中華民國(臺灣)政府對公民與政治權利國際公約審查委員會提出第三次國家報告第二份問題清單之回應

Replies from Republic of China (Taiwan) to the Second List of Issues to be taken up in Connection with the Consideration of its Third Report (ICCPR)

2022 年 4 月

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公政公約第二份問題清單及政府機關回應
ICCPR,The Second List of Issues(LOIs) and Reply to LOIs

第 2、3 條 Article 2、3		
點次	**問題內容**	
1	**原文**	Under Article 2 in the first list of issues, several questions were raised for which an adequate response has not been given. Raising those questions again: What is the time frame for the enactment of a comprehensive anti sex discrimination / equality law? Has this been done now?
	中文參考翻譯	第一份問題清單第 2 條下提出之數項問題未獲充分回應，問題重申如下：制定綜合性反性別歧視法/平等法的時間期限為何？是否已完成？

中文回應

我國於2018年進行制定綜合性反歧視法之委託研究，2019年6月完成研究報告，該報告並協助提出平等法草案，用以作為我國立法之參考，惟尚未諮詢學者專家、民間團體。2020年我國將「制定綜合性之平等法」納入「國家人權行動計畫」之議題，列為政府優先辦理之人權事項，國家人權行動計畫刻正陳報行政院核定中，俟核定後將由行政院主責研擬平等法草案，期於2022年至2024年間將草案送至立法院審議。

英文回應

In 2018, Taiwan’s government conducted a commissioned research to formulate a comprehensive anti-discrimination legal regulation, which was completed and a report was submitted in June 2019. The report also assisted in proposing a draft for equality legal regulation as a reference for domestic legislation, but has not consulted with scholars, experts or civil societies. In 2020, we included the "formulation of a comprehensive equality legal regulation" into the "National Human Rights Action Plan" as a priority

human rights issue for the government. The National Human Rights Action Plan had been submitted to the Executive Yuan for approval. After the approval, the Executive Yuan would be in charge of developing the draft which would be submitted to the Legislative Yuan for review between 2022 and 2024.

第 2、3 條 **Article 2、3**		
點次	**問題內容**	
2	**原文**	It is stated in the government replies that "on November 27, 2019, the Executive Yuan convened the "Meeting on Legislation Recommendations for the Establishment of a Comprehensive Anti-Discrimination Law". At the meeting, a resolution was made to accept the recommendations of the research project completed in June 2019 to discuss and establish a comprehensive equity law. Currently, there is a draft still under review which will be sent to the legislature for review in 2021-2024." What is the current title of the law that is being drafted? Is it called an equity law? Equity and equality are two different concepts.
	中文參考翻譯	政府之回應表示「行政院前於 2019 年 11 月 27 日召開『研商制定綜合性反歧視法之立法建議會議』。會議決議參採 2019 年 6 月完成之研究案建議，研議制定綜合性之平等法。目前草案仍在審核中，期於 2021 年至 2024 年將草案送至立法院審議。」此項草案目前名稱為何？是否稱為 equity law? Equity 與 equality 為兩種不同概念。

<u>中文回應</u>

1.行政院前於 2019 年 11 月 27 日召開「研商制定綜合性反歧視法之立法建議會議」。會議決議參採 2019 年 6 月完成之研究案建議，研議制定綜合性之平等法，委託研究報告並協助提出平等法草案，用以作為我國立法之參考，惟尚未諮詢學者專家、民間團體。2020 年我國將「制定綜合性之平等法」納入「國家人權

行動計畫」之議題，列為政府優先辦理之人權事項，國家人權行動計畫刻正陳報行政院核定中，俟核定後將由行政院主責研擬平等法草案，期於 2022 年至 2024 年間將草案送至立法院審議。

2.草案預計以「平等法」為名稱，其意涵除消極的禁止歧視外，更以希冀透過積極作為促成實質上的公平（Equity），草案英文名稱將於法律制定過程中進行討論。

英文回應

1.On November 27, 2019, the Executive Yuan held the "Legislative Proposal Meeting to Discuss and Formulate a Comprehensive Anti-Discrimination Legal Regulations." The meeting reached a resolution to adopt the research report completed in June 2019 to formulate a comprehensive anti-discrimination legal regulation as a reference for domestic legislation, but has not consulted with scholars, experts or civil societies. In 2020, we included the "formulation of a comprehensive equality legal regulation" into the "National Human Rights Action Plan" as a priority human rights issue for the government. The National Human Rights Action Plan had been submitted to the Executive Yuan for approval. After the approval, the Executive Yuan would be in charge of developing the draft which would be submitted to the Legislative Yuan for review between 2022 and 2024.

2.The draft is expected to be titled "Equality Act," which means that in addition to negatively-prohibited discrimination, it also aims to promote substantial equity through positive actions. The English title of the draft will be discussed during the formulation and legislation process.

第 2、3 條 **Article 2、3**		
點次	**問題內容**	
3	**原文**	The government replies also state that “meanwhile in Taiwan, laws and regulations in relation to anti-discrimination are provided by various government entities which address related issues with entity-specific laws and regulations.” This will create disparities in the understanding of the principle of equality and non-discrimination if different government entities address related issues with entity specific laws and regulations. Is this currently the case?
	中文參考翻譯	政府回應也指出「我國現行涉及反歧視之法規，散見於各機關主管法規」。如果不同機關以各機關主管法規處理相關問題，將導致各方在平等和非歧視原則的理解上產生差異。目前的狀況是否如此？

中文回應

1.我國現行涉及反歧視之法規，散見於各機關主管法規，例如就業服務法、性別工作平等法、身心障礙者權益保障法、老人福利法、原住民族工作權保障法等，主要以「不得歧視」或「不得為差別待遇」之方式為立法上之規範，惟並未明確定義何謂歧視或差別待遇。各法規主管機關就其法規所規範之歧視或差別待遇行為予以認定及處分，人民對於行政機關之行政處分有所爭議，認損害其權利或利益者，得提起行政救濟，由法院予以審認。

2.我國已將「制定綜合性之平等法」納入「國家人權行動計畫」之議題，列為政府優先辦理之人權事項，平等法將明定歧視的定義、歧視的方式、適當的救濟措施等事項，期於 2022 年至 2024 年間將草案送至立法院審議。

英文回應

1.Taiwan’s current anti-discrimination laws and regulations are among the laws and regulations of various competent authorities, such as the Employment Service Act, the Act of Gender Equality in Employment, the People with Disabilities Rights Protection Act, the Senior Citizens Welfare Act, and the Indigenous Peoples Employment Rights Protection Act. The main legal norms are "no discrimination" or "no disparate treatment" but there is no clear definition of what constitutes discrimination or disparate treatment. The competent authorities of various laws and regulations recognize and punish the acts of discrimination or disparate treatment regulated by their own laws and regulations. If the people have disputes over the administrative dispositions of the administrative authorities and believe that their rights or interests are infringed, they may file for administrative remedies, which will be reviewed by the court.

2.We included the "formulation of a comprehensive equality legal regulation" into the "National Human Rights Action Plan" as a priority human rights issue for the government. The equality regulation will clarify the definition of discrimination, the approaches of discrimination, appropriate remedies and other related matters and the draft will be submitted to the Legislative Yuan for review between 2022 and 2024.

第 2、3 條 **Article 2、3**		
點次	**問題內容**	
4	**原文**	In terms of the content of the law has there been progress: has a definition of discrimination as per article 1 of CEDAW been included? Will the law provide for competent tribunals for the adjudication of complaints and for adequate remedies? Will the law provide adequate remedies when discrimination has been established? Have effective provisions been established in the law to give effect to the rights provided in this Convention?

	中文參考翻譯	法律內容方面是否有所進展：是否已根據《消除對婦女一切形式歧視公約》(CEDAW)第 1 條納入了歧視的定義？該法是否規定由合格的國家法庭 (competent tribunals)裁定申訴和適當救濟？確定存在歧視時，法律是否提供適當救濟措施？該法是否已制定有效的條款以落實本公約規定的權利？

中文回應

我國已將「制定綜合性之平等法」納入「國家人權行動計畫」之議題，列為政府優先辦理之人權事項，未來將由行政院主責研擬平等法草案，平等法將明定歧視的定義、歧視的方式、適當的救濟措施等事項，期於 2022 年至 2024 年間將草案送至立法院審議。

英文回應

We included the "formulation of a comprehensive equality legal regulation" into the "National Human Rights Action Plan" as a priority human rights issue for the government. The Executive Yuan will be in charge of developing a draft which will clarify the definition of discrimination, the approaches of discrimination, appropriate remedies and other related matters, and will be submitted to the Legislative Yuan for review between 2022 and 2024.

第 2、3 條

Article 2、3

點次	問題內容	
5	**原文**	In the list of issues, in relation to the question on violence against women whether there was a policy or law against emerging forms of violence such as stalking or cybercrime (including digital sexual violence), the response was that “on October 2020, the “Definition, Types, and Description of Digital/Internet Gender Violence” was promulgated in January 2021, and the relevant

		ministries and commissions were instructed to conduct legal and regulatory reviews, education and promotion, and survey statistics." Has there been a monitoring of the implementation of the above instructions by the relevant ministries and an assessment of their achievements?
	中文參考翻譯	問題清單中關於對女性的暴力之提問，問及是否有針對新興形式暴力的政策或法律，例如跟蹤或網路犯罪 (包括數位性暴力)，政府回應「2020 年 10 月(行政院召開...)，2021 年 1 月函頒『數位/網路性別暴力之定義、類型及其內涵說明』，責請相關部會據以辦理法規盤整、教育宣導及調查統計」。是否對相關部會執行上述指示的情況進行監督，並對其成果進行評估？

中文回應

為落實數位/網路性別暴力之防治工作，相關部會均已就法規盤整、教育宣導及調查統計等面向，分別訂定績效指標與具體做法，並納入各該部會 2022-2025 年性別平等推動計畫。有關部會後續執行情形及成果，將由行政院性別平等會定期追蹤與監督(小組成員包含性平團體代表、學者專家)，並將於網路公開執行成果，供各界監督。

英文回應

To implement measures for the prevention and control of digital/internet gender violence, the relevant ministries and commissions have set performance indicators and specific practices for the consolidation of laws and regulations, educational outreach and promotion initiatives, and survey statistics, which will be included in the 2022-2025 gender equality promotion plan of each respective ministry and commission. The implementation and results of the relevant ministries and commissions will be regularly tracked and monitored by the Gender Equality Committee of the Executive Yuan (the task force includes representatives of gender equality groups, scholars and experts), and the results of the implementation will be made public on the Internet for monitoring by

all sectors.

