

Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

Initial Report of the Republic of China (Taiwan)

List of Issues

November 2023

The Review Committee¹ appreciates the Republic of China (Taiwan)'s affirmation of cultural pluralism and strong commitment to eliminate racial discrimination as firmly expressed in its reports and engagement in the implementation process of the International Convention on the Elimination of Racial Discrimination (ICERD).

Ahead of its in-person review in April 2024, the Review Committee has received and carefully studied the following submitted reports:

Government Reports:

- Common Core Document Forming Part of the Reports: Initial Report on the International Convention on the Elimination of All Forms of Racial Discrimination, December 2022 (referred to as Common Core Document).
- Implementation of the ICERD: Initial Report on the International Convention on the Elimination of All Forms of Racial Discrimination, December 2022 (referred to as Implementation Report).

National Human Rights Commission (NHRC):

- Independent Opinion on Taiwan's Initial Report on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), May 2023 (referred to as NHRC Independent Opinion).

Parallel reports from civil society submitted by:

- Covenants Watch (co-author with 18 other NGOs)
- The Garden of Hope Foundation (co-author with 3 other NGOs and 77 representatives of migrant workers)
- The Non-Monastic Chinese Mahayana Buddhist Precepts, Promotion and Conservation Association (BPPCA)
- Mental Health Association in Taiwan (MHAT)
- Taipei Twins Association

¹ The Review Committee consists of (in alphabetical order): Keiko Ko, Sheryl Lightfoot, Rosslyn Noonan and Manfred Nowak.

- Buddhist Association of the Republic of China (BAROC) (co-author with 2 other NGOs)
- Taiwan Alliance to Promote Civil Partnership Rights(TAPCPR)
- Taiwan United Religions Organization (TURO)
- Taiwan Association of Gender & Sexuality Rights Protection
- Taiwan Parents protect Women and Children Association (co-author with Corporation Aggregate of The Resurrection Food Bank Holistic Care Association)
- International Association for Advancement of Children Rights (IAACR)
- Alliance for Women’s Rights & Sustainable Development
- Taiwan Mothers Shield Alliance (MSA)
- National Alliance of Presidents of Parents Association
- Amnesty International
- Respect for Life Alliance
- Glowing Light Life Care Association

After reviewing this material, the Review Committee addresses several comments and questions to the Government of Taiwan ahead of the in-person review meeting in April 2024.

These are structured in the following way:

1. The Convention in Domestic Law and the Institutional and Policy Framework for its Implementation (Arts. 1, 2)
2. Racist Hate Speech, Incitement to Racial Hatred and Hate Crimes (Arts. 2, 4 and 6)
3. Indigenous Peoples
4. Migrant Workers
5. New Immigrants and Foreigners
6. Refugees and Asylum Seekers
7. Non-national Children – Undocumented Children
8. National Human Rights Commission (NHRC)

Abbreviations:

ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
NHRC	National Human Rights Commission
UN	United Nations

1. The Convention in Domestic Law and the Institutional and Policy Framework for its Implementation (Arts. 1, 2)

1. Both previous international review committees and the NHRC commented that instead of a comprehensive anti-discrimination law, anti-discrimination provisions are found in different sections of Taiwanese law. Are there more recent developments in the enactment of the Equality Law (Implementation Report, para. 38)? What is the timeframe for the enactment? Are representatives of Indigenous peoples and different ethnic groups involved in the drafting and deliberation process?

2. ICERD entered into force in Taiwan on 9 January 1971, earlier than any of the other UN core human rights treaties ratified from 2007 onwards (Common Core Document, table 31 on pp. 58-60). Why was the ICERD Action Plan only adopted in 2020 and the international review process established thereafter (many years after similar procedures took effect for ICCPR and ICESCR, CEDAW, CRC and CRPD) (see Implementation Report, para. 2)?

3. Please provide further details on the implementation of ICERD in the domestic legal order. Please articulate the meaning of “remains binding on Taiwan” as differentiated from the other five international human rights conventions, incorporated into domestic law through the enactment of implementation acts (Common Core Document, para. 86).

4. Please provide examples of the application of ICERD by the courts (not just as a citation but of invocation where the provisions of ICERD were directly applied to determine the rights or duties of the relevant parties) (Common Core Document, para. 116).

5. Are there any more recent activities of the working group formed to review ICERD-related legal provisions, and whether more regulations were reviewed and/or amended (Implementation Report, para. 40)? Is there a procedure and timeline for this process? The NHRC in its Independent Opinion mentions that the review was only conducted at central government level (NHRC Independent Opinion, para. 22). Are there any plans to extend the review also to local government provisions?

