

# **Implementation of the International Covenant on Civil and Political Rights**

Initial report submitted under article 40 of the Covenant

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## **Article 1**

### **Peoples' Right to Self-Determination**

1. The Republic of China was founded on October 10, 1911. The Constitution of the ROC (hereinafter referred to as the "Constitution") was promulgated on December 25, 1947. The Constitution stipulates that the Republic of China is a sovereign and independent democratic nation whose sovereignty resides with the whole of its citizens. The Republic of China relocated its government to Taiwan in 1949 and began a period of martial law that lasted for 38 years, during which time people's freedoms of speech, assembly, and association were restricted. Martial law was lifted in 1987. As the authoritarian regime broke up, social movements started to gain prominence. People initiated political and social reforms to gradually promote the consolidation of various rights. The First Amendment to the Constitution took place on April 22, 1991, which legitimized the generation of the second intake of the central government representatives and resolved the long-term inability to comprehensively re-elect congressmen. The Third Amendment to the Constitution on July 28, 1994 laid the legal groundwork for the direct popular election of the president. The comprehensive re-elections of congressmen in 1991 and 1992, the direct popular elections of the governor and Taipei and Kaohsiung mayors in 1994, the direct popular election of the president in 1996, and the first regime change in 2000 put an end to the one-party authoritarian system that had been in existence for 50 years. Currently both central and local governments are created through elections. Parties that have won elections shall form the governments.

2. Since 1945, when Taiwan was handed back to China from Japan, the Republic of China government has rebuilt the executive and judicial systems, issued new currency, and gone through seven constitutional reforms and five presidential elections between 1988 and 2012. It is a sovereign and independent nation as defined by International Law.

3. Peoples' right to self-determination means that people can independently determine their political status and even the sovereignty of their nations through their votes. The Seventh Amendment to the Constitution in 2005 incorporated the people's right to referendum on constitutional revision as part of the Constitution. Given the constitutional revisions and changes of territory specified in the Additional Articles of the Constitution and the high initiation and

endorsement thresholds established in the Referendum Law for a referendum initiative to sustain, there have not been any successfully approved referendum initiatives thus far. Nevertheless, the possibility of an approved referendum initiative in the future cannot be denied.

### **Right to Self-Determination of Indigenous Peoples**

4. The Republic of China has gradually given protection, assistance, and aid in the promotion of the status, political involvement, education, culture, transportation and water resources, healthcare, economy, land, and social welfare for indigenous peoples. The Council of Indigenous Peoples (CIP) was founded under the Executive Yuan in 1996, on June 17, 1998, the Education Act for Indigenous Peoples was promulgated, in 2000 the Draft Act of Indigenous Self-Governance was drafted and promoted, in 2003 the traditional customs and norms of indigenous peoples were included in applicable laws and regulations, on February 5, 2005 the Indigenous Peoples Basic Law (IPBL) was promulgated, in 2006 the Directions of Indigenous Tribal Community Assembly were established, on December 18, 2007 the Regulation of Resource Co-management in Indigenous Areas was promulgated, on December 26, 2007 the Ordinance on the Protection of Aboriginal Traditional Intellectual Creations was promulgated, and in August 2011 the Aboriginal Land and Sea Water Draft was forwarded to the Executive Yuan for deliberations.

5. Despite the fact that both the Constitution and IPBL stipulate that the government shall implement self-governance of indigenous peoples based on the free will of indigenous peoples, since disputes remain in terms of "the rights of self-governance region residents", "the authority of indigenous government", "finance", "the effective date and trial mechanism" involved in the Executive Yuan's Draft Act on Aboriginal Autonomy, and the Executive Yuan's Draft act of Indigenous self-governance, the Act has not been approved by the Legislative Yuan.

6. Although the IPBL declares that the government acknowledges the rights of indigenous peoples over their land and natural resources and has established the aboriginal land survey and management council accordingly and that indigenous peoples may hunt wild animals, pick wild plants and fungi, harvest minerals and stones, and utilize water resources, among other non-profit activities, legally for the sake of their traditional culture, rituals, or self-use within



aboriginal regions. When exercising the aforementioned rights, however, indigenous peoples are restricted by other special laws, such as the Water Conservancy Law, the Mining Act, the Soil and Stone Quarrying Law, and the Firearms, Ammunition, and Knives Control Act. Violations of the foregoing regulatory requirements shall still be subject to penalties. After the Firearms, Ammunition, and Knives Control Act was amended on November 14, 2001, indigenous peoples who produce, transport, or possess self-made guns or spear guns without a permit shall be subject to an administrative fine unless there are other applicable criminal penalties in place.

7. The IPBL stipulates that when the government or a private person develops aboriginal lands, consultation with local indigenous people should be done to obtain their consent or participation before development takes place in accordance with their free will. The government shall not go against the free will of indigenous peoples by storing hazardous materials within aboriginal regions. In the event that the recommended candidate final disposal site for low-level radioactive waste chosen by the government is located in an aboriginal region, the voting results of the people in the township the facility is located should be prioritized in a local referendum. It shall be considered approved only with no less than 50% consent. For the recent hotel and resort development project at the Dulan Bay and Shan-Yuan Coast of Taitung, and the controversial development of the Luming Hydropower Plant along Lakulaku River, the CIP asked the developers to follow the IPBL requirements and intended to plan related packages in the “Draft of Indigenous Land and Sea Territory Act” in order to further protect the rights of indigenous peoples over their lands, however the proposal was not passed in the Legislative Yuan.

8. In accordance with the Regulations on Development and Management of the Lands Reserved for Indigenous Peoples, the government shall only grant the ownership of reserve land to indigenous peoples when the indigenous peoples have obtained farming rights and surface rights and have continuously managed the land for a full five years. As is indicated in the Draft of Indigenous Land and Sea Territory Act, ownership shall be granted directly after aboriginal reserve land has passed review. The traditional territorial land is to be ascertained through the designation process. After the right to aboriginal reserve land is granted, the private ownership system shall be maintained. The traditional territorial land is owned by the public and is to be used by the tribe through application. This draft, however, has not been approved by the

Executive Yuan.

9. During aftermath reconstruction, indigenous peoples promoted "special zone designation" for disaster-ridden areas (also referred to as the "dangerous regions") or settlement of aboriginal land. Because it involves the traditional regions that indigenous peoples rely on for a living and the future livelihood of indigenous peoples, prior approval by the tribal council or tribal decision-making function should be obtained to respect diversified and different voices in the tribe. Indigenous peoples do not have sufficient land for them to utilize and economic activities to support their lives so some of them decide to leave their tribes and move to cities to make a living. The Sanying Tribe in the water resource land along Dahan River is a community for aboriginals who work in cities. They rebuilt their houses after they were dismantled by the government. Many indigenous peoples are striving to survive in the midst of deprivation. How are they to consolidate their right to self-determination? If applicable laws approved by the government have recognized the fact that indigenous peoples should have the right to self-determination, it must work precisely to accomplish this goal.

## **Article 2**

### **Major Legal Measures to Effectuate Rights under the International Covenant on Civil and Political Rights**

10. The Legislative Yuan deliberated and approved the International Covenant on Civil and Political Rights (hereinafter referred to as the "Covenant") and the Enforcement Law for International Covenant on Civil and Political Rights and International Covenant on Economic, Social, and Cultural Rights (hereinafter referred to as the "Enforcement Law for the Two Covenants") on March 31, 2009. The latter became effective on December 10, 2009. Despite the fact that it is specified in the Enforcement Law for the Two Covenants that the Covenant carries the power of a domestic law and that reference to the legislation purpose and interpretation of the Human Rights Committee is recommended with regard to its applicability, the government should prevent against undermined human rights and proactively facilitate realization of various human rights when exercising its power. The Covenant and general opinions, however, are not understood by most civil servants. Neither are they incorporated in any operating guidelines.

11. Although the government has been reflecting on and seeking to improve its laws and regulations as well as administrative measures that do not fall in line with the Covenant in accordance with the Enforcement Law for the Two Covenants for over two years, amendments to certain laws that are in violation with the Covenant have not been completed by the Legislative Yuan within the regulatory two-year deadline.

12. Most of the rights protected under individual clauses of the Covenant are visible in the domestic laws of the Republic of China, but complete protection of individual rights under the Covenant has not been possible. Grand justices, courts, and prosecutors seldom quote the rights confirmed by the Covenant in their interpretation of the Constitution, verdicts, complaints, or decisions of nol pros at the moment, which will accordingly undermine the consolidation of rights confirmed by the Covenant in Taiwan.

13. Major authorities protecting the rights under the Covenant include the Presidential Human Rights Advisory Committee, Grand Justice, courts, the Control Yuan, and the Ministry of Justice. The Presidential Human Rights Advisory Committee is in charge of advising on and initiating national human rights policies and referring complaints to authorities concerned for subsequent management. The Control Yuan handles complaints from the people and can start “own motion” investigations to indirectly protect human rights by correcting administrative acts, censuring, or impeaching the government and civil servants, but it does not deal with infringements on human rights on the private level. The Ministry of Justice is in charge of assisting government departments in reflecting upon and improving regulatory and administrative measures non-compliant with the Covenant, which shall survive the two-year deadline indicated in the Enforcement Law for the Two Covenants. The Ministry of Justice shall demand that individual government departments introduce substantial improvement measures in response to events violating human rights under the Covenant and help law enforcers have a better understanding of the significance of rights confirmed by the Covenant.

