

Review of the Initial Report of the Government of Taiwan
on the Implementation of the
**International Convention on the Elimination of All Forms of Racial
Discrimination**

**Concluding Observations and Recommendations
By the International Review Committee**

Taipei, 24 April 2024

I. Introduction

1. The *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) is the first of nine core human rights treaties of the United Nations (UN), the compliance of which by States parties is monitored by independent human rights treaty bodies. ICERD was adopted by the UN General Assembly on 21 December 1965 and entered into force on 4 January 1969, in accordance with Article 19. As international monitoring body, the Committee on the Elimination of Racial Discrimination, consisting of 18 independent experts, was elected by the Assembly of States Parties in 1969 pursuant to Article 8. This Committee monitors State compliance by means of considering State reports (Article 9), deciding on inter-State communications (Articles 11-13) and, in respect of States parties having made a respective optional declaration, deciding on individual communications (Article 14).

2. The Republic of China (Taiwan) signed ICERD on 31 March 1966. It was ratified on 14 November 1970, and its instrument of ratification was deposited with the United Nations when Taiwan still held the representation of China at the UN. ICERD came into effect in Taiwan on 9 January 1971. This was before the adoption of UNGA Resolution 2758 on 25 October 1971, which recognised the People's Republic of China as "the only legitimate representative of China to the United Nations". Since Taiwan was no longer a member of the United Nations, it was denied the possibility of submitting State reports to the UN Committee on the Elimination of Racial Discrimination. On the domestic level, ICERD played no significant role in Taiwan during the following decades.

3. In 2009, the then President of Taiwan announced the ratification, as a matter of domestic law, of the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). The *Act to Implement the two Covenants* also provided that a reporting system would be created to monitor the Government's compliance with the obligations it has undertaken. In 2011, the Government initiated the process of preparing detailed reports on the rights contained in each of the Covenants and in 2013 an international group of independent experts, from 10 different countries, were invited to review these reports in light of information from all available sources, and especially civil society. This group was chaired by the Austrian expert Manfred Nowak. The first review took place in Taipei between 25 February and 1 March 2013, leading to Concluding Observations and Recommendations adopted on 1 March 2013. The second and third reviews took place in Taipei in January 2017 and, due to COVID-19 restrictions, with one year delay in May 2022.

4. Similar procedures were initiated by the Government of Taiwan in respect of three other core UN human rights treaties: The *Enforcement Act of the Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) entered into force on 1 January 2012; the *Implementation Act of the Convention on the Rights of the Child* (CRC) came into effect on 20 November 2014; and the *Enforcement Act of the Convention on the Rights of Persons with Disabilities* (CRPD) came into effect on 3 December 2014.

5. In 2018, the Presidential Office requested the Ministry of the Interior to develop a plan for the implementation of measures to promote ICERD, which in 2020 led to the Executive Yuan's adoption of the *ICERD Action Plan*. Similar to the *Implementation Acts for the two Covenants*, this *Action Plan* defined the reporting and review system. The Government thus initiated the process of preparing detailed initial reports on the rights contained in ICERD, and in 2023, an Independent Review Committee from four different countries was invited to review these reports in light of information from all available sources, and especially civil society. The Committee consists of the following independent experts, working in their personal capacities: Keiko Ko (Japan), Sheryl Lightfoot (Canada), Rosslyn Noonan (New Zealand) and Manfred Nowak (Austria) as Chair. On 24 April 2024, the Committee adopted a set of Concluding Observations and Recommendations.

6. The Committee appreciates that some of the human rights protections enshrined in ICERD are addressed also by other international instruments which Taiwan integrated into its domestic legal system in the past fifteen years, notably Articles 2, 3 and 26 ICCPR, Articles 2 and 3 ICESCR, as well as various obligations under CEDAW, CRC and CRPD when it comes to intersecting forms of discrimination. In light of this, previous Review Committees of the respective treaties have put forward a series of recommendations aimed at the elimination of racial discrimination in Taiwan. The extent to which the Government has taken these recommendations into account and has taken steps towards their implementation are therefore an important additional basis for these Concluding Observations and Recommendations.

II. Positive Aspects

7. The Committee warmly welcomes this first review of the implementation of the *International Convention on the Elimination of all Forms of Racial Discrimination* (ICERD). In particular the Committee welcomes:

- (a) the detailed Initial Report, including a Common Core Document of the Government and the comprehensive Reply to the Committee's List of Issues
- (b) participation of all the relevant government agencies, and in particular the Prime Minister, Chen Chien-jen, the Minister without Portfolio, Lo Ping-cheng, the Minister of the Interior, Lin Yu-chang, the Deputy Minister of the Interior, Wu Jung-hui, the Deputy Minister of Labor, Hsu Chuan-Sheng, the Deputy Minister of the Council of Indigenous Peoples, Calivat Gadu, the Director General of the National Immigration Agency, Bill Chung, and the team at the National Immigration Agency liaising with the Committee
- (c) reports and engagement of the National Human Rights Commission (NHRC)
- (d) contributions of a diverse range of Non-Governmental (NGOs) and Civil Society Organisations (CSOs)
- (e) the open, transparent process of the hearings, including interpretation into Chinese, English and sign language and a live webcast

- (f) willingness of government agencies, the NHRC and CSOs to respond frankly to the Committee's questions and comments; and the speed with which supplementary information was provided at very short notice
- (g) evidence of the Government's commitment to eliminate all forms of discrimination from reviews of the International Covenants on Civil and Political and on Economic, Social and Cultural Rights, and the other human rights treaties that Taiwan has adopted.

