

Review of the Initial Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants

Concluding Observations and Recommendations Adopted by the International Group of Independent Experts Taipei, 1 March 2013

A. INTRODUCTION

1. In 2009 the President of Taiwan announced the ratification, as a matter of domestic law, of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Act to Implement the two Covenants also provided that a reporting system would be created to monitor the Government's compliance with the obligations it has undertaken.
2. In 2011 the Government initiated the process of preparing detailed reports on the rights contained in each of the Covenants and in 2013 a group of independent experts, from ten different countries, were invited to review these reports in light of information from all available sources, and especially civil society. The group consisted of the following ten independent experts, working in their personal capacities: Philip Alston, Nisuke Ando, Virginia Bonoan-Dandan, Theodor van Boven, Jerome Cohen, Shanthi Dairiam, Asma Jahangir, Manfred Nowak, Eibe Riedel, and Heisoo Shin.
3. The Experts followed established international monitoring procedures in all relevant respects and applied the accepted international legal interpretations of the relevant rights. Its work involved no comparison with the situation prevailing in other countries and these concluding observations focus solely on the situation in Taiwan. The Experts divided themselves into two groups, one dealing with the ICCPR and one with the ICESCR.
4. The Experts consider that the Government and people of Taiwan have demonstrated exemplary commitment to the process of monitoring compliance with the relevant human rights obligations. The Government has provided valuable and detailed reports, following international precedents, and has engaged in a highly constructive manner with the Experts. Each of the sessions, held over a period of three days (25-27 February, 2013), was attended by a large number of government officials representing all of the relevant departments, as well as representatives of the Office of the President, the Control Yuan, the Executive Yuan, and the Examination Yuan. Members of the Legislative Yuan also appeared before the Experts in response to the latter's invitation. The proceedings were also webcast live and followed closely by civil society. The Experts are especially grateful to Prosecutor Ming-li Kuo and his colleagues from the Ministry of Justice for their extraordinarily efficient and helpful coordination of the overall endeavour.
5. The Experts commend the very active engagement of a wide range of civil society groups in all aspects of the review process. They received a large number of detailed alternative reports, and held focused hearings to enable non-governmental groups to provide inputs

into the process. The response was remarkable and enabled the Experts to develop a deeper understanding of many complex issues.

6. The Experts wish to underscore that these Concluding Observations and Recommendations do not deal with all of the very large number of issues presented to it. In order to ensure the manageability of the process and a clear focus for its observations, only a limited number of issues can be addressed directly. The Experts consider, however, that the value of the overall process goes far beyond what is contained in these Concluding Observations and Recommendations and express the hope that the process that has been initiated in this way will be an ongoing one that seeks to provide meaningful responses and solutions to all of the issues raised during the dialogue.
7. Finally, the Experts emphasize that the purpose of the Concluding Observations and Recommendations that follow is primarily to identify areas in which the Government of Taiwan should consider further measures in order to promote full compliance with its obligations. The observations do not, therefore, provide any systematic recognition of the many positive achievements that have occurred in recent years. The Experts are, however, deeply impressed by the dramatic progress that has been made since 1987, when Taiwan began to emerge from a long and dark period of martial law. Developments in recent years have greatly accelerated this progress towards a society governed by human rights and the rule of law.

B. GENERAL ISSUES

National Commission for the Protection and Promotion of Human Rights

8. In many countries, including a reasonable number in the Asia/Pacific region, the need was recognized to establish, in addition to existing constitutional structures, an independent national human rights commission that meets the requirements of independence and autonomy set out in the Paris Principles Relating to the Status of National Human Rights Institutions, adopted by the United Nations General Assembly in 1993. Such a commission would, inter alia, carry out advisory, monitoring and investigative functions in the broad area of civil, cultural, economic, political, and social rights and should also be instrumental in drawing up a National Action Plan for the Promotion and Protection of Human Rights.
9. The Experts recommend that a specific time frame be set for the establishment of an independent national human rights commission in accordance with the Paris Principles as a priority objective.

United Nations Core Human Rights Treaties

10. The Experts warmly welcome Taiwan's acceptance, without reservations, of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All

Forms of Discrimination against Women and to that effect has enacted implementation legislation which provides that these obligations prevail over other laws, with the exception of the Constitution, in the event of any inconsistency. Considering the wish of Taiwan to be a constructive partner in the global human rights community and also the wish expressed by concerned sectors of Taiwanese society, it will be an important step towards a broader recognition and acceptance of international human rights standards that Taiwan takes in the near future the necessary steps to accept the obligations under other United Nations core instruments in the field of human rights. In practice, some of the material provisions of these instruments are already being applied.