14. Case: The second round of Chiang-Chen Talks between the Straits Exchange Foundation and the Association for Relations Across the Taiwan Straits (ARATS) took place in Taipei from November 3 to 7, 2008. During the talks, some citizens expressed their opinions through assembly and parades, which resulted in disputes and clashes between police and civilians.

Various scholars and 25 non-governmental organizations, including the Judicial Reform Foundation, complained to the Control Yuan alleging that the measures taken by the police and national security had undermined the basic rights of the people. Investigations by the Control Yuan indicate that: (1) both the freedom of assembly and procession and the freedom of expression are basic human rights. The overall promotion and communication efforts regarding the second round of Chiang-Chen Talks from the Mainland Affairs Council (MAC) of the Executive Yuan were insufficient to give rise to the positive power of public opinion to accordingly the disadvantage of the overall operation; (2) there were inadequacies in the attitudes, skills and pre-service education for the order maintenance policing, leading to multiple clashes between the police and the people, which undermined the democratic image of the nation; (3) the logistic planning and deployment and onsite mobilization of police forces during the security maintenance operation at the Grand Formosa Regent Taipei were inappropriate, dealing a serious blow to the image of the nation and the police. The law enforcement was clearly at fault. Based on the results of Control Yuan's investigations, efforts have been made to enhance police awareness of human rights and to consolidate education and promotion. These efforts have improved the techniques and emergency responsiveness of the police on duty ensuring correct law enforcement and human rights protection.

## **Article 2, Item 1, Article 3, Article 26**

### **Anti-discrimination Constitution and Law**

15. Article 7 of the Constitution stipulates that all citizens of the Republic of China, regardless of sex, religion, race, class, or party affiliation, shall be equal before the law. Article 10, paragraph 6 of the Additional Articles of the Constitution of the ROC provides that the state shall protect the dignity of women, safeguard their personal safety, eliminate sexual discrimination, and further substantive gender equality. Article 62 Paragraph 1 of the Immigration Act stipulates that no person residing in the Taiwan Area shall be discriminated against based on factors such as nationality, race, color, class, and place of birth.

16. Enforcement Act of Convention on the Elimination of All Forms of Discrimination against Women

(1) The Legislative Yuan approved the conclusion of the "Convention on the Elimination of All Forms of Discrimination against Women" ("CEDAW") of the United Nations in 2007 and approved the "Enforcement Act of Convention on the Elimination of All Forms of Discrimination against Women" (the "Enforcement Act of CEDAW") in 2011. The enforcement date was set on January 1, 2012. According to CEDAW, sex discrimination includes sex-based direct and indirect discriminations. It is necessary to evaluate the impacts of policies, regulations, and measures on different sexes after they are implemented. Government agencies at all levels shall adopt related legislation or measures to eliminate direct and indirect sex discriminations and proactively promote gender equality. The requirements in the Enforcement Act of CEDAW are generally identical to those in the "Enforcement Law for the Two Covenants."

(2) The Executive Yuan has had the gender equality complaint box set up since 2010 to accept related complaints. The complaints are forwarded to individual responsible ministries and departments for replies and management according to their nature. There are, however, no administrative dispositions, substantial punishments, and court decisions available yet on violations of CEDAW. The punishments are currently imposed in accordance with applicable regulations in the Act of Gender Equality in Employment (the "AGEE").

17. Laws that have anti-discrimination clauses include the Senior Citizens Welfare Act, the People with Disabilities Rights Protection Act, the Immigration Act, the Indigenous Peoples Employment Rights Protection Act, the Gender Equity Education Act, the Mental Health Act, the Communicable Disease Control Act, the HIV Infection Control and Patient Rights Protection Act, the Labor Standards Act (the "LSA"), the AGEE, and the Employment Services Act (the "ESA").

### **Sex Ratio in the Public Sector**

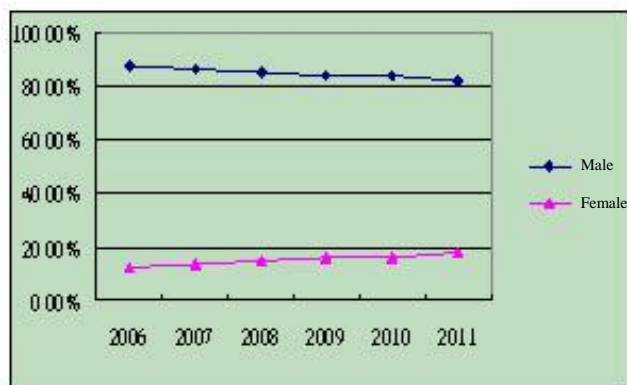
18. Among the 42,214 people holding the position of a supervisor, 13,324 are females, accounting for 31.26%. The ratios of females among chief administrators, political appointees, senior rank, indigenous, and disabled civil servants in the public sector all increased between 2006 and 2011. In terms of the strategies to improve sex ratios, such as to provide data on the number and ratio of different sexes among political appointees or the sex ratios of positions in respective agencies as suggested that serve as the reference for heads of agencies when they decide on related hires, they are for reference only and do not exercise any binding power.

19. Political appointed agency heads: The ratio of female political appointed agency heads increased from 10% to 25% between 2006 and 2011, as is indicated in Table 1.

**Table 1 Gender ratio of political appointed agency heads upon inauguration of new premiers in recent years**

Unit: Persons; %

| Year | Total                           | Male | (%)   | Female | (%)   |
|------|---------------------------------|------|-------|--------|-------|
| 2006 | 40                              | 36   | 90.00 | 4      | 10.00 |
| 2007 | 40                              | 33   | 82.50 | 7      | 17.50 |
| 2008 | 40                              | 32   | 80.00 | 8      | 20.00 |
| 2009 | 40                              | 30   | 75.00 | 10     | 25.00 |
| 2010 | The cabinet did not re-assemble |      |       |        |       |
| 2011 | The cabinet did not re-assemble |      |       |        |       |



Source: Statistics of Directorate-General of Personnel

Administration, Executive Yuan

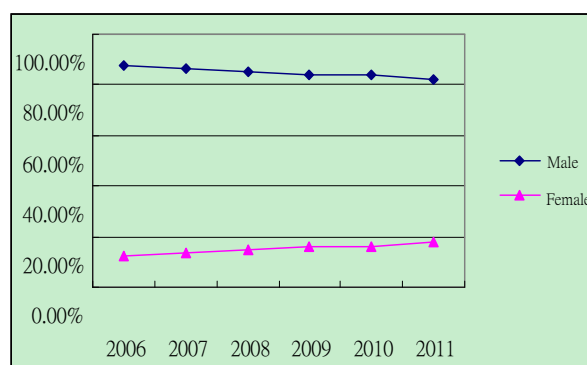
20. Political appointees, senior civil servants, indigenous civil servants and civil servant with disabilities

(1) According to the statistics of the Ministry of Civil Service, the ratio of females has increased from 12.28% to 17.98% among political appointees (Table 2); from 20.37% to 27.34% among senior civil servants (Table 3); from 21.91% to 28.47% among indigenous civil servants (Table 4); and from 34.17% to 37.42% among civil servants with disabilities (Table 5) over the past six years.

**Table 2 Gender ratio of political appointees**

Unit: Persons; %

| Year | Total | Male | (%)   | Female | (%)   |
|------|-------|------|-------|--------|-------|
| 2006 | 285   | 250  | 87.72 | 35     | 12.28 |
| 2007 | 297   | 256  | 86.20 | 41     | 13.80 |
| 2008 | 403   | 343  | 85.11 | 60     | 14.89 |
| 2009 | 383   | 321  | 83.81 | 62     | 16.19 |
| 2010 | 389   | 326  | 83.80 | 63     | 16.20 |
| 2011 | 445   | 365  | 82.02 | 80     | 17.98 |



Source: Statistical Yearbook of Civil Service 2011

**Table 3 Gender ratio of senior civil servants**

Unit: Persons; %

| Year | Total  | Male  | (%)   | Femal | (%)   |
|------|--------|-------|-------|-------|-------|
| 2006 | 8,970  | 7,143 | 79.63 | 1,827 | 20.37 |
| 2007 | 9,018  | 7,080 | 78.51 | 1,938 | 21.49 |
| 2008 | 9,107  | 7,035 | 77.25 | 2,072 | 22.75 |
| 2009 | 9,314  | 7,066 | 75.86 | 2,248 | 24.14 |
| 2010 | 9,485  | 7,031 | 74.13 | 2,454 | 25.87 |
| 2011 | 10,038 | 7,294 | 72.66 | 2,744 | 27.34 |



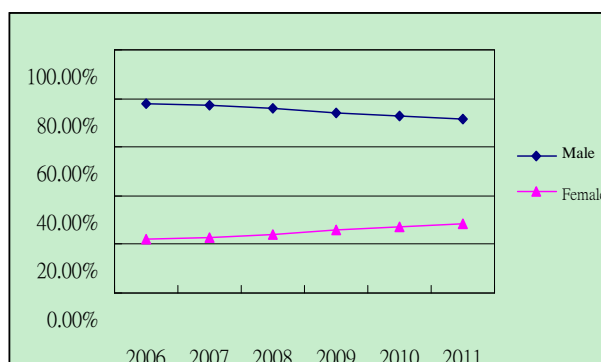
Source: Statistical Yearbook of Civil Service 2011

Description: As prescribed by the Indigenous Peoples Employment Rights Protection Act, the government agencies shall hire 1,954 indigenous people by 2011.