6. Could you provide us with a list of all members of the Executive Yuan Coordination Committee on Prevention of Human Trafficking and Elimination of Racial Discrimination, as well as the steering group for the elimination of racial discrimination established under this Committee (Implementation Report, para. 69)?

7. Please provide details on the specialized divisions (units) for Indigenous peoples in the Judiciary. Please provide examples of rights of Indigenous peoples that are only granted to Indigenous peoples (Implementation Report, para. 99).

2. Racist Hate Speech, Incitement to Racial Hatred and Hate Crimes (Arts. 2, 4 and 6)

8. Please provide further information on a national policy on racial profiling (NHRC Independent Opinion, para. 18).

9. Please provide detailed, updated information on complaints filed by the victims of racial hate speech (Implementation Report, paras. 85-95).

10. The Common Core Document reports that “The concept of equal rights for racial and ethnic groups is promoted to the public through infographics, digital learning courses, teaching materials, and handouts.” (para. 123). On the other hand, the NHRC reports that “there have been many inappropriate comments in society recently which have reignited historical conflicts between ethnic groups and created controversy over the stigmatization of indigenous peoples” (para. 138). How does the government’s current strategy to promote understanding among different racial and ethnic groups in the public sphere, including in the media, address this persistent problem?

3. Indigenous Peoples

3.1 General Observations

11. There are significant overlap of issues highlighted by reviews of other conventions. While progress is being made, the actual implementation of laws pertaining to Indigenous peoples is lagging behind stated governmental goals and timelines and remains out of alignment with international human rights standards. Rights violations occur in political domains as well as in persistent socio-economic disparities.

12. The NHRC recommends the establishment of an oversight mechanism to address inequalities and discrimination caused by inadequacies within the legal system or lack of enforcement as well as implicit discrimination.

3.2 Issue Areas

3.2.1 Self-determination

13. Are there recent developments on the 2022 Constitutional Court ruling that ordered the government to amend or formulate laws pertaining to self-identification?

14. Concerns are raised that inconsistent and sometimes arbitrary criteria are applied for the identification of Indigenous peoples, leading to unrecognized Indigenous groups. What moves are being made to recognize unrecognized tribes?

15. Concerns regarding the fairness of the selection process and representativeness of the Council of Indigenous peoples have been raised. Please provide information on any efforts to secure the fairness of the selection process.

16. Concerns are raised about Indigenous peoples' participation in all stages of development projects. How can this be secured?

17. How would Tribal Councils fit into the existing legal framework?

18. Concerning the right of free, prior and informed consent, questions have been raised about existing consultation and consent regulations for Indigenous peoples, and how those processes integrate Indigenous decision-making processes and procedures. This issue was also highlighted by the ICCPR and ICESCR in 2017. What is the progress toward developing, with Indigenous peoples, effective mechanisms to respect Indigenous peoples' right to free, prior and informed consent and effective remedies?

3.2.2 Legal Framework

19. Under the Indigenous Peoples Basic Law (2005), the government was supposed to have amended or abolished relevant laws, but it has been reported that some subsidiary laws and regulations (e.g. Indigenous Peoples Land and Sea Law, Indigenous Peoples Autonomy Law) remain unamended. What are the government's plans to amend these? Could you provide a list of laws and regulations that are not in alignment with the Indigenous Peoples Basic Law?

20. What are the measures being taken to bring the implementation of the Indigenous Peoples Basic Law up to human rights standards?

21. What is the government's position on the UNDRIP? Which steps are taken to align the Indigenous Peoples Basic Law with the UNDRIP and possibly enshrine UNDRIP in the Constitution?

22. How often are laws reviewed to ensure consistency with the Indigenous Peoples Basic Law, the UNDRIP and other international human rights conventions?

3.2.3 Discrimination in Daily Life

23. Concerns are raised regarding the government's attitude towards microaggressions which negatively impact day-to-day lives of Indigenous peoples. Is there any governmental plan for the microaggressions?