8. This report identifies both positive aspects and challenges of the current legal, policy and institutional implementation of ICERD and makes recommendations for further progress on the priority issues.

III. Observations and Recommendations

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

9. According to § 2 of the Initial Report, ICERD came into effect in Taiwan on 9 January 1971: "Government agencies should refer to the spirit of the ICERD and its general recommendations when implementing relevant policies". In §§ 86 – 103 of the Common Core Document (CCD), the Government explains how the five other core UN human rights treaties mentioned above were incorporated into domestic law by means of implementation or enforcement acts as well as a substantial number of further domestic laws. With regard to ICERD, the Government only states that it "remains binding on Taiwan" (§ 86) and cites as domestic laws protecting the rights enshrined in ICERD only the *Punishment of the Crime of Genocide Act* and the *Immigration Act* (§ 103). In its Reply to relevant questions by the Committee, the Government maintains that ICERD "is seen as a treaty and already has legal status domestically. Hence, enacting implementing laws is unnecessary to further domesticate the convention's provisions." (p. 6). However, in its Reply on the application by the courts, the Government states that there are "currently no directly applicable provisions of the International Convention on the Elimination of All Forms of Racial Discrimination to determine rights and obligations" (p. 7). In its Parallel Response to the same question, the National Human Rights Commission (NHRC) states: "The direct applicability of ICERD in Taiwan's courts remains relatively limited, with international conventions being considered as supplementary arguments" (pp. 4-5).

10. It follows that ICERD, although having legal status with the same effect as domestic law, is regarded by the Government and courts of Taiwan as containing no directly applicable provisions. In other words, the provisions of ICERD are considered as non-self-executing, an assessment which the Committee however disagrees with, above all with respect to Article 5.

11. The Committee recommends that the Government transform ICERD into domestic law in the same way as it did with respect to other core UN human rights treaties. The Government should, therefore, adopt as soon as possible a specific implementation or enforcement act with the aim of implementing ICERD in Taiwanese law.

Equality and Anti-Discrimination Law

12. The International Groups of Independent Experts reviewing the two Covenants¹ has repeatedly expressed its concerns about the lack of a comprehensive anti-discrimination legislation (e.g. § 19 of CO 2017 and §§ 26-29 CO 2022) and recommended the enactment of a comprehensive anti-

¹ This International Group of Independent Experts, established in 2013, has been renamed to International Review Committee from 2017 onwards.

discrimination law which should bind both private and public sectors and private individuals. In its Initial Report, the Government stated that the “enactment of an equality law is listed as a priority in the *National Human Rights Action Plan* that was announced in May 2022” (§ 38). During the review meeting on 23 April 2024, the Government provided the Committee with a “Brief Introduction to the Draft Bill of the Anti-Discrimination Act” dated 23 April 2024. After hearings and consultations in 2024, the draft bill will be submitted to the Legislative Yuan for deliberation by the end of 2024 (Reply, p. 2).

13. The Committee commends the Government for having made some progress in drafting a comprehensive equality and anti-discrimination act. In these Concluding Observations and Recommendations, the Committee advocates both a comprehensive equality and anti-discrimination act and a specific *Implementation Act for ICERD*.

14. The Committee recommends that the Government submit the draft bill of the equality and anti-discrimination act as quickly as possible to a comprehensive review by the NHRC, civil society organisations and, most importantly, directly affected communities such as Indigenous Peoples, migrant workers, persons with disabilities, the LGBTIQ community and others, acknowledging the often intersectional nature of discrimination. The prohibited grounds of discrimination should be as comprehensive as possible, and the scope of application should cover all human rights related areas, including employment, education, housing, health, justice etc. The act should be applicable to discrimination by the public sector as well as discrimination by private companies, non-profit organisations and private individuals.

B. Racist Hate Speech, Incitement to Racial Hatred and Hate Crimes (Articles 2 and 4)

15. The Committee notes that the National Communication Commission (NCC) has no information on complaints filed by the victims of racial hate speech (Reply, p. 15). However, there are reports that hate speech, particularly against Indigenous Peoples and certain ethnic groups, have not been mitigated and that hate speech in cyber space has significantly increased (NHRC, §§ 35-36). The gap between the official records and the information provided to the Committee indicates the need for a more adequate administrative framework to investigate and address the problem.

16. Moreover, Article 4(a) ICERD expressly requires all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts to be declared punishable by law. Nevertheless, under current law in Taiwan, hate speech which does not target specific individuals may not be punishable and the current laws of Taiwan do not provide for sentence aggravation for crimes motivated by racial discrimination.