**Table 4 Gender ratio of aboriginal civil servants**

Unit: Persons; %

| Year | Total | Male  | (%)   | Female | (%)   |
|------|-------|-------|-------|--------|-------|
| 2006 | 6,796 | 5,307 | 78.09 | 1,489  | 21.91 |
| 2007 | 6,785 | 5,237 | 77.18 | 1,548  | 22.82 |
| 2008 | 6,693 | 5,077 | 75.86 | 1,616  | 24.14 |
| 2009 | 6,631 | 4,927 | 74.30 | 1,704  | 25.70 |
| 2010 | 6,572 | 4,793 | 72.93 | 1,779  | 27.07 |
| 2011 | 6,509 | 4,656 | 71.53 | 1,853  | 28.47 |



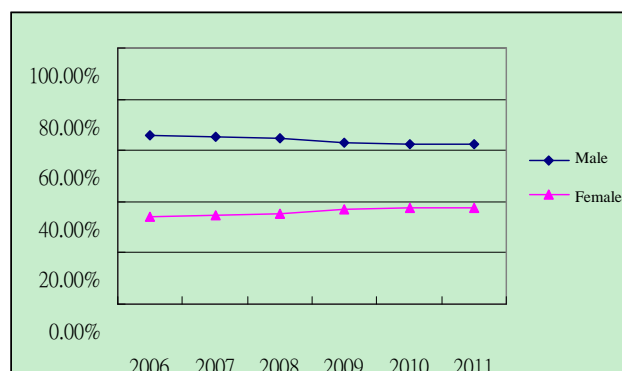
Source: Statistical Yearbook of Civil Service 2011

(2) By 2011, there were 4,954 civil servants with disabilities, among which 3,100 (62.58%) were men and 1,854 (37.42%) were women. The mean age was 45.53 years old, and mean seniority was 15.75 years.

**Table 5 Gender ratio of civil servants with disabilities**

Unit: Persons; %

| Year | Total | Male  | (%)   | Female | (%)   |
|------|-------|-------|-------|--------|-------|
| 2006 | 4,758 | 3,132 | 65.83 | 1,626  | 34.17 |
| 2007 | 4,625 | 3,013 | 65.15 | 1,612  | 34.85 |
| 2008 | 4,826 | 3,121 | 64.67 | 1,705  | 35.33 |
| 2009 | 5,041 | 3,190 | 63.28 | 1,851  | 36.72 |
| 2010 | 4,945 | 3,101 | 62.71 | 1,844  | 37.29 |
| 2011 | 4,954 | 3,100 | 62.58 | 1,854  | 37.42 |



Source: Statistical Yearbook of Civil Service 2011



21. For the ratio of female legislators, government administrators, business executives and managers, see Table 6.

**Table 6 Ratio of female legislators, government administrators, and business executives and managers**

Unit: 1,000 persons; %

| Year         | Legislators, government administrators, business executives and managers (1) |           | Ratio of women (2)/ (1) |
|--------------|--|-----------|-------------------------|
|              |  | Women (2) |                         |
| 2007 Average | 462  | 81        | 17.53                   |
| 2008 Average | 461  | 82        | 17.79                   |
| 2009 Average | 442  | 86        | 19.46                   |
| 2010 Average | 439  | 90        | 20.50                   |
| 2011 Average | 435  | 94        | 21.61                   |

Source: "Manpower Survey", Directorate General of Budget, Accounting and Statistics, Executive Yuan

Description: The data between 2007 and 2010 are provided in accordance with the Standard Occupational Classification and Statistics of R.O.C. (5th Revision). The 2011 data are provided in accordance with the Standard Occupational Classification and Statistics of R.O.C. (6th Revision).

22. The Civil Service Promotion and Transfer Act is neutral to gender difference in the promotion of civil servants. Article 10 of The Civil Service Promotion and Transfer Act specifies the positions exempted from the screening (selection) procedures. It is meant to facilitate agency heads with their selection of people with common beliefs to be heads, vice heads, or middle-to-high-level supervisors in respective agencies without having to go through the screening (selection) procedures. Whether to take gender into consideration in terms of recruitment, however, is part of the agency head's discretion.

23. From the above we see that the ratio of women holding the position of a supervisor is low despite the fact that women account for nearly half of the population in Taiwan.

24. The economic security for seniors offered by the government includes also the pension fund under the national annuity, old age basic guarantee pension payment, elderly farmers' welfare allowance, and veterans home care payment besides the living allowance for old people with

medium and low income. On the other hand, for people ages 65 and above with medium and low income who live a difficult life but do not accept placement by the government and whose life is beyond their children's capability to support, the living allowance of NT\$3,000 or NT\$6,000 per month per person is provided to reflect their financial status. In 2010 a total headcount of 1,431,345 people benefited from the welfare. The approved appropriations totaled over NT\$7.6907 billion. In 2011 a total headcount of 1,424,019 people benefited from the welfare. The approved appropriations totaled over NT\$7.61806 billion.

25. To protect the care needs of disabled or dementia elderly, the government has started to promote the Ten-Year Plan for Long-term Care since 2008 which provides services such as in-home services, day care, family care, geriatric nutrition and food, shuttle services, aid purchase and rental, home improvement for a barrier-free environment, and long-term care to people ages 65 and above, indigenous peoples ages 55 and above who live in the mountains, people ages 50 and above with disabilities, and disabled or dementia elderly. A total of 52,580 people in 2009, 64,320 people in 2010, and 83,217 people in 2011 were served. In terms of geriatric welfare institutions that offer care services, there were 1,066 in 2009, which served 40,183 people; 1,053 in 2010, which served 41,519 people; and 1,051 in 2011, which served 42,824 people.

26. To protect old people from being discriminated against in society, the government approved a proposal to provide the elderly with friendly care in 2009, which encompasses a total of 63 action items to be implemented through integration of resources from all aspects in order to reinforce services for disadvantaged elderly, promote geriatric health, encourage geriatric participation in society, and normalize a age-friendly environment, the four major goals. Fifty-eight (92%) action items were completed in 2009; sixty (95%) were accomplished in 2010; and sixty-one (96.8%) achieved in 2011.

27. The National Immigration Agency of the Ministry of the Interior (the "NIA") established the Regulations Governing Discrimination Complaint Filing Procedures for Residents of the Taiwan Area and the Guidelines for the Establishment of the Review Panel for People Residing in the Taiwan Area Filing Complaints against Discrimination in 2008 and has handled and deliberated on related complaints accordingly. A Review Panel comprised of concerned

authorities and impartial people from society is in charge of reviewing the complaints. One discrimination case was handled in 2009, 2010, and 2011, respectively. All of the three cases were about discriminatory language or words and were ruled to be untenable after the review.

### **Act of Gender Equality in Employment**

28. Articles 7 to 11 of the AGEE stipulate that employers shall not discriminate against applicants or employees because of their gender or sexual orientation in the course of recruitment, screening test, hiring, placement, assignment, evaluation, promotion, paying wages, retirement, and severance. The 2011 Gender Employment and Management Survey of the Council of Labor Affairs (the "CLA") shows that among businesses in 2011, gender consideration accounted for 30.8% in terms of job assignment, followed by the salary payment criteria (9.7%). The ratio of gender consideration in each of the remaining aspects, such as the degree of salary increase, employee promotion and transfer, training, and in-service education, employee evaluation, employee benefits, and layoff, on the other hand, was less than 5%. Compared with historical data, the issue of differential treatment in terms of working conditions as a result of the employee's gender has shown gradual improvements.

**Table 7 Ratio of gender consideration among businesses in assigning employees' job responsibilities**

| Item \ Year                       | Unit: % |      |      |      |      |
|-----------------------------------|---------|------|------|------|------|
|                                   | 2007    | 2008 | 2009 | 2010 | 2011 |
| Work assignment                   | 40.3    | 39.9 | 34.8 | 35.4 | 30.8 |
| Salary payment criteria           | 18.4    | 13.3 | 14.0 | 12.1 | 9.7  |
| Degree of salary increase         | 8.5     | 5.6  | 5.9  | 4.8  | 4.4  |
| Employee evaluation               | 4.8     | 2.2  | 2.9  | 2.3  | 2.1  |
|                                   | 5.3     | 3.4  | 3.7  | 3.3  | 2.3  |
| Training and in-service education | 4.8     | 3.1  | 4.0  | 2.9  | 2.4  |
| Layoff                            | 2.3     | 1.4  | 1.9  | 1.8  | 1.4  |
| Employee benefits                 | 3.1     | 2.1  | 2.0  | 2.2  | 1.7  |

Source: 2011 Gender Employment and Management Survey, Council of Labor Affairs, Executive Yuan