3.2.4 Land Issues

24. Concerns have been raised regarding Indigenous peoples' land rights, in particular:

- The demarcation of Indigenous traditional territories have excluded private land;
- Collective rights;
- The implementation of the Indigenous Reservation Land program between 2007 and 2014 saw only about 9% of applications successful due to multiple obstacles and barriers;
- Nearly 20 years after the Indigenous Peoples Basic Law, neither the mandated Indigenous Land Survey and Management Committee nor the Indigenous Peoples Land and Sea Areas Act have been effectively legislated;
- Consultation under the Mining Act takes place in ways that do not align with traditional decision-making systems and there are no penalties for those who do not fulfill their statutory obligations;
- The Indigenous Reserved Land Rights Review Committee is not appointed through an open and transparent process;
- The allocation of land reserves occurs at a very slow pace due to understaffing.

25. What progress is being made in restructuring the land reserve system and establishing how to fund it sufficiently?

26. What progress is being made on a comprehensive review of consultation practices?

27. In para. 37 of its concluding observations on the implementation of the two International Covenants of 13 May 2022, the International Review Committee called upon the Government to provide remedies for Indigenous peoples affected by the storage or disposal of nuclear waste and other hazardous materials on their lands or territories. In its parallel Report on ICERD, Covenants Watch also expresses concern regarding the lack of progress in removing nuclear waste from Indigenous lands. What has the Government and the Taiwan Power Co (Taipower) done in the recent past to remove nuclear waste from Indigenous lands and territories and in providing other effective remedies to Indigenous peoples?

3.2.5 Indigenous Languages

28. Issues are raised, in particular:

- There are concerns about the protection of the right of Indigenous peoples to register their names in their own languages;
- There are concerns about the quality and accuracy of interpretation in Indigenous languages during legal proceedings;
- The teaching of Indigenous languages in schools is in many instances considered ineffective.

29. Is there any progress on regular national surveys and reviews of implementation of language policies and increased Indigenous peoples' participation in decision-making?

3.2.6 Employment

30. Are there any investigations into the employment ratio of Indigenous peoples in government agencies and organizations?

31. Is there any need for a mechanism for enhancing employment of Indigenous peoples in government agencies and organizations?

3.2.7 Education

32. How can teacher education for Indigenous peoples be strengthened in order to help address teacher shortage?

33. What is the progress toward a comprehensive background data investigation and review of the Education Act for Indigenous Peoples to improve policies and their outcomes?

34. How can preschool Indigenous language instruction be better resourced?

3.2.8 Housing

35. Are there any efforts to improve and create remedial measures for housing policies for Indigenous peoples that are formulated in a culturally responsive way?

3.2.9 Health

36. It has been reported that significant disparities remain in health indicators between Indigenous and non-Indigenous citizens of Taiwan. How can Indigenous peoples' health care services be targeted based on their needs rather than on how services can be delivered?

37. Is there any enhanced training for health care professionals in Indigenous areas?

3.2.10 Political Participation

38. How can obstacles to Indigenous peoples' full and effective participation in political life be removed?

39. How can the election system for Indigenous legislators be redefined and reformed?

3.2.11 Hunting/Fishing

40. It has been reported that many Indigenous individuals have been prosecuted for practicing their traditional hunting and fishing practices. Please provide more information about this problem.

41. Is there any progress toward dialogue with Indigenous peoples so that policies and regulations can be aligned with ICERD and UNDRIP regarding free, prior and informed consent?

3.2.12 Transitional Justice

42. Which progress has been made in the field of transitional justice for Indigenous peoples? Could you provide further information on the activities of the Presidential Office Historical Justice and Transitional Justice Committee (Implementation Report, para. 57)? Could you provide further information on the work of the Executive Yuan's Department of Human Rights and Transitional Justice (Implementation Report, para. 68)?

4. Migrant Workers

4.1 General Observations

43. Most of the pressing issues have been raised repetitively by previous reviews of the ICCPR, ICESCR, CEDAW and CRC. There is also significant consensus among NGOs and the National Human Rights Commission (NHRC) on the main persisting issues for migrant workers.

44. Reported developments are mostly incremental e.g. promised inter-Ministerial Working Groups etc.; previously promised legislation appears to have made little or no progress. The relationship between freedom from racial discrimination and religious freedom / religious discrimination is questioned by some NGOs with an emphasis on the relevance and importance of the right to be free of religious discrimination.

45. Are there any more recent developments regarding accession to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), as mentioned in the Common Core Document in para. 86?

4.2 Right to Work

46. The Employment Service Act continues to restrict migrant workers' right to change employers; and there are a number of related discriminatory provisions including accommodation, access to health services, right to organise and join trade unions especially in relation to migrant domestic workers, farm workers and fishers; survivors' benefits (as identified in the state report); migrant workers are significantly disproportionately represented in occupational health and safety fatalities and injuries.