11. The Government should give effect to its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination. The Experts also recommend that the Government initiate the necessary processes leading to an early acceptance of the obligations under the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities, the Convention for the Protection of All Persons from Enforced Disappearance, and the Convention against Torture. It should also set up the type of national preventive mechanism envisaged under the Optional Protocol to the Convention against Torture.

The Implementation Act Relating to the International Covenants

12. The review of laws, regulations, directives and administrative measures provided for in the Implementation Act and the deadline of 10 December 2011 has not been fully met. The review process should continue in an accelerated manner in order to strengthen the domestic implementation of the International Covenants.
13. The Experts recommend that the further review of laws, regulations, directives and administrative measures be carried out with due priority within specific timeframes, taking into account both the deliberations in the review meetings of the initial reports of the Government of Taiwan under the two International Covenants, and of the present concluding observations and recommendations,

Judicial Implementation of the Covenants

14. The Experts note that, as a result of the Implementation Act, the provisions of the two Covenants are part of Taiwanese law and prevail over inconsistent domestic laws other than the Constitution. They observe, however, that the Covenants continue to be invoked only rarely in judicial decision-making.
15. In relation to economic, social and cultural rights, the Constitution still reflects a clear hierarchy between the civil and political rights recognized in Chapter II and the “fundamental national policies” identified in Chapter XIII. To date the judiciary has made very limited use of the provisions of the ICESCR. The Government suggested that this might be because of concerns that the provisions are not self-executing. While

drawing attention to the longstanding position in international law according to which many of the provisions of the Covenant can be applied directly, the Experts urge the Government to address the concern by according specific legislative recognition to the relevant rights, and spelling out the means by which the relevant provisions can be given effect. The Government also indicated that the courts might be reluctant to deal with economic, social and cultural rights because of their budgetary implications. The Experts recall that many civil and political rights also entail such implications and that there are many ways in which courts can act in consultation with the executive branch in order to reconcile the need to uphold economic, social and cultural rights while also ensuring adequate budgetary support.

16. The Experts therefore recommend that: (i) additional legislative recognition be given to specific economic, social and cultural rights with a view to facilitating and ensuring their application by the judiciary; (ii) in-depth, intensive, and applied training in relation to the two Covenants be provided for the judiciary by high-level experts with the appropriate expertise; (iii) the Ministry of Justice should keep an updated list on its website of all cases in which the courts have invoked the provisions of the Covenants.

Human Rights Education and Training

17. In addition to more effective training for the judiciary, the Experts recommend that carefully targeted training be provided for specific occupational groups such as prosecutors, police officers and prison administrators. The appropriateness and effectiveness of such training programmes should be regularly evaluated. In cautioning against an over-emphasis on quantity rather than quality, the Experts note that much of the information they received from the Government seemed to suggest that the number of training courses, the number of participants, and the volume of materials was more important than the substantive content of the training.
18. The Experts call upon the Government to ensure that the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and related domestic legislation are made an integral part of education and training for all government agencies, members of the legal profession, law enforcement officers and the judiciary and education for the elimination of negative stereotypes in society.
19. The human rights education curriculum for Taiwanese schools highlights for the most part the history and structure of the international human rights system without sufficient focus on the human rights values and principles enshrined in the Universal Declaration of Human Rights and the two Covenants. The Experts also regret that gender equality is classified as a separate “issue” from human rights in the listing of the “7 disciplines” in the curriculum for years 1-9.

Transparency and Participation in Decision-making

20. As already noted, the Experts were deeply impressed by the highly participatory and consultative process followed in the context of the International Covenants review. It became clear in the review, however, that the principles of transparency, consultation and participation are not well accepted in the context of many governmental processes affecting human rights. Many instances could be cited. For example, policy-making in relation to urban renewal, indigenous rights, the rights of persons with disabilities, homelessness, land expropriation, and a range of other areas appears generally to be undertaken primarily on the basis of internal analysis by ministerial-level task forces and other such mechanisms, with minimal participation by those affected.
21. The Experts recommend that the Government: (i) consider adopting a clear and precise policy on sharing of information in the relevant fields; (ii) seek to ensure that affected groups are represented in ministerial task forces and other such bodies; and (iii) ensure that the outcome of consultation processes that have been established be given greater weight.

Corporate Responsibility

22. In a statement adopted by the UN Committee on Economic, Social and Cultural Rights in May 2011, the Committee called on States to include in their initial and periodic reports challenges faced and measures taken in relation to the role and the impact of the corporate sector on the realization of economic, social and cultural rights. This may affect labour conditions, trade union rights, housing rights, the position of female workers and migrant workers, but also land rights and environmental rights, domestically and extraterritorially.
23. The Experts recommend that the Government pays all due attention to the issue of corporate responsibility, including the need for binding legislation providing for monitoring and control, and include further information on developments relating to this issue in any subsequent review reports.