17. In a related recommendation under Article 20 ICCPR, the International Groups of Independent Experts reviewing the two Covenants in 2013 recommended “that a law be enacted so that the crime of advocacy of national, racial or religious hatred is inserted into the Criminal Code” (CO 2013, § 75). This recommendation was reiterated in 2017 and 2022 (CO 2017, § 74, CO 2022, § 88).

18. The Committee recommends that the Government:

- 1) Facilitate reporting by the victims and ensure effective investigation of cases of hate speech and crimes motivated by hatred and racial discrimination.**
- 2) Review current measures to ensure that the relevant authorities may take appropriate action to address hate speech in the cyber sphere and improve the procedures for victims to request deletion of hate speech.**
- 3) Take note of Article 4(a) ICERD which requires criminal sanctioning of hate speech, and in the meantime ensure that all other measures are taken to eliminate hate speech and hate crimes.**

C. Remedies (Article 6)

19. The Committee notes that judicial and administrative remedies, including via the Control Yuan, are available to victims of racial discrimination in Taiwan. However, the Committee regrets that there are no systematic statistics on racial discrimination cases (Initial Report, § 225). It is also concerned about the report that the information on complaint channels provided by the Ministry of the Interior's complaint review panel is not available in multiple languages (NHRC, § 132). The Committee agrees with the NHRC's comment that "the lack of complaints does not mean discrimination does not exist. The reasons for the low number may include victims' lack of adequate knowledge of their rights or fear of criticism or retaliation" (NHRC, § 133). Moreover, the Committee is concerned that while the provisions of the Convention are not directly applicable in judicial proceedings, an implementing legislation or the equality and anti-discrimination act has not been enacted.

20. The Committee recommends that the Government:

- 1) **Collect data on the cases involving discrimination across all branches of the government.**
- 2) **Make efforts to ensure that all channels of remedies are more accessible to the victims of racial discrimination and information be available in different languages.**
- 3) **Adopt the ICERD implementing legislation and the equality and anti-discrimination act, including effective equality mechanisms.**

D. Indigenous Peoples

Legal Framework for the Implementation of the Rights of Indigenous Peoples

21. The *Convention concerning Indigenous and Tribal Peoples in Independent Countries, ILO Convention No. 169*, adopted in 1989, was the first international legal instrument to emphasise the right of Indigenous Peoples to enjoy their human rights without discrimination and provide a rights-based framework for their participation in decision-making processes that impact them. Currently ratified by twenty-four countries, it remains the only international convention exclusively focused on Indigenous Peoples' rights.

22. The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP or the Declaration) provides a comprehensive framework of minimum standards for the protection and promotion of the rights of Indigenous Peoples. According to Article 43 of the *Declaration*, the rights recognised in the *Declaration* constitute the minimum standards for the survival, dignity and well-being of Indigenous Peoples of the world.

23. In 2007, the *Declaration* was adopted by the General Assembly as a global consensus document that provides a contextualised elaboration of general human rights principles and rights relating to the specific historical, cultural and social contexts and circumstances of Indigenous Peoples. In 2014, all 193 UN Member States committed to take measures to "achieve the ends" of the *Declaration*, through a General Assembly resolution that adopted the *Outcome Document of the World Conference on Indigenous Peoples*, UN GA Res. A/69/2 (2014).

24. In the preamble to the *Declaration*, the General Assembly encouraged States to comply with and effectively implement all their obligations as they apply to Indigenous Peoples under international instruments; those related to human rights, in consultation and cooperation with the Peoples concerned. The Assembly also emphasised the urgent need to respect and promote the inherent rights of Indigenous Peoples.

25. According to the UN Expert Mechanism on the Rights of Indigenous Peoples' *Study on laws, legislation, policies, constitutions, judicial decisions, and other mechanisms States have utilised to achieve the ends of the Declaration*, the *Declaration* is legally significant as an authoritative statement

by the General Assembly on the rights of Indigenous Peoples and as a source of interpretation of State obligations under human rights treaties they have ratified (A/HRC/EMRIP/2024/2).² The *Declaration* can assist States in the interpretation of their human rights obligations in the Indigenous Peoples' context.

26. The human rights treaty bodies have increasingly addressed the rights of Indigenous Peoples, utilising the *Declaration on the Rights of Indigenous Peoples* as an interpretive tool. For example, the Committee on the Elimination of Discrimination against Women, in its General Recommendation No. 39 (2022) describes the Declaration "as an authoritative framework for interpreting State party and core obligations under the Convention on the Elimination of All Forms of Discrimination Against Women" (CEDAW/C/GC/39).