第 2、3 條 **Article 2、3**		
點次	**問題內容**	
6	**原文**	The government report indicates that the prevention and control of digital/internet gender violence will be tabled into the Executive Yuan-level key issues for gender equality for 2022-2025, and many aspects of this endeavour such as legal, educational and statistical are provided. However, a precise time frame is not indicated when these will take place. Please provide a tentative time frame for the prevention and control of digital/internet gender violence as planned.
	中文參考翻譯	政府國家報告指出將防治數位/網路性別暴力納入 2022-2025 年性別平等重要議題之行政院層級議題推動列管，同時提供了法規面、教育面、統計面之各面相措施。然而，並未指明上述措施確切的時間期限。請說明已規劃之數位/網路性別暴力防治其暫定實施時間期限為何。

<u>中文回應</u>

「防治數位/網路性別暴力」係屬行政院 2022-2025 年性別平等重要議題院層級議題之一，其目標包括「一、完善法令與行政措施及其相關成效；二、促進民眾及公部門對於數位/網路性別暴力之認知；三、全面建構數位/網路性別暴力調查統計」，範圍涵蓋法規、教育及統計等三面向。各該目標所設關鍵績效指標(含衡量標準與目標值)及策略，由權責部會按年提列具體做法與績效指標(含期程與目標值)，納入部會 2022-2025 年性別平等推動計畫辦理，其期程計 4 年，自 2022 年 3 月起至 2025 年 12 月 31 日止，依計畫逐年實施。

英文回應

"Prevention and Control Of Digital/Internet Gender Violence " is one of the key gender equality issues at the Yuan level for 2022-2025. Its objectives include "1. to improve laws and administrative measures and their related effectiveness; 2. to promote people and public sector awareness of digital/Internet gender violence; 3. to comprehensively construct surveys and statistics on digital/Internet gender violence," which shall cover three major aspects: laws and regulations, education, and statistics. The key performance indicators (including measurement standards and target values) and strategies for each goal will be set out by the responsible ministries and commissions on a yearly basis, with specific practices and performance indicators (including timelines and target values). They will be included in the respective 2022-2025 gender equality promotion plan of each ministry and commission. The project will run for four years, from March 2022 to December 31, 2025, and will be implemented year by year according to the set plan.

第 2、3 條 **Article 2、3**		
點次	**問題內容**	
7	**原文**	On the request to provide information on the number of compensations and quantum paid out in the year 2018-20, the government reply is that there is no data to provide. Is there such data now? If not, why not?
	中文參考翻譯	關於請政府提供 2018-2020 年的賠償案件數和支付金額之資訊一問，政府回應無資料可提供。現在是否有此資料？如果沒有，為何無此資料？

中文回應

因司法院目前並未就性騷擾請求民事損害賠償事件設立專屬字別及案由，故無法直接取得此類案件之相關案號，並提供相關損害賠償金額統計資料。又此類事件

性質上屬民事損害賠償，倘以關鍵字進行搜尋，會將其他無關事件一併算入，恐與現況有極大落差，將無法呈現此類案件之全貌，其所得概略性統計反有誤導真實現況之虞。

英文回應

Since there is no particular type and cause of action set up for civil damage claims filed for sexual harassment, it is hard to get the case number relating to these cases directly, as well as the statistics on the amount of compensation. Additionally, considering the cases' nature as compensation for civil damage, applying keywords searching may count other irrelevant incidents, leading to a result that shows a huge gap from reality. This ambiguous, rough statistical result is not only far from the whole picture of the cases but inversely misleading.

第 2、3 條 **Article 2、3**		
點次	**問題內容**	
8	**原文**	Since the Ministry of Health and Welfare (MOHW) regularly collects statistical data regarding cases of domestic violence, sexual assault prevention, sexual harassment prevention relating to abuse against women please provide data on the identities of women victims, their ethnicity, nationality, minority status, age, educational level and location such as urban/ rural.
	中文參考翻譯	由於衛生福利部(MOHW)定期收集與女性受虐相關之家庭暴力、預防性侵害、預防性騷擾案件之統計資料，請提供有關女性受害者身份、種族、國籍、少數族群身份、年齡、教育程度和所在地(如城市/鄉村) 等資料。

中文回應

有關我國女性遭受家庭暴力、性侵害、性騷擾案件等統計資料，詳見衛福部保護服務司／統計專區（網址：https://dep.mohw.gov.tw/DOPS/lp-1303-105.html）。

英文回應

Statistics regarding cases of women suffering from domestic violence, sexual assault, or sexual harassment are provided in the Department of Protective Services/Statistics (URL: https://dep.mohw.gov.tw/DOPS/lp-1303-105.html).

第 4 條

Article 4

點次	問題內容	
9	原文	The Replies from the Government to issues raised in connection with measures taken in order to stop the spread of COVID-19 (pages 11-16), as well as relevant information submitted by the National Human Rights Commission (NHRC) and NGOs, clearly show that the Government has severely restricted various human rights, such as the right to privacy, freedom of movement, freedom of expression, as well as human rights of prisoners and migrant workers. Has the Government officially proclaimed a state of public emergency in accordance with Article 4 ICCPR in order to derogate from its obligations under the Covenant? If so, when was this done and in relation to which human rights and for which period? If not, how does the Government justify these far-reaching restrictions under the respective provisions of the Covenant?
	中文參考翻譯	針對為阻絕 COVID-19 蔓延而採取的措施之相關提問，《政府回應》(第 11-16 頁(指英文版)*)以及由國家人權委員會(NHRC)和非政府組織提供的相關資訊，清楚表明政府嚴格限制了各種人權，如隱私權、行動自由、

		言論自由，以及受刑人和移工的人權。政府是否已根據《公政公約》第4條正式宣布公共緊急狀態，以減免根據《公約》所承擔之義務？如果有，是何時宣布？與哪些人權相關？時間期間為何？如果沒有，政府如何根據《公約》相關規定證明這些影響深遠的限制是正當的？ *註：秘書處補充說明。

中文回應

1.衛福部對於 COVID-19 疫情，向以嚴謹的態度因應，於 2020 年 1 月 20 日報請行政院同意成立「嚴重特殊傳染性肺炎中央流行疫情指揮中心」(下稱中央流行疫情指揮中心)，統籌整合各部會資源與人力，全力守護國內防疫安全，並於 2020 年 2 月 27 日提升至一級開設。因應國內 COVID-19 本土疫情持續嚴峻，2021 年 5 月 19 日宣布提升全國疫情警戒至第三級，自 2021 年 7 月 27 日起調整為第二級並陸續依疫情調整防疫規定，後續亦將持續密切監視國內外疫情，視社區傳播風險與疫情控制需要，適時調整防疫政策，並即時向國人公開說明或公告，並遵循傳染病防治法相關規定程序公布防疫措施。

2.另為有效防治 COVID-19 疫情，我國邊境檢疫措施係隨著國內外疫情及社區防疫執行狀況，適時滾動調整。目前已從暫緩未持有我國有效居留證之非本國籍人士入境(緊急及人道考量者除外)之邊境嚴管措施，逐步放寬國人之外籍配偶、未成年子女以及商務人士入境申請，於兼顧人道人倫需求時，同時確保國內社區防疫安全。

3.因 COVID-19 具強烈傳染性，一旦疫情擴散，對國民的生命及健康即有立即之危害。內政部警政署規劃執行之各項防疫作為，均依據中央流行疫情指揮中心公布或訂定之相關措施辦理。

4.內政部移民署配合中央流行疫情指揮中心政策，於疫情期間與相關機關及非政府組織合作推動外來人口安心採檢專案及逾期停(居)留外來人口安心接種 COVID-19 公費疫苗專案，確保臺灣社會防疫安全及兼顧外來人口健康權。

5.依據中央流行疫情指揮中心第 16 次會議決議及教育部 2020 年 3 月 20 日公告，為防治控制疫情需要，自公告日起 2020 年 7 月 15 日止，公告公私立高級中等以下學校、外國僑民學校、實驗教育機構、團體及教保服務機構之教職員工生，非經專案許可，應暫時停止出國(境)；教育部業於 2020 年 4 月 1 日函文交通部

及民用航空局，考量已預劃於上述期間出國之教職員工生權益，轉知航空公司優予考量該等旅客可申請免手續費改票或退票事宜，以維護、保障相關人員最大權益。

6.政府為阻絕 COVID-19 而實施邊境管制措施，為避免學生、新聘教師及研究人員因無法入境而影響其就學及工作權益，自 2020 年 6 月 17 日起開放境外學位生專案來臺，未能入境學生則採行線上教學方式取代實體授課，並自 2021 年 8 月 17 日起開放教研人員專案來臺，尚無限制民眾人權之情事。

7.此次 COVID-19 疫情係於 2019 年底在中國大陸爆發，行政院於 2020 年 1 月 20 日成立中央流行疫情指揮中心，統籌各相關部會權責，立法院並於同年 2 月 25 日制定公布嚴重特殊傳染性肺炎防制及紓困振興特別條例，中央流行疫情指揮中心依該條例規定，並基於維護公共利益、整體國家安全及防疫量能等原則，推動各項防疫措施。

8.交通部因應中央流行疫情指揮中心防疫政策，配合執行各項防疫作為，並依疫情警戒標準機動調整各項規定，其中對於陸運車班降低承載量部分，仍維持基本民行及必要性運輸服務，對於人民遷徙自由並無限制。

英文回應

1.MOHW has been addressing the COVID-19 pandemic rigorously since its outbreak. With the approval of the Executive Yuan, MOHW established a Central Epidemic Command Center for Severe Special Infectious Pneumonia (CECC) on January 20, 2020, to integrate resources and manpower across government agencies and safeguard the health of the public from the outbreak. The CECC was upgraded to a level 1 center on February 27, 2020. As the domestic COVID-19 situation stayed serious, the CECC announced a nationwide Level 3 epidemic alert on May 19, 2021, which was subsequently downgraded to Level 2 on July 27, 2021, with epidemic prevention measures adjusted accordingly. The CECC will continue to closely monitor the epidemic situations at home and abroad, timely adjust the prevention policy in view of the risk of community transmission and epidemic control needs, and promptly make public statements or announcements of policy change; the CECC will also announce epidemic

prevention measures in accordance with the procedures prescribed in the Communicable Disease Control Act and relevant rules and regulations.

2. To control the COVID-19 pandemic more effectively, Taiwan's border quarantine measures have been adjusted on a rolling basis and based on local and international epidemic situations and the status of community epidemic control. Border control has been gradually relaxed, with Taiwan moving from imposing strict measures that suspended entry of foreign nationals not holding a valid R.O.C. (Taiwan) alien resident certificate (exceptions were considered on a case-by-case basis for emergencies and on humanitarian grounds) towards the eased policy that allows the foreign spouses and underage children of R.O.C. nationals and foreign business travelers to apply for entry. The relaxation takes humanitarian and family unification needs into consideration while ensuring community safety.

3. Since COVID-19 is highly contagious, once the epidemic spreads, it poses an immediate danger to the lives and well-beings of all citizens. All epidemic prevention actions planned and executed by the NPA are based on the relevant measures announced or established by the Central Epidemic Command Center.

4. The National Immigration Agency, in line with the policies of the Central Epidemic Command Center (CECC), cooperates with other competent authorities and Non-Governmental Organizations in implementing special projects, such as Carefree Covid-19 Screening Program for Foreign Nationals and Carefree Covid-19 Vaccination Program for overstaying Foreign Nationals to ensure the safety of Taiwan society with regard to epidemic prevention and take into account the health rights of foreign nationals.

5. According to the resolution of the 16th meeting of the Central Epidemic Command Center and the announcement of the Ministry of Education on March 20, 2019, in order to prevent and control the epidemic, from the announcement date to July 15, 2019, public and private high school and lower schools, foreign nationals Faculty,

staff and students of schools, experimental education institutions, groups, and education security service institutions should temporarily stop going abroad (territorial) without the permission of the project; the Ministry of Education sent a letter to the Ministry of Communications and the Civil Aviation Administration on April 1, 2020, considering The rights and interests of faculty, staff and students who have pre-planned to go abroad during the above-mentioned period are forwarded to the airline to give consideration to such passengers to apply for a fee-free ticket change or refund, so as to safeguard and protect the best interests of the relevant personnel.