Transitional Justice

24. The years of repression and gross violations of human rights before the lifting of martial law have left large scars on Taiwanese society. Certain measures were taken for the sake of healing and reparation, including the adoption of the 228 Incident Dispensation and Compensation Act and the construction of the 228 Incident Memorial. However, the period of transition has not ended and more is needed to reconcile Taiwanese society. The right to reparation should include measures of social and psychological rehabilitation of the victims and should be accompanied by the right to truth and justice.

25. The experts recommend that measures be taken to reveal the full truth about the gross violations of human rights during the years of the ‘White Terror’ and that, as a requirement of reparative justice, the suffering of the victims be duly recognized. In this respect, effective access of victims and researchers to the National Archives should be guaranteed.

Equality and Non-Discrimination Based on Gender

26. It is generally accepted that the provisions of the Covenants relating to gender issues need to be interpreted in line with the jurisprudence under CEDAW. The Experts commend the Government of Taiwan for having ratified CEDAW, enacting laws and policies for the promotion of gender equality, and establishing the Gender Equality Department. The challenge now is to achieve effective implementation and monitoring of these various initiatives and create a social environment conducive to women’s rights. The Experts recommend that the Government takes comprehensive measures to ensure that knowledge of the rights of women under CEDAW, its concept of substantive gender equality and indirect discrimination, including the obligation to accelerate de facto equality through the use of temporary special measures in all areas, as well as the CEDAW Committee’s general recommendations, are well-known in society in general, and among all branches of the Government and the judiciary at all levels. It should be applied by all branches of Government as a framework for all laws, court verdicts and policies on gender equality and the advancement of women’s rights.
27. The Experts therefore recommend: (i) the enactment of comprehensive legislation covering all fields of gender equality, with a view to implementing gender mainstreaming and gender budgeting; (ii) the adoption of more systematic temporary special measures to accelerate de facto equality of women; (iii) the elevation of the Gender Equality Department to a higher status so that it has the power, authority and budget to enable it to effectively carry out its mandate in data collection, gender impact assessment, and the formulation and implementation of policies on gender equality.
28. The Experts note reports that transgender persons are widely considered to suffer from a form of mental illness and that persons with gender identities different from their biological sex, suffer many forms of discrimination, including bullying in schools. During the dialogue with government representatives, the Committee observed that the dominant perspective is that gender identity is solely about sexual orientation. This was also evident in the description of gender equality education offered in schools.
29. The Experts recommend that Taiwan’s Ministry of Education (MOE) take the lead in developing and implementing effective information and awareness-raising initiatives on the equal right of everyone regardless of gender identity, to the enjoyment of economic, social and cultural rights. In particular the MOE should ensure the implementation of the Gender Equality Education Act by requiring schools to undertake targeted measures for the protection and promotion of the rights of students who are marginalized and disadvantaged because of their gender identities. The Experts urge the MOE to develop

appropriate educational materials with a view to addressing homophobic biases that affect students' perceptions of gender identities other than their own.

Rights of Indigenous Peoples

30. The Experts are concerned about the fact that lands of indigenous peoples, such as on Orchid Island, have been designated by the Government for the purpose of permanent disposal of nuclear waste. In reply to the list of issues, the Government stressed that, according to the "Indigenous Peoples Basic Law" (Article 31), the Government shall not store hazardous materials in the indigenous peoples' regions without the agreement of the indigenous peoples. With respect to the envisaged nuclear waste site in Daren Township in Taitung County and Wuchiou Township in Kinmen County, the Experts are encouraged by the plan to hold a referendum. They recommend, however, strongly that it is the indigenous peoples most directly affected and not the overall population of the respective counties who shall decide in such referendum.
31. It is reported that indigenous peoples' reserve lands and traditional lands that are still in the application process, are in the meantime already being used for development projects, consequently depriving indigenous peoples of access to their land and sources of livelihood. Reports cite as one example, the Shihti Fishing Port which has been built in Fengpin Village in Hualien County on traditional land of the Amei people that they had registered with the township government as "reserve land" from 1990 to 1993.
32. The Experts recommend that the Taiwan Government closely monitor the processing of development project plans to ensure that such plans do not infringe on the right of indigenous peoples to their territories, and to provide access to effective remedies in the instances where such infringements have already occurred.
33. It has come to the attention of the Experts that the nine Ping Pu lowland aboriginal tribes have not been granted recognition as indigenous peoples by the Government of Taiwan despite evidence of their distinct history and culture, language, customs and traditions.
34. The Experts recommend that the government clarify its policy of identifying indigenous peoples based on international human rights standards set out in the two Covenants as well as in the UN Declaration on the Rights of Indigenous Peoples, and the ILO Convention No. 169 on indigenous and tribal peoples, and to apply a human rights based approach in its engagement of the various indigenous groups in the country.
35. The Experts strongly recommend the effective enforcement of Taiwan's Indigenous Peoples Basic Law (IPBL), and the revision of policies and administrative measures that contravene the IPBL. The Experts further recommend clarification of the definition of "indigenous land (territories)" in consultation with and the direct participation of, indigenous peoples. The Experts would also welcome an official endorsement of the United Nations Declaration on the Rights of Indigenous Peoples.