**Table 8 2011 unfair treatment at workplace for female employees because of their gender**

Unit: %

| Item  | Job search | Work assignment | Degree of salary increase | Performance evaluation | Promotion and transfer | Training and in-service education | Layoff, resignation, or dismissal | Employee welfare measure |
|---|------------|-----------------|---------------------------|------------------------|------------------------|-----------------------------------|-----------------------------------|--------------------------|
| Female  | 3.8        | 3.2             | 5.0                       | 2.3                    | 3.7                    | 2.2                               | 1.7                               | 2.0                      |
| Occupation  |            |                 |                           |                        |                        |                                   |                                   |                          |
| Administrator, business leader, and manager                 | 1.1        | 2.8             | 4.6                       | 1.1                    | 6.5                    | 1.5                               | -                                 | -                        |
| Professional  | 1.8        | 1.1             | 1.3                       | 0.4                    | 1.4                    | 0.4                               | 0.2                               | 1.1                      |
| Operator and assistant professional                         | 3.3        | 3.0             | 4.9                       | 2.1                    | 4.9                    | 3.3                               | 2.6                               | 1.0                      |
| Office worker   | 2.7        | 2.8             | 5.2                       | 3.6                    | 4.6                    | 2.4                               | 1.4                               | 1.8                      |
| Clerk and sales representative                              | 4.3        | 3.3             | 4.1                       | 2.0                    | 3.2                    | 2.1                               | 2.8                               | 3.7                      |
| Agriculture, forestry, fishery, and animal husbandry worker | 10.0       | 10.0            | 17.5                      | 10.0                   | -                      | -                                 | -                                 | -                        |
| Technician and related worker                               | 6.1        | 4.8             | 8.1                       | 1.9                    | 1.6                    | 1.2                               | 1.9                               | 2.9                      |
| Machinery and equipment operator and assembly operator      | 7.9        | 5.4             | 9.5                       | 3.2                    | 4.1                    | 3.6                               | 0.5                               | 2.0                      |
| Non-technician and laborer                                  | 5.4        | 4.6             | 6.2                       | 2.3                    | 3.6                    | 1.4                               | 2.4                               | 3.6                      |

Source: 2011 Gender Employment and Management Survey, Council of Labor Affairs, Executive Yuan

29. When employees or job seekers become aware of the fact that their employers are in violation of applicable requirements of the AGEE, they shall file a complaint with the local competent authority in accordance with Article 34 of the AGEE. When employers, employees, or job seekers disagree with the punishments imposed by the local competent authority, they shall apply for review by the Committee on Gender Equity in Employment under the CLA within ten days or file an appeal directly. To facilitate investigation and review of complaints involving gender equity in employment, individual local administrative competent authorities dealing with labor affairs and the CLA have established their Committee on Gender Equity in Employment since the Act of Gender Equity in Employment (AGEE) was implemented in 2002.

30. Article 34 of the AGEE stipulates that employees or job seekers shall file a complaint with the local competent authority when they become aware of the fact that the employer is in violation of the AGEE. In the event that the employer violates applicable requirements,

regulations on related punishments are available in Article 38 and Article 38-1 of the AGEE. Statistics show that a total of 966 complaints about gender equity in employment were handled and reviewed as of December 2011 since the implementation of the AGEE and 271 sustained. There were 581 cases on sex discrimination. Among them, 140 sustained. There were 366 cases on sexual harassment reviewed. Among them, 124 sustained. There were 158 cases on employment equity measures. Among them, 41 sustained. (Note: There were more than two types of complaints in one case.) In addition, according to Article 26 of the AGEE, when employees are undermined as a result of conditions in Articles 7 to 11 or Article 21, the employer shall be responsible for the compensation.

### **Employment Services Act**

31. The Commission on Employment Discrimination is formed by related government agencies, institutions, groups of workers, employer organizations, scholars, and experts in accordance with Article 6 of the ESA and Article 2 of its enforcement rules to handle complaints about employment discrimination. When employers are in violation of Article 5 Paragraph 1 of the ESA by discriminating against any job applicant or employee on the basis of race, class, language, thought, religion, political party, place of origin, place of birth, gender, sexual orientation, age, marital status, appearance, facial features, disability, or past membership in any labor union, they are subjected to a fine not less than NT\$300 thousand and not more than NT\$1.5 million in accordance with Article 65 of the ESA. In other words, job applicants or employees can provide related substantial evidence and apply for a review by the Commission whenever they find an employer violating the prohibited employment discrimination indicated in the ESA. There are, however, no regulations available under the current ESA at the moment yet on the compensation for those being discriminated against or protection of existing jobs. Nevertheless, job applicants or employees being discriminated against can request compensation for non-proprietary damages in accordance with Article 195 of the Civil Code for the time being. Addition of applicable regulations to the ESA may be discussed in the future.

32. Statistics on the implementation efficacy of commissions on employment discrimination under individual city and county governments throughout Taiwan that have been established since 2007 show that sex discrimination tops complaints about employment discrimination,

followed by the discrimination against age and then that against race and place of birth combined.

**Table 9 Statistics of complaints about employment discrimination between 2007 and 2011**

Unit: Case; %

| Item \ Year                                | 2007         |       | 2008         |       | 2009         |       | 2010         |       | 2011         |       |
|--|--------------|-------|--------------|-------|--------------|-------|--------------|-------|--------------|-------|
| Total No. of complaints                    | 203          |       | 223          |       | 411          |       | 197          |       | 337          |       |
| No. of complaints resulting in fines       | 23           |       | 23           |       | 41           |       | 26           |       | 46           |       |
| Complaints about employment discrimination | No. of cases | %     | No. of cases | %     | No. of cases | %     | No. of cases | %     | No. of cases | %     |
| Race                                       | 3            | 1.48  | 3            | 1.35  | 2            | 0.49  | 6            | 3.05  | 4            | 1.20  |
| Class                                      | 1            | 0.5   | 2            | 0.9   | 0            | 0     | 4            | 2.03  | 3            | 0.90  |
| Place of birth                             | 1            | 0.5   | 3            | 1.35  | 2            | 0.49  | 2            | 1.02  | 8            | 2.38  |
| Gender                                     | 153          | 75.37 | 154          | 69.06 | 259          | 63.02 | 95           | 48.23 | 165          | 48.97 |
| Age  | 31           | 15.27 | 41           | 18.39 | 81           | 19.71 | 42           | 21.32 | 63           | 18.70 |

Source: Commissions on employment discrimination under individual city and county governments throughout Taiwan (Statistics of the Bureau of Employment and Vocational Training, Council of Labor Affairs, Executive Yuan)

Description: The numbers of the complaints and sustained cases show that there are more complaints because job applicants or employees can file one with local competent authorities on labor affairs as long as they feel that they are being discriminated against in employment. After clarification through investigational records, those falling in the category of employer-employee conflict will be handled as separate cases. If they are employment discrimination cases, however, they will be submitted to the Commission on Employment Discrimination for deliberations. The commissioners review each complaint on the basis of the actual employment eligibility and the employer's operational needs. The burden of proof is on the employer. It is then determined whether the employer is in violation of the law or not according to facts before a fine is decided.

### Gender Equity Education Act

33. As is indicated in the Gender Equity Education Act, gender equity education committees at all levels of government and individual educational institutions should be established and it is the responsibilities of gender equity education committees at all levels of government and individual educational institutions to promote gender equity education-related affairs at the national, local,

and community level. The 2010 White Paper on Gender Equity Education released by the Ministry of Education defines objectives of gender equity education-related policies as follows: to consolidate gender equity education committees at all levels, to enrich and integrate gender equity education resources, to have innovative curricular design, teaching materials, and teaching methods for gender equity education, to reinforce the awareness of gender equity among educators, to promote the tertiary prevention efficacy against sex events, and to develop modern citizens' attainments and power of action concerning gender equity. It is hoped that the White Paper on Gender Equity Education can help all levels of government and educational institutions implement the Gender Equity Education Act by providing integrated and systematic gender equity education.

34. As is indicated in the Gender Equity Education Act, the school shall not discriminate against a prospective student during recruitment or evaluation of applications for admission on the basis of his or her gender, gender temperaments, gender identity, or sexual orientation, and the school shall not discriminate against students on the basis of their gender, gender temperaments, gender identity, or sexual orientation in its instruction, activities, assessments, rewards and penalties, benefits, or services. In addition, the school shall proactively protect the rights of pregnant students to education and provide necessary assistance. Schools violating the requirements shall be subjected to a fine not less than NT\$10,000 and not more than NT\$100,000.

35. The Gender Equity Education Act stipulates that when the school violates the requirements, the victim or his or her legal representative may apply with the competent authority supervising the school for an investigation. The victim of an incident of sexual assault, sexual harassment, or sexual bullying on campus or his or her legal representative may apply for an investigation in writing with the offender's school. In addition, anyone with the knowledge of the events mentioned in the preceding two paragraphs may report them to the school or competent authority according to prescribed procedures. The school, competent authority, or any other authority with jurisdiction, shall ask the offender to apologize to the victim, receive eight hours of related gender equity education, or accept other measures for the purpose of education in addition to psychological counseling when deciding on the punishment for sexual harassment or sexual

bullying. The hope is to eliminate sex discrimination through diversified and flexible education and counseling measures.

36. Sex ratio in school admissions at all levels of education: The ratios of female students for Academic Year 2011 (from August 2011 to July 2012) are: 47.52% for kindergartens, 47.70% for elementary schools, 47.92% for junior high schools, 49.82% for senior high schools, 48.94% for universities, 44.45% for vocational high schools (as a result of the fact that nursing schools in Taiwan have gradually been upgraded to junior colleges since Academic Year 1999), and 72.33% for junior colleges. As far as graduate institutes are concerned, the ratios of female students in master's programs and doctorate programs during the 2011 Academic Year are 43.31% and 29.66%, an increase of 3.80% and 3.01%, respectively, from the 2006 Academic Year. Generally speaking, sex ratios among the students admitted and people of the schooling age for the specific academic year are similar for senior high and lower levels of education. Gender differences in admission only show among undergraduates and graduate students.