6. In response to the spread of the Delta variant globally and its high transmissibility, non-R.O.C nationals without a valid ARC will be barred from entry to Taiwan. International students can officially start the process of applying for entry into Taiwan from 17, June, 2020. And those students who are unable to entry Taiwan could continue their study by distance learning during the COVID-19 pandemic. Teachers and researchers can officially start the process of applying for entry into Taiwan from 17, August, 2021.
7. The COVID-19 pandemic started at the end of 2019 in mainland China. On January 20, 2020, the Executive Yuan established the Central Epidemic Command Center (CECC) to coordinate efforts of related government agencies amid the fight against the spread of this infectious disease. On February 25, 2020, the Legislative Yuan enacted and promulgated the Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens, with which the CECC conforms in implementing various pandemic control measures to protect public interests, safeguard overall national security, and maintain our disease control capacity.
8. Following the guidance from the Central Epidemic Command Center (CECC), the Ministry of Transportation and Communications (MOTC) has implemented a wide variety of epidemic prevention and control measures, and adjusted relevant regulations in accordance with the current epidemic alert level. While capacity of highway

bus and railway transport has been reduced, basic civilian and necessary transportation services remain in operation. People's freedom of movement is not limited.

第 6 條 **Article 6**		
點次	**問題內容**	
10	**原文**	The Replies from the Government relating to the death penalty (pages 17-18, 27-28) suggest that Taiwan is on the way toward the "gradual elimination of the death penalty" with effective achievement. The Taiwan Alliance to End the Death Penalty states, however, that the "MOJ remained extremely passive in the past few years, and failed to take any positive measures to abolish the death penalty or introduce a moratorium", and that it "is only because of NGOs' persistent advocate, the issue of the death penalty was added in the National Action Plan on Human Rights". Can you please explain which measures the MOJ has taken to gradually eliminate the death penalty?
	中文參考翻譯	《政府回應》中有關死刑的段落顯示(第 17-18、27-28 頁(指英文版)*)，臺灣朝向推動「逐步廢止死刑」之政策目標前進，並已獲致成效。然而，臺灣廢除死刑推動聯盟指出「法務部在過去數年間仍非常消極，並沒有積極提出廢除死刑或者停止死刑國家政策」且「《國家人權行動計畫》在民間的強力爭取推動下，死刑議題才列入其中」。可否說明法務部已採取哪些措施逐步廢止死刑？ *註：秘書處補充說明。

中文回應

為推動我國逐步廢除死刑之政策目標，除賡續運作「逐步廢除死刑研究推動小組」，逐步凝聚民意共識，以達成長期政策目標外；並參酌公民與政治權利國際公約（下稱公政公約）第 6 條與聯合國人權事務委員會針對該公約第 6 條生命權所提出之第 36 號一般性意見（下稱第 36 號一般性意見），於「國家人權行動計畫」提出下列 3 項具體行動，以落實生命權之保障。

1.檢察官審慎求刑

考量現行法制對於嚴重犯罪情節之具體個案，仍有處以極重刑罰之規定，故有必要針對檢察官具體求刑之規定，納入前揭公政公約第 6 條及第 36 號一般性意見有關科處死刑限制之意見，以促使檢察官審慎求刑。並列為檢察官在職訓練之課程規劃，精進檢察官對該號一般性意見之理解，俾予以落實於具體個案之求刑中。

2.研究分析民意對死刑制度與替代方案之態度及意見

我國曾於 2007 年委託民調機構進行「臺灣地區死刑存廢問題之民意調查」，惟迄今已逾 13 年，為瞭解民意對死刑制度與替代方案之最新態度及意見，將再委託學術或中立機構進行民意調查，以作為研訂死刑替代方案之參考。

3.研訂死刑之替代方案

我國曾於 2007 年委託學者提出「廢除死刑暨替代方案之研究」，惟上開替代方案於社會各界尚未取得社會共識前，未貿然推動立法程序。上開研究迄今已逾 13 年，各國死刑替代法制及思維，容有更迭；且國內民意對於死刑存廢與替代方案之態度，亦可能隨時空、社會環境變化而有不同，有必要再委託學者進行最新之研究，俾作為研訂死刑替代方案可行政策之參考。

英文回應

In order to promote the policy objective of gradually abolishing the capital punishment in Taiwan, in addition to continuously operating the “Research and Promotion Team for the Progressive Abolition of the Capital Punishment” to gradually build public consensus to achieve long-term policy objectives; Article 6 of the International Covenant on

Civil and Political Rights (hereinafter referred to as the Covenant) and General Comment No. 36 proposed by the United Nations Human Rights Committee on the right to life in Article 6 of the Covenant are also referred to for proposing the following three specific actions in the “National Human Rights Action Plan” to implement the protection of the right to life.

1.Prudent Prosecution made by Prosecutors

Under the consideration that the current legal system still imposes extremely severe punishments on specific cases of severe offenses, it is necessary to include the provisions on specific punishments by prosecutors into the opinions of Article 6 of the Covenant and General Comment No. 36 on restrictions to impose capital punishment to prompt prosecutors to prudently determine the adequate punishment. It is also included in the curriculum planning of on-the-job training for prosecutors to improve prosecutors’ understanding of the General Comment and implementation of determining the adequate punishment for specific cases.

2.Research and Analysis of Public Opinions on the Capital Punishment System and Alternatives

Over 13 years ago, in 2007, the Taiwanese government commissioned a polling agency to conduct the "Public Opinion Survey on the Issue of Capital Punishment in Taiwan." In order to understand the latest public attitudes and opinions of on the capital punishment system and alternatives, we will entrust academic or unbiased institutions to conduct the public opinion surveys as a reference for developing alternatives to the capital punishment.

3.Development of Alternatives to the Capital Punishment

In 2007, the Taiwanese government commissioned scholars to submit the “Study on the Abolition of the Capital Punishment and Alternatives,” but the legislation procedure for the alternatives cannot commence unless a widely accepted social consensus is reached. The above study was completed over 13 years ago, in 2007, and the legal

system and thinking of alternatives to the capital punishment in various countries have undergone certain changes, and the attitudes of domestic public opinion on the retention and abolition of the capital punishment and alternatives may also vary over such period. Therefore, it is necessary to commission scholars to conduct the latest research as a reference for developing feasible policies for alternatives to the capital punishment.

第 6 條 **Article 6**		
點次	**問題內容**	
11	**原文**	The Replies of the Government (page 27) refer to two cases of persons sentenced to death, where a re-trial was successfully granted and both defendants were eventually found not guilty. According to the Government, these "are best examples to illustrate Taiwan's careful execution, respect for life, and protection of human rights". How is it possible that these two persons, who were later found not guilty, were originally sentenced to death? Are these not rather "best examples" of miscarriage of justice to support the argument that the death penalty should be eliminated without further delay or at least that a moratorium on executions should be implemented immediately in order to avoid that further innocent people will be sentenced to death with irreversible consequences?
	中文參考翻譯	《政府回應》(第 27 頁(指英文版)*)提及兩起死刑確定案件成功聲請法院再審，並獲判無罪確定之案例。根據政府回應，以上「均是我國審慎執行死刑、尊重生命及保障人權的具體展現」。這兩人雖後來獲判無罪，但最初卻被判處死刑，怎會有此等情事？此兩例難道不是司法不公的「具體展現」？證明應不再拖延廢止死刑，或至少應立即暫停執行死刑，以免有更多無辜人民受判死刑，造成不可逆的後果？ *註：秘書處補充說明。

中文回應

1.廢除死刑雖係國際趨勢，惟死刑之廢除，牽涉層面甚廣，並非一蹴可幾，此由英、法、瑞士、義大利等歐洲國家，歷經長久時間方廢除死刑，即可證明。我國民意多數仍反對廢除死刑，依歷年民調，反對廢除死刑者始終約有近八成，在民眾對於死刑存廢仍有相當疑慮，且就廢除死刑之替代方案仍未有共識前，尚無法全面廢除死刑或暫停執行死刑。

2.我國死刑政策係採取「逐步廢除死刑」，現階段則是「減少使用死刑」、「審慎執行死刑」，以兼顧社會正義及人權保障。2017(鄭性澤)、2020(謝志宏)各 1 件死刑判決確定案件，由檢察官主動聲請法院再審，並獲判無罪確定之案例，正是遵循「審慎執行死刑」之政策。上開兩案固已歷經司法三級三審之正當法律程序判決死刑定讞，惟法務部就判決死刑確定案件，仍須依據法務部所頒「執行死刑規則」、「審核死刑案件執行實施要點」等規定嚴謹審核，查明死刑定讞者有無再審、非常上訴之事由，以及有無任何司法救濟程序仍在進行中，包括有無聲請再審、非常上訴、大法官解釋（現為憲法法庭「裁判憲法審查」），且有無刑事訴訟法第 465 條所定「心神喪失」等停止執行之法定事由，及是否經總統赦免等情事，俾充分保障死刑定讞者之人權。

3.我國目前實體法上雖仍有死刑之規定，且現仍有 38 名判決死刑定讞者，惟死刑判決及死刑案件執行之數量，近年來均大幅減少，統計 2017 年迄 2022 年 3 月止，僅 2 名判決死刑定讞，而執行死刑亦僅 2 名，且均屬剝奪他人生命法益、手段殘酷之犯罪，符合公政公約（ICCPR）第 6 條第 2 款所指「情節最重大之罪(the most serious crime)」之情形。由死刑判決定讞案件及執行死刑人數大幅減少之現況以觀，亦證我國在推動逐步廢除死刑之政策，已獲致相當成效。

英文回應

1.Although the abolition of the death penalty is an international trend, given the wide range issues it involves, there is no such this as overnight success, as proven by the long-term effort it took in European countries such as the UK, France, Switzerland

and Italy. Given the majority opinion against the abolishment of the capital punishment, as shown in the annual polls, about 80% of people in Taiwan are still highly doubtful about the retention or abolishment of the capital punishment. Hence, the total abolishment or suspension of the capital punishment is unachieved before a consensus over the alternative for the death penalty has been reached.

2. While gradual abolishment of the capital punishment is the policy we currently adopt in Taiwan, "reduction" and "prudent execution" of the capital punishment are the basic principles at the moment to maintain social justice, and protect human rights at the same time. The capital punishment was, respectively, determined for one case in both 2017 (Cheng, Hsin-Tse) and 2020 (Hsieh, Chih-Hong). The prosecutor voluntarily petitioned the court for retrial and the two cases were found to be acquitted, which is evidence of following the policy of "prudent execution of the capital punishment." Although the above two cases had already gone through the due process of the three levels of instances before the capital punishment was determined, the execution of the capital punishment was still required to follow the "Regulations for Executing the Death Penalty" and the "Guidelines for Reviewing the Execution of Cases of Capital Punishment" promulgated by the Ministry of Justice and other regulations to ensure a rigorous review to find out whether there are grounds for retrial or extraordinary appeal for those convicted of the capital punishment, and whether any judicial remedy procedures are still in progress, including whether there is a petition for retrial, extraordinary appeal, and the interpretation by the Justices (currently known as the Constitutional Court's "Judicial Review of the Court Decisions"), and whether there are statutory reasons for the suspension of execution, such as "insanity" stipulated in Article 465 of the Code of Criminal Procedure or general pardon by the President, so as to fully protect the human rights of those convicted of the capital punishment.