C. SPECIFIC ISSUES RELATING TO THE ICESCR

Right to Work (Art. 6)

36. Considering the high level of economic development of Taiwan and the high level of education of women, the Experts are concerned that the employment rate of women is as low as 48%. They note that women's responsibility for childcare is one of the main reasons for their low rate of employment.
37. The Experts urge the Government of Taiwan to take measures to increase the employment rate of women. They recommend that the government undertake studies into the situation of women's employment, the workplace environment and their responsibility at home as the primary caregiver for the family members.

Migrant Workers and their Labour Conditions (Arts. 6 and 7)

38. A matter of serious concern is the abuse of rights and the absence of rights of migrant workers in such areas as their recruitment, mostly involving exorbitant brokers' fees, their almost complete dependence on their employers, and the restrictions on their transfer between employers, the loss of their status as documented workers, and their becoming undocumented with the attendant risk of deportation. Domestic workers are among the most vulnerable of migrant workers in terms of excessive working hours, low wages, and their vulnerability to sexual harassment. It is also a matter of concern that migrant workers, including domestic workers, are not covered by basic labour protection legislation, such as the Fair Labour Standards Act and the Labour Safety and Health Act. Further, it is a serious problem that even the most basic rights which, under international human rights standards, are to be attributed to everyone, and which include in particular the rights to food, housing and health care, are not secured for undocumented workers.
39. The Experts therefore recommend that (i) basic labour protection legislation such as the Labour Standards Act and the Labour Safety and Health Act, be made more inclusive so as to cover migrant workers, domestic workers, and dispatched workers; (ii) the exploitation by recruitment brokers be more closely controlled and abuses penalized; (iii) the rights of migrant workers enabling them to transfer between employers be extended; (iv) the right of everyone, including nationals and non-nationals, documented and undocumented, to enjoy very basic human rights, notably the rights to food, housing and health care, be guaranteed; and (v) proposals to delink the basic wages of foreign workers from those of Taiwanese citizens be rejected as in violation of United Nations and International Labour Organization standards.

Minimum Wages and Poverty Gap (Arts. 7 and 11)

40. As the Government states in its initial report on the implementation of the ICESCR the current level of wages is insufficient for workers and their families to maintain an adequate standard of living and that certain categories of people, such as persons with disabilities and many of those engaged in sheltered employment, earn less than the minimum wage (paras. 81-83).

41. The Experts recommend that the Government of Taiwan provide workers and their families with a level of wages that is in accordance with Article 7(a)(ii) of the ICESCR and that the applicability of the minimum wage legislation be extended to those sectors in which it still does not apply.

Access by Persons with Disabilities to Appropriate Employment

42. Persons with disabilities find themselves in many respects in a position of exclusion or marginalization. This also applies to the right to work and their employment conditions.
43. The Experts recommend that, following the International Committee on Economic, Social and Cultural Rights General Comment No. 18, paragraph 17, the authorities at all levels take the necessary measures enabling persons with disabilities to secure and retain appropriate employment and to assist them in their occupational field so as to facilitate their integration or reintegration into society.

Trade Union System (Art. 8)

44. Serious doubts have been expressed whether relevant laws such as the Labour Union Act, the Act for the Settlement of Labour Management Disputes and the Collective Agreement Act are in conformity with the provisions of Article 8 of the ICESCR and Article 22 of the ICCPR. These laws impose various restrictions regarding the classification, formation and the purposes of labour unions as well as on the right to strike.
45. The Experts recommend that the relevant labour law legislation be brought into line with United Nations and International Labour Organization standards.

Protection and Assistance to Family (Art. 10)

46. The Experts are concerned that “marriage immigrants” from Southeast Asia are facing various difficulties in their enjoyment of economic, social and cultural rights. They are concerned that the prohibition of dual citizenship forces a marriage immigrant to first renounce her original nationality before acquiring Taiwanese nationality, which may more readily lead her to become stateless. The marriage immigrants also still face the exploitation of brokers despite the legal prohibition of brokerage, both in Taiwan and in their countries of origin. The Experts urge the Government of Taiwan to take measures, legislative or otherwise, to prevent the situation of statelessness of marriage immigrants. The Experts further recommend that the marriage brokerage is strictly controlled and punished.

