



TAIWAN

SUBMISSION TO THE INTERNATIONAL REVIEW
COMMITTEE ON THE DOMESTIC IMPLEMENTATION
OF THE ICCPR AND THE ICESCR

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1. INTRODUCTION

Amnesty International makes this submission for consideration by the International Review Committee on the Third Reports of the Government of Taiwan on the Implementation of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (hereafter, “the Review Committee”).

In this submission, Amnesty International emphasizes concerns with regard to human rights issues relating to the COVID-19 pandemic; the death penalty; refugees and asylum-seekers; the right to privacy, in particular the application of facial recognition technology and the use of digital identification; the right to freedom of expression, especially regarding measures on handling misinformation; the Assembly and Parade Act, the use of less lethal weapons in the policing of assemblies, and the case of the Sunflower Movement; same-sex marriage; migrant workers’ rights; and the rights of Indigenous peoples.

This document is based on Amnesty International’s research concerning developments over the past four years but should not be considered an exhaustive list of concerns.

2. COVID-19 (ARTICLES 6, 17 OF THE ICCPR AND ARTICLE 12 OF THE ICESCR)

2.1 THE RIGHT TO PRIVACY IN THE CONTEXT OF THE PANDEMIC

Taiwan’s government has carried out a series of measures to prevent the spread of COVID-19. For example, starting from 27 March 2020, travellers have been subject to mandatory quarantine for 14 days when they arrive in Taiwan.¹ The government invested in mask production to meet increasing demand for surgical masks, implemented a monitoring system on who could buy masks, and produced a series of videos to raise awareness about COVID-19 in different languages, including Taiwanese, Hakka and Indigenous languages. These measures helped Taiwan minimize the impact of COVID-19. However, some measures carry risks to the enjoyment of human rights, especially the rights to privacy, health and life.

Article 48 of the Communicable Disease Control Act (CDCA) grants the government power to request that “persons who have been in contact with patients affected by communicable diseases or who are suspected of being infected” follow necessary measures, such as examination, immunization, medication, control of

¹ ‘依法配合居家檢疫隔離 14 天，共同守護國人健康’ (Comply with the Quarantine related Regulation and Stay Quarantine for 14 days), Ministry of Health and Welfare, 27 March 2020, www.cdc.gov.tw/Bulletin/Detail/EBjqgNd478Dxd8ClzeqXg?typeid=9

certain designated areas or isolation.² Article 58 of the CDCA emphasizes that the measures to prevent communicable disease shall not be resisted.³ Amnesty International recognizes that governments have the right and responsibility to introduce measures to deal with the pandemic of COVID-19. However, it is also important for the government to conduct these measures on a strong legal basis, strictly comply with the principles of necessity and proportionality and ensure they are time-bound and under proper supervision.⁴ In addition, the principles of equality and non-discrimination contained in different human rights instruments must remain central to all government responses to COVID-19.⁵

To ensure travellers comply with quarantine requirements, individuals are subject to surveillance by the government through the GPS signal from smartphones and other electronic devices. During the pandemic, in the name of fighting COVID-19, the government also has access to personal information, such as travel history and records of purchasing masks.⁶ These new measures put individuals' right to privacy at risk, as they are not subject to clearly defined scope and time frame.

For example, in order to track the routes of passengers of the cruise ship *Diamond Princess*, which had docked at Keelung, Taiwan, on 31 January 2020 and was subsequently found to have a COVID-19 outbreak on board, the government accessed personal data, including credit card transaction logs, CCTV footage and mobile position data.⁷

During this period, it has been reported that, through the effort from Chunghwa Telecom, at least six government databases were connected with each other, including travel records, databases from the National Health Insurance Administration, National Police Agency and Ministry of Health and Welfare, and personal data of people in quarantine. Over 35 authorized units have had access to these databases and constantly monitor people's activities. The government did not explain how the data was stored and used.⁸ To date, the government has yet to explain when the government's extended reach into these databases will end. In response to concerns raised by civil society, the government only cited Articles 48 and 58 of the CDCA without further explanation.⁹

While technology certainly plays an important role in curbing the impact of COVID-19, an increase in state digital surveillance powers threatens the rights to privacy and to the freedoms of expression, association and from discrimination in ways that could degrade trust in public authorities and disproportionately harm already marginalized communities.¹⁰

² Ministry of Justice, *Communicable Disease Control Act*, 19 June 2019, law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=L0050001, Article 48.

³ Ministry of Justice, *Communicable Disease Control Act*, 19 June 2019, law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=L0050001, Article 58.

⁴ '科技與人權：新冠病毒 COVID-19——監控與人權威脅' (Tech and Human Rights: COVID-19—The Surveillance and the Threat to Human Rights), Amnesty International Taiwan Section, 22 April 2020, www.amnesty.tw/news/3408.

⁵ Among others: Article 1 and 2, Universal Declaration of Human Rights; Article 2, ICESCR; Article 2, ICCPR.

⁶ '防疫政策亦應兼顧法律與人權' (The Policy to Prevent the Outbreak of COVID-19 should not Ignore Laws and Human Rights), Taiwan Association for Human Rights, 14 February 2020, www.tahr.org.tw/news/2604

⁷ Chen, C.-M., H.-W. Jyan et al., "Containing COVID-19 among 627,386 Persons in Contact with the Diamond Princess Cruise Ship Passengers Who Disembarked in Taiwan: Big Data Analytics", May 2020, www.jmir.org/2020/5/e19540/

⁸ Open Culture Foundation, *COVID-19 without A Lockdown: How Taiwan Did It with Multiple Digital Tools*, 2020, docs.google.com/presentation/d/1nH4VTw9cdDh4JvPz-tMxtR1zjSIE-6_1KLWkBO9R_Lk/edit?fbclid=IwAR2eOjYkulgPekQTjPg2GqMKICWImUEm_b-fCQfBW_3-Lv5tn3Y_TtizKw#slide=id.p, p. 12.

⁹ '政府以資訊國安為由採用電子監控系統並追蹤手機，是否侵犯自由人權與侵害隱私？應如何確立合理明確的法律界限？ - 專題報告' (Could the government apply digital surveillance and trace cellphone signal for information security reason, and does it invade the human rights? Is there a clear legal frame? Special report), National Communications Commission, April 2020, misq.ly.gov.tw/MISQ/docu/MISQ3006/uploadFiles/2020033103/04200109092091122002.pdf, p. 4.