3. Although the capital punishment is still available in Taiwan's currently effective substantive laws and there are still 38 people who have been sentenced to the capital

punishment, the numbers of executions of the capital punishment and cases sentenced to the capital punishment have decreased significantly in recent years. According to statistics from 2017 to March 2022, only 2 persons were sentenced to the capital punishment and another 2 were executed. All of them committed crimes of depriving victims of the legal interests of life with cruel means, which were in line with "the most serious crime" as referred to in Paragraph 2 of Article 6 of ICCPR. Based on the fact that the numbers of capital punishment sentencings and executions have decreased significantly, there is solid evidence that Taiwan's policy of progressively abolishing the capital punishment has reached a considerable achievement.

第 7 條 **Article 7**		
點次	**問題內容**	
12	**原文**	The Replies of the Government to the strong recommendation of the Review Committee to incorporate torture, as defined in Article 1 CAT and required by Article 4 CAT, as a separate and specific crime into the Criminal Code of Taiwan (pages 18-19) are vague and unclear. Can you please explain why a specific crime of torture has not yet been included in the Criminal Code? When will this happen?
	中文參考翻譯	審查委員會強烈建議將《禁止酷刑及其他殘忍不人道或有辱人格之待遇或處罰公約》(CAT)第 1 條定義之酷刑按第 4 條要求新增至《刑法》作為一種獨立且特定的犯罪類型，然《政府回應》模糊不清。可否解釋為何《刑法》尚未納入酷刑罪此特定犯罪類型？何時會納入？

中文回應

1.禁止酷刑及其他殘忍不人道或有辱人格之待遇或處罰公約第 1 條規定:「『酷刑』指為自特定人或第三人取得情資或供詞，為處罰特定人或第三人所作之行為或涉嫌之行為，或為恐嚇、威脅特定人或第三人，或基於任何方式為歧視之任何

理由，故意對其肉體或精神施以劇烈疼痛或痛苦之任何行為。此種疼痛或痛苦是由公職人員或其他行使公權力人所施予，或基於其教唆，或取得其同意或默許。但純粹因法律制裁而引起或法律制裁所固有或附帶之疼痛或痛苦，不在此限。」

2.中華民國刑法第 125 條規定：「有追訴或處罰犯罪職務之公務員，為左列行為之一者，處 1 年以上 7 年以下有期徒刑：一、濫用職權為逮捕或羈押者。二、意圖取供而施強暴脅迫者。三、明知為無罪之人，而使其受追訴或處罰，或明知為有罪之人，而無故不使其受追訴或處罰者。因而致人於死者，處無期徒刑或 7 年以上有期徒刑。致重傷者，處 3 年以上 10 年以下有期徒刑。」另中華民國刑法第 126 條規定：「有管收、解送或拘禁人犯職務之公務員，對於人犯施以凌虐者，處 1 年以上 7 年以下有期徒刑。因而致人於死者，處無期徒刑或 7 年以上有期徒刑。致重傷者，處 3 年以上 10 年以下有期徒刑。」因此，中華民國刑法已分別就有追訴或處罰犯罪職務之公務員、或有管收、解送、拘禁人犯職務之公務員，為自特定人或第三人取得情資或供詞、為處罰特定人或第三人所作之行為或涉嫌之行為，或為恐嚇、威脅特定人或第三人，或基於任何方式為歧視之任何理由，故意對其肉體或精神施以劇烈疼痛或痛苦之行為，均予納入刑法處罰，且最重處無期徒刑。另外，於中華民國刑法第 134 條亦規定，如公務員假借職務上之權力、機會或方法故意犯刑法第 277 條、第 286 條、第 296 條、第 296 條之 1、第 302 條、第 304 條、第 305 條、第 231 條之 1 等罪者，例如妨害自由罪等，加重其刑至二分之一。換言之，中華民國刑法第 125 條、第 126 條即為公約第 1 條所規定之一種獨立且特定的犯罪類型，另亦有就公務員犯罪之加重規定，並非未納入酷刑罪之特定犯罪類型。

英文回應

1.Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that “For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act that he or a

third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

2. Article 125 of the Criminal Code of the Republic of China stipulates that "A public official charged with the duty of investigation or bringing offenders to justice who commits one of the following offenses shall be sentenced to imprisonment for not less than one year but not more than seven years: 1. Abusing his authority in arresting or detaining a person. 2. Using threats or violence with the purpose of extracting a confession. 3. Knowingly causing an innocent person to be prosecuted or punished, or causing a guilty person not be prosecuted or punished. If death results from the commission of the offense, the offender shall be sentenced to life imprisonment or with imprisonment for not less than three but not more than ten years; if aggravated injury results, the offender shall be sentenced to imprisonment for not less than three years but not more than ten years." In addition, Article 126 of the same Code stipulates that "A public official charged with the custody, or conveyance of prisoners who commits an act of violence or cruelty to a prisoner shall be sentenced to imprisonment for no less than one year but not more than seven years. If death results from the commission of the offense, the offender shall be sentenced to life imprisonment or with imprisonment for not less than three but not more than ten years; if aggravated injury results, the offender shall be sentenced to imprisonment for not less than three years but not more than ten years." Therefore, the Criminal Code of the Republic of China already has the stipulate provisions of punishments (the most severe punishment is life imprisonment) to public servants or those responsible for custody or conveyance of criminals, who with the intention to obtain information or confessions from, or punish

a specific person or a third person for their conduct or suspected conduct, or to intimidate, threaten such specific person or a third person, or discrimination in any way, intentionally inflicting severe physical or mental severe pain or suffering. In addition, Article 134 of Criminal Code of the Republic of China stipulates that any public official who takes advantage of his authority, opportunity or means afforded by his official position to intentionally commit an offenses stipulated in Articles 277, 286, 296, 296-1, 302, 304, 305, and 231-1 the same Code, such as offenses against abandonment, shall be subject to the punishment prescribed for such offense by increasing it up to one half unless special provisions have been made for such punishment. In other words, Articles 125 and 126 of Criminal Code of the Republic of China are the independent and specific type of crimes stipulated in Article 1 of the Covenant, and there are also aggravated provisions for crimes (which are not specific types of crimes of torture) committed by public servants.

第 7 條 **Article 7**		
點次	**問題內容**	
13	**原文**	The Replies of the Government to the recommendation of the Review Committee that all allegations of torture shall be promptly investigated by an independent and impartial body with full investigation powers are fairly vague and refer to the Prosecutors Evaluation Commission and the Control Yuan as the competent bodies (pages 20-21). Can you please explain how many complaints of torture, cruel, inhuman or degrading treatment or punishment by the police, prosecutors or other public officials have been submitted during recent years to the Prosecutors Evaluation Commission and/or the Control Yuan? In how many of these cases was torture or any other ill-treatment established? Have the perpetrators been brought to criminal justice and sentenced? Have

		the victims received any form of reparation?
	中文參考翻譯	審查委員會建議所有酷刑的指控應由具完全調查權限、獨立而公正的組織展開徹底且迅速的調查，《政府回應》中對此項說明相當模糊，並提及檢察官評鑑委員會及監察院即為主管機關 (competent bodies)。可否說明近年來有多少宗關於警察、檢察官或其他公務人員實施酷刑、殘忍、不人道或有辱人格的待遇或處罰之投訴提交給檢察官評鑑委員會和/或監察院？這些案件中，有多少宗確立有酷刑或任何其它不當處遇 (ill-treatment)？加害者是否已被繩之以法並判刑？受害者是否得到任何形式的賠償？

中文回應

1.檢察官、警察或其他公務人員如有實施酷刑、殘忍、不人道或有辱人格的待遇或處罰，涉及刑事責任者，當由司法機關依法偵查、審判與執行。至於檢察官涉及行政違失部分,除了行政監督權人可依法官法而予以行政監督處分(促其注意、警告)外，尚有檢察官評鑑委員會個案請求評鑑制度及監察院的彈劾。自 2020 年 7 月 17 日個案評鑑新制實施後，個案當事人可以直接對檢察官請求評鑑，不必再透過律師公會或其他團體。迄 2022 年 3 月 29 日止，共受理 410 件，其中已有 2 件請求成立，移送懲戒法院職務法庭審理；有 1 件請求成立，交付法務部檢察官人事審議委員會審議，決議予以警告之處分；另有 2 件請求雖不成立，惟移請行政監督權人依法官法另為適當之行政監督處分。

2.監察院近三年(2019 年至 2021 年)，就免於酷刑權部分，審議通過調查報告計 12 案；審查行政機關違失部分，成立糾正案 8 案。

英文回應

1.For any of the prosecutors, police officers or other public servants committing torture, cruel, inhuman or degrading treatment or punishment, those involved in related crimes shall be investigated, tried and executed by judicial agencies in accordance with the laws. As for the prosecutors involved in administrative violations, in addition

to the administrative supervision authority entitled to impose administrative dispositions (urging the prosecutors to more attentive and giving warning) in accordance with the Judges Act, there are also measures such as the appraisal system by the prosecutors appraisal committee and the impeachment by the Control Yuan. Since the implementation of the new appraisal system on July 17, 2020, the parties concerned may directly request appraisal on the prosecutor without having to go through the bar association or other organizations. As of March 29, 2022, a total of 410 applications have been accepted, of which 2 were further processed and transferred to the Disciplinary Court trial, 1 was further processed and submitted to the Prosecutors Review Committee of the Ministry of Justice for deliberation, and it was concluded to issue a warning, and there were 2 though not further processed, transferred to the administrative supervisory authority for appropriate administrative supervisory disposition according to the laws.

2. In the past three years (2019-2021), the Control Yuan has completed 12 investigations on the right to be exempted from torture, and proposed 8 corrective measures to the administrative agencies-in-charge for their unlawful violations.

第 7、10 條 **Article 7、10**		
點次	**問題內容**	
14	**原文**	The Replies of the Government (pages 22-26) and of the NHRC (pages 10-13) indicate some progress and the reduction of prison overcrowding and conditions of detention. Nevertheless, both sources as well as NGOs agree that there is still much room for improvement. Can you please explain when the 5-year target of the MOJ to reach a staff-to-prisoner ratio of 1:5 will be reached? When will the salary for prisoners' work be raised so that the basic monthly cost of living for prisoners of NT $3,000 will be covered?