27. The Committee on the Elimination of Racial Discrimination was the first international human rights treaty body to adopt a General Recommendation on the Rights of Indigenous Peoples (General Recommendation XXIII: Indigenous Peoples, UN Doc A/52/18, 1997). In the years since, the CERD Committee has been routinely adopting observations and recommendations regarding the rights of Indigenous Peoples. In several recent decisions, the CERD Committee has explicitly relied on the *Declaration* as an interpretive lens.³

28. As Article 38 of the *Declaration* indicates, States shall work in consultation and cooperation with Indigenous Peoples in order to take the appropriate measures, including legislative measures, to achieve the ends of the *Declaration*. Further, as the Expert Mechanism on the Rights of Indigenous Peoples notes, operationalising the rights affirmed in the *Declaration* requires States to undertake an ambitious programme of legal and policy reform, institutional actions, and reparations, involving a multitude of State actors working within their own respective spheres of competence (A/HRC/EMRIP/2024/2). New laws, the amendment of existing legislation, or even a new Indigenous-specific policy and regulatory framework may be required for effective implementation of the *Declaration*. Very often, Indigenous-specific laws are necessary but often not sufficient as transformation of broader legal structures in key areas is also needed. This is particularly the case in relation to Indigenous Peoples' rights to "self-determination" (Article 3), "autonomy or self-government in matters relating to their internal and local affairs" (Article 4), and to "maintain and strengthen their distinct political, legal, economic, social and cultural institutions" (Article 5), including in the administration of justice (Articles 34-35) (A/HRC/EMRIP/2024/2, § 9).

29. The International Group of Independent Experts reviewing the two Covenants from the very beginning has put a strong emphasis on the rights of Indigenous Peoples (CO 2013, §§ 30-35) and strongly recommended already in 2013 the effective enforcement of Taiwan's *Indigenous Peoples Basic Law* (IPBL) and an official endorsement of UNDRIP (CO 2013, § 35). These experts in 2017 welcomed the historic apology to Indigenous Peoples by President Tsai Ing-wen in August 2016, but strongly recommended that the "Government urgently develop, together with indigenous peoples, effective mechanisms to seek the free, prior and informed consent of indigenous peoples on development plans and programmes that are affecting them" (CO 2017, §§ 27-30). In its most recent Concluding Observations, these experts recognised the efforts that have been made in preserving the culture and languages of the Indigenous Peoples of Taiwan, but again made a number of strong recommendations, such as providing remedies for Indigenous Peoples affected by the storage or disposal of nuclear waste and other hazardous materials on Indigenous Peoples' lands or territories (CO 2022, §§ 36-41).

² See also See A/HRC/9/9, § 86 and A/HRC/EMRIP/2023/3, § 8.

³ See for example Lars-Anders Ågren et. al v Sweden CERD/C/102/D/54/2013 (2020) and Anne Nourgam v. Finland CERD/C/106/D/59/2016 (2022).

General Observations

30. The Committee notes the existence of progressive legal and institutional frameworks intended to respect the rights of Indigenous Peoples and enable consultations with them on matters that impact them. The Committee is concerned about reports that indicate that these frameworks lack open and transparent avenues for Indigenous Peoples' participation at all levels of decision-making, resulting in gaps. Implementation of the rights of Indigenous Peoples requires carrying out legal and policy reforms, in consultation and cooperation with Indigenous Peoples, to ensure that national and local laws are consistent with the *Declaration*.

31. The protocols by which Indigenous Peoples engage with governments must uphold the highest standards and adhere to the rights affirmed in the *Declaration*, including free, prior and informed consent.

32. NGOs have reported that the Council of Indigenous Peoples (CIP) lacks an open and transparent mechanism for full participation in policy formulation, resulting in many gaps.

33. The Committee recommends that the Government:

- 1) Include representatives of Indigenous Peoples in engagements between the Government and Indigenous Peoples, selected through their own representative institutions, and advocacy groups, in addition to inviting representatives of relevant rightsholders.**
- 2) Take concrete steps, in consultation and cooperation with Indigenous Peoples, to incorporate an implementation framework for the *Declaration* into domestic law.**
- 3) Develop a national action plan, administrative measures and strategies in full consultation and cooperation with Indigenous Peoples. This plan should identify and specify the roles of different governmental entities and departments, include accountability mechanisms, and set specific steps and timelines.**
- 4) Co-design with Indigenous Peoples an independent mechanism to review and monitor compliance with the *Declaration*, identify and report violations, provide guidance, raise awareness and strengthen the capacity of Indigenous Peoples. The creation of a distinct body or mechanism at the national level to explicitly address the interrelated rights of Indigenous Peoples is instrumental to the fulfilment of Indigenous Peoples' individual and collective rights, including the right to self-determination, cultural rights, and the right to land, territories and resources. In accordance with Article 32 of the *Declaration*, States should promote the establishment of mechanisms for participation, consultation and platforms for dialogue between Indigenous Peoples and States. These mechanisms should be co-designed with Indigenous Peoples and should be comprised of representatives of both the Government and Indigenous Peoples, in accordance with the principles of trust, transparency, comprehensiveness and balanced assessment.**
- 5) Consider ratification, as a matter of domestic law, of *ILO Convention 169*.**
- 6) Review and reform the structure and practices of the CIP, in consultation and cooperation with Indigenous Peoples, to ensure its alignment with the *Declaration*.**
- 7) Conduct a comprehensive review, in consultation and cooperation with Indigenous Peoples, of all laws and policies to ensure their alignment with the *Declaration*.**

Self-determination

34. The Committee welcomes the 2018 analysis showing strong alignment of the *Indigenous Peoples Basic Law* with specific articles of the *Declaration*. However, the Committee also observes that the *Indigenous Peoples Basic Law* lacks sufficient enforcement power in terms of implementation. NGOs report that as a result, the legal system does not adequately protect Indigenous Peoples' core rights,

such as the right to self-determination, the right to land, and the right to language and culture. The *Declaration* affirms that States must consult and cooperate in good faith through Indigenous Peoples' own representative institutions prior to adopting or implementing any legislative or administrative measures that may impact Indigenous Peoples (Article 19).