#### **People with Disabilities Rights Protection Act**

37. Competent authorities in charge of finance, police administration, sports, culture, procurement laws and regulations, communications, technology and research, and economy are added under the People with Disabilities Rights Protection Act in order to extend the protection for people with disabilities to various aspects in life. The Act stipulates that the dignity and legal rights of people with disabilities should be respected and protected and their rights to receive education, to take tests, to be hired, to find a job, to reside, to relocate, and to receive medical care shall not be discriminated against. Violators will be subjected to a fine not less than NT\$100,000 and not more than NT\$500,000. In addition, the Ministry of the Interior has established the Protection Panel for the Rights of People with Disabilities. The panel convenes once every four months. In addition, the establishment and operation of an protection panel for the rights of people with disabilities have been included in the welfare performance audits for all levels of government that take place once every two years in order to protect the human rights of people with disabilities. Statistics show that there were 42 related cases handled in 2010 and 29 in 2011.



38. There were a total of 22 cases between 2008 and 2011 brought forth and discussed in the meetings of the Protection Panel for the Rights of People with Disabilities under the Ministry of the Interior after petitions were accepted by the Panel.

39. To protect the rights of students with disabilities to receive differential education, the Government established the Special Education Act in 1984. The amendment to the Special Education Act in 2009 further specifies that schools and authorities in charge of examination affairs at all levels shall not refuse to accept a student or examinee because of their physical or mental disabilities. Schools and authorities in charge of examination affairs at all levels should provide services and measures suitable for respective tests. Meanwhile, to accommodate the educational needs of students with disabilities, schools offering senior high or lower levels of education should take into account the competence, aptitude, and special educational needs of, and career planning for students with disabilities and provide adequate counseling on advanced studies accordingly. The Annual Statistical Report on Special Education of the Ministry of Education shows that there were 9,612 students with disabilities in pre-schools, 57,579 in junior high schools, 15,849 in senior high schools, and 7,020 in higher-level educational institutions in Academic Year 2005 (from August 2005 to July 2006), amounting to a total of 90,060 students in total. As of the end of December of Academic Year 2011, there were 10,468 students with disabilities in pre-schools, 65,610 in junior high schools, 22,713 in senior high schools, and 11,249 in higher-level educational institutions, amounting to 110,040 students in total.

**Table 10 Number of students with disabilities at all levels of education between Academic Year 2005 and Academic Year 2011**

Unit: Student

| Academic Year | Pre-school | Elementary school | Junior high school | Senior high school and vocational school | College and university | Total   |
|---------------|------------|-------------------|--------------------|--|------------------------|---------|
| 94            | 9,612      | 36,480            | 21,099             | 15,849                                   | 7,020                  | 90,060  |
| 95            | 9,860      | 37,512            | 21,740             | 16,835                                   | 7,788                  | 93,735  |
| 96            | 10,341     | 38,970            | 22,956             | 17,633                                   | 8,827                  | 98,727  |
| 97            | 10,740     | 40,048            | 23,618             | 18,946                                   | 9,489                  | 102,841 |
| 98            | 11,621     | 40,567            | 24,236             | 20,184                                   | 10,274                 | 106,882 |
| 99            | 12,355     | 41,869            | 25,289             | 21,358                                   | 10,853                 | 111,724 |
| 100           | 10,468     | 40,631            | 24,979             | 22,713                                   | 11,249                 | 110,040 |

Source: Special Education Transmit Net, Ministry of Education

Description: 1. Academic Year 2005: August 2005 to July 2006; Academic Year 2006: August 2006 to July 2007; Academic Year 2007: August 2007 to July 2008; Academic Year 2008: August 2008 to July 2009; Academic Year 2009: August 2009 to July 2010; Academic Year 2010: August 2010 to July 2011; Academic Year 2011: August 2011 to July 2012;

2. Tables 13 and 14 have identical start and end times when statistics are obtained by the academic year.

40. According to the 2009 National Examination Disabled Examinees Rights Protection Guidelines, ambiguities regarding the applicability of the said guidelines that have been raised with the Disabled Examinees Rights Protection Review Panel, comprising the concerned organizations, medical and special education experts and leaders of disability groups, for assessment, have reached a total of 129 cases as of January 2012, of which 98 have been fully or partially approved. Paragraph 3 of article 16 of the People with Disabilities Rights Protection Act, amended and promulgated in 2011, stipulates that when organizing any open examinations, the public or private organizations, groups, schools, and enterprises concerned should consider the individual needs of disabled examinees and provide diversified and suitable assistance under the principle of fairness in order to ensure equal opportunities for disabled participants.

41. In accordance with the People with Disabilities Rights Protection Act, media using discriminative titles and descriptions when reporting on people with disabilities shall be subjected to a fine not less than NT\$100,000 and not more than NT\$500,000. Related cases will also be submitted to the Advisory Board on Radio and Television Programs and Commercials comprising scholars, experts, representatives of non-governmental organizations, and senior practical workers for opinions. The People with Disabilities Rights Protection Act allows the visually impaired to enter public areas with their qualified guide dogs. A judge, however, prohibited a visually impaired person from entering the courtroom for a court appearance with a guide dog in 2011. The Judicial Yuan has demanded that courts at all levels follow the aforementioned law to protect the rights of people with disabilities. When the employment rights of people with disabilities are undermined by hardware and software barriers at the workplace, transportation difficulties or expensive commutation costs, employer bias, among other factors, barrier-free transportation facilities should be set up, the workplace should be improved, applicable procedures should be simplified, and the re-design efficacy of positions should be enhanced so that people with disabilities have equal opportunities to employment.

### **Mental Health Act**

42. Article 22 of the Mental Health Act stipulates that the dignity and legal rights of patients should be respected and protected and shall not be discriminated against. For those with stable conditions, mental illness shall not be used as an excuse to refuse schooling, participation in tests, employment, or to provide unfair treatment. It is established in Article 23 that media coverage shall not involve discriminative titles or descriptions relating mental illness and shall not be against the truth or create misunderstanding of related patients in the readers or viewers. No media coverage has been determined to be violating regulations of the Mental Health Act so far.

### **Communicable Disease Control Act**

43. As is indicated in the Communicable Disease Control Act, when patients with communicable disease file a discrimination complaint, the central competent authority shall ask local competent authorities to conduct necessary investigation and decide on the management accordingly. There are currently no statistics on sanctions available.

## **HIV Infection Control and Patient Rights Protection Act**

44. In accordance with the HIV Infection Control and Patient Rights Protection Act, the dignity and the legal rights of the infected should be protected and respected; there shall be no discrimination, no denial of education, medical care, employment, nursing care, or housing, nor any other unfair treatment. If an infected person is treated unfairly, he/she shall file a complaint within one year from the date the mistreatment occurs in accordance with the Regulations Governing Protection of the Rights of HIV Patients, and shall not be subjected to even more unfavorable dispositions accordingly. There have been seven complaints in total so far about undermined rights of the infected. Among them, five were filed with regard to employment and one has resulted in reinstatement of work with the company compensating for lost wages during the suspension of work; four have resulted in fines according to the law.

## **Restrictions for National Exams**

45. There remain three civil servant examinations with gender restrictions. However, only the special exams for judicial officers, such as prison wardens and administrators, still observe the restrictions on male and female acceptance ratios in order to accommodate the segregation requirements of male and female inmates.

46. Out of all civil servant examinations, there are eight with restrictions over military service status, including the Special Examination for Investigation Agents, and ten with upper age limits, such as the Special Examination for National Security and Intelligence Agents. Some special categories also have additional physical requirements that reflect the specific needs of the respective agencies.

## **Elimination of Gender Discrimination**

47. The Gender Equity Education Act, the Enforcement Rules for the Gender Equity Education Act, the Regulations on the Prevention of Sexual Assault, Sexual Harassment or Sexual Bullying on Campus, and the School Guidelines for Sex Education and Care of Pregnant Students are meant to advance substantial equity between males and females and to eliminate gender discrimination. All of these laws and policies specify that the school shall not treat students of different genders differently because of their gender, gender temperaments, gender identity or sexual orientation in terms of the learning environment and resources, curriculum, teaching

materials, and the instruction. Nevertheless, there were still cases of junior high school students committing suicide by jumping off buildings in 2011 because they were teased by classmates for being "sissies" and did not see an improvement in their situation after asking for help from their parents and teachers. Aside from homosexuals and bisexuals, discrimination against and harassment suffered by transsexuals and transgendered people should also be eliminated.

48. To protect the rights of women to participate in politics, eliminate discrimination against women's political rights, and promote substantial gender equity, Article 134 of the Constitution stipulates that openings for women should be indicated in various elections and applicable laws shall be established to be the criteria. To eliminate sex discrimination, the Ministry of Education has proactively promoted annual gender equity education programs, developed gender equity-based diversified teaching methods and materials, included gender equity issues in junior high and senior high school syllabuses, trained seed teachers for gender equity education, encouraged offering of gender equity education-related programs in colleges and universities, released publications, and produced radio programs, among a variety of other channels of education and communication in society, which helps enhance gender awareness in the staff, faculty, and students and join efforts in the establishment of a discrimination-free campus.

