the right to self-determination of peoples.
3. According to Paragraph 38 of the *Concluding Observations and Recommendations* adopted by the International Review Committee following the international review of Taiwan’s *Third National Report on the Two Covenants* (ICCPR and ICESCR) on May 13, 2022, indigenous peoples and individuals have the right to belong to and identify as any indigenous community or group based on their traditions and customs in accordance with DRIP and the two covenants.
4. In consideration of the above, the NHRC commends the Executive Yuan for responding to the Constitutional Court judgment but finds the following shortcomings with the current bill for the *Pingpu Indigenous Peoples Identity Act*:
 - 1) Based on the interpretation found in Constitutional Court judgment 2022 Xian-Pan-Zi No. 17, the term “aboriginal peoples” (now more commonly known as “indigenous peoples”) used in Article 10, Paragraphs 11 and 12 (first half) should include “all

¹ **Article 1 of the ICCPR:** “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. / All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. / The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”

² **Article 9 of DRIP:** “Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.”

Article 18 of DRIP: “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.”

Article 33 of DRIP: “Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live. / Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.”

currently existing Austronesian ethnic groups in Taiwan” and not just the “mountain indigenous peoples” and “plains indigenous peoples” described in current law. The judgment expressly states that any peoples and individuals with affinity to the same cultural characteristics, ethnic identity, and ethnographic history may, of their own accord, request official recognition of their indigenous status. However, the name “Pingpu Peoples” and Article 3 (definitions) of the Executive Yuan’s bill still reduce the idea of indigeneity to a certain group of people, marking a departure from the Constitutional Court judgment, which states that the request for recognition should be open to all. The arbitrary classification in the bill may exclude communities and individuals who are otherwise eligible to put forward a request and could give rise to concerns over regulatory consistency and inclusivity. For example, what would happen if an Austronesian group that is not traditionally considered a Pingpu group wishes to request recognition? Would the Executive Yuan amend the current law or formulate a separate act to accommodate them?

- 2) The system and rationale for recognition provided in the proposed bill do not fully conform to the human rights standards set forth in DRIP and the two covenants, with large gaps in self-identity, community participation, equal safeguards, and other key areas.

II. Article-specific recommendations

To help fine-tune the government’s policy on indigenous status recognition, the NHRC has put forward the following article-specific legal analysis and recommendations based on the current legislative system in Taiwan. We hope that the following technical legal advice and stage-by-stage guidance can help both the executive and legislative branches of the government amend the bill to meet international human rights standards.

1. Article 10:

- 1) Articles 9, 18, and 33 of DRIP stipulate that indigenous peoples should be entitled to self-identity and self-determination. In a similar vein, Paragraph 40 of the *Concluding Observations and Recommendations for the Third National Report on the Two Covenants* issued in 2022 recommends that the government work towards amending the *Constitution* and *Indigenous Peoples Basic Law* in accordance with DRIP and the two covenants and, to achieve that goal, perform a nation-wide census, collaborate with indigenous communities (including unrecognized communities such as the Pingpu peoples), and formulate a national policy for indigenous peoples.
- 2) Article 10 of the bill mentions a review committee composed of experts and scholars but not indigenous representatives. The NHRC recommends that indigenous representatives be included and an oversight mechanism be established to ensure that indigenous voices are considered in the decision-making process. In the interest of fairness, committee meeting minutes should be published and public hearings should be held.

2. Article 12:

- 1) Article 12, Paragraph 1 reads, “Upon approval of a request for recognition as a Pingpu community or group in accordance with the preceding article, the criteria for individual recognition as community or group members shall be published by the competent authority for a period of five years. If necessary, the competent authority may, after consulting with the community or group, extend the publication period for up to another five years.” Paragraph 2 of the same article further requires eligible individuals to register during the publication period or risk permanently losing their right to be recognized as

part of a Pingpu community under Article 21 of the proposed bill, which does not provide adequate safeguards for the Pingpu peoples' right to self-identity.

- 2) Ethnic identity is a dynamic concept informed not only by lineage but by the perception of self, personal experience, social context, and cultural influences. With generational differences and historical factors at play, it becomes even more complex for children.³ Indeed, a person's identity never stops evolving. Individuals or even families might gradually change their ethnic affiliation over time due to destruction of cultural heritage, differences in information received, or changes in the external environment. The NHRC worries that the inclusion of a registration deadline described in Article 12 of the proposed bill could hinder indigenous peoples' right to exercise self-identity, contradicting the spirit of indigenous self-identity and self-determination provided above. An easy fix would be to allow registration beyond the publication period or the acceptance of make-up applications.