Right to Housing (Art. 11)

47. The Experts note with concern the situation of hundreds of families living in informal settlements in Taipei, who are presently threatened with forced evictions without adequate alternative housing as required by international human rights standards, as in the case of the Shaoxing and Huagang communities. The Experts also note with concern the forced evictions that have taken place in the development project of the A7 station and of the Airport MRT, affecting some 700 households and 5,000 persons. According to information received, the tenants were not meaningfully consulted prior to the sale of their properties to the construction companies.
48. The Experts recommend that the Taiwan central administration should undertake a review of the Urban Renewal Act which is viewed by civil society as poorly conceived and as being the cause of the large number of forced evictions that are conducted without due regard for just compensation or for international human rights standards.
49. The Experts also recommend that forced evictions be stopped unless alternative housing is provided in line with General Comments 4 and 7 of the UN Committee on Economic, Social and Cultural Rights, ensuring that the residents do not become homeless.
50. The Experts take note of the Government statistics on the number of homeless people in Taiwan
51. (3,012 male/362 female). While accepting that these numbers cover the registered homeless persons, the number of actually homeless people must be considerably higher. The Experts are aware that it may be very difficult to reach many of the homeless, in order to provide them with minimum basic life support, such as supplying them with food, housing, cleaning facilities, clothing, sleeping bags and access to health care facilities.
52. The Experts recommend that Government departments, local authorities, and civil society organizations should cooperate closely in finding solutions for reaching the homeless. The Experts suggest for this purpose the setting up of pilot projects to test and evaluate various methods of assistance, involving inter alia psychiatrists, physicians, street-workers, local authorities and Government departments.

Right to Health and Education (Arts. 12 and 13)

53. The Experts are concerned about the high pregnancy and abortion rates amongst female adolescents. While noting that the Government is taking various steps at all levels of government to provide sex education programmes for adolescents, the success of such measures has not yet been evaluated.
54. The Experts recommend that evaluations of sex education programmes for female and male adolescents, and the effects of such measures on the incidence of early pregnancy and abortions amongst female adolescents be evaluated regularly and that an institution be entrusted with that monitoring task.

55. The Experts are concerned about the life situation of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. As in many other countries, such persons frequently face exclusion, marginalization, discrimination and aggression by large parts of the general population, and in schools, resulting in high suicide rates and physical and mental health problems.
56. The Experts recommend that health care personnel, amongst them doctors, nurses and other hospital staff and teachers at all levels of education be trained regularly on the full respect of human rights of LGBTI persons. They furthermore recommend that public information campaigns in the mass media be developed.

D. SPECIFIC ISSUES RELATING TO THE ICCPR

Right to Life (Art. 6)

57. Although not prohibiting the death penalty per se, Article 6(6) ICCPR expresses an international trend towards abolition of capital punishment, which is underlined by repeated resolutions of the UN General Assembly calling upon all States to at least introduce a moratorium on the death penalty. Furthermore, Article 7 ICCPR prohibits in absolute terms all forms of cruel, inhuman or degrading punishment. Since even relatively lenient forms of corporal punishment have been found by the UN Human Rights Committee and regional human rights courts to constitute inhuman or degrading punishment, the question arises whether this dynamic interpretation also applies to the ultimate form of corporal punishment, namely the death penalty. Various national courts, including the Constitutional Court of South Africa, have found the death penalty to constitute cruel punishment, and the current UN Special Rapporteur on Torture identified the prohibition of the death penalty deriving from the concept of human dignity as an evolving standard of customary international law. Although the Government of Taiwan affirms (para. 94 of its initial report) that the “death penalty is brutal from the perspectives of humanity and the Covenant”, Taiwan is among a small minority of only 20 States worldwide having carried out executions in 2011. The Experts, therefore, strongly recommend that the Government of Taiwan intensifies its efforts towards abolition of capital punishment and, as a first and decisive step, immediately introduces a moratorium on executions in accordance with the respective resolutions of the UN General Assembly.
58. Until the final abolition of capital punishment, the Government of Taiwan should ensure that all relevant procedural and substantive safeguards relating to the imposition and execution of capital punishment are scrupulously adhered to. In particular, persons with mental or intellectual disabilities shall never be sentenced to death and/or executed. According to Article 6(4) ICCPR, anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. This implies that the execution of the sentence of death must be postponed at least until the proper conclusion of the relevant procedure. In the opinion of the Experts, this provision of the Covenant seems to have been violated in all 15 cases of executions carried out in Taiwan during the last three years. Finally, the

death penalty must never be imposed on the basis of a confession extracted by torture, as in the cases of the Su Chien-ho trio or of Chiou Ho-shun, who had spent 23 years in detention before his death sentence was finally certified by the Judicial Yuan in July 2011. The Experts strongly recommend the commutation of the death sentence in all such cases.