¹⁰ Amnesty International, Digital Surveillance technologies to fight pandemic must respect human rights, (Index: POL 30/2081/2020), 2 April 2020, www.amnesty.org/en/documents/pol30/2081/2020/en/

2.2 RIGHT TO LIFE AND RIGHT TO HEALTH

Statistics from the Ministry of Justice for 2001–20 show that prisons in Taiwan have been overcrowded for more than two decades.¹¹ For example, in Taoyuan Prison the excessive rate of overcrowding has risen from 50.2% in 2015 to 62% at the end of 2019.¹² The seriously detrimental impacts of overcrowding on prisoners' health are especially concerning in the context of the COVID-19 pandemic.

Asylum-seekers who are not protected under the National Health Insurance have faced difficulties in taking precautions against COVID-19. In the early stage of the pandemic, only those who had a residence permit or an entry and exit permit were able to purchase surgical masks.¹³ Asylum-seekers who had overstayed their visas or did not have identification documents could not legally obtain masks.¹⁴

2.3 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- Ensure that the use of digital technologies to track and monitor individuals and populations during the COVID-19 pandemic is carried out strictly in line with human rights, including a transparent system and rules in accessing and collecting personal data related to the pandemic;
- Ensure the use of mass surveillance technology corresponds with the principles of legality, necessity and proportionality, in particular that its use is neither discriminatory nor indiscriminate and is not indefinite but, rather, time-bound and limited in scope, and that all surveillance measures are subject to effective judicial and parliamentary oversight and affected individuals have access to an effective remedy for violation of their human rights;
- Urgently reduce the number of people held in custody and ensure that people who are deprived of their liberty have access to adequate health care, and that all detention facilities are equipped with sufficient equipment and supplies for physical hygiene;
- Ensure that preventive care, goods, services and information are available and accessible to all persons, including asylum-seekers.

¹¹ '矯正機關收容人數'(The Number of Prisoners), Ministry of Justice, www.rjtd.moj.gov.tw/RJSDWEB/common/WebList3_Report.aspx?list_id=1216

¹² '法務部矯正署桃園監獄 收容現況及特性' (The General Situation and Features of the Taoyuan Prison), Taoyuan Prison, August 2020, bit.ly/3jQ3enD, p2.

¹³ '口罩實名制 2/6 上路 國人及外籍人士購買相關規定' (The Name-based Mask Rationing Plan Starting from 2 June, the Regulation of Mask Purchasing for Nationals and Non-national), National Health Insurance Administration, 5 February 2020, www.nhi.gov.tw/News_Content.aspx?n=FC05EB85BD57C709&s=D7F94F9DBC1C6F5D.

¹⁴ ' 口罩實名制 2/6 上路 國人及外籍人士購買相關規定' (The Name-based Mask Rationing Plan Starting from 2 June, the Regulation of Mask Purchasing for Nationals and Non-national), National Health Insurance Administration, 5 February 2020, www.nhi.gov.tw/News_Content.aspx?n=FC05EB85BD57C709&s=D7F94F9DBC1C6F5D.

3. LACK OF PROGRESS TOWARDS THE ABOLITION OF THE DEATH PENALTY (ARTICLES 6, 7 OF THE ICCPR)

3.1 THE GENERAL SITUATION OF THE DEATH PENALTY IN TAIWAN

The Review Committee in 2017 pointed out that Taiwan has made poor progress in efforts to abolish the death penalty.¹⁵ Amnesty International documented eight new death sentences and one execution between 2017 and 2019, with 39 inmates on death row at the end of 2019.¹⁶ President Tsai Ing-wen told the BBC in January 2020 that abolition of the death penalty is going to take “a long time” because “in a democratic society, you need people’s acceptance of these ideas before you can make a move”.¹⁷ However, referring to public opinion does not rationalize the inhumanity of the death penalty and using it as a reason to delay the abolition of the death penalty is against Article 6(6) of ICCPR.¹⁸ The Human Rights Committee has stated that this provision means that states “that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, de facto and de jure, in the foreseeable future”, and is a manifestation of the “pro-abolitionist spirit of the Covenant”.¹⁹ The on-going use of the death penalty and the lack of progress toward abolition show that the government of Taiwan has failed to address the concerns of the Review Committee and is not complying with the ICCPR.

The amendment of the Prison Act resulted in changes to the Regulations for the Execution of Death Penalty.²⁰ However, it is disappointing that these amended rules still allow death sentences for individuals who have psychosocial or intellectual disabilities, in violation of international law and standards.²¹ The

¹⁵ International Review Committee, *Review of the Second Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants*, 20 January 2017, covenantwatch.org.tw/wp-content/uploads/2018/12/2017-ICCPR-ICESCR-CORs_EN.pdf, para. 58.

¹⁶ Amnesty International, *Death sentences and executions 2019*, 21 April 2020, (Index: ACT 50/1847/2020) www.amnesty.org/en/documents/act50/1847/2020/en/F, p. 21.

¹⁷ Office of the President, *President Tsai interviewed by BBC*, 18 January 2020, english.president.gov.tw/News/5962

¹⁸ Amnesty International, *Common Q&A about death penalty*, 17 October 2018, www.amnesty.tw/news/2932

¹⁹ Human Rights Committee, *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, UN Doc. CCPR/C/GC/36, paras 50, 51.

²⁰ '死刑: 常見 Q&A' (Common Q&A about death penalty), Amnesty International Taiwan Section, 17 October 2018, www.amnesty.tw/news/2932

²¹ Human Rights Committee, *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, UN Doc. CCPR/C/GC/36, para. 49; Concluding Observations: USA, UN Doc. CCPR/C/USA/CO/3/Rev.1 (2006), para. 7; Concluding Observations: Japan, UN Doc. CCPR/C/JPN/CO/5 (2008) para.16; Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN document A/HRC/28/68/Add.1 (2015), para. 607.

authorities do not have to inform family members of the execution in advance and this can itself be cruel and inhumane treatment in clear violation of Article 7 of the ICCPR.²²

3.2 CASE OF CHIOU HO-SHUN

Chiou Ho-Shun is one of the longest-serving death row inmates in Taiwan. Arrested in 1988, Chiou was sentenced to death in 1989 for kidnapping and murder. The most recent investigation report written by Kao, Yung-Cheng a member of Control Yuan again highlighted that police had subjected Chiou to torture and other ill-treatment during the investigation process. It is also reported that Chiou's "confessions" were obtained through torture and that there are discrepancies in the evidence.²³ The failure to completely exclude all evidence obtained by torture or other ill-treatment during trials and convictions [of the victim of that treatment] is a clear violation of Articles 7 and 14 of the ICCPR.²⁴

Under Article 6(4) of the ICCPR, death row prisoners must have an opportunity to seek pardons and commutations. Currently, prisoners on death row are effectively denied the right to apply for a pardon or amnesty, as there is no clear procedure for them to do so.²⁵ The current Pardon Act does not correspond with Taiwan's obligations under Article 6(4) of the ICCPR, as explained by the Human Rights Committee in detail in its General Comment No. 36, as it fails to provide a clear regulation for the application for pardon or amnesty in terms of certainty, procedure and the right to be informed of any milestones.²⁶

3.3 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- Immediately establish an official moratorium on executions with a view to abolishing the death penalty, as called for consistently by UN General Assembly resolutions since 2007 with growing support;
- Pending full abolition of the death penalty, ensure that a sentence of death is not carried out if the prisoner has a severe mental or intellectual disability; and
- Amend the Pardon Act in line with international standards, in particular by laying out in detail all relevant procedures and minimum guarantees.