35. NGOs report that the current *Regulation of Consultation and Obtaining Consent to Participate from Indigenous Peoples and Tribes* regulates the consent of Indigenous Peoples but does not adequately reflect the principles of free, prior and informed consent.

36. The Committee observes some issues in both individual and collective identification of Indigenous Peoples that are not grounded in the self-determination of Indigenous Peoples to identify their members and be recognised as Indigenous Peoples. The *Declaration* affirms that Indigenous Peoples and individuals have the right to belong to an Indigenous community or nation, relying on that nation's traditions and customs (Article 9).

37. The Committee recommends that the Government:

- 1) Review and reform the *Indigenous Peoples Basic Law*, and its enforcement mechanisms, in consultation and cooperation with Indigenous Peoples, to ensure full alignment with the *Declaration*.**
- 2) Review and amend the current regulations on consultation to comply with the principles of free, prior and informed consent.**
- 3) Undertake a full review of identification regulations for Indigenous Peoples, on both the individual and collective levels, in consultation and cooperation with Indigenous Peoples, to align with the right of self-determination in identification.**

Land Issues

38. The Committee has received reports from NGOs that land ownership and territorial rights for Indigenous Peoples do not reflect international human rights standards. As affirmed in the *Declaration*, Indigenous Peoples have the right to the lands, territories and resources they have traditionally occupied, owned, or otherwise used (Article 26). As other State examples show, the declaration of an Indigenous traditional territory need not disrupt private property ownership, and collective, tribal land ownership and decision-making over land can be accommodated.

39. The Committee recommends that the Government hold dialogues with Indigenous and non-Indigenous Peoples to identify laws and policies that can be created or amended to enable Indigenous Peoples' land rights that align with international human rights standards.

Disposal of Nuclear Waste

40. The Committee recalls the recommendation of the International Groups of Independent Experts reviewing the two Covenants of 2022 "to provide remedies for Indigenous Peoples affected by the storage or disposal of nuclear waste and other hazardous materials on Indigenous Peoples' lands or territories, in compliance with article 29 UNDRIP. A remedy should also be provided to the Tao Peoples in Lanyu with a concrete timetable for the complete removal of nuclear waste and rehabilitation of the government." (§ 37). The Committee regrets that no satisfactory solution has been found.

41. The Committee recommends that the Government take urgent measures to find a solution to the disposal of nuclear waste in alignment with Article 29(2) UNDRIP.

Indigenous Peoples' Languages

42. The Committee welcomes enhancements in the household registration system to accommodate Indigenous Peoples' languages and commends the Government's recognition of the importance of the right to non-discriminatory use of names written in Indigenous Peoples' languages in official documents. The Committee remains concerned about name regulations that may still discriminate against Indigenous Peoples and their languages.

43. The Committee commends the Government on its extensive language interpretation programme within the judicial system. The Committee is concerned about gaps that remain with some Indigenous Peoples' languages not available for interpretation and a lack of qualified interpreters.

44. The Committee recognises the significant investments the Government is making in Indigenous Peoples' language education but has received reports of ineffectiveness of Indigenous Peoples' language education, especially teacher shortages.

45. The Committee recommends that the Government:

- 1) Engage in a dialogue with Indigenous Peoples in order to identify remaining issues in the household registration system that may discriminate against Indigenous Peoples and their languages, especially in identification practices, so that those gaps can be addressed.**
- 2) Abolish any systems that require the knowledge and use of Indigenous Peoples' languages as a criterion for eligibility for identification as Indigenous.**
- 3) Invest additional resources in Indigenous Peoples' language education, research, and transmission.**

Health

46. The Government's Initial Report cites statistics that the average life expectancy for Indigenous Peoples in 2021 was nearly 7 years lower than the national average. This was a significant reduction in the gap of slightly over 8 years reported in 2017 (§ 203). The Government also reports improved access to medical care in Indigenous areas due to enhanced medical facilities, telehealth services and enhanced capacity. The Committee welcomes these investments in health care and the improved health outcomes.

47. The Committee has also received information that life expectancy statistics represent only one indicator of data on the health of Indigenous Peoples and can also mask significant disparities across different Indigenous areas.

48. The Committee recommends that the Government:

- 1) Attempt to integrate and collect data across ministries every year (e.g., comparison of the demographic data of the agencies under the Ministry of Health and Welfare with those of the Indigenous Peoples) and to collate data related to the health care of Indigenous Peoples. Health care data of the Indigenous Peoples should be disclosed to their communities.**
- 2) Design a system that allows representatives of Indigenous Peoples and health advocacy groups to participate in the assessment of health indicators and the design of the health care service model, given the differences in health factors among different Indigenous groups.**

Hunting and Fishing

49. The Committee has received reports that many Indigenous individuals are being prosecuted for practicing their traditional hunting and fishing practices. There is evidence of a clash between Government wildlife conservation measures and traditional Indigenous conservation practices. Yet, Article 20 UNDRIP affirms that Indigenous Peoples have the right to maintain and develop their

political, economic and social systems, including the enjoyment of their own means of subsistence and development, and to engage freely in their traditional and other economic activities.