Prohibition of Torture (Art. 7)

59. Fighting impunity of perpetrators of torture is one of the most effective means to eradicate torture and other forms of ill-treatment. The Experts, therefore, recommend that the Government of Taiwan insert the crime of torture, as defined in Article 1 of the UN Convention against Torture (CAT), as a separate crime with adequate penalties in its Criminal Code. In addition, all allegations or suspicions of torture shall be thoroughly and promptly investigated by an independent and impartial body with full criminal investigation powers with a view to bringing the perpetrators to justice with adequate punishment.
60. The absolute prohibition of torture in Article 7 ICCPR also implies an absolute prohibition to extradite, expel or return any person to another country or jurisdiction where he or she would face a serious risk of being subjected to torture (principle of non-refoulement). This absolute prohibition of refoulement applies to all individuals, including those who have committed the most serious crimes, to terrorists and others who might constitute a threat to national security and public safety. Since the principle of non-refoulement and respective procedures are missing in the law of Taiwan, the Experts recommend that respective provisions be inserted into the relevant domestic laws, including the Immigration Act. In addition, the Experts recommend the speedy adoption of a Refugee Act, which should also include the principle of non-refoulement in accordance with both Article 33 of the Geneva Refugee Convention, Article 7 ICCPR and Article 3 CAT.

Administration of Justice (Arts. 9, 10, and 14)

61. The overcrowding of prisons is recognized by the Government of Taiwan as an “urgent problem” (para. 146 of the initial report). Overcrowded prisons lead to a variety of human rights problems, such as poor hygienic and health standards, lack of privacy, an increase of violence and often to conditions of detention that can only be qualified as inhuman or degrading treatment. In addition to the measures already taken by the Government of Taiwan, including the construction of new prisons, the Experts strongly recommend effective measures to reduce the number of prisoners by, inter alia, liberalizing its harsh policy on drug use and by introducing less restrictive provisions on pre-trial bail and parole. The Experts also recommend improvements in the prison health services by transferring the responsibility to the Health Department. In this context, the Experts also appeal to the Government of Taiwan on humanitarian grounds to take appropriate action in relation to the serious health problems of former President Chen Shui-bian.

62. Article 9(4) ICCPR provides that anyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of the detention and order release if the detention is not lawful (right to habeas corpus). In its replies to the list of issues, the Government of Taiwan admits that the writ of habeas corpus is not applicable to foreigners or mainlanders placed in shelters of the National Immigration Agency (para. 105). This problem was also recognized by the Judicial Yuan when issuing Interpretation No. 708 in February 2013 and declaring Article 38 of the Immigration Act unconstitutional. The Legislative Yuan was given two years within which to bring this provision in line with the right to personal liberty and habeas corpus. Since Article 9(4) ICCPR is directly applicable in the domestic law of Taiwan, the Experts recommend that any detention orders under the Immigration Act shall immediately be subject to judicial review in full accordance with Article 9(4) ICCPR.
63. Article 38 of the Immigration Act was revised in 2011 by introducing a maximum period of administrative detention of aliens of 120 days. However, nationals of the Peoples' Republic of China do not come under the purview of this Act and may, therefore, be detained for an unlimited period of time. The Experts recommend legislative changes to the effect that the limit of 120 days shall be equally applied to PRC nationals.
64. Article 9(3) ICCPR stipulates that it shall “not be the general rule that persons awaiting trial shall be detained in custody”. According to Article 101 and 101-1 of the Code of Criminal Procedure, “accusation of a serious crime” as such constitutes a valid reason for ordering pre-trial detention. In 2012, 3,373 persons (42.07% of all persons held in pre-trial detention) were detained solely under the reason of being accused of a serious crime (para. 111 of the Replies of the Government of Taiwan to the list of issues). Article 5 of the Speedy Trial Act 2010 further stipulates a maximum period of eight years of pre-trial detention, which, in the opinion of the Experts, violates the “reasonable time” limit of Article 9(3) ICCPR. Taking into account the exceptional nature of pre-trial detention, as stipulated in Article 9(3) ICCPR, the Experts recommend that persons accused of a serious crime shall only be held in pre-trial detention if additional grounds, such as a risk of flight, risk of destroying evidence or the risk of re-committing an offence, have been established by the courts. In addition, the maximum time limit of pre-trial detention shall be significantly reduced so as to conform to the “reasonable time” limit in Article 9(3) ICCPR.
65. The Speedy Trial Act of 2010 reduced the maximum length of criminal trials to eight years. But there are no corresponding time limits imposed on the Supreme Court, which often repeatedly revokes the High Court judgments and remands the case back to the High Court for repeated re-trials. The Experts consider that criminal trials of up to eight years violate the right of suspects to be tried “without undue delay” as stipulated in Article 14(3)(c) ICCPR and recommend further legislative changes aimed at reducing the length of criminal proceedings.
66. According to Article 14(5) ICCPR, everyone convicted of a crime shall have the right to his or her conviction and sentence being reviewed by a higher tribunal. In practice,