²² 死刑執行規則修正應採納《公政公約》第36號一般性意見書' (The Amendment of the Regulations for the Execution of Death Penalty should Comply with the General Comment No. 36), Amnesty International Taiwan Section, 20 July 2020, www.amnesty.tw/news/3517.

²³ '調查報告 109 司調 0044' (Investigation Report by Control Yuan in 2020 No.0044), Control Yuan, 2020, cybsex.gov.tw/CYBSBoxSSL/edoc/download/31605.p3-5, p. 62.

²⁴ Human Rights Committee, *General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, 30 October 2018, para. 41; see also Article 15 of the Convention against Torture.

²⁵ Ministry of Justice, The Pardon Act, 24 September 1991, law.moj.gov.tw/LawClass/LawAll.aspx?pcode=C0010005

²⁶ Human Rights Committee, *General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, 30 October 2018, tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf, para. 47.

4. NON-REFOULEMENT AND ASYLUM-SEEKERS (ARTICLES 2, 7, 13 AND 14 OF THE ICCPR)

4.1 REFUGEE ACT

In 2017, the Review Committee recommended that Taiwan pass a Refugee Act as soon as possible and ensure that the Act incorporate the principle of non-refoulement.²⁷ However, adoption of the draft Refugee Act has been delayed for several years, despite the bill having been introduced in 2005 and having entered the legislative procedure multiple times. Taiwan still lacks integrated support measures and cannot effectively protect the rights of or provide assistance to asylum-seekers, including those from Hong Kong and Macau.

Under existing law, refugees and asylum-seekers cannot receive help from the legal aid system which undermines their rights to an effective remedy and legal representation.²⁸

4.2 LAWS AND REGULATIONS REGARDING HONG KONG AND MACAO AFFAIRS

Article 18 of the Laws and Regulations Regarding Hong Kong and Macao Affairs indicate that “[n]ecessary assistance shall be provided to Hong Kong or Macao Residents whose safety and liberty are immediately threatened for political reasons”.²⁹ However, the Enforcement Rules of the Act Governing Relations with Hong Kong and Macao do not provide clear procedures for asylum-seekers from Hong Kong and Macao, nor does it specify the kind of help they can receive. As a result, asylum-seekers from Hong Kong and Macao can only apply on a case-by-case basis. The law does not provide and ensure these asylum-seekers a fair and clear mechanism regularizing their status and providing effective protection in case of political persecution in the jurisdiction they left or other cases when their ability to stay is necessary for the enjoyment of their human rights.

A state’s discretion in the adoption and enforcement of migration policies is limited by its obligation to respect, protect and promote the human rights of all individuals within its territory and subject to its jurisdiction.³⁰ This includes the obligation not to deny entry to persons in need of international protection. The Human Rights Committee has clarified that in specific circumstances the ICCPR does require the

²⁷ International Review Committee, *Review of the Second Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants*, 20 January 2017, [covenantwatch.org.tw/wp-content/uploads/2018/12/2017-ICCPR-ICESCR-CORs_EN.pdf](https://www.covenantwatch.org.tw/wp-content/uploads/2018/12/2017-ICCPR-ICESCR-CORs_EN.pdf), para. 55.

²⁸ Ministry of Justice, *Legal Aid Act*, 01 July 2015, law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030157, article 14.

²⁹ Ministry of Justice, *Laws and Regulations Regarding Hong Kong & Macao Affairs*, 13 December 2017, law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=Q0010003, article 18.

³⁰ Human Rights Committee, *General Comment No. 27, Freedom of movement (article 12) (1999)*, UN Doc. CCPR/C/21/Rev.1/Add.9, para. 4.

authorities to provide protection to a foreign victim of human rights violations in the form of entry or residence.³¹

4.3 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- Without undue delay, ensure the passage of a refugee law to ensure that Taiwan has an act that helps asylum-seekers as set out in international human rights law and standards;
- Formulate specific rules to implement Article 18 of the Laws and Regulations Regarding Hong Kong and Macao Affairs that comply with the General Comment No. 15 to ensure effective international protection is afforded to persons from these territories where warranted;
- Ensure access to justice for asylum-seekers and refugees by removing their blanket exclusion under the Legal Aid Act.

5. RIGHT TO PRIVACY (ARTICLE 17 OF THE ICCPR)

5.1 FACIAL RECOGNITION

Taiwan's Constitutional Court recognizes that the right to privacy in public spaces should be protected.³² Article 17 of the ICCPR stipulates that the interference of privacy generally may not be unlawful or arbitrary. Furthermore, the Human Rights Committee has pointed out that personal data accessible in public spaces could still be protected by Article 17 of the ICCPR and hence the right to privacy, in principle, can be violated by the state gathering data in public situations, for example by facial recognition technology.³³

Amnesty International believes that facial recognition technology (FRT) used for general identification of unspecified people within a certain location, such as in train stations, is a mode of mass surveillance and, as such, is a violation of the right to privacy, as not necessary or proportionate in any circumstance. Other uses of FRT are only permissible if they strictly comply with the principles of legality and non-discrimination and are necessary and proportionate to a legitimate aim. This means, among other things, that any such measure must be authorized in accordance with domestic laws that are sufficiently clear, be publicly accessible and foreseeable, and allow effective safeguards against abuse.³⁴ Developing international standards further lay out that relevant laws should include appropriate safeguards, such as the length of time

³¹ Human Rights Committee, *General Comment No. 15: The position of aliens under the Covenant (1986)*, UN Doc. HRI/GEN/1/Rev.1 at 18 (1994), para. 5: "However, in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise."

³² '釋字第 689 號' (J.Y. Interpretation No. 689), Constitutional Court, 29 July 2011, cons.judicial.gov.tw/jcc/zh-tw/jep03/show?expno=689.

³³ Human Rights Committee, *Concluding observations on the seventh periodic review of Colombia*, 17 November 2016, www.refworld.org/docid/5975e6de4.html, para. 32; General comment No. 37 (2020) on the right of peaceful assembly (article 21), UN Doc. CCPR/C/GC/37, para. 62.