	中文參考翻譯	《政府回應》(第 22-26 頁(指英文版)*)和國家人權委員會 (NHRC) 回應意見 (第 10-13 頁(指英文版)*)指出監所超額收容問題與拘留環境有所改善。然而，上述兩份回應與非政府組織都同意仍有很大進步空間。可否說明何時能達到法務部設定之人員與收容人比 1:5 的 5 年目標？何時會提高收容人的工作薪資，使之滿足收容人每月新臺幣 3,000 元的基本生活費用？ *註：秘書處補充說明。

中文回應

1.查矯正機關自 2020 年 12 月起已達無超額收容之目標，經持續追蹤，迄 2022 年 3 月 31 日收容人數為 53,902 名，核定容額為 58,407 名，均維持無超額收容之情形，且刻執行中之矯正機關新（擴、遷）建工程於 2022 年度陸續完工後，預期可再增加 4,819 名核定容額，提供收容人更為充裕的生活及教誨教育空間。另為有效運用各矯正機關舍房空間，輔以機動調整移監衡平各地區矯正機關收容情形，2021 年合計辦理機動調整移監共 1,589 人次；加以落實矯正系統「後門政策」之假釋制度，從速審查假釋程序，減少矯正機關收容人數，各項策略皆已發揮紓解超收之功效。

2.法務部矯正署於 2015 年係以戒護人力比 1:8 為目標，請增預算員額 3,041 人，惟囿於公務人員整體人力需依「中央政府機關總員額法」之總量控管限制，且行政院人事行政總處審認戒護人力比僅為增員參考，並非計算人力配置之唯一標準，最終仍須就收容人特性、勤務點分布、科技設備運用程度等相關因素通盤考量。

3.2021 年底，矯正機關戒護人力為 5,778 人(含約僱人員 176 人)，教化人力(教誨師、調查員、輔導員、導師、訓導員、教導員)預算員額為 406 名，年度平均收容人數為 54,657 人，戒護人力比約為 1：9.5，教化人力比約為 1:134.6，相較以往已有改善。雲林第二監獄及八德外役監獄改建工程完工後，為應新增收容容額，行政院業已核復前開二所機關人力請增計畫，核增人力 390 名，期能增補合適戒護、教化及各類專業人力，以提升矯正效能。

4.依監獄行刑法之規範，受刑人除罹患疾病、入監調查期間、戒護安全或法規別有規定者外，應參與作業，是以受刑人之勞務作業係屬於公法上必須接受之強制勞務作業，非屬私法上之自由契約。受刑人作業勞作金給付係依受刑人實際作業時間及勞動能率合併計算為基準，屬公法上之分配，非私法上之薪資給付，且受刑人在監基本生活需求，已由機關編列預算統一支付，勞作金尚非其賴以維生之薪資。

5.為提升收容人作業上處遇，2020 年 7 月 15 日監獄行刑法及羈押法修正施行，將收容人勞作金提撥比例由原作業賸餘 37.5%提升至 60%，收容人平均勞作金已有明顯增加，且矯正機關與作業廠商簽約時皆邀請第三方公正人士辦理評價會議，爭取提高勞作金，2021 年平均勞作金為 948 元，較 2012 年 377 元已增幅 2.5 倍。法務部矯正署並自 2017 年起推動自主監外作業，大幅提高監外作業收容人勞作金收入，幫助其重建家庭關係及穩定出監後生活。

英文回應

1.Since December 2020, the correctional institutions had reached the goal of no overcrowding. Through continuous tracking, as of March 31, 2022, the number of inmates was 53,902 with the approved accommodation capacity of 58,407, all of which maintained no overcrowding and the currently ongoing construction projects (expansion and relocation) of the correctional institutions scheduled to be completed in 2022 are expected to increase the approved accommodation capacity by an additional 4,819, providing more abundant living and educational space for the inmates. In addition, in order to effectively use the space of inmate rooms of each correctional institution and the dynamic adjustment and referral to balance the accommodations within the institutions at each region, a total of 1,589 inmates will be processed for dynamic adjustment and referral in 2021. The parole system of the "backdoor policy" of the correctional system will be implemented and the parole procedure will be reviewed expeditiously to reduce the number of inmates in the correctional institutions. All of the

above strategies have played a significant in relieving overcrowding.

2. In 2015, the Agency of Corrections, MOJ set the goal of a guard-inmate ratio of 1:8, and requested additional headcounts of 3,041 personnel. However, the overall number of civil servants is restricted by the total headcounts specified in the "Act Governing the Total Number of Personnel Headcounts of Central Government Agencies", and the ratio of headcounts submitted for review and confirmation by the Directorate-General of Personnel Administration, Executive Yuan is only for reference instead of the sole standard for calculating adequate dispatch of personnel. In the end, it is still necessary to comprehensively consider factors such as the characteristics of the inmates, the distribution of points for command and control, and the degree of usage of technological equipment.
3. By the end of 2021, the rebuilding institutions had 5,778 guards (including 176 contract employees), and the estimated number of rehabilitation and education personnel (teachers, investigators, counselors, tutors, instructors, and trainers) is 406. The annual average number of inmates is 54,657 people, the guard-inmate ratio and rehabilitation and education-inmate ratio are about 1:9.5 and 1:134.6, which indicates an improvement compared to the previous result.In order to provide more adequate treatment environments to inmates, after the completion of the rebuilding of Yunlin Second Prison and Bade Prison Camps, the Executive Yuan has approved the manpower increase plan for the two institutions by approving 390 additional manpower. It is expected that appropriate guarding, education and various professional manpower will be able to improve the correction efficiency.
4. According to the Prison Act, the inmates except those who suffer from diseases are required to participate in labor works during the period of detention and investigation unless otherwise for guarding safety, or laws and regulations. Therefore, the labor work of the inmates is compulsory under public laws, not the contract under private laws. The wage for the inmates' labor work is based on the combined calculation of

the inmates' actual working hours and duty ratio, which shall be the disbursement under public laws, not the wage under private laws. The costs for inmates' basic living needs in prisons and detention centers have been uniformly covered by the Agency's budget, so the wage for labor work is technically not the wage that the inmates rely on to survive.

5. In order to improve the working status of inmates, the Prison Act and Detention Act were amended and promulgated on July 15, 2020, and the proportion of disbursement of inmates' labor wage was increased from 37.5% to 60%, and the average labor payment of labor wage for inmates has increased significantly. When the rebuilding institutions sign the contract with any business operators, the third-party impartial personnel will be invited to hold an evaluation meeting and try the best to raise the labor wage. The average labor wage in 2021 reached NT$948, an increase of 2.5 times compared with NT$377 in 2012. The Agency of Corrections, MOJ has also promoted independent external work outside prison since 2017, which would greatly raise the income of inmates working outside the prison to help them rebuild their relationships with family members and stabilize their lives after being released.

第 9、10 條 **Article 9、10**		
點次	**問題內容**	
15	**原文**	The Replies of the Government concerning statistical annual data on children in detention show a slight increase of children in juvenile detention houses and reformatory schools between 2018 and 2020. Can you please provide the Review Committee with the total number of children (up to the age of 18 years), disaggregated by age, gender and types of disability, who are at a snapshot date (between now and the time of the Review) detained in juvenile detention houses, in reformatory schools, in juvenile rehabilitation centers, in

		prisons, in police custody, psychiatric hospitals and special detention facilities for children with disabilities?
	中文參考翻譯	《政府回應》裡關於拘留中兒童之年度統計資料顯示，2018 年至 2020 年間，少年觀護所和矯正學校的兒童略有增加。可否按年齡、性別和障礙類型分列，向審查委員會提供截至某一特定日期 (從現在到報告審查之間某日) 被收容在少年觀護所、矯正學校、少年勒戒處所、監獄、警方拘留所、精神病院和身心障礙兒童特殊設施之(18 歲以下)兒童總數？

中文回應

1.矯正機關 2022 年 3 月 31 日收容未滿 18 歲少年人數如下表：

機關類別		總計	矯正學校	少年觀護所	少年勒戒處所
矯正機關收容少年總數		495	266	228	1
性別	男	437	235	201	1
	女	58	31	27	-
年齡	未滿 12 歲	-	-	-	-
	12 歲	1	-	1	-
	13 歲	8	-	8	-
	14 歲	34	6	28	-
	15 歲	86	42	44	-
	16 歲	157	92	65	-
	17 歲	209	126	82	1
身心障礙少年總數		9	7	2	-
身心障礙類別	神經系統構造及精神、心智功能	9	7	2	-
	眼、耳及相關構造與感官功能及疼痛	-	-	-	-
	涉及聲音與語言構造及其功能	-	-	-	-
	循環、造血、免疫與呼吸系統構造及其功能	-	-	-	-
	消化、新陳代謝與內分泌系統相關構造及其功能	-	-	-	-
	泌尿與生殖系統相關構造及其功能	-	-	-	-
	神經、肌肉、骨骼之移動相關構造及其功能	-	-	-	-
	皮膚與相關構造及其功能	-	-	-	-

2.臺灣對於少年所為之不利自我健全成長、損及他人權益或公共秩序等行為，特別訂有「少年事件處理法」及其子法(如「少年偏差行為預防及輔導辦法」)、「兒童及少年福利與權益保障法」及教育相關法令，而違反「社會秩序維護法」之行為，即屬損害他人權益或公共秩序，亦不利少年行為人自我健全成長之行為，故警察機關若發現少年有(廣義)偏差行為(包括：觸犯刑罰法律、曝險行為及其他狹義偏差行為等 3 類)，即須依上開法令處理之(不依社會秩序維護法規定及程序)。承前說明，警察機關若發現少年有觸犯刑罰法律或曝險行為，皆依前揭規定報請少年法院處理，將少年本人加以護送至少年法院或逕行釋放，未有對少年拘留之情事。

3.經查歷年精神疾病強制住院個案資料，並無兒童被許可強制住院。依 2018 年迄 2022 年 3 月 31 日統計數據，海巡署無留置或拘提未滿 18 歲之少年。

英文回應

1.The following Table shows the number of juvenile inmates under the age of 18 in the rebuilding institutions as of March 31, 2022 ：

Institution Type		Total	Reformatory school	Juvenile detention houses	Juvenile rehabilitation centers
Total number of juvenile inmates in rebuilding institutions		495	266	228	1
Gender	Male	437	235	201	1
	Female	58	31	27	-
Age	Less than 12 y.o.	-	-	-	-
	12 y.o.	1	-	1	-
	13 y.o.	8	-	8	-
	14 y.o.	34	6	28	-
	15 y.o.	86	42	44	-
	16 y.o.	157	92	65	-
	17 y.o.	209	126	82	1
Total number of juvenile inmates with disabilities		9	7	2	-
Type of dis-abilities	Mental Functions & Structures of the	9	7	2	-

	Nervous System				
	Sensory Functions & Pain; the Eye, Ear and Related Structures	-	-	-	-
	Functions & Structures of/involved in Voice and Speech	-	-	-	-
	Functions & Structures of/related to the Cardiovascular, Hematological, Immunological and Respiratory Systems	-	-	-	-
	Functions & Structures of/related to the Digestive, Metabolic and Endocrine Systems	-	-	-	-
	Functions & Structures of/related to the Genitourinary and Reproductive Systems	-	-	-	-
	Neuromusculoskeletal and Movement related Functions & Structures	-	-	-	-
	Functions & Related Structures of the Skin	-	-	-	-

2.In Taiwan, the Juvenile Justice Act and its subsidiary laws (such as the Regulations for the Prevention of Juvenile Deviant Behavior and Counseling), the Protection of Children and Youths Welfare and Rights Act, and education-related legislations have been specially enacted to deal with the behavior of juveniles that is detrimental to the

sound growth of self, the rights of others, or public order. Actions that violate the Social Order Maintenance Act are viewed as detrimental to the rights and interests of others or to public order, and are not conducive to the sound growth and development of juvenile offenders of the law. Therefore, if the police authorities find that a juvenile has (in a broad sense) exhibited deviant behavior (including: violation of criminal laws, behavior that exposes him/her to dangers and other narrowly defined deviant behavior, etc.), they must deal with it in accordance with the above laws rather than the provisions and procedures of the Social Order Maintenance Act. As previously explained, if the police authorities find that a juvenile has committed criminal acts or exhibited behavior that exposes him/her to dangers, they will be reported to and processed by the juvenile court in accordance with the preceding provisions, and the police authorities will escort the juvenile to the juvenile court or release the juvenile directly. There are no incidences of the detention of juveniles.