Article 376 of the Code of Criminal Procedure provides that certain types of cases may not be appealed to the court of third instance. In such cases, a criminal defendant, having been found not guilty in the first trial but guilty in the second instance, is thereafter denied the opportunity of appellate relief, in violation of Article 14(5) ICCPR. The Experts, therefore, recommend that Article 376 of the Code of Criminal Procedure be amended so that every defendant found guilty in the court of second instance after a not guilty verdict in the court of first instance will be guaranteed the right of appeal to the court of third instance. In addition, Article 388 of the Code of Criminal Procedure shall be amended to require the appointment of counsel for any defendant who lacks counsel and wishes to appeal his criminal conviction to the court of third instance.

67. Article 14(2) ICCPR stipulates that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. The principle of presumption of innocence also aims at protecting accused persons against “trial by the media”. In order to combat reported practices of certain media in Taiwan, the Experts recommend that the Judicial Yuan, the Executive Yuan, the Ministry of Justice and related government departments should take effective administrative and criminal measures to punish officials who release information about criminal cases to the media in violation of the laws and regulations designed to safeguard the presumption of innocence.
68. Article 14(7) ICCPR provides that no one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted. In this respect, the Experts recommend that the Legislative Yuan should enact the Judicial Yuan’s draft revision of Article 422 of the Code of Criminal Procedure restricting the right of the prosecutor to file a motion for retrial of a case against the defendant, after a final verdict has been confirmed.

Freedom of Movement (Art. 12)

69. According to Table 22 of the initial Report, more than 50,000 nationals of Taiwan were prevented from leaving their country in 2011 for various reasons. More than 18,000 nationals were prevented from leaving the country for reasons of financial and taxation control. These administrative decisions of tax authorities, which constitute a far-reaching interference with the human right to leave one’s own country in accordance with Article 12(2) ICCPR, are only in very few cases overturned by court decisions. In the opinion of the Experts, these wide-scale restrictions of freedom of movement of Taiwan nationals can hardly be justified by the limitation clause in Article 12(3) ICCPR. The Experts, therefore, recommend appropriate legislative and policy changes in order to bring this practice of tax and other administrative agencies in line with the requirements of freedom of movement.

Right to Privacy (Art. 17)

70. Para. 164 of the Government’s initial report refers to a highly restrictive policy relating to HIV-positive aliens, including mandatory HIV testing and the requirement of all HIV-positive aliens, including spouses of nationals of Taiwan, to leave the country. The

Report concludes that to “catch up with future trends in favor of the international human rights of people who are HIV-positive, the removal of entry restrictions for people who are HIV-positive and not nationals of the Republic of China will be discussed”. The Experts confirm that these restrictive policies are in clear contradiction to the approaches endorsed by WHO and UNAIDS and constitute violations of various human rights, in particular the rights to privacy, freedom of movement, equality and non-discrimination provided for in Articles 2, 12, 17 and 26 ICCPR. The Experts, therefore, recommend abolition of the mandatory HIV testing requirement and lifting of the respective restrictions on the entry, stay and residence of aliens living with HIV.

71. Article 17 ICCPR prohibits arbitrary interference with an individual’s privacy. As the regulation of sexual behaviour resulting in penal actions would constitute an arbitrary interference with privacy, unless when absolutely necessary for the protection of those affected or where it is carried out through force, the Experts are of the opinion that criminalising adultery is not in conformity with Article 17 ICCPR. The Experts recommend that the Government should take steps to abolish this provision from the Criminal Code.
72. The statistics on communication monitoring are high enough to raise concerns about the potential for misuse by interfering with the right to privacy. 17,548 cases were received by the Telecommunication Surveillance Centre of the National Police Agency in 2012. While some requests for surveillance were rejected, the vast number was approved, probably for legitimate reasons. The Experts found no particular problem with the process as described by the Government. While the Experts did not receive any report of misuse, they note that in other countries such systems have often led to abuse, and they therefore recommend that a vigorous process of judicial oversight be maintained and wider access be provided for complaints of misuse.

Freedom of Expression (Art. 19 and 20)

73. Article 19 ICCPR obliges States to ensure that everyone has a right to seek, receive and impart information and ideas of all kinds, including through any media of his/her choice. The Experts received several submissions alleging that the media was in imminent risk of being monopolised by a handful of media houses, thus creating a disproportionate concentration by influential media corporations. This endangers the right to receive information and ideas of all kinds. The Experts were informed by the Government that although there was as yet no specific anti-monopoly law governing the media, there are limits that ensure that persons do not hold more than a certain percentage of shares of newsprint, radio, or television enterprises. The Government did admit that existing laws are challenged as they still cannot effectively regulate mergers and acquisitions of news channels or newspapers by conglomerates. The Government also recognised that the public has expressed its concern about the possible threat to freedom of speech due to heavy “concentration” of media ownership. The Experts received specific examples of moves that could seriously undermine the freedom of media and therefore calls upon the

Government to immediately take preventive steps to block any merger or acquisition of news channels or newspapers that will result in putting dissemination of public information under heavy concentration of a handful of entities. The Experts further recommend the enactment of a comprehensive law on ensuring that the diversity of media is encouraged to protect free speech and the right to seek, receive and impart information and ideas of all kinds.