³⁴ UN High Commissioner for Human Rights, *The right to privacy in the digital age*, UN Doc. A/HRC/39/29 (2018), para. 5.

information obtained from a surveillance system may be kept, by whom it may be accessed, and requirements for permanent deletion or destruction.³⁵

FRT collects and processes personal data. The government's utilization of FRT needs to ensure it respects individuals' right to control personal information and their right to spaces in which they can freely express their identity.

The government often uses FRT in public areas and in schools. Furthermore, FRT is also widely applied in multiple government departments, such as the M-Police system of the National Police Agency. These measures are often used without the consent of the individuals affected and lack a strong legal basis. For example, in 2018, the Ministry of Transportation and Communication (MOTC) applied and tested FRT as part of the Smart Surveillance System in several train stations to monitor passengers entering and leaving the stations. Although the project ended in 2019, the MOTC had collected personal data for nearly four months without consent of the passengers.³⁶ In a recent press release, the MOTC did not explain how it used the data or whether the data would be properly and permanently erased from the government database. The MOTC also avoided explaining the legal basis of the tests.

Applying FRT in public areas indiscriminately invades people's right to control information about themselves and the right to be free from unlawful or arbitrary interference by the State. Without detailed proper regulation of biometric data and FRT, the use of this emerging technology may do more harm than good to the right to privacy. In this context, the present use of FRT by the government raises serious questions under Article 17 of the ICCPR.

5.2 THE NEW EID (E-IDENTIFICATION) SYSTEM

In 2018, the government announced that Taiwan would adopt a new "eID" system in 2020.³⁷ The eID will combine the existing ID card with a Citizen Digital Certificate.³⁸ According to the government, the eID will enable people to use public services in a more convenient way, such as digital voting, health insurance, filing tax online and other digital public services.³⁹

The Human Rights Committee has laid out that the collection and storage of personal information on any electronic devices must be regulated by law and that the state must take effective measures against abusive or unauthorized use, as well as give individuals the rights to ascertain what personal data is stored in automatic data files, to know who has control over these files and to request correction or clarification.⁴⁰

Without proper planning and supervision to safeguard personal data, the new eID could violate the privacy of individuals. To integrate access to different functions and services into one digital certificate requires connecting different databases, which might lead to misuse of personal data by the government. The government claims to have finished the legislation necessary to protect people's privacy and information security,⁴¹ such as formulating the Regulations for the Nationwide Replacement of National ID Cards and

³⁵ UN Special Rapporteur on the right to privacy, *Working Draft Legal Instrument on Government-led Surveillance and Privacy. Including the Explanatory memorandum, version 0.7*, 28 February 2018, Article 4(1)(l) www.ohchr.org/Documents/Issues/Privacy/SR_Privacy/2018AnnualReportAppendix7.pdf

³⁶ '臺鐵豐原站智慧型影像監控系統試辦案' (TRA surveillance system trial at Fengyuan Station), Ministry of Transportation and Communication, 5 November 2019, pse.is/RSUZ9

³⁷ '數位身分識別證打開智慧政府的關鍵鑰匙' (*E-identification is the Key to Fulfill Smart Government*), Ministry of the Interior, 22 August 2019, bit.ly/2GF73xF, p. 2.

³⁸ '數位身分識別證打開智慧政府的關鍵鑰匙' (*E-identification is the Key to Fulfill Smart Government*), Ministry of the Interior, 22 August 2019, bit.ly/2GF73xF, p. 9.

³⁹ '數位身分識別證打開智慧政府的關鍵鑰匙' (*E-identification is the Key to Fulfill Smart Government*), Ministry of the Interior, 22 August 2019, bit.ly/2GF73xF, pp. 3, 10.

⁴⁰ Human Rights Committee, *General comment No. 16: Article 17 (Right to privacy) (1988)*, UN Doc. HRI/GEN/1/Rev.1 at 21 (1994), para. 10.

⁴¹ '公民與政治權利國際公約執行情形' (Third Report on the ICCPR and ICESCR), Ministry of Justice, 29 June 2020, bit.ly/3dgFSFc, para. 189.

Interior Certification Authority Certification Practice Statement.⁴² However, these regulations fail to protect personal data in multiple respects. Current regulations do not specify the departments or institutions authorized to collect and use personal data or whether the access is for all data stored or only to certain parts of the data. There are also no provisions on the time limit for data storage or the scope of data collection, and there is no information about how the government will trace and monitor the digital footprint of the new eID.

5.3 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- Ban immediately the use, development, production, sale and export of facial recognition technology for identification purposes by state agencies and the private sector;
- Set up a transparent and comprehensive legal framework for the application of facial recognition technology and conduct a risk and human rights impact assessment before applying FRT in public spaces;
- Disclose details about current and past use of FRT in public areas;
- Ensure effective supervision of how the public and private sectors follow privacy-related regulations, and investigation of potential abuses of the right to privacy;
- Comprehensively regulate in law all relevant aspects pertaining to the new eID to prevent personal data from being misused by the public and private sectors, such as scope, use, access and storage of data as well as effective safeguarding measures.

6. RIGHT TO FREEDOM OF EXPRESSION (ARTICLE 19 OF THE ICCPR)

6.1 MEASURES ON FIGHTING MISINFORMATION

The government has viewed fighting misinformation as an important task in recent years. In 2018, Minister without Portfolio Lo Ping-cheng established a task force to fight misinformation that introduced several legal amendments to existing legislation, including the Agricultural Products Market Transaction Act, the Food Administration Act, the Communicable Disease Control Act, the Nuclear Emergency Response Act, the Act Governing Food Safety, and the Sanitation and Disaster Prevention and Protection Act.⁴³ Through these amendments, individuals and organizations that spread or share misinformation and, as a result, cause

⁴² '數位身分識別證(New eID)簡易問答集' (Q&A for the New eID), Ministry of the Interior, September 2019, www.ris.gov.tw/documents/data/5/6/ca2b5d37-d0e0-4b18-83be-fae54ea6ee34.pdf, p. 6.

⁴³ '防制假訊息危害專案報告' (Special Report for Preventing the Misinformation), Lo P.-C., www.ey.gov.tw/File/5E45C50A967D755E?A=C, p. 12–13.

damage to the public or others could face harsh punishment, such as an NT\$1 million (approx. US\$ 34,000) fine and even life imprisonment.