3. According to the record, no child was permitted to compulsory hospitalization. According to the statistics from 2018 to March 31th, 2022, the ROC Coast Guard did not detain any juvenile under the age of 18.

第 14 條 **Article 14**		
點次	**問題內容**	
16	**原文**	According to the Parallel Report of the Chinese Association of Human Rights (CAHR) Taiwanese law does not indicate how long time the judge is left to make a ruling after accepting the request for detention and that an excessively long waiting period may violate the personal freedom of the defendant and the principle of «presumption of innocence ». Is the current practice compatible Article 14 of ICCCR and is the Government in any event willing to consider legislative measures in order avoid violations of the Article?

	中文參考翻譯	根據社團法人中華人權協會(CAHR)的平行報告，臺灣法律沒有指明法官受理聲押案後多久要作出裁定，而過長的等待時間可能違反被告人身自由和「無罪推定」原則 (presumption of innocence)。目前的做法是否符合《公政公約》第 14 條，政府是否無論如何都願意考慮採取立法措施以避免違反該條規定？

中文回應

刑事訴訟法第 93 條第 5 項規定：「法院於受理前三項羈押之聲請，付予被告及其辯護人聲請書之繕本後，應即時訊問。但至深夜仍未訊問完畢，被告、辯護人及得為被告輔佐人之人得請求法院於翌日日間訊問，法院非有正當理由，不得拒絕。深夜始受理聲請者，應於翌日日間訊問」，業已明定，法院對於檢察官聲請羈押案件應「即時」審理。又此類案件，涉及被告人身自由剝奪，必須謹慎為之；案件情節不一，案情繁雜者，尤需相當時間之準備，且同法第 101 條第 4 項明定：「被告、辯護人得於第一項訊問前，請求法官給予適當時間為答辯之準備」；刑事訴訟法並明定深夜不得訊問，以免發生疲勞訊問之情形。是就審理所需時間，自宜保持彈性；否則，強制規定受理後應於一定時間內作出決定，可能會迫使法院在未準備妥當之狀況下，即作出羈押與否之重要決定。

英文回應

Paragraph 5 of Article 93 of Code of Criminal Procedure (hereinafter “CCP”) provides, “When accepting the petition for detention, as described in the preceding three paragraphs, the court shall immediately begin the interrogation after giving the accused and the defense attorney a written copy of the petition… If the petition is accepted late at night, the interrogation may begin during the daytime of the following day.” It requires the court “immediately” review a prosecutor’s petition to detain the defendant. Such cases involve deprivation of liberty, prudence must be given. For complicated cases, more time is needed for preparation. Paragraph 4 of Article 101 of CCP also entitles the defendant and his or her defense attorney the right for appropriate time to prepare the

defense. In addition, CCP prohibits any hearing in late night to prevent physical and mental exhaustion. Therefore, time for the review should be flexible. On the contrary, establishing a fixed time rule may compel the court to make an important decision without full preparation.

第 14 條 **Article 14**		
點次	**問題內容**	
17	**原文**	It is alleged in the Report of the CAHR that persons who have been sentenced to death but are later acquitted have a less favourable access to protective measures to return to society than that of guilty persons who have completed their imprisonment. Is the allegation correct and if so will the Government consider to rectify it?
	中文參考翻譯	社團法人中華人權協會(CAHR)報告聲稱，已判決死刑但後來獲判無罪者，比已經服完刑期的有罪者，更欠缺獲得回歸社會的保護措施。以上指稱是否正確？若確是如此，政府是否考慮糾正此狀況？

中文回應

1.不論刑事補償受害人保護、犯罪被害人保護或更生人保護機制，均須由國家提供包含生活經濟、身體健康、教育資格等不同面向之保護措施，從國家整體性之立場，宜有一致性之規劃與處理，以將有限資源作最有效利用；同時，相關機關在執行時，亦應本諸同理心作最適安排，以免受保護者反遭歧視或傷害。

2.現行犯罪被害人保護法及更生保護法之主管機關均為法務部，並已長年持續為犯罪被害人及更生人提供必要的協助，另依法務部報請行政院核定之「加強犯罪被害人保護方案」（https://www.moj.gov.tw/2204/2205/2323/2354/2371/2376/41510/post）第六、（三）、4 點，可知行政院已就「協助冤獄受害人復歸社會」核定由相關機關（法務部、衛福部、勞動部）予以轉介或提供必要之協助。

英文回應

1.Regardless of the protections of the victims of criminal compensation, crime victims or rehabilitated persons, government must provide them with many aspects of support systems which include livings, health, and education. The government should plan and deal with these issues consistently, and make the most effective use of limited resources； at the same time, relevant agencies should also make the most appropriate arrangements based on empathy to prevent the protector from being discriminated against or harmed.

2.The competent authority of Crime Victim Protection Act and the Rehabilitation Protection Act is the Ministry of Justice, which has been providing necessary assistance to crime victims and rehabilitated persons for many years. According to Point 6(3) and 4 of “The Plant of the Enhancement of Crim Victim Protection”（https://www.moj.gov.tw/2204/2205/2323/2354/2371/2376/41510/post）, we can see that the Executive Yuan has made “the Rehabilitation of the Victims of Wrongful Imprisonment” approved by the relevant authorities (the Ministry of Justice, the Ministry of Health and Welfare, the Ministry of Labor) to refer or provide necessary assistances.

第 14 條 **Article 14**		
點次	**問題內容**	
18	**原文**	Is the case-law of Taiwanese courts restricting the right to cross-examination in respect of statements of a hearsay character incompatible with ICCPR Article 14 para. 4, section 5, as alleged by the Taiwan Criminal Defence Attorney Association and the Taipei Bar Association?
	中文參	臺灣法院的判例法限制對傳聞性質之陳述進行交互詰問的權利，是否如

	考翻譯	臺灣刑事辯護律師協會和台北律師公會所稱，不符合《公政公約》第 14 條第 4 項第 5 款*的規定？ *註:原文引用有誤，此處應指《公政公約》第 14 條第 3 項第 5 款

中文回應

《刑事訴訟法》保障被告的對質詰問權利。2004 年的司法院釋字第 582 號解釋明示，被告就不利於己證人，訴訟上有對質詰問的權利。因此，即使該法第 159 條之 1 至第 159 條之 5、第 206 條、第 208 條在特定條件下承認法庭外陳述的證據，被告依然有權對於陳述之人行使對質詰問權。除此之外，該法第 155 條第 2 項規定，證據未經合法調查，不得作為證據；第 288 條之 1 第 1 項規定，法院每調查一證據完畢，應詢問當事人有無意見；第 288 條之 2 規定，法院應予當事人辯論證據證明力之適當機會。從而，《刑事訴訟法》及其實務，符合《公政公約》第 14 條關於對質詰問的規定。

英文回應

Taiwan's Code of Criminal Procedure (hereinafter "CCP") protects a defendant's right to confrontation and cross-examination. Interpretation No. 582 of Taiwan's Grand Justices declared in 2004 that a defendant shall enjoy the right to confront and cross-examine any witness against him or her. Hence, even though CCP (Article 159-1 to 159-5, 206 and 208) admits an out-of-court statement as evidence in specified circumstances, a defendant still has the right to challenge the one who made the statement face to face at court hearing. Besides, CCP also stipulates that any pieces of evidence cannot be adopted unless they are legally investigated by the court (Article 155II) and are subject to both parties' examination during court investigation (Article 288-1I). Furthermore, both sides of the parties are entitled to debate the probative value of any pieces of evidence (Article 288-2). Thus, Taiwan's CCP and its practice comply with the requirement of Article 14 of ICCPR for confrontation and examination.

第 14 條 **Article 14**		
點次	**問題內容**	
19	**原文**	Is it compatible with ICCPR Article 14 para.5, that a violation of that Article has not been remedied in respect of cases which were pending before November 17th 2017?
	中文參考翻譯	對於 2017 年 11 月 17 日之前的未決案件，沒有針對違反該條*的行為進行補救，這是否符合《公政公約》第 14 條第 5 項？ 註：指刑事訴訟法第 376 條

中文回應

由於臺灣的特殊國際地位，臺灣無法批准《公政公約》並送交聯合國。臺灣是透過內國立法的方式，亦即制定《公民與政治權利國際公約及經濟社會文化權利國際公約施行法》(下稱兩公約施行法)，使該公約內容成為內國法的一分。兩公約施行法第 8 條規定，政府機關應制定、修正或廢止不符兩公約規定之法令。關於《刑事訴訟法》第 376 條牴觸《公政公約》第 14(e)條關於有罪判決應至少有一次覆審機會之爭議，該法於 2017 年 11 月 18 日修正施行，已符合兩公約施行法的要求。由於兩公約施行法並未要求政府機關的修法必須溯及適用至已確定案件，故臺灣的刑事訴訟法修正，即便未有溯及適用的規定，亦未違反公政公約。

英文回應

Due to Taiwan's special international status, Taiwan is unable to ratify ICCPR and then deposit the ratification to United Nations. Instead, the way Taiwan accepted ICCPR was to enact the "Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights" (hereinafter "the Act") which incorporated ICCPR into its domestic law. Article 8 of the Act provides that Taiwan shall review any law to see if it is contradicted with ICCPR and the

government is obligated to fix any contradiction by legislation. Regarding the issue on contradiction between Article 376 of Code of Criminal Procedure (hereinafter "CCP") and Article 14(e) of ICCPR, Taiwan has passed the amendment to CCP in 2017, effective on Nov. 18, 2017, to honor Article 14(e) of ICCPR. Since the Act does not require any retroactive application on a closed case, Taiwan's CCP, though with no retroactive application, does not violate ICCPR.