50. The Committee recommends that the Government review, in consultation and cooperation with Indigenous Peoples, the existing hunting control-related laws and regulations, including the *Regulations Governing Permission and Management of Guns, Ammunition, Knives and Weapons*, the *Wildlife Conservation Act*, and the *National Parks Law*, etc., and amend them to ensure alignment with the *Declaration*, particularly to promote Indigenous Peoples' self-governance in hunting in Indigenous Peoples' exclusive areas as well as hunting co-management models in shared areas.

E. Migrant Workers

General Observations

51. ICERD Article 5(e)(i) and (ii) provide for the right of everyone to equality before law in the enjoyment of:

“The rights to work, to free choice of employment, to just and favourable conditions of work, to protections against unemployment, to equal pay for equal work, to just and favourable remuneration;

The right to form and join trade unions.”

52. The International Groups of Independent Experts reviewing the two Covenants from the very beginning has put a strong focus on the rights of migrant workers, including foreign fishers and household foreign workers, and their labour conditions in relation to Articles 6 and 7 ICESCR (CO 2013, §§ 38-39, CO 2017, §§ 31-34, CO 2022, §§ 42-46).

53. The *Employment Services Act* provides for the right to work, prohibiting racial discrimination in employment, unless expressly provided for in another law. It is unlawful for an employer to discriminate against job applicants or employees based on race. Where racial discrimination is proven an employer may be subject to fines and other sanctions.

54. The Government's Initial Report noted that “different assistance measures have been established for sectors to foster substantive equality among all racial and ethnic groups” (§ 161).

55. Migrant workers are one of the groups for whom, despite a number of positive Government initiatives, the right to work as provided for in ICERD has yet to be fully realised. Those initiatives include minimum pay and conditions that must be part of migrant workers' contracts of employment, a three-day induction programme for all migrant workers on arrival, information resources, a Foreign Workers' hotline, funding to local governments to set up migrant workers consultation service centres, and extending from 3 to 14 years the time migrant workers may be employed in Taiwan.

56. Wage differentials remain between workers who are Taiwanese citizens and migrant workers in manufacturing and construction industries and most significantly domestic caretakers. For all migrant workers the barriers to changing employer is a breach of the right to free choice of employment.

57. While the Government has now introduced a process for change of employment in specified circumstances, it is difficult for a migrant worker to negotiate. Brokers and the current worker's first employer may effectively prevent it.

58. The Committee recommends that the Government:

- 1) Review comprehensively the *Employment Service Act* to identify and remove discriminatory restrictions on migrant workers including the right to change employers, accommodation**

provisions, access to health services, the right to organise and join trade unions, and survivors' benefits.

- 2) **Include, as a matter of urgency, a provision in law for migrant workers to change their employer after a set period. The length of time required for a migrant worker to remain with the initial employer should be set after consultations with employers and migrant workers and their advocates.**
- 3) **Tighten regulations on foreign and national recruitment agencies by requiring them to meet human rights compliant standards to be licensed to operate in Taiwan.**

Women Migrant Workers

59. According to the Government statistics, as of October 2023 there were 751,000 migrant workers in Taiwan. Of those, 232,000 are employed in the social welfare sector as care workers and home help. 177,000 are Indonesians and 27,000 are from the Philippines (Reply, p. 116).

60. The Committee welcomes the changes the Government has introduced in recent years to improve the working conditions of migrant domestic caregivers, the vast majority of them women. These include expanding respite care services and increasing the monthly minimum wage. The Committee also welcomes the establishment of the Domestic Caretakers Union Taoyuan, as unions are essential to give workers a voice and to begin to redress the power imbalance between domestic workers and their employers. But domestic caregivers remain among the most disadvantaged of workers generally, and migrant domestic workers are even more disadvantaged than local employees.

61. The Committee was informed of the Government's efforts to balance the needs of people requiring affordable long-term care who choose private family-based care, and decent pay and conditions for migrant domestic workers. Evidence was presented that female migrant workers from Indonesia and the Philippines account for more than 70% of missing migrant workers becoming undocumented residents (Reply, p. 116). Research identified poor employment conditions amounting to exploitation as a primary cause.

62. In discussion with the Government, the NHRC and NGOs, it became clear that sustainable fulfilment of the right to work for foreign domestic workers is closely related to long-term care policies and service delivery. Currently support and social services for people with disabilities and their families lag far behind their actual needs. This situation is likely to get worse as the aged population continues to grow.