These amendments raise concerns under the right to freedom of expression. Some of the terms in these regulations are vague and unclear. For example, in Article 63 of the Communicable Disease Control Act, the element of violating this rule is simply “sharing a rumour”. The definition of “undermining public order and peace” in Article 63 of the Social Order Maintenance Act is ambiguous. Many individuals charged under this law have been acquitted by the courts, showing that the article may be unclear.⁴⁴ These laws recognize “false news” or “spreading misinformation” based on vague and overly broad language and concepts that create uncertainties about the limits to the space for people to express themselves. In fact, it is questionable whether they are necessary and proportionate to combatting misinformation. The harsh punishments in these regulations could potentially result in self-censorship. Amnesty International submits that these laws restrict the right to freedom of expression more than permissible under Article 19 of the ICCPR.

6.2 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- Comprehensively review all laws that might be harmful to the right to freedom of expression;
- Establish clear guidelines to ensure that measures to combat misinformation comply with international human rights standard.

7. FREEDOM OF PEACEFUL ASSEMBLY (ARTICLE 21 OF THE ICCPR)

7.1 ASSEMBLY AND PARADE ACT

Already during the 2013 review proceedings, and again in 2017, the government acknowledged that Article 29 of the Assembly and Parade Act placed excessive limits on the freedom of assembly.⁴⁵ The government promised to amend the Act, including to limit the power to mandate dispersal. However, the Act has still not been amended and Article 29 and other disproportionately restrictive articles remain in place.

The Assembly and Parade Act continues to disproportionately restrict people’s right to hold peaceful assemblies. According to Article 8, groups and organizations holding demonstrations must obtain approval from the government.⁴⁶ Article 6 forbids organizations and groups from holding any activities close to

⁴⁴ ‘管制不實訊息，應兼顧言論自由’ (Fighting Misinformation Should Also Protect the Freedom of Expression), Taiwan Association for Human Rights, 13 January 2020, www.tahr.org.tw/news/2593

⁴⁵ International Review Committee, *Review of the Second Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants*, 20 January 2017, covenantwatch.org.tw/wp-content/uploads/2018/12/2017-ICCPR-ICESCR-CORs_EN.pdf, para. 75.

⁴⁶ Ministry of Justice, *Assembly and Parade Act*, 26 June 2002, law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080058, article 8.

specified areas, such as the Executive Yuan, courts at all levels and foreign embassies.⁴⁷ These limitations on the people's right to freedom of peaceful assembly have negative effects on the development of civil society.

7.2 THE USE OF LESS LETHAL WEAPONS

At present, Taiwan has no specific laws that regulate the use of water cannon, pepper spray, tear gas and other less lethal weapons during assemblies. There is no regulation to ensure that the use of less lethal weapons complies with international human rights law and standards, in particular the principle of proportionality. The use of less lethal weapons in public assemblies can cause severe damage to demonstrators' physical and mental health and can have lethal consequences in specific instances. Police deployed water cannons in some demonstrations, such as the Sunflower Movement, using high-velocity streams of water to disperse crowds. The high-velocity stream of water can cause serious physical injury or even death.⁴⁸

7.3 SUNFLOWER MOVEMENT

The judgment of the High Court trial of protesters arrested during the Sunflower movement was delivered in April 2020. Sixteen defendants, including protest leaders, accused of offences such as "inciting others to commit an offence" and "obstructing an officer in discharge of duties", were found guilty and sentenced to between three and five months' imprisonment.⁴⁹ Punishing the leaders of demonstrations for the violence or other unlawful behaviour committed by other individuals during demonstrations is an unjustified and disproportionate restriction on the freedom of peaceful assembly.⁵⁰ Amnesty International submits that the Taiwanese authorities failed to comply with its obligations under Article 21 of the ICCPR in the prosecution of these individuals.

7.4 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- As a matter of urgency, bring the Assembly and Parade Act in line with Taiwan's obligations under international human rights law and specify the role of government authorities as facilitators of the right to peaceful assembly; and
- Ensure that the law and regulations governing the use of force by law enforcement officials are in line with international law and standards, including the UN Basic Principles on the Use of Force and Firearms for Law Enforcement Officials, and that all law enforcement officials are properly trained accordingly with international standards, such as those set out in the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

⁴⁷ Ministry of Justice, *Assembly and Parade Act*, 26 June 2002, law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080058, article 6.

⁴⁸ Amnesty International, *The Human Rights Impact of Less Lethal Weapons and other Enforcement Equipment*, (Index: ACT 30/1305/2015) www.amnesty.org/en/documents/act30/1305/2015/en/ p. 48. Amnesty International, *The Human Rights Impact of Less Lethal Weapons and other Enforcement Equipment*, (Index: ACT 30/1305/2015) www.amnesty.org/en/documents/act30/1305/2015/en/ p. 26.

⁴⁹ '對太陽花運動參與者的不公判決應該被翻轉' (The Unfair Judgment to the Participant in the Sunflower Movement Should be Overturned), Amnesty International Taiwan Section, 28 April 2020, www.amnesty.tw/news/3416

⁵⁰ Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, UN Doc. CCPR/C/GC/37, para. 17.

8. SAME-SEX MARRIAGE (ARTICLES 2, 17, 23, 26 OF THE ICCPR)

In 2017, the Review Committee recognized the efforts of the government of Taiwan to achieve marriage equality.⁵¹ In May 2019, the Legislative Yuan passed the Act for the Implementation of J.Y. Interpretation No. 748, which allows same-sex couples to get married.⁵² Taiwan thereby became the first jurisdiction in Asia to legalize same-sex marriage. Under the new law, same-sex couples are granted the same right to legally marry as opposite-sex couples, and many of the same rights and obligations applied to opposite-sex couples under the existing regulations in the Civil Code are applied to same-sex couples. However, the Act did not give same-sex couples full marriage equality in all aspects.⁵³

For example, the new law only covers same-sex marriage between Taiwanese citizens and those non-national spouses whose countries have themselves legalized same-sex unions.⁵⁴ Secondly, same-sex married couples' adoption rights are limited in that they may only adopt the biological child(ren) of their partner, but not jointly adopt non-biological children, as permitted for opposite-sex married couples.

The law also made the crime of "adultery" applicable to same-sex unions. At the time, Taiwan's criminal code allowed for a married person who commits "adultery" to be imprisoned for up to a year. However, in May 2020 the Constitutional Court declared this provision unconstitutional, as a violation of a person's sexual autonomy and privacy and discriminatory against women.⁵⁵

The denial of genuine marriage equality to same-sex couples in the Civil Code continues to constitute discrimination on the grounds of sexual orientation and falls short of Taiwan's duty to respect, protect and fulfil everybody's human rights to dignity and equality (Article 2 and 26 of the ICCPR, and Article 1 of Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights"). The Act also fails to fully protect everybody's right to marry and found a family as guaranteed by Article 23(2) of the ICCPR.