### **Care for Minorities**

49. Since elementary schools and junior high schools provide compulsory education, the students do not have to pay tuition/miscellaneous fees. To protect the rights of financially disadvantaged students to receive differential education when they reach the senior high and vocational high school stage, the Ministry of Education has established regulations regarding tuition exemptions for students of low-to-middle income families and for the physically and mentally disabled and their children. As for the assistance available for minorities at colleges and universities, the Ministry of Education also has three types of measures available. The first is the exemption of tuition and miscellaneous fees. This is part of the government's legitimate and obligatory expenditures. Tuition and miscellaneous fees for students from middle-to-low income families are sponsored by the government. The second encompasses various types of financial aid, which are to be appropriated by individual schools from their own total income or tuition/miscellaneous income according to the criteria established by the schools. The third one is

self-liquidation financing, such as student loans. The Ministry of Education pays for the interest in accordance with students' financial status. In light of the global financial crisis, the Ministry of Education established the Education Safety Program in 2009 to prevent citizens from discontinuing their education as a result of a sudden economic downturn by providing subsidies and emergency relief financial aid to children of unemployed families.

50. To deal with issues facing foreign spouses and relating international marriages, help foreign spouses to adapt to the life in Taiwan quickly, and stabilize international marital life, the Care and Counseling Measures for Foreign Spouses and Mainland Chinese Spouses was established in 2003. Forty substantial measures are available under eight major action items, adaptation to new life, medical care and eugenic care, protection of employment rights, enhanced education and culture, child care assistance, protection of personal safety, improvement of regulatory system, and promotion of public awareness, to be handled by individual authorities concerned at the central government and local government levels. In addition, to combine the care and counseling services for marital immigrants and government and non-governmental resources, the care and counseling fund for foreign spouses was set up in 2005. NT\$300 million is raised each year. It is expected to raise a total of NT\$3 billion over a period of ten years to be the fund for promoting related service proposals on the counseling and care for marital immigrants within the Republic of Taiwan. The purposes include: (1) To provide medical subsidies, social aid, and legal services; (2) To organize learning programs for foreign spouses, communicate on, encourage and provide childcare, and promote multiculturalism; (3) To establish family service centers and societies; (4) To offer counseling or talent training and active community services. The number of proposals and the respective value approved each year are as follows: 118 and around NT\$242.73 million in 2007; 193 proposals and around NT\$239.77 million in 2008; 194 proposals and around NT\$186.48 million in 2009; 362 proposals and around NT\$223.68 million in 2010; and 342 proposals and around NT\$208.80 million in 2011.

51. Care and Counseling Fund for Foreign Spouses:

(1) The fund is meant to support medical subsidies, social aid, legal services, multicultural promotions, learning programs, and family service centers so as to consolidate and promote the care and counseling services for foreign spouses. Since 2005, the treasury has been

assigning NT\$300 million on a yearly basis to support the care for foreign spouses and their children with the Management Committee in place. Professional and symbolic scholars and representatives of non-governmental organizations are hired to serve as the committee members and review all applications one by one.

(2) The amount of sponsorship approved for each of the past years, however, never reached NT\$300 million. A main reason is that the Management Committee was very cautious and professional while reviewing each of the applications. In addition, for medical subsidies, emergency social aid, legal services, multicultural promotions, and learning programs, the fund will not provide further sponsorship when the central health administration, social administration, and education authorities and local governments have appropriated related budget. This is to prevent against overlapping and waste of government's administrative resources.

(3) To extensively utilize the fund and accomplish the government's good will to take care of foreign spouses, the Ministry of the Interior held workshops on how to apply for the sponsorship throughout Taiwan in 2010. The hope was to enhance the number of applications. As far as the implementation in 2009, 2010, and 2011 is concerned: ①Number of applications: 650 in 2011, totaling NT\$436,353,211 in value; and 533 in 2010, totaling NT\$407,041,517 in value. Compared with 2009 (291 applications, totaling NT\$300,495,813 in value), the number of applications and the value in both 2011 and 2010 have shown increases; ②Approval: 342 in 2011 at a combined value of NT\$208,799,737 and 362 in 2010 at a combined value of 223,678,389. Compared with 2009 (194 applications approved at a combined value of NT\$186,481,664, the number of applications and value in both 2011 and 2010 have shown increases.

(4) To sum up, application, approval, and actual implementation in both 2011 and 2010 have shown increases from 2009 to help provide more diversified services that satisfy the needs of foreign spouses and their children.

(5) The Ministry of the Interior will continue with reinforced promotion in the future by holding regular and irregular workshops on the purposes and criteria for sponsorship through the fund and related requirements such as the application and review procedures and explaining the operations to authorities concerned and non-profit private organizations at all levels through various promotional events so that authorities concerned and non-governmental organizations

can have more substantial and specific programs in place to help foreign spouses apply for the Care and Counseling Fund and facilitate review and implementation of the programs, which accordingly enhances the implementation benefits of the Fund.

52. To further protect the rights of Mainland Chinese spouses living in Taiwan, applicable regulations in the Act Governing Relations Between The People Of The Taiwan Area And The Mainland Area (the Act Governing Relations between the Two Areas) have been amended and enforced since August 14, 2009. Highlights of the amendment include: (1) The length of time for Mainland Chinese spouses to be eligible for applying for the National ID is shortened from eight years to six years and they do not have to enclose financial statements any more at the time they apply for residency; (2) Restrictions on Mainland Chinese spouses' right to work are comprehensively relaxed. As long as they are eligible dependent relatives of Taiwanese citizens, they can work in Taiwan without a work permit; (3) Before Mainland Chinese spouses are deported, the National Immigration Agency shall convene the review committee and give the parties concerned the opportunity to express their opinions to protect the rights of Mainland Chinese spouses through legitimate legal procedures; (4) The limit of NT\$2 million to be inherited by Mainland Chinese spouses is lifted and Mainland Chinese spouses with permanent residency shall inherit and register real estate ownership. The MAC has also coordinated with government agencies such as the Ministry of the Interior to reinforce protection of the rights of Mainland Chinese spouses to family reunions. Related requirements for Mainland Chinese to come to Taiwan to visit relatives, to stay, or to live in Taiwan, for example, have become more favorable.

53. The Republic of China adequately supplements insufficient domestic workforce by introducing foreign workers in a complementary way with limits on the industry and quantity. Foreign workers shall not work in Taiwan accumulatively for over 12 years. In addition, to ensure stable employment and protect their rights at work, it is established that foreign workers shall change their employers with prior approval from the Council of Labor Affairs for unattributable causes (including death or immigration of the employer or the care recipient, the impossibility to continue work as a result of the ship being confiscated, having sunk or under repairs, the employer closing down the factory, going out of business, or termination of the



Labor Contract as a result of failure to pay wages in accordance with the Labor Contract, among others). In addition, applicable restrictions are relaxed. As long as agreement is reached among the original employer, the foreign worker, and an eligible new employer, the foreign worker shall apply for switch of employers directly. When the original employer has a license abolished by the CLA because of violations, foreign workers shall have a public employment service agency find a match or reach mutual understandings with eligible new employers and switch their employers. It is not restricted by the nature of the original job. Between February 27, 2008 and December 31, 2011, there were a total of 139,619 foreign workers changing their employers. The successful switch rate was 90%. See Table 11 for the statistics.

**Table 11 Statistics of foreign workers switching employers**

Unit: Persons; %

| Item  |                             | Total No. of people | Ratio (%) | Family  | Industry |
|---|-----------------------------|---------------------|-----------|---------|----------|
| Registered with public employment service agency                              | Pending switch              | 507                 | 0.4       | 396     | 111      |
|   | Switch yet to be successful | 13,083              | 9.4       | 9,338   | 3,745    |
| Successful switch with application for subsequent employment permit completed |                             | 126,029             | 90        | 106,914 | 19,115   |
| Total   |                             | 139,619             | 100       | 116,648 | 22,971   |
| Successful switch rate  |                             | 90.3                |           | 91.7    | 83.2     |

Source: Compiled data and statistics of Information Office, Bureau of Employment and Vocational Training, Council of Labor Affairs, Executive Yuan and Online Operating System for Foreign Workers to Switch Employers

54. The provision in Subparagraph 1, Paragraph 1, Article 23 of the Immigration Act stipulates that the alien's spouse engaged in works set forth in Subparagraphs 8 to 10, Paragraph 1, Article 46 of the ESA cannot apply for the issuance of an Alien Resident Certificate. Different regulations governing the residency of the families of foreign professionals engaged in specialized or technical works and foreign workers engaged in non-technical and labor works shall apply. The CLA specifies in Article 44 of the Regulations on the Permission and

Administration of the Employment of Foreign Workers that no foreign worker is allowed to bring along with his/her family to stay for residence, unless the employed female foreign worker or the spouse of the employed male foreign worker gives birth to offspring in the Republic of China during the term of employment and is able to maintain their life. Restrictions on "bringing along with his/her family to stay for residence" as is indicated in the foregoing vary between blue-collar and white-collar workers. It is necessary to reflect on the compliance with the Covenant's non-discrimination and prohibited legal discrimination requirements.

55. It is established in the Regulations Governing Management of the Health Examination of Employed Aliens that foreign professionals do not need to complete health examinations unless they are language teachers in cram schools, who will then need to complete health examinations within three days after they arrive in Taiwan. Foreign workers should complete the examinations before they come to Taiwan and on Day 3, Month 6, Month 18, and Month 30 after they arrive in Taiwan. Article 54 or Article 73 of the ESA stipulates that the employment permit should not be issued or should be abolished when a hired alien fails a health examination or has contagious disease specified by the central health competent authority (e.g. tuberculosis, AIDS, syphilis). The alien must leave the country immediately and shall not work in Taiwan any more. For foreign professionals engaged in specialized or technical works and foreign workers engaged in non-technical and labor works, different regulations governing the health examination shall apply. It is necessary to reflect on the compliance with the Covenant's non-discrimination and prohibited legal discrimination requirements.