63. The Committee recommends that the Government:

- 1) **Prioritise the assessment process of *ILO Convention 189*, the *Domestic Workers Convention*, in close consultation with national and migrant domestic workers, their unions and other advocates, and recommend this Convention to the Legislative Yuan for domestication as a matter of urgency.**
- 2) **Develop a long-term care policy that addresses the needs for family care and the rights of local and migrant domestic workers.**

Distant-Water Migrant Fishers

64. The Committee noted the progress that has been made by the Government in reviewing, with a view to domestication, *ILO Convention 188 – the Work in Fishing Convention*. However, distant-water migrant fishers on Taiwan flagged ships remain at risk of human rights abuses and cannot enjoy the rights available to near-water fishers. A significant factor is their isolation at sea for many months when they are unable to contact their families, file complaints or, among other things, access health services for accidents or illness. Distant-water vessels generally constitute a hazardous working environment.

65. The Committee recommends that the Government:

- 1) Amend the *Distant Waters Fisheries Act* to provide for installation of Wi-Fi communication equipment on offshore vessels and set out the rights of fishers to regularly access those.**
- 2) Investigate and analyse health and safety issues experienced on distant-water vessels over the last ten years as the basis for development of regulations and programmes to reduce the hazardous nature work on those vessels.**

Right to Justice

66. The Government's Initial Report states that "all people of Taiwan regardless of gender, religion, race, class or party affiliation, are equal before the law". It acknowledges that the protection of the rights of non-citizens must, "in principle be in line with the requirements concerning non-citizens under ICERD General Recommendation No. 30, the ICCPR and the ICESCR" (§96).

67. For foreign nationals employed in Taiwan subject to the *Employment Service Act*, the Ministry of Labour funds local governments for legal aid in some specific cases. The assistance available, however, appears to be accessible only to migrant workers legally in Taiwan and not for undocumented migrant workers.

68. Further, the fines and other sanctions for those found to be undocumented workers have recently been increased. Amongst other concerns, that issue, the ability to seek redress for revocation of work permits, the interpretation of what constitutes "serious" violations in the *Employment Service Act* and the issue of access to relevant, quality interpretation services were most frequently raised.

69. The Committee was informed of programmes that had been developed by the Ministry of Justice and the Judicial Yuan amongst others to increase the number of languages covered by professional interpreters and to improve the quality, including the legal and technical language capacity of the interpreters.

70. The Committee recommends that the Government:

- 1) Ensure fair access to justice for all migrant workers, including those that are undocumented.**
- 2) Undertake a review of the *Legal Aid Act* and involve the NHRC and migrant workers' advocates in the process.**
- 3) Consider the establishment of a national legal interpretation service to reduce disparities and ensure equality of services between the courts, the police authorities and the immigration authority.**

Non-national, Undocumented Children

71. ICERD provides the right of everyone to equality before the law in the enjoyment of the right to nationality in Article 5(d)(iii). According to Article 24 ICCPR, every child shall be registered immediately after birth, have a name and the right to acquire a nationality. Similarly, Article 7 CRC provides the right to acquire a nationality, and as far as possible, the right to know and be cared for by his or her parents, and places particular obligations on the State in situations where the child would otherwise be stateless. The International Review Committee reviewing the implementation of the CRC in Taiwan in 2022 expressed concern "about continuing reports of problems facing children born in Taiwan to foreigners, especially undocumented migrants, in relation to acquisition of identity documents, residency rights and/or access to basic services, and sometimes involving statelessness" (§ 25).

72. Non-national, undocumented children constitute possibly the most vulnerable group of any in Taiwan. NGOs are aware of communities with significant numbers of undocumented children who remain unknown to government authorities. In most cases they are children of female migrant workers

who have left their initial positions and, to avoid deportation, have disappeared into remote areas, where agriculture or manufacturing work may be available. These children do not have an Alien Residence Certificate and are therefore not eligible to enrol in the National Health Insurance programme.

73. While various government agencies collaborate to support “non-citizens helpless children and youth”, this support applies only to those for whom neither the mother nor the father can be identified or found.

74. The only path to legal residency and access to basic services for these children and young people is to be separated from their mother, treated as orphans, and declared stateless. In that case they can be adopted within or outside Taiwan. If adopted within Taiwan, they are eligible for citizenship. If not adopted, they remain within the care service until they reach 18 years of age, when they can apply for residency and subsequent citizenship.

75. The Committee recommends that the Government:

- 1) Address the issue by regularising the situation of the many undocumented women migrant workers so they do not have to abandon their children to get them access to fundamental human rights such as stable accommodation, education and health services.**
- 2) Develop criteria, in consultation with NGOs working with undocumented families, on which to base an offer of regularisation of their visa status to undocumented mothers.**
- 3) Provide a child without any parents to care for them with immediate legal residency and citizenship.**

F. New Immigrants and Foreigners

Marriage Equality

76. ICERD guarantees the right to equality before the law in the enjoyment of the right to marriage and choice of spouses in Article 5(d)(iv). The Committee is concerned about discriminatory practices based on national origin in the “Marriage Interview Procedures” conducted for nationals of 19 designated countries in the context of immigration procedures for the purpose of marrying a Taiwanese citizen.

77. The Committee recommends that the Government review this marriage interview system by introducing objective interview criteria that are not based on nationality or national origin.

Foreign Students

78. The Committee is concerned about reports of foreign students being exploited for labour, including being forced to work by their schools, being paid below the minimum wage, and being excluded from labour insurance, pension funds, and extra pay for national holidays or overtime (NHRC, § 87).