8.1 REPRODUCTIVE RIGHTS

According to Article 2 of the Assisted Reproduction Act, assisted reproduction technology and therapy is only available to women in opposite-sex marriages "who have a uterus that can carry a fetus and give birth to a

⁵¹ International Review Committee, *Review of the Second Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants*, 20 January 2017, covenantwatch.org.tw/wp-content/uploads/2018/12/2017-ICCPR-ICESCR-CORs_EN.pdf, para. 77.

⁵² Ministry of Justice, *Act for Implementation of J.Y. Interpretation No. 748*, 15 July 2019, law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0000008

⁵³ Amnesty International, *Taiwan becomes first in Asia to legalize same-sex marriage after historic bill passes* (Press Release, 17 May 2019), www.amnesty.org/en/latest/news/2019/05/taiwan-same-sex-marriage-law

⁵⁴ Ministry of Justice, *Act Governing the Choice of Law in Civil Matters Involving Foreign Elements*, 26 May 2010, law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0000007, article 46.

⁵⁵ '司法院釋字第七九一號解釋' (J.Y. Interpretation No. 791), Constitutional Court, 29 May 2020, cons.judicial.gov.tw/jcc/zh-tw/jep03/show?expno=791

child”⁵⁶ The regulation effectively denies same-sex couples, unmarried people, intersex and transgender individuals the option of their own children using assisted reproductive technology, which deprives them of their right to have a family.

8.2 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- Ensure full and genuine marriage equality rights for same-sex couples, on the same basis and with the same rights as marriage between opposite-sex couples, including the right to marry for non-nationals regardless of the legal framework in their home countries and the right to found a family; and
- Amend the Assisted Reproduction Act to end unjustified restrictions on access to assisted reproductive technologies and therapies.

9. MIGRANT WORKERS' RIGHTS (ARTICLE 7 OF THE ICESCR)

9.1 MIGRANT DOMESTIC WORKERS' RIGHTS

In its last review, the Review Committee pointed out that there had been few signs of progress in migrant workers' rights in Taiwan since the first review in 2013.⁵⁷ Migrant domestic workers are not covered by the Labor Standards Act.⁵⁸

Over 250,000 migrant domestic workers are not entitled to the right to reasonable limitation of working hours and fair wages and their wages and benefits can be controlled by employment agencies and employers. In a survey conducted by the Ministry of Labor in 2019, 34% of migrant domestic workers did not have any vacation and received an average wage of NT\$19,947 (approx. US\$638) per month,⁵⁹ which is considerably lower than the NT\$24,000 (approx. US\$822) minimum wage under the Labor Standards Act.⁶⁰

The most common channel for migrant workers to come to Taiwan is through employment agencies. These agencies have enormous control over and influence on the market for migrant workers. Before migrant workers start working in Taiwan, they are charged a range of fees by the employment agencies, such as brokers' fees, referral fees and service fees. In most cases, the total charges can range from NT\$60,000 to

⁵⁶ Ministry of Justice, *Assisted Reproduction Act*, 3 January 2018, law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=L0070024, article 2.

⁵⁷ International Review Committee, Review of the Second Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants, 20 January 2017, covenantwatch.org.tw/wp-content/uploads/2018/12/2017-ICCPR-ICESCR-CORs_EN.pdf, para. 31.

⁵⁸ '基本工資調整外籍勞工是否適用?' (Does the Adjustment of the Minimum Wage Apply to Migrant Domestic Workers?), Ministry of Labor, 25 June 2018, www.mol.gov.tw/topic/3067/5990/5999/14488/

⁵⁹ '108 年外籍勞工管理及運用調查報告' (The Investigation Report on the Use and Management of Migrant Worker in 2019), Ministry of Labor, December 2019, pp. 1, 5, statdb.mol.gov.tw/html/svy08/0842all.pdf, pp. 1, 5.

⁶⁰ Ministry of Labor, The Process and the Way about How the Minimum Wage Come Up, 9 September 2020, www.mol.gov.tw/topic/3067/5990/13171/19154/

200,000 (approx. US\$2000–6800), which is a huge amount of money for most migrant workers.⁶¹ Even worse, in some cases, migrant workers who would like to change employers are asked to pay a second broker's fee, which is illegal under domestic law.

The government claims that migrant workers are able to consult the “1955” Foreign Workers’ Free Hotline for legal aid, referral protection and relocation service. However, many migrant workers complain that this hotline has not effectively helped with resolving issues.⁶² Without adequate resources to deal with problems such as poor working and living conditions or sexual harassment, some migrant workers feel they have no choice but to run away from their employers and employment agencies. In 2019, there were overall 17,776 irregular migrant workers in Taiwan.⁶³

9.2 THE RIGHTS OF FOREIGN CREW MEMBERS ON FISHING VESSELS

In 2017, the Review Committee expressed grave concerns about the rights of foreign crew members on fishing vessels because incidents of human rights on Taiwanese fishing vessels are reportedly severe and common.⁶⁴ The government of Taiwan has not implemented effective measures to protect the rights of foreign crew members since the last review in 2017. They are often exploited and mistreated by their employers, such as working long hours in poor and unsafe conditions and living in inhumane conditions.

For instance, to manage crew member more easily, employers force foreign crew members to stay on the boat even when the vessel is in port. In 2019, six foreign fishing vessel crew members who had been forced to stay on board their ship were killed upon the collapse of Nanfang'ao Bridge in the north of Taiwan.⁶⁵ The Yilan Migrant Fishermen Union told the Public Television Service that over 90% of fishing vessel crew members had to stay on their vessels because employers often neglected to provide for basic needs, such as accommodation.⁶⁶

Although the government claims to treat migrant workers with justice and make them feel at home,⁶⁷ most foreign crew members are subjected to unfair treatment. According to the Environmental Justice Foundation, approximately 24% of foreign fishing vessel crew members who responded to a 2019 survey reported having been physically abused by a captain or senior crew members, such as being kicked or beaten. Over 90% of foreign crew members reported not receiving their wages on time.⁶⁸

⁶¹ '人比利益優先 廢除私人仲介刻不容緩' (People should come First: Abolition of Manpower Agencies should not be Delayed), Chen H.-L., www.laf.org.tw/index.php?action=LAFBaoBao-detail&tag=239&id=246

⁶² '保障移工人權 台灣仍須努力' (Taiwan should work hard on protecting migrant worker's human rights), Chen R.-R., 29 February 2012, bit.ly/3nHYVgl

⁶³ '產業及社福移工行蹤不明失聯概況' (The General Condition of the Industry and Social Welfare Migrant Workers that Lost Contact), Ministry of Labor, statdb.mol.gov.tw/html/trend/108/51205.pdf

⁶⁴ International Review Committee, Review of the Second Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants, 20 January 2017, covenantwatch.org.tw/wp-content/uploads/2018/12/2017-ICCPR-ICESCR-CORs_EN.pdf, para. 33.