56. With regard to the protection of the rights of domestic workers providing family services, in light of the special nature of their work to which applicable requirements of and the days off, sick leave, or special leave under the Labor Standard Act do not apply, foreign workers and their employers shall establish an agreement on the vacation system based on mutual understandings prior to arrival in Taiwan. The 2010 Foreign Workers Utilization and Management Survey Report of the CLA show that the average salary of foreign caretakers at home was NT\$18,341; those with established working time worked around 12.88 hours on average and those without established working time worked around 12.9 hours on average; 57.6% of the workers had days off on all or certain weekends and holidays; 99% of the 42.4% foreign caretakers without days

off on weekends and holidays were paid overtime. In addition, foreign caretakers at home are in charge of taking care of the daily life of the care recipients so their working time includes standby time. The time spent in accompanying care recipients watching TV or talking a walk is also part of the work.

### **Regulations on Equal Rights between Men and Women in Civil Code**

57. Article 1002 of the Civil Code was amended in 1998 as follows: "The domicile of the husband and the wife shall be determined by mutual agreement; without an agreement or with unsuccessful agreement, a court decision shall be applied for. Before the court decision as indicated in the preceding paragraph, it will be presumed the common household is the domicile of the husband and the wife." The determination of the domicile is based on three principles: (1) gender equity; (2) court decision upon unsuccessful agreement; and (3) temporary presumption that the common household is the domicile of the husband and the wife before a court decision.

58. After Article 1000 of the Civil Code was amended in 1998, the husband and the wife should keep his or her own surname in principle, regardless of betrothed marriage or uxorilocal marriage. The party who has prefixed to his or her surname that of the spouse shall return to his or her own surname at any time in the same marriage.

59. The marital property system in the Civil Code were amended in 2002 to consolidate and recognize the value of household labor. It is established that the payment for living expenses of the household will be shared by the husband and the wife according to each party's economical ability, household labor or other conditions. In other words, household labor is part of the living expenses of the household. The marital property system established in the Civil Code ensure gender equity in terms of the economic status and happy cohabitation in a marriage.

60. The 2007 amendment of the Civil Code revised the way how a child gets his or her surname. In the past, the father's surname was prioritized. The 2007 amendment stipulates that parents should agree in writing whether their child will assume the father's or the mother's surname.

61. The 1996 amendment of the Civil Code added court intervention and decision for the sake of protecting children's interest and gender equity. The exercise of parenthood is no longer determined solely by the father.

62. In terms of women's right to inheritance, the part about succession in the Civil Code has given women and men equal rights to inherit family property under the "Heirs to Property" chapter since the genesis of the chapter. The right of succession does not differ between genders and is not affected by the marital status, either.

### **Measures Taken by Media to Advance Gender Equity and Penalty upon Violations**

63. In light of the fact that gender issues covered in TV programs involve diversified value-based judgments and to improve TV and radio programs and commercials, respect different genders, and eliminate discrimination, bias, and stereotypes to accordingly present pluralistic gender images, the National Communications Commission (NCC) established the Principles for Media to Produce and Broadcast Gender Issues and Contents in November 2010. The regulations focus on non-violation of laws, prevention against vulgar expressions, discrimination, bias, and stereotypes, and proactive promotion of gender equity. The Principles have been made known to related businesses through associations and unions. Media are asked to exercise self discipline and fulfill the spirit of gender equity in the contents of programs and commercials. Statistics of TV and radio content cases involving sex or gender issues punished by the NCC between 2007 and 2011 June in accordance with broadcast laws are shown in Table 12.

**Table 12 Statistics of TV and radio content cases involving sex or gender issues punished in accordance with broadcast laws between 2007 and 2011**

Unit: Case; NT\$10,000

| Radio |   |  |      |
|-------|---|--|------|
| Year  | No. of cases  |  | Fine |
|       | Impair the physical or mental health of children or juveniles | Disrupt public order or adversely affect good social customs |      |
| 2007  | 0   | 0  | 0    |
| 2008  | 0   | 0  | 0    |
| 2009  | 0   | 0  | 0    |
| 2010  | 0   | 7  | 207  |
| 2011  | 3   | 4  | 135  |

## TV

| Year | No. of cases                       |   |  | Fine |
|------|------------------------------------|---|--|------|
|      | Violate program rating regulations | Impair the physical or mental health of children or juveniles | Disrupt public order or adversely affect good social |      |
| 2007 | 0                                  | 0   | 0  | 136. |
| 2008 | 2                                  | 0   | 0  |      |
| 2009 | 4                                  | 1   | 0  |      |
| 2010 | 0                                  | 1   | 0  |      |
| 2011 | 1                                  | 0   | 0  |      |

## Satellite

| Year | No. of cases                       |   |  | Fine |
|------|------------------------------------|---|--|------|
|      | Violate program rating regulations | Impair the physical or mental health of children or juveniles | Disrupt public order or adversely affect good social customs |      |
| 2007 | 15                                 | 0   | 3  | 290  |
| 2008 | 9                                  | 0   | 2  | 350  |
| 2009 | 3                                  | 1   | 1  | 80   |
| 2010 | 4                                  | 1   | 4  | 330  |
| 2011 | 0                                  | 0   | 2  | 40   |

Source: Records of National Communications Commission

## Gender Mainstreaming

64. The Republic of China has established the Implementation Program for Gender Mainstreaming (2010 to 2013) to facilitate promotion and implementation by individual government agencies of action items under six major aspects of gender mainstreaming, i.e. gender statistics, gender analysis, gender budget, gender influence assessment, gender awareness and empowerment, and gender equity. The establishment of various legislative policies, programs, and solutions of the government takes into account perspectives of different genders. Budget appropriation and resource distribution policies are consolidated accordingly. The guidelines for individual agencies under the Executive Yuan in the review of mid-to-long-term programs and precautions for individual agencies under the Executive Yuan when submitting acts for review are also amended. It is currently established that acts and mid-to-long-term programs must be evaluated for their impacts on different genders before they are submitted to the Executive Yuan for review.

### **Related Measures to Eliminate Discrimination of Traditional Customs against Women**

65. To revolutionize folklore rituals and concepts that are derogatory to and discriminative against women, one of the declared purposes of the Women Policy Guidelines approved by the Executive Yuan in January 2004 and to consolidate gender equity, the following efforts have been made: (1) The Statute For Ancestral Estates In Joint Ownership about the inheritance of ancestral estates was established in 2007. The rights of women to serve as a clan member (i.e. successor of property) are no longer completely eliminated. (2) The Guidelines for Worshipping and Commemorating Confucius was amended and promulgated in 2009. It is specified that the offspring of Confucius shall take the post of sacrificial official to Confucius. It is no longer limited to legitimate offspring. (3) The Funeral Etiquette Research and Improvement Task Force was formed in 2010. The task force introduced measures to adjust funeral etiquettes violating gender equity, categorized the various types of families, and drafted the precautions for funeral service representatives while coordinating funeral arrangements. (4) The "Modern Funerals" publication is compiled to promote the universal value of gender equity.

### **School Enrollment Rate among Appropriately-aged and School-aged Children**

66. Among six-year-old children, 99.57% attended schools during the 2011 Academic Year (August 2011 to July 2012), of which 99.55% were boys and 99.59% were girls, with a difference of 0.04%. For the past five years, the attendance rate among six-year-old children has been over 99%. On the other hand, there were 97.87% of six to eleven-year old school-age children attending schools during the 2011 Academic Year, 97.97% of which were boys and 97.76% were girls, with a difference of 0.21%. For the past five years, the attendance rate among school-age children has been about 98%.

**Table 13 School Enrollment Rate among Appropriately-aged and School-aged Children**

Unit: %

| Academic Year | Enrollment rate among six-year-old appropriately-aged children |       |       | Attendance rate among six to eleven-year-old school-age children |       |       |
|---------------|--|-------|-------|--|-------|-------|
|               | Mean   | M     | F     | Mean   | M     | F     |
| 95            | 99.02  | 99.11 | 98.93 | 97.77  | 97.83 | 97.71 |
| 96            | 99.16  | 99.12 | 99.20 | 97.79  | 97.87 | 97.69 |
| 97            | 99.32  | 99.35 | 99.29 | 97.74  | 97.83 | 97.65 |
| 98            | 99.31  | 99.27 | 99.36 | 98.01  | 98.09 | 97.91 |
| 99            | 99.47  | 99.40 | 99.55 | 97.95  | 98.04 | 97.86 |
| 100           | 99.57  | 99.55 | 99.59 | 97.87  | 97.97 | 97.76 |

Source: Department of Statistics, Ministry of Education

Description: 1. The attendance rate among six to eleven-year-old children is the enrollment rate.

2. Enrollment rate of school-aged children = No. of enrolled 6-year-old children ÷ Total No. of 6-year-old children × 100.

3. Enrollment rate of children = No. of six to eleven-year-old children attending schools ÷ Total No. of six to eleven-year-old school-age children × 100.

67. According to the Compulsory Education Act, the Statute For Mandatory Schooling With School Age Children, and the Guidelines for Reporting Dropouts in Junior High and Elementary Schools and Reinstatement Counseling, a dropout refers to a student aged 6 to 15 that does not attend school for over three days without prior application for leave of absence or for unknown reasons. When a student drops out, assistance is necessary to help locate, reinstate the studies of, and counsel the student.