79. The Committee recommends that the Government strengthen its efforts to prevent such labour exploitation of foreign students, through such means as investigations, intensified inspections and revisions of regulations where necessary.

G. Refugees and Asylum Seekers

80. The International Groups of Independent Experts reviewing compliance with the two UN Covenants has already in 2013 recommended the “speedy adoption of a *Refugee Act*, which should also include the principle of non-refoulement in accordance with both Article 33 of the *Geneva Refugee Convention*, Article 7 ICCPR and Article 3 CAT” (CO 2013, § 60). These recommendations were reiterated in 2017 and 2022 (CO 2017, §§ 55-56, CO 2022, § 78).

81. In § 121 of the Initial Report, the Government explained that a “draft refugee act underwent deliberations during the 6th to 9th sessions of the Legislative Yuan but has not been passed, reflecting the need to build consensus among the public.” The continuing lack of a *Refugee Act* with clear legal provisions to regularise the legal status of asylum seekers and uphold the principle of non-refoulement is a point of strong concern for the Committee. In light of the rising number of asylum seekers globally, including in the Asian region (e.g. refugees from Myanmar or Afghanistan), there is an increasing urgency to develop a legal framework and procedures to respond to this reality. The absence of a *Refugee Act* is leading to the return of asylum seekers to their countries of origin, despite the risk of being subjected to torture or other forms of ill-treatment, in violation of the principle of non-refoulement. The Committee is concerned about the phenomenon of chain refoulement, where Taiwan may deport denied asylum seekers to a third country from which they entered Taiwan, which in turn deports them to their country of origin where they may face torture or ill-treatment.

82. The Committee is further concerned about reports of the difficult situation faced by asylum seekers, such as the fact that legal aid is not granted to those crossing the border illegally. Instead of granting full refugee protection, individuals are granted a “deferred deportation status” which does not allow them to regularly access housing, healthcare or employment, and instead makes them dependent on NGO services and support.

83. The Committee is also concerned that illegal entry is a crime under the *Criminal Code*, which according to government information the Committee received carries a maximum sentence of 5 years imprisonment. If applied to asylum seekers, this would be in contravention of the *Geneva Refugee Convention*.

84. The Committee recommends that the Government:

- 1) Expedite the process of adopting a *Refugee Act* without any further delay. Ratification, as a matter of domestic law, of the *Geneva Refugee Convention* in order to align Taiwanese laws with international standards would be an important step in this process, as well as of the *Convention Against Torture (CAT)* and the *Convention Against Enforced Disappearances (CED)* in light of their provisions preventing forcible return of persons to a country where they could be subject to violations of some rights that are protected by those instruments.
- 2) Closely review, in the interim period before the adoption of the *Refugee Act*, each case of possible deportation to prevent violations of the non-refoulement principle, and ensure that other rights are protected irrespective of the individuals’ legal status and nationality.
- 3) Provide legal aid to all asylum seekers, whether or not they crossed the border legally.
- 4) Abolish the criminalisation of illegal entry of asylum seekers in the *Criminal Code*.

H. National Human Rights Commission (NHRC)

85. The Committee appreciates both the Independent Opinion and the Parallel Response to the List of Issues received from the National Human Rights Commission and the active participation of Commissioners throughout the two days of public hearings on the implementation of ICERD. The information and analysis provided has contributed to these Concluding Observations and Recommendations.

86. The Committee is concerned that the Legislative Yuan has not yet adopted the *Enabling Law for the NHRC*. Despite the NHRC's limited resources, the Committee would encourage greater activity and outreach.

87. The *Paris Principles, United Nations endorsed requirement for National Human Rights Institutions (NHRIs)* (UN GA Res 48/134, 1993), make specific reference to the responsibility of National Human Rights Institutions

(g) To publicise human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

88. The *Paris Principles* require NHRIs to have a broad mandate encompassing all the rights of the *Universal Declaration of Human Rights* and to both promote and protect human rights. Promotion and protection include actively engaging with the Legislative Yuan, the Executive Yuan and its agencies; identifying and reaching out to marginalised, disadvantaged and remote communities including Indigenous communities.

89. The Committee recommends that the NHRC:

- 1) **Commit to developing within the next two years all the functions specified by the *Paris Principles* of an NHRI including:**
 - a. **identifying through research and public consultations the most pressing human rights issues in Taiwan**
 - b. **developing plans to respond to each of the key priorities focusing on systemic issues, through public inquiries, advice and advocacy to the Executive Yuan and Legislative Yuan, human rights community development programmes, and monitoring of implementation of the international human rights standards that Taiwan has accepted**
 - c. **developing an effective human rights, equality and anti-discrimination complaints handling mechanism**
 - d. **increasing public knowledge and awareness of human rights through a higher public profile.**
- 2) **Make a strong case to the Executive Yuan and Legislative Yuan, with the support of the Control Yuan, for increased funding sufficient to enable the NHRC to fulfil all the functions of a fully independent National Human Rights Institution.**
- 3) **Negotiate with the Control Yuan for a greater share of existing resources until such time as it receives increased funding.**