⁶⁵ '漁船不是住家外籍漁工需要安全的住所' (Fishing Vessels Should not be Accommodation, Migrant Fisherman Should Have a Safe Accommodation), Taiwan Association for Human Rights, 3 October 2019, www.tahr.org.tw/news/2531

⁶⁶ '外籍漁工生活環境惡劣 約9成以船為家' (The Living Condition of Migrant Fishermen are Horrible, Over 90% had to Live in Fishing Vessel), Public Television Service, 03 October 2019, news.pts.org.tw/article/448935

⁶⁷ '移工權益維護報告書' (Report On Protection Of The Rights For Foreign Workers In Taiwan), Ministry of Labor, January 2020, pp. 2–3.

⁶⁸ Environmental Justice Foundation, Widespread Abuse and Illegal Fishing as Taiwan's Fleet Remains Out Of Control, 22 July 2020, ejfoundation.org/news-media/widespread-abuse-and-illegal-fishing-as-taiwans-fishing-fleet-remains-out-of-control-1

9.3 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- Strengthen the monitoring of recruitment, manpower and placement agencies, brokers and others involved in the employment of migrant domestic workers, including through regular and unannounced inspections;
- Ensure that all migrant workers, including irregular migrants, who are victims of human rights abuses can effectively seek and obtain justice;
- Incorporate the provisions of the UN Migrant Workers Convention into domestic law and implement it in policy and practice;
- Review and improve the Government's support services, such as the "1955" Hotline and service centres for foreign workers and, in compliance with the ILO Domestic Workers Convention No.189, ensure sanctions for employers and employment agencies that do not obey the law are effective in leading to increased compliance;
- Introduce legislation such as the Domestic Worker Protection Act and, in compliance with Article 7 of the ICESCR and the ILO Domestic Workers Convention No. 189, ensure that migrant domestic workers enjoy the same rights as other workers; and
- Exercise effective oversight over compliance of fishing operators with domestic and international standards protecting the rights of local and foreign crew members, including by carrying out more labour inspections on distant water fishery and in-shore fishing fleets, as well as ships in port.

10. RIGHTS OF INDIGENOUS PEOPLES (ARTICLES 12, 15 OF THE ICESCR AND ARTICLE 27 OF THE ICCPR)

10.1 RIGHT TO HEALTH

In 2017, the Review Committee raised concerns about the gap in life expectancy between different regions and economic classes.⁶⁹ Amnesty International would like to draw the Review Committee's attention to the gap of life expectancy between Indigenous peoples and the domestic average. A special report released by the Ministry of Health and Welfare in 2018 shows that the average life expectancy of Indigenous people is 71.9 years, which is 8.3 years less than the domestic average. In addition, the Indigenous infant mortality

⁶⁹ International Review Committee, *Review of the Second Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants*, 20 January 2017, covenantwatch.org.tw/wp-content/uploads/2018/12/2017-ICCPR-ICESCR-CORs_EN.pdf, para 46.

rate is higher than the domestic average.⁷⁰ According to a report released by the Council of Indigenous Peoples, the average density of medical institutions in Taiwan is 618 per 1,000km²; however, in Indigenous administrative areas, there are only six medical institutions per 1,000km².⁷¹ These figures show that the government is failing to ensure equal access to healthcare.

10.2 RIGHT TO HUNT

In 2017, the Review Committee recommended that the government of Taiwan should help to preserve and promote the culture of Indigenous peoples.⁷² Hunting is one of the important ways of living for Indigenous people in Taiwan, and hunting rights of Indigenous peoples have been incorporated into domestic law. However, there remain many conflicts between Indigenous peoples' hunting rights and government measures.

For example, some lands reserved for Indigenous peoples and hunting fields overlap with national parks. Due to restrictions under the existing National Park Law, Indigenous peoples cannot hunt in national parks even though those areas might be their customary lands.⁷³ In addition, the Wildlife Conservation Act provides strict guidelines for hunting activities that do not always take into account Indigenous peoples' customs and practices or sufficiently support their hunting culture.⁷⁴ Indigenous people are often prosecuted for acts of preparing for traditional activities, such as hunting, and it hinders the continuity of Indigenous culture.⁷⁵

10.3 STATUS ACT FOR INDIGENOUS PEOPLES

In the second review in 2017, the Review Committee noted that the way the government categorizes Indigenous peoples is obsolete.⁷⁶ According to the Status Act for Indigenous Peoples, Indigenous peoples are divided into native Indigenous Peoples of the mountain and plain-land regions, each of which was accorded different rights and benefits.⁷⁷ For example, the Mountain Indigenous people could have advantage in the college entrance exam with the Indigenous people language proficiency certificate.⁷⁸ The government did not provide any similar measures for Plain-land Indigenous people against Indigenous people living in the Taiwanese plains on the basis of their identification under the law.

⁷⁰ Ministry of Health and Welfare, The Solution to Health inequality: The Current Condition and Vision of The Medical Resource in Indigenous Administrative Area, 30 May 2018, www.mohw.gov.tw/dl-45845-85d149f8-05d0-411f-96e7-fc9f0ebad7ca.html

⁷¹ '我國解決健康不平等、原鄉醫療 資源之現況與展望' (The Solution to Health inequality: The Current Condition and Vision of The Medical Resource in Indigenous Administrative Area), Council of Indigenous People, 30 May 2018, lis.ly.gov.tw/lydb/uploadn/107/1070530/18.pdf, p. 4.

⁷² International Review Committee, Review of the Second Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants, 20 January 2017, para 30.

⁷³ Ministry of Justice, National Park Law, 08 December 2010, law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0070105, Article 13.

⁷⁴ Ministry of Justice, Wildlife Conservation Act, 23 January 2013, law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=M0120001

⁷⁵ '淺論原住民族狩獵釋憲案' (Briefing of the J.Y. Interpretation on Indigenous People Hunting Right), Yapasuoyngu akuyana, www.laf.org.tw/index.php?action=media_detail&p=1&id=298.

⁷⁶ International Review Committee, Review of the Second Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants, 20 January 2017, covenantwatch.org.tw/wp-content/uploads/2018/12/2017-ICCPR-ICESCR-CORs_EN.pdf, para. 29.

⁷⁷ Ministry of Justice, Status Act For Indigenous Peoples, 03 December 2008, law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0130001

⁷⁸ '原住民學生升學優待辦法規定為何?' (What is the Benefit for Indigenous Students on Entrance Exams?), Council of Indigenous Peoples, www.cip.gov.tw/portal/docDetail.html?CID=84787D2F3B3C9BDA&DID=3E651750B40064670EBFBCD69710BBA9.