第 14 條 **Article 14**		
點次	**問題內容**	
20	**原文**	Was the draft of the Criminal Compensation Act submitted by the Judicial Yuan to the Legislative Yuan in 2019 compatible with Article 14 para. 6 of the ICCPR? What were the reasons for its withdrawal?
	中文參考翻譯	司法院於 2019 年向立法院提交的《刑事補償法》修正草案是否符合《公政公約》第 14 條第 6 項？其撤回的原因是什麼？

中文回應

1. 司法院係於 2020 年 7 月 9 日與行政院會銜函請立法院審議「刑事補償法部分條文修正草案（下稱本草案）」，目前仍在該院之一讀程序，等待司法及法制委員會審查中（https://lis.ly.gov.tw/lylgmeetc/lgmeetkm?.aec30076000110000008000001000000^0000000A00000000039C03de7），並未撤回該項提案。
2. 本草案考量現行刑事補償法第 7 條所謂「依社會一般通念」之標準過於抽象，且補償金額之標準業有第 6 條規定可資規範，為免第 7 條有關酌減補償金額之規定受到過度適用，並使補償金額標準回歸第 6 條之一般規定，故將第 7 條刪除。未來如獲立法通過，受害人縱有可歸責事由，亦僅能在第 6 條所定標準之範圍內，作為酌定補償金額之參考因子，而不能於較低額之範圍內酌定補償金額。

3.本草案第 8 條第 3 款「虛偽自白、逃亡、干擾證據調查或其他事由而可歸責」係參照司改國是會議決議有關審酌要件明確化的要求，將現行第 8 條第 2 款後段「可歸責事由之程度」明確化，並移列第 3 款，尚非新增之規定，又該條立法說明中已闡明其規定之法理依據，核與釋字第 670 號解釋理由書：「為避免補償失當或浮濫等情事，受害人對損失之發生或擴大，如有可歸責之事由，固得審酌不同情狀而排除或減少其補償請求權，惟仍須為達成該目的（指避免補償失當或浮濫等）所必要，始無違憲法第 23 條之比例原則。」意旨相符。亦即，受理補償事件之機關所審查者，乃受害人對於刑事補償之發生或擴大有無可歸責之事由，而非受害人有無被訴之犯罪嫌疑，復非就同一事證重複審查受害人是否應受無罪判決，自與雙重危險禁止與無罪推定原則無違。

4.此外，本草案第 6 條之 1 針對未受人身自由拘束之受害人，明定其在依再審或非常上訴程序裁判無罪確定前，如已因有罪確定案件之偵查、審判程序或判決結果而蒙受人身自由以外諸如名譽權等人格法益之重大損失，且已達特別犧牲之程度時，縱未經羈押或刑罰之執行，仍得請求國家補償。

5.綜上，本草案如獲立法通過，將可更加落實《公政公約》第 14(6)條之規定。

英文回應

1.On July 9, 2020, the Judicial Yuan and the Executive Yuan has jointly signed and sent to the Legislative Yuan to review the "Draft Amendments to Certain Provisions of the Criminal Compensation Law (hereinafter referred to as the Draft)". It is still in the reading process of the Legislative Yuan（ https://lis.ly.gov.tw/lylgmeetc/lgmeetkm?.aec300760001100000080000001000000^0000000A00000000039C03de7）, pending the review by the Judicial and Legal Committee and is not withdrawn.

2.Considering the standard based on the general situation of the society is too abstract to determine and Article 6 has stipulated the standard on determination of the amount of compensation, so we have to avoid Article 7 to be applied excessively and should

apply the standard on determination of the amount of compensation which has been written in Article 6.Article 7, accordingly, will be deleted in Criminal Compensation Act Draft Amendment. Once Criminal Compensation Act Draft Amendment is passed, even though the victim of the compensation claim is attributable, the compensation shall be in the range of Article 6 and shall not be lower than the range.

3. Paragraph 3 of Article 8 of the Draft "attributable to false confessions, escape or destruction of evidence, among other things" refers to the requirement of clarifying the requirements for review of the National Conference on Judicial Reform. Paragraph 2 of "the degree of attributable causes" is clarified and moved to the third paragraph and it is not a new provision. Moreover, the legal basis for this provision has been clarified in the legislative explanation of this article. According to the reasoning of J.Y. Interpretation Nos. 670 " for the sake of avoiding inappropriate or abusive indemnification, such indemnification right may be excluded or reduced under different circumstances if the victim is culpable for the creation or expansion of damages. Yet it has to be necessary to achieve the statutory purpose so that there is no violation of the principle of proportionality under Article 23 of the Constitution." The meaning is consistent. That is to say, what is reviewed by the agent that accepts the compensation matter is whether the victim is culpable for the creation or expansion of damages of the criminal compensation, not whether the victim is suspected of a crime, and the victim has not been repeatedly reviewed for the same evidence. Whether it should be acquitted or not, the prohibition of self and double jeopardy and the principle of presumption of innocence are not violated.

4. According to Article 6-1 of Criminal Compensation Act Draft Amendment the person whose personal freedom is not restricted, even though he/she is not detained or is not excuted, before the adjudication of not guilty is rendered and becomes final on the retrial, extraordinary appeal, if there is any injury of reputation and constitutes

special personal sacrifice because of a guilty ruling, he/she may seek state compensation. Hence, once Article 6-1 of Criminal Compensation Act Draft Amendment is passed, a person whose personal freedom is not restricted is also protected.

5. In summary, once the above Criminal Compensation Act Draft Amendment is passed, Article 14(6) of International Covenant on Civil and Political Rights will be implemented more completely.

第 14 條 **Article 14**		
點次	**問題內容**	
21	**原文**	Is it correct as alleged by the Taiwanese bar associations that the right of persons found guilty in criminal proceedings to request DNA identification is ineffective as most of such evidence has been destroyed? If so, are any measures being considered by the Government to remedy the situation and if not why? What has been the Government's reaction to the investigative report 0063 2020 from the Control Yuan? Will the Government consider establishing an explicit legal framework for the custody of such exhibits?
	中文參考翻譯	是否如臺灣數個律師公會所稱，在刑事訴訟中受有罪判決確定者，請求 DNA 鑑定之權利形同具文，因多數發現證物已遭銷毀？若是如此，政府是否正在考慮採取任何措施為此類情況提供救濟？若無此考慮，又是為何？政府對監察院(109 司調 0063 號)*調查報告有何反應？政府是否會考慮為保管此類證物建立明確的法律架構？ 註：秘書處補充說明

中文回應

1. 有罪判決確定後，卷宗及證物係移送檢察官據以指揮執行。關於執行階段卷宗及證物之保管及銷燬，司法院作為審判行政之機關，尊重主管機關即法務部之權責。

2.關於判決死刑確定案件之證物，法務部已於 2020 年 10 月 30 日以法檢字第 10904528800 號函行文臺灣高等檢察署應永久保存。至於先前判決死刑確定案件證物已遭銷燬者，仍宜視相關案件是否符合再審、非常上訴之要件以定其得否尋求救濟。法務部就死刑、無期徒刑或其他重大刑案之贓證物保存問題，刻正持續召集有關機關研議中，期能就相關問題研擬出妥適之解決方案。

3.在刑事訴訟中受有罪判決確定者，請求 DNA 鑑定已有「刑事案件確定後去氧核醣核酸鑑定條例」明文規定，且為因應該法施行，內政部警政署刑事警察局已於 2017 年依法務部來函辦理，函請各刑事 DNA 鑑定單位，應將鑑定完畢後之證物 DNA 檢體保存 10 年。

4.經處死刑、無期徒刑判決之卷宗需永久保存，已有「檔案法」相關規定在案。

5.有關刑案證物保管問題，依「刑事訴訟法」、警察偵查犯罪手冊、刑事鑑識手冊等規定，刑案證物應隨案移送地檢署，無法隨案移送則應暫存於刑案證物室保管，並儘速移送地檢署贓物庫，因此警察機關並無保管有罪判決確定案件之證物。

英文回應

1.Following a defendant is found guilty and the case is final, all case files and evidence are transferred by the court to a public prosecutor for execution. Regarding preservation and destruction of case files and evidence during the execution phase, the Judicial Yuan, as a court administration, respects the authority of the Ministry of Justice.

2.For the evidence in cases where the capital punishment is determined, MOJ has issued an official letter of Fa-Jian-Zi No. 10904528800 dated October 30, 2020 to request the Taiwan High Prosecutors Office for permanent preservation. For those who have been previously sentenced to capital punishment and the evidence related to their cases has been already destroyed, it is still required to determine whether these relevant cases meet the requirements for retrial and extraordinary appeal to determine whether these persons can seek remedies. With regard to the preservation of stolen

items and evidence for capital punishment, life imprisonment or other major criminal cases, MOJ is continuing to invite relevant agencies for discussions with an aim to come up with appropriate solutions to the relevant issues.

3. In criminal proceedings, for those who have been convicted of crimes by court verdict, procedures for requests for DNA analysis and identification have been expressly established in the "Post-Conviction DNA Testing Act" (Attachment 1), and in response to the implementation of this law, the Criminal Investigation Bureau of the NPA, has already implemented related measures according to an official request from the Ministry of Justice that all criminal DNA identification units to retain the DNA samples of evidence for 10 years after the completion of the investigative work.
4. The files of death penalty and life imprisonment sentences are required to be kept permanently, and the relevant regulations for archival procedures are already in place.
5. On the issue of the custody of evidence in criminal cases, according to the Code of Criminal Procedure, the Police Crime Investigation Manual, and the Forensic Science Manual, criminal evidence should be transferred to the local prosecutor's office with the case; if it cannot be transferred with the case, it should be temporarily stored in the criminal evidence room and transferred to the local prosecutor's office as soon as possible. Therefore, the police authorities do not keep the physical evidence used against people finally convicted.

第 19 條 **Article 19**		
點次	**問題內容**	
22	**原文**	In the government responses, para. 1 on pp. 70-71 explains about legislation prohibiting dissemination of rumours or false information about COVID-19 but it does not indicate whether there have in fact been any prosecutions. Please indicate whether there have been any prosecutions and, if so, provide details about the nature of the offence, the proceedings and the sanction imposed.
	中文參考翻譯	政府回應第 70-71 頁(指英文版)*第 1 點說明了關於禁止傳播有關 COVID-19 的謠言或假消息之立法，但未說明事實上是否有任何起訴。請說明是否有任何起訴，如果有，請詳細說明犯罪性質、法律程序和實施的制裁。 *註:秘書處補充說明。

中文回應

1.經統計，自 2020 年 2 月疫情發生至 2022 年 3 月 30 日止，各檢察機關偵辦散播疫情假訊息案件,合計偵結起訴 103 人(7%,經法院判決有罪之案件計 43 件)，緩起訴 473 人(33%)，不起訴 866 人(60%)。起訴比率僅 7%，顯示檢察機關偵辦散播疫情假訊息案件，已兼顧防制疫情假訊息散播之公共利益與保障被告言論自由之均衡維護。

2.散播 COVID-19 疫情假訊息係觸犯「嚴重特殊傳染性肺炎防治及紓困振興特別條例」第 14 條之罪，屬刑事犯罪，適用刑事訴訟程序，法定刑為「3 年以下有期徒刑、拘役或科或併科新臺幣 300 萬元以下罰金。」依通常情形，係個案經告訴或告發後，進入偵查程序，檢察官偵查終結後，如提起公訴，法院於審理期間，係由承辦法官以公開審理為原則，依據卷證資料，本於法律確信，獨立判斷後做出判決。

3.另查，自 2020 年 1 月 1 日至 2021 年 12 月 31 日止，違反「社會秩序維護法」第 63 條第 1 項第 5 款「散佈謠言，足以影響公共之安寧」而經法院裁定之案件中，與 COVID-19 疫情相關者，計有 141 件，其中處以罰鍰者 48 件，不罰者 93 件；其程序，依「社會秩序維護法案件處理辦法」第 32 條規定，警察機關受理並踐行調查程序後，應移送地方法院或其分院簡易庭審理，毋庸經由檢察官偵查或訴追。

英文回應

1.According to statistics, from the outbreak of the epidemic in February 2020 to March 30, 2022, various prosecutors' offices have investigated and handled cases of dissemination of false information about the epidemic. A total of 103 people (7%) have been investigated and prosecuted, 473 people (33%) have been deferred prosecution and 886 (60%) were not prosecuted. The prosecution rate is only 7%, which shows that the prosecutors' offices have taken into account the public interests of preventing the dissemination of false epidemic information and the protection of the defendants' freedom of speech when investigating cases.