3. Articles 22 and 23:

- 1) Educational and cultural support should be codified
 1. Paragraph 44 of Constitutional Court judgment 2022 Xian-Pan-Zi no. 17 states: "According to Article 10, Paragraphs 11 and 12 (first half) of the *Additional Articles of the Constitution of the Republic of China*,⁴ the state should assume an active role in preserving indigenous languages and cultures by providing the appropriate educational/cultural support and safeguards. Legislators should formulate the appropriate laws in accordance with the aforementioned provisions, with consideration given to the current status and historical context of each indigenous group and its members and the allocation of available national resources." Article 22 of the proposed bill does reference the indigenous peoples' linguistic and cultural rights under Article 10, Paragraph 11 of the *Additional Articles*, but when it comes to the various state obligations set forth under Paragraph 12, the proposed bill states that the government should "assess and evaluate the allocation of national resources" (Article 23), which is far from legally binding. The wording of the proposed bill shrugs off the collective rights set forth in Paragraph 12 as incidental, significantly weakening the protection of Indigenous peoples' core rights, including the right to autonomy, land, and natural resources.
 2. Article 22, Paragraphs 2 and 3 state that the government should formulate and implement the relevant cultural and educational policies, but Article 23 does not mention education or culture legislation as a requirement. The NHRC recommends amending the second half of Article 23 to read, "Laws shall be formulated or amended

³ Paragraph 45 of General Comments No. 11 on the *Convention on the Rights of the Child*: "The Committee encourages States parties to bear in mind article 8 of the United Nations *Declaration on the Rights of Indigenous Peoples* which sets out that effective mechanisms should be provided for prevention of, and redress for, any action which deprives indigenous peoples, including children, of their ethnic identities."

⁴ Article 10 of the *Additional Articles of the Constitution of the Republic of China*:

Paragraph 11:

"The State affirms cultural pluralism and shall actively preserve and foster the development of [indigenous] languages and cultures."

Paragraph 12:

"The State shall, in accordance with the will of the ethnic groups, safeguard the status and political participation of the [indigenous peoples]. The State shall also guarantee and provide assistance and encouragement for [indigenous] education, culture, transportation, water conservation, health and medical care, economic activity, land, and social welfare, measures for which shall be established by law. The same protection and assistance shall be given to the people of the Penghu, Kinmen, and Matsu areas."

to adequately safeguard indigenous peoples' rights to **education and culture**, political participation, transportation and water resources, health and medicine, land and economic rights, and social welfare.”

2) Distinction between temporary special measures and permanent rights

1. According to General Recommendation No. 32 on ICERD, a temporary special measure, as described in Article 1, Paragraph 4 of ICERD, is a necessary short-term support measure intended to remedy a situation in which the basic freedoms and human rights of certain disadvantaged groups are threatened. Temporary special measures are implemented alongside laws, policies, and practices formulated to meet the obligations of state parties under ICERD.”
2. Paragraph 15 of the same document makes a distinction between temporary special measures and permanent rights: “Special measures should not be confused with specific rights pertaining to certain categories of person or community, such as, for example, the rights of persons belonging to minorities to enjoy their own culture, profess and [practice] their own religion, use their own language, [and reclaim] lands traditionally occupied by them.... Such rights are permanent rights, recognized as such in human rights instruments.... States parties should carefully observe distinctions between special measures and permanent human rights in their law and practice.”
- 3) The NHRC recommends distinguishing temporary special measures from permanent rights in the wording of Article 23 of the proposed bill and in formulating or amending the relevant laws. For special measures, the “conditions for the adoption and implementation of special measures” described in Paragraphs 16 through 18 of General Recommendation No. 32 should apply. The competent authority should carefully appraise the needs and circumstances of the affected individuals and communities to ensure the legitimacy, appropriateness, and necessity of the measures.
 1. Appraisals of the need for special measures should incorporate a gender perspective and should be carried out based on the socio-economic and cultural status and circumstances of the various groups in the population and their participation in society.
 2. The competent authority should ensure that special measures are designed and implemented only after consultation with affected communities and the active participation of such communities.

III. Conclusion

The NHRC commends the Executive Yuan for proposing a bill responding to the Constitutional Court's judgment and the need for self-identity of the Pingpu peoples. However, the proposed bill still falls somewhat short of international human rights standards, namely DRIP and the ICCPR, particularly in core aspects such as the protection of self-identity, community participation, and equal rights.

As the national human rights institution of Taiwan, the NHRC is tasked with identifying and disclosing shortcomings of domestic systems, inconsistencies with international human rights standards, and the associated human rights risks, as well as with overseeing the government's efforts to make improvements through legislation. While we understand the challenges in implementing changes in the current political landscape, the government must stand its ground when it comes to human rights. If the proposed bill is not properly amended before promulgation, the same controversies that surrounded the *Indigenous Peoples Identity Act*—including arbitrary exclusions, unfair recognition

mechanisms, and differential safeguards for community participation—will likely be repeated, severely undermining the nation’s effort to strengthen ethnic justice and social integration.

Therefore, the NHRC recommends that the executive and legislative branches of the government conduct a joint review of the bill informed by international human rights standards to fine-tune the criteria for recognition and framework of participation, design a recognition system that truly reflects the historical context of the Pingpu peoples, and ensure that indigenous peoples’ rights to self-determination and equal participation are protected.