74. Some provisions of the Criminal Code interfere with freedom of expression. The Experts are mindful that although many of these are seldom invoked, they should nonetheless be repealed. In particular, Article 246 violates Article 19 ICCPR by making defamation of religious buildings and ideological locations a penal offence. Similarly, Article 104 punishes the dissemination of rumours or the spreading of false sayings, which is vague and highly restrictive.
75. Article 20 ICCPR stipulates that any advocacy of national, racial or religious hatred that constitutes incitement to discriminations, hostility or violence shall be prohibited by law. The Experts therefore recommend that a law be enacted so that the crime of advocacy of national, racial or religious hatred is inserted into the Criminal Code.

Freedom of Assembly (Art. 21)

76. The Government acknowledged that Article 29 of the Assembly and Parade Act is in violation of Article 21 ICCPR. The Government has expressed its commitment to change the approval system to a registration system, to limit the power of the police to mandate dispersal and to follow the principle of proportionality, to delete criminal punishment in the Act, to relax the registration deadline and to reduce the upper limit while deleting the lower limit for administrative fines. These amendments, however, failed to be ratified at the December 2011 session of the Legislative Yuan. It was also disclosed by the Government that despite the present legal situation, the Government has vastly relaxed the rules regarding the holding of demonstrations, rallies etc and a pro human rights policy is being observed in this regard. Nevertheless, the Experts firmly believe that suppressive legislation ought to be removed, even though the practice may have changed. The Experts, therefore, recommend that the Legislative Yuan without further delay adopt the required amendments to the Assembly and Parade Act so that it is brought into conformity with Article 21 ICCPR. At the same time the Experts encourage civil society to invoke the jurisdiction of the Judicial Yuan to challenge the legitimacy of the offensive provisions of the Act.

The Right to Marriage and Family Life (Arts. 23 and 24)

77. The Experts note that under the law the minimum age of marriage for men is 18 and the age for women is 16. The Experts consider this age difference to be discriminatory in violation of various provisions of the ICCPR, CEDAW and the CRC, and therefore

recommend that the law on the minimum age of marriage be amended to raise the minimum age of marriage of women to 18.

78. The Experts express their appreciation of the numerous initiatives such as reporting systems, domestic prevention offices, and hotlines to address violence against women in the country, especially domestic violence. It notes that most of these initiatives are the responsibility of the police. The Experts however are concerned that there is inadequate data on the prevalence, cause and effects of domestic violence and that there is a need to ensure comprehensive coverage of the initiatives concerned as well as for monitoring and assessment of the impact of the initiatives. The Experts recommend that the impact of the initiatives be assessed and on the basis of this assessment a comprehensive plan be developed to address domestic violence by adopting an interdisciplinary and multi-sectoral approach. They also recommend that national data is collected to assess the prevalence cause and effects of domestic violence. They further recommend that the Government bases all efforts to address violence against women on General Comment 19 of the CEDAW Committee and other relevant international human rights standards.
79. The Experts are concerned at the lack of legal recognition of the diversity of families in the country and that only heterosexual marriages are recognized but not same sex marriages or cohabiting partnerships. This is discriminatory and denies many benefits to couples of same sex or cohabiting partners. The Experts express their concern that the Government plans to conduct a public survey before it amends the law to recognize the diversity of families. The Government has an obligation to fulfill the human rights of all people and not make such fulfillment contingent on public opinion.
80. The Experts recommend that the Civil Code be amended to give legal recognition to the diversity of families in the country. They also recommend gender equality and gender diversity awareness and education be conducted without delay to society in general and in schools in particular.
81. On the issue of abortion, Taiwanese domestic legislation requires that a pregnant woman needs to obtain the consent of her husband and, depending on the circumstance, that of other family members. The Experts recommend that the legislation be amended so as to enable a pregnant woman to decide for abortion of her own free will.

E. FOLLOW-UP

82. The Experts highly appreciate this initiative of the Government of Taiwan to review its commitment to uphold universal human rights standards. The process that has been adopted is unique and creative. It has already yielded positive results, due in large part to intense engagement on the part of the representatives of the government, the Experts and civil society. The Experts strongly encourage the continuation of this process and recommend that a follow-up review be undertaken.