2.The dissemination of false information about the COVID-19 epidemic constitutes an offense against Article 14 of the Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens, which shall be subject to criminal procedures and punishable for imprisonment of not more than three years or criminal detention, or in lieu thereof or in addition thereto, a fine of no more than NT$3 million. " In general, criminal proceedings of such a case can be divided into two major phases, the investigation and trial phases. The investigation phase starts when a criminal act is reported or complained and ends when a public prosecutor concluded to indict the defendant. During the trial phase, the trial judge, based on his or her objective belief, makes judgements in accordance with evidence and materials in the case file independently.

3.From January 1, 2020 to December 31, 2021, in cases judged by the court in violation of Subparagraph 5, Paragraph 1, Article 63 of the Social Order Maintenance Act, "spreading rumors sufficient to affect public tranquility ", there are 141 cases related to the COVID-19 epidemic, of which 48 cases were fined and 93 cases were not punished. The procedures, in accordance with Article 32 of the Case Handling Measures of the Social Order Maintenance Act, are accepted and implemented by the police authorities. After the investigation procedure is carried out, it shall be transferred to the district court or its branch court for trial, without the need for investigation or prosecution by the public prosecutors.

第 21 條 **Article 21**		
點次	**問題內容**	
23	**原文**	For what reasons is the draft submitted to the Legislative Yuan in 2016 aiming at rectifying a violation of Article 21 of the ICCPR by the Assembly and Parade Act not yet adopted by the Legislative Yuan? In this connection the Government is asked to explain why it has been necessary to take more than 6 years to clarify the meaning of the terms “security distance” and “compulsory exclusion” in the draft bill of the Assembly and Parade Act submitted to the Executive Yuan in January 2016 taking into account that the existing legislation is in violation of ICCPR Article 21?
	中文參考翻譯	2016 年提交立法院的《集會遊行法》修正草案旨在修正該法違反《公政公約》第 21 條的情況，立法院尚未通過的原因是什麼？在這方面請政府說明，考慮到現行法律違反了《公政公約》第 21 條，為何需要 6 年多的時間來釐清 2016 年 1 月提交給行政院之《集會遊行法》修正草案中「安全距離」和「強制排除」的含義？

中文回應

1.行政院於 2016 年 2 月 1 日將「集會遊行法」修正草案函請立法院第 9 屆委員會審議，該次修正案，全面改變集會遊行制度；全案於立法院進行政黨協商會議時，行政官員與立法委員間以及立法委員彼此間就條文內之「安全距離」及「強制排除」等法規範設計意見歧異，遂無法續行相關討論。

2.後第 9 屆立法委員於 2020 年卸任，依據「立法院職權行使法」第 13 條規定：「每屆立法委員任期屆滿時，除預(決)算案及人民請願案外，尚未議決之議案，下屆不予繼續審議。」基於尊重新民意及民主治理原則，因「前屆之法律議案」可能違反新的民意，故法案退回行政機關重新研議後再重報，惟我國 2020 年起迄今面臨全球新冠肺炎(COVID-19)疫情肆虐，相關人力、物力均投入抗疫，本案目前積極研議中，並與專家學者進行討論研議後，再行重報立法院審議。

英文回應

1.On February 1, 2016, the Executive Yuan sent the "Draft Amendments to the Assembly and Parade Act" to the 9th Legislative Yuan for consideration. The proposed amendments include comprehensive changes to the Assembly and Parade Act. During the consultative meetings between the parties in the Legislative Yuan, there were divergent views between government officials and the legislators and between the legislators themselves on the "safe distance" and "forcible removal" draft provisions of the Act, and therefore the relevant discussions could not be continued.

2.After the term of the 9th Legislative Yuan retired in 2020, in accordance with Article 13 of the Law Governing the Legislative Yuan`s Power, "Upon the expiration of the term of office of each member of the Legislative Yuan, except for the budget and citizen petitions, any motion that has not yet been resolved shall not be further considered in the next term." Based on the principle of respecting new public opinion and democratic governance, the bill was returned to the executive branch for reconsideration and re-submission due to the possibility that "motions from the previous session

of the Legislative Yuan" might violate the new public opinion. However, with the global outbreak of the COVID-19 pandemic since 2020, relevant human and material resources have mostly been devoted to fighting the epidemic in Taiwan. The case is now under active preparations and will be re-submitted to the Legislative Yuan for consideration after discussions and deliberations with experts and scholars in accordance with the actual progress.

第 23 條 **Article 23**		
點次	**問題內容**	
24	**原文**	To the question in the list of issues as to whether there are circumstances that would impede certain individuals or couples from benefitting from the same sex marriage law Judicial Yuan Interpretation 748, it appears that this is the case. For example, if one partner in a same sex marriage is from a country where same sex marriage is not legal, the couple cannot register their marriage in Taiwan. Further, same sex marriage between a Taiwanese and Chinese is also prohibited. So there is an inadequacy in the legal protection of transnational same-sex couples. Has this changed? If not, is there an explanation or rationale for the inadequacy in the legal protection of transnational same-sex couples and for perpetuating marriage inequality? What is the intention of the Executive Yuan and the Judicial Yuan in eliminating such inequality? If law reform in this context is intended as indicated, has this progressed? What is the plan for accelerating the reform?
	中文參考翻譯	對於問題清單中「是否存在妨礙某些個人或伴侶從《司法院釋字第 748 號解釋》中受益的情況？」一題，現實似乎確是如此。例如，若同性婚姻中一方來自同性婚姻不合法的國家，則該對伴侶無法在臺灣辦理結婚登記。此外，臺灣人和中國人之間同性婚姻也受禁止。因此，對跨國同性伴侶的法律保障不足。情況是否有所變化？如果沒有，對跨國同性伴

		侶的法律保障不足，以及延續婚姻不平等此現象，是否有解釋或理由？行政院和司法院在消除此等不平等的意向為何？如果此脈絡下有意推動法律改革，是否已有進展？加速改革的計畫是什麼？

中文回應

為促使跨國同性婚姻規範更臻完善，司法院前將涉外民事法律適用法（以下簡稱涉民法）第 46 條、第 63 條修正草案函送本院會銜，本院已於 2021 年 6 月 17 日邀集內政部、外交部、法務部及大陸委員會研商。另為瞭解跨國同性婚姻結婚登記與外籍同性伴侶入境我國相關面談事宜之影響情形，本院復於同年 8 月 4 日召開研商涉民法第 46 條、第 63 條修法配套事宜會議。又，針對兩岸同性婚姻問題，大陸委員會亦配合前開涉民法第 46 條、第 63 條修正草案進行法制研議，刻正統整各界意見評估及溝通。

英文回應

In order to further enhance regulations pertinent to transnational same-sex marriages, the Judicial Yuan sent the draft amendments to Article 46 and Article 63 of the Act Governing the Choice of Law in Civil Matters Involving Foreign Elements (hereinafter referred to as the Civil Law for Foreign Matters) to the Executive Yuan for joint sign-off. On June 17, 2021, the Ministry of the Interior, the Ministry of Foreign Affairs, the Ministry of Justice, and the Mainland Affairs Council were invited to deliberate on the matter. In order to fully grasp the impact of the registration of transnational same-sex marriages and the interview of foreign same-sex partners entering Taiwan, the Executive Yuan held a meeting on August 4 of the same year to discuss the amendment of Article 46 and Article 63 of the Civil Law for Foreign Matters and relevant measures. In addition, to address the issue of same-sex marriages between Taiwan and Mainland Chinese partners, the Mainland Affairs Council is also cooperating on the preceding draft amendments to Article 46 and Article 63 of the Civil Law for Foreign Matters to conduct a legal study, and is now consolidating the opinions of all sectors for further

evaluation and communication.

第 23 條 **Article 23**		
點次	**問題內容**	
25	**原文**	In the answers to the list of issues, it is indicated that there is an integrated domestic violence safety net programme with a multi-agency programme. Has this programme been evaluated for its impact and is there data now on the trends in domestic violence prevalence? Can victims of domestic violence bring their cases to court and is there adequate support services, welfare and legal, for victims?
	中文參考翻譯	對問題清單的回應中指出，有一個跨機關的整合性家庭暴力安全防護網計畫。是否已評估該計畫帶來的影響，現在是否有關於家庭暴力普及率趨勢的資料？家暴被害人可否向法院提起訴訟？被害人是否有足夠的福利與法律支援服務？

中文回應

1.評估推動「家庭暴力安全防護網計畫」成效部分：

針對經評估有高致命風險之家暴被害人，由各直轄市、縣(市)政府提列至每月召開的跨網絡平台會議，共同擬定周延的被害人安全計畫；2021 年計辦理 527 場跨網絡平台會議、討論 9,842 件案件，其中防治網絡介入後危機程度下降共 5,304 件，佔 54%。

2.家庭暴力普及率趨勢資料部分：

為瞭解我國婦女遭受親密關係暴力之樣態、嚴重性、發生率與盛行率，並與國際相關調查接軌，衛福部於 2015 年進行首次大規模調查，並於 2021 年完成第 2 次調查。第 2 次調查結果顯示，我國 18-74 歲曾有或現有親密伴侶的婦女遭受伴侶暴力終生盛行率為 19.62%，與 2015 年首次調查結果相較，終生盛行率

下降 4.83%。

3.家暴被害人可否向法院提起訴訟部分：

我國家暴被害人將可依家庭暴力防治法第 10 條規定向法院聲請民事保護令外，倘相對人故意實施家庭暴力行為而成立其他法律所規定之犯罪，亦可向法院提起訴訟或請求損害賠償，以維護自身及未成年子女或其他家庭成員之權益。

4.被害人是否有足夠的福利與法律支援服務部分：

依家庭暴力防治法第 8 條規定，各直轄市、縣(市)主管機關應整合所屬警政、教育、衛生、社政、民政、戶政、勞工、新聞等機關、單位業務及人力設置家庭暴力防治中心，並協調司法、移民相關機關，提供被害人 24 小時緊急救援、診療、庇護安置、經濟扶助、法律諮詢、就業就學及住宅輔導等多元福利與法律支持服務，同時提供或轉介被害人及經評估有需要之目睹家庭暴力之兒童及少年或家庭成員身心治療評估及處置需求協助。

英文回應

1.Evaluation of the effectiveness of implementing the “Domestic Violence Safety Net”: Victims of domestic violence evaluated to have high life-threatening risks are reported by each special municipality, county, and city government during monthly cross-network platform meetings, which are convened to jointly develop comprehensive victim safety plans. In 2021, a total of 527 cross-network platform meetings were convened to discuss 9842 cases. After the intervention of the safety network, the risk level of 5304 cases decreased, accounting for 54% of all domestic violence cases.

2.Domestic violence prevalence and trend data: To understand the patterns, severity, incidence, and prevalence of women suffering from intimate partner violence based on standards of relevant international surveys, the Ministry of Health and Welfare conducted the first large-scale survey in 2015 and completed the second survey in 2021. The results of the second survey revealed that in Taiwan, the lifetime prevalence

of intimate partner violence for women aged 18–74 years who had or have (an) intimate partner(s) was 19.62%. The lifetime prevalence decreased by 4.83% compared with the first survey results in 2015.

3. Can victims of domestic violence file litigation with the court?: Domestic violence victims in Taiwan can file a petition with the court for an ordinary protection order according to Article 10 of Domestic Violence Prevention Act. If a respondent intentionally commits domestic violence, which is considered crime as regulated in other laws or acts, the victim can file litigation or a petition with the court to request damage compensation to maintain their own rights or the rights of minor children or other family members.