10.4 RIGHT TO ANCESTRAL LANDS

In 2017, the Review Committee pointed out that any plans involving the development of Indigenous people's ancestral lands should obtain the consent of those communities.⁷⁹ In recent years, Indigenous peoples' rights to ancestral lands have been severely impacted by the mining industry. According to a survey done by the Bureau of Mines in 2019, 102 of 173 mining concessions were located in traditional lands of Indigenous people.⁸⁰

In 2017, the Ministry of Economic Affairs (MOEA) approved an application from the Asia Cement Corporation (ACC) to extend its right to mine for 20 years. The Indigenous people affected filed an administrative complaint and asked the MOEA to withdraw its approval. In 2019, the Taipei High Administrative Court ruled that, as the MOEA did not consult and obtain the free, prior and informed consent of the Indigenous people before granting the land to ACC, the ministry would be required to withdraw approval and return the land to the stakeholders.⁸¹

In September 2019, the MOEA announced that it would not appeal this judgment, but ACC decided to file an appeal.⁸²

10.5 THE RELOCATION OF LANYU STORAGE SITE FOR RADIOACTIVE WASTE

In the last two reviews, the Committee repeatedly pointed out that the government of Taiwan should bring solutions to the relocation of the Lanyu Storage Site to ensure that the relocation plan would not negatively affect Indigenous peoples.⁸³

Since 1982, about 100,000 drums of radioactive waste have been stored in the Lanyu Storage Site.⁸⁴ The government has never consulted the Tao People (the Indigenous people in Lanyu) about issues related to the storage site. This is a violation of Article 21 of the Indigenous Peoples Basic Law, which requires the government to consult and obtain consent from Indigenous peoples or tribes before utilizing or developing their land.⁸⁵ It also means the government has failed to comply with its obligations under international human rights law and standards, in particular Article 15(1) of the ICESCR, under which states should respect and protect Indigenous Peoples' right to ancestral lands to prevent them from losing their identity.⁸⁶ The UN Declaration on the Rights of Indigenous Peoples requires states to "take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent."⁸⁷

⁷⁹ International Review Committee, *Review of the Second Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants*, 20 January 2017, [covenantwatch.org.tw/wp-content/uploads/2018/12/2017-ICCPR-ICESCR-CORs_EN.pdf](https://www.covenantwatch.org.tw/wp-content/uploads/2018/12/2017-ICCPR-ICESCR-CORs_EN.pdf), para. 28.

⁸⁰ '經濟部礦務局-礦業及土石業務統計報表' (The Statistic of Mine Industry and Soil and Rock Affair of Bureau of Mines), Bureau of Mines, April 2019, www.mine.gov.tw/Download/PIInfo/P00001715A.pdf

⁸¹ '臺北高等行政法院 106 年訴字第 1505 號判決' (The Judgment of Taipei High Court in 2017 No.1505), Judicial Yuan, law.judicial.gov.tw/FJUD/default.aspx

⁸² '礦權展限一切依法! - 亞泥將上訴' (The Right of Mining did not Against the Law, The Asia Cement Corporation Will File an Appeal), Asia Cement Corporation, 11 July 2019, www.acc.com.tw/news-center/latest-news/609-1080711-appeal

⁸³ International Review Committee, *Review of the Second Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants*, 20 January 2017, [covenantwatch.org.tw/wp-content/uploads/2018/12/2017-ICCPR-ICESCR-CORs_EN.pdf](https://www.covenantwatch.org.tw/wp-content/uploads/2018/12/2017-ICCPR-ICESCR-CORs_EN.pdf), para. 47.

⁸⁴ Taiwan Power Company, The Operation of the Lanyu Storage Site, www.taipower.com.tw/en/page.aspx?mid=4504

⁸⁵ Ministry of Justice, The Indigenous Peoples Basic Law, 20 June 2018, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0130003>, Article 21

⁸⁶ Committee on Economic, Social and Cultural Rights, General comment No. 21 Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/21, para. 36.

⁸⁷ UN Declaration on the Rights of Indigenous Peoples, UN doc. A/RES/61/295 (2007), Article 29(2).

For years, the Tao have requested that the government relocate the Lanyu Storage Site. Finally, in October 2019 the government promised to introduce a compensation plan on the Lanyu Storage Site in the new session of the Legislative Yuan.⁸⁸ This plan includes a promise to relocate the storage site and a grant of about NT\$2.5 billion (approx. US\$85 million). However, the government has not provided any plan or schedule for the relocation and had not presented it to the Legislative Yuan so far.

10.6 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- Introduce and adopt the Health of Indigenous Peoples Act and ensure equal access to healthcare and medical resources for Indigenous peoples;
- In accordance with Article 15 of the ICESCR, ensure that new legislation and projects do not negatively impact on the human rights of Indigenous Peoples;
- Introduce the amendment of the Status Act for Indigenous Peoples and recognize fully the rights, history and identity of all Taiwanese Indigenous Peoples, including those of the plains;
- Amend the Mining Act to ensure that mining companies consult with and obtain the free, prior and informed consent of Indigenous Peoples before locating mines near or on customary lands; and
- Undertake effective steps to resolve the conflicts between MOEA, ACC and the Indigenous people affected by the mining concessions.

⁸⁸ '行政院 108 年 10 月 18 日核定: 核廢料蘭嶼貯存場使用原住民保留地損失補償要點, 經濟部將依規定儘速落實總統對雅美/達悟族人的承諾' (The Executive Yuan Approve the Compensation Statement on the Lanyu Storage Site: The Ministry of Economic Affairs Will Fulfill the Promise made by the President to the Tao People), Ministry of Economic Affairs, 18 October 2019, www.moea.gov.tw/Mns/populace/news/News.aspx?kind=1&menu_id=40&news_id=87863

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TAIWAN

SUBMISSION TO THE INTERNATIONAL REVIEW COMMITTEE ON THE DOMESTIC IMPLEMENTATION OF THE ICCPR AND THE ICESCR

3RD REPORTS, 22-26 MARCH 2021

This document represents Amnesty International's submission for consideration by the International Review Committee on the Third Reports of the Government of Taiwan on the Implementation of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

In this submission, Amnesty International emphasizes concerns with regard to human rights issues relating to the COVID-19 pandemic; the death penalty; refugees and asylum-seekers; the right to privacy, in particular the application of facial recognition technology and the use of digital identification; the right to freedom of expression, especially regarding measures on handling misinformation; the Assembly and Parade Act, the use of less lethal weapons in the policing of assemblies, and the case of the Sunflower Movement; same-sex marriage; migrant workers' rights; and the rights of Indigenous peoples.