47. Are there commitments with timelines to reduce remaining discriminatory provisions impacting migrant workers? If not, why not?

4.3 Women Migrant Workers

48. Issues relate to the treatment of pregnant migrant workers; notably the disproportionate number of women migrant workers who "go missing", especially those from Indonesia and the Philippines (Implementation Report, table 18 on p.50).

49. What reasons have been identified for the number of women migrant workers who 'go missing'? What provisions are in place to support those who are pregnant?

4.4 Right to Justice

50. Issues raised most frequently:

- ability to seek redress for revocation of work permits and interpretation of what constitutes “serious violations” as provided in the Employment Service Act;
- unfairness of State Reciprocity law;
- access to legal aid for undocumented migrant workers;
- poor, uneven quality of interpretation services – across the public sector as a whole.

51. Regarding remedies for racial discrimination, please provide more detailed information on the cases received by the courts, the Control Yan, as well as the administrative agencies mentioned in the Implementation Report (paras. 226-255). How many cases were decided favourably for the complainants, how many were dismissed or withdrawn, and on which basis?

5. New Immigrants and Foreigners

52. Please specify notable outcomes of the 2023 Survey of New Immigrants’ Living Needs, in particular where they diverge from the reported results of the 2018 survey (Implementation Report, paras. 9, 170).

53. Could you give further information on the mandate and activities of the Foreign Women and Children Consultation Center, as well as numbers on individuals supported (Implementation Report, para. 13)?

54. Are there any more recent developments on the draft amendments to Articles 23 and 31 of the Immigration Act on the residency requirements of new immigrants through marriage (Implementation Report, para. 35)?

55. Are there any more recent developments on the consideration of deleting the loss or absence of nationality as a disqualification criteria for the receipt of survivor benefits for dependents of civil servants, funeral benefits, and interest on public deposits for dependents of second category political appointees (Implementation Report, para. 32)?

56. What is the current status of the amendment to the State Compensation Law as proposed by the Executive Yuan, removing the principle of reciprocity (NHRC Independent Opinion, para. 41)?

6. Refugees and Asylum Seekers

57. What is the status of the refugee bill that is currently being drafted by the government (Common Core Document para. 171)? Are there any more recent developments on the draft refugee act (Implementation Report, para. 121)?

58. How many asylum requests have been received by the government of Taiwan in recent years? How many have been accepted or rejected, respectively? (Implementation Report, para. 122)

59. In the current absence of a Refugee Act, the Review Committee is concerned about the visa requirements for stateless Tibetan students requiring them to leave and re-enter Taiwan every six months, "imposing enormous stress and a heavy financial burden" according to the NHRC (para. 94), and an alternative to this procedure should be identified.

60. Covenants Watch states that the "deferred forced deportation" status does not protect refugees from countries, such as Myanmar, Ukraine and Afghanistan, against deportation in violation of the principle of non-refoulement. Which actions is Taiwan taking to regularize the residence status of refugees who are not allowed to be deported?

7. Non-national Children – Undocumented Children

61. Despite some good intentions, current policies and practices continue to create a group of stateless children with all consequential lack of access to enjoyment of fundamental rights.

62. In para. 168 of its Parallel Report, Covenants Watch alleges that the State registered a mere fraction of the total population of stateless children in Taiwan and suggests in para. 169(3) that Taiwan should accelerate the process of granting stateless children temporary residence status. What is the total number of stateless children currently in Taiwan and which action does the Government plan to grant children born on the territory of the ROC with both parents unascertainable or stateless the nationality of the ROC? Why are stateless children not granted at least a temporary resident status and immediately covered by the National Health Insurance Act, as required under international human rights law?

8. National Human Rights Commission (NHRC)

63. The state report identifies the establishment of the NHRC as a significant addition to the national promotion and protection of human rights framework and specifically the promotion of social cohesion. The Covenants Watch parallel report lists a number of issues that it asserts require attention for the NHRC to be more fully effective. Some recommendations are directed to the NHRC itself, some to the Control Yuan under whose auspices it was established, others require action by the Executive or Legislative Yuan.

64. It would be useful to know why the Legislative Yuan has not yet reviewed the draft Enabling Law for the NHRC.

65. In dialogue with the NHRC we can explore their commitment to systemic monitoring of the implementation of human rights standards, national inquiries into priority human rights issues, and outreach to and engagement with the most marginalised of Taiwan's communities.