**Table 14 Dropout rate among junior high and elementary school students**

Unit: %

| Academic Year | 95    | 96    | 97    | 98    | 99    |
|---------------|-------|-------|-------|-------|-------|
| Dropout rate  | 0.076 | 0.056 | 0.044 | 0.041 | 0.043 |
| Boys          | 0.080 | 0.058 | 0.044 | 0.043 | 0.043 |
| Girls         | 0.072 | 0.053 | 0.044 | 0.039 | 0.044 |

Source: Student Affairs Committee, Ministry of Education

Description: 1. The dropout rate is the ratio of students who have not reinstated studies since they dropped out of school to the total number of students in elementary and junior high schools.

2. Because Academic Year 2011 has not been finished yet, it is impossible to provide statistics for the whole academic year.

68. For the transfer of children's nationalities, please refer to Article 23 of the Covenant.

### **Regulations about Offense against Sexual Autonomy in and Amendment Trends for the Criminal Code of the Republic of China**

69. The Criminal Code has devoted a chapter to sexual offenses that says anyone that has sexual intercourse with a male or female against the latter's will by threats, violence, intimidation, inducing hypnosis, or other means shall be subjected to sentences on the count of forced sex or obscene act. With aggravating factors such as two and above accomplices, aggravated sentences for forced sex or obscene act shall also apply. For offenses that result in death or critical injuries and involving intentional homicide or critical injuries suffered by the victim, there are also respective penalties for aggregated consequential crimes and combinative crimes in place. For sexual intercourse or obscene acts with a male or female less than 14 years old or over 14 years old but less than 16 years old, there are additional regulations on aggravated penalties. There is the "no trial without complaint" premise for legal action with regard to forced sex or obscene acts against spouses.

70. In February 2010 a six-year-old girl was sexually assaulted. The prosecutor indicted the offender on aggravated offense of forced sex, for which the minimum sentence is seven years in prison. The court of first instance, however, changed the count to sexual intercourse with a male or female less than 14 years old, for which the sentence is no less than three years and no more than ten years in prison because the offender did not act against the girl's will. The offender was eventually sentenced to three years and two months in prison. The ruling ignited waves of discontent among the public. In August of the same year, the Supreme Court heard another sexual case involving a three-year-old girl and remanded it to the previous court for new trial because objective evidence on whether the defendant exercised violence, intimidation, induced hypnosis or was engaged in other objective acts against the victim's will required verification. The aforementioned two rulings were bombarded by public opinion. People initiated the white rose movement and expressed their dissatisfaction with the trial judge and lack of confidence in justice. They also urged amendment to the chapter on forced sex in the Criminal Code. The



Supreme Court then reached a resolution in its 2010 Seventh Criminal Divisions Conference. Sexual offenses against a victim less than seven years old shall all be punishable by Subparagraph 2, Paragraph 1, Article 222 of the Criminal Code as an aggravated crime of sexual intercourse against the victim's will.

## **Article 4**

71. Despite the fact that the Republic of China is not a signatory to the Covenant, it will still honor the obligations under the Covenant. It will, for example, inform individual governments and related international organizations when it applies or terminates regulations that reduce rights under the Covenant.

72. The Republic of China has not initiated anti-terrorism legislation yet.

### **Measures Taken by Republic of China to Extensively Minimize Covenant Rights**

73. Examples of extensively reduced Covenant rights include the National General Mobilization Act enforced in 1942 and abolished in 2004, the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion implemented in 1948 and terminated in 1991, the Martial Law put into practice in 1949 and lifted in 1987, and related general mobilization systems, systems during national mobilization for suppression of the communist rebellion, and regulatory systems during the Period of Martial Law, lasting 61 years, 43 years, and 38 years, respectively. All of the above measures were adopted in response to possible wars. As for examples of partially reduced Covenant rights, there are the Emergency Decrees governing the aid, placement, and restoration operations that were announced by the President on September 25, 1999, and the Enforcement Guidelines for Emergency Decrees established by the Executive Yuan on September 25, 1999 in response to the catastrophic 921 Earthquake. Constitutional emergency mechanisms include the Martial Law and emergency decrees. Related regulations are established in Articles 39 and 43 of the Constitution, Paragraph 3 Article 2 of the Additional Articles of the Constitution, and the Martial Law.

74. In the past, under the national general mobilization systems, systems during national mobilization for suppression of communist rebellion, and during the Period of Martial Law, the government could reduce various rights of the citizen in the name of general mobilization,

suppression of communist rebellion, or the Martial Law. The highest commander took control of judicial and local administrative affairs and gave instructions to judicial and local administrative officials. Military jurisdiction applied to the public. Covenant rights regarding life, assembly and association, march and petition, speech, teaching, writing, publishing, religious activities, strike, private communication, privacy, residence and movement, a fair and open trial, and personal freedom all under the control of military. All the rights were not adequately protected and normally people were unable to exercise them.

75. After declaration of the end to the Period of Martial Law Rule, the President granted inmates from the Formosa Incident special pardon and reinstated their rights in accordance with the Amnesty Act in 1990. In 1995 and 1998, in accordance with the Act Governing the Recovery of Damage of Individual Rights during the Period of Martial Law Rule and the Compensation Act for Wrongful Trials on Charges of Sedition and Espionage during the Martial Law Period, the government adopted relief measures and provided compensations to reinstate the eligibility of, return confiscated property to, request state compensation for, release the compensation fund to, and restore the undermined reputations of people whose rights were infringed upon during the Period of Martial Law Rule. The government also set up a foundation with non-governmental organizations that has been devoted to helping people whose rights are infringed upon regain their reputations, investigations, and commemorative and academic events that contribute to social and democratic developments in Taiwan.

## **Article 5**

76. The Republic of China completely accepts rights and freedoms defined in the Covenant and asks individual domestic agencies to refer to the legislative purpose of the Covenant and the Human Rights Committee's interpretation of the Covenant. Article 22 of the Constitution also stipulates that other freedoms and rights of the people, as long as they are not obstructing social order and public interest, shall be protected by the Constitution. Article 23 of the Constitution says that "All the freedoms and rights enumerated in the preceding Articles shall not be restricted by law except such as may be necessary to prevent infringement upon the freedoms of other persons, to avert an imminent crisis, to maintain social order or to advance public welfare."

## **Article 6**

### **Protection over Right of Life**

77. The right of life should be respected and protected. No abortion is allowed unless the Eugenics and Health Care Act is followed. No brain death determination is allowed unless the Statute For Human Organ Transplant Ordinance is followed. In the event that a citizen dies not because of illness or the death is doubted to be the result of illness, the prosecutor should give order of autopsy as soon as possible. When a criminal act is suspected, necessary inspections and investigations should follow. If it is a case of arbitrary deprivation of life, the prosecutor and judicial police shall begin an autopsy, investigate and embark on legal action against the criminal act in accordance with applicable laws such as the Criminal Code and the Code of Criminal Procedure. Between 2006 and 2011, police handled 921, 881, 803, 832, 743, and 681 intentional homicide cases, respectively.

78. Options available for seeking compensations upon deprivation of right of life are as follows:

(1) Civil Code, Crime Victims Protection Act, and the State Compensation Law; and

(2) Law of Compensation for Wrongful Detentions and Executions: The Law of Compensation for Wrongful Detentions and Executions amended and announced on July 06, 2011 stipulates that the daily value of compensation for an executed death sentence convict, except for the rate of no less than NT\$3,000 and no more than NT\$5,000 per day based on number of days the convict is held in custody, has increased and the original restriction that the total shall not exceed NT\$30 million is deleted.

(3) For victims whose life, body, freedom, or property was infringed upon by civil servants or state power during the 228 Incident, applications for the compensation fund and reinstatement of reputation can be submitted to the 228 Memorial Foundation in accordance with the 228 Incident Disposition and Compensation Act. As of 2011, a total of 2,756 applications for the compensation were received. Among them, 2,266 were approved. The compensation totaled NT\$7176.7 million in value. For those whose applications for reinstatement reputation were approved, the President presented the Reinstatement of Reputation Certificate to the victims or their offspring during important celebrations. As of 2011, a total of 964 such certificates were presented.

## **Death Penalty**

79. The 2007–2008 National Human Rights Report (Pilot Report) disclosed the stance to gradually abolish death penalty. Substantial measures have been taken so far to gradually minimize the imposition of death sentence. There are a total of 57 offenses to which death penalty shall apply. The 57 offenses are established in nine laws. Death penalty is applicable not only to offenses involving deprivation of the life of other people. The government, however, has proposed a draft to delete death penalty for several offenses that do not involve deprivation of life. Grand Justice Interpretations No. 194, 263, and 476 do not hold that death penalty is unconstitutional. Requests for interpretation of the Constitution from death row prisoners have been constantly overruled procedurally, too.

80. Trial procedures for death penalty cases follow the system of three instances at three levels. Courts of first and second instances must submit death penalty cases directly to the higher-ranking court without waiting for the defendant to file an appeal. All death penalty cases at military courts shall be submitted directly to the High Court and Supreme Court for trial. All death penalty cases are subjected to trials by three, three, and five judges, respectively, in courts of the first, second, and third instances. The average length of time required for each case is 5.8 years. There have been cases that spanned up to 20 years, too.

81. Criteria for the Supreme Court to give a death penalty are as follows: "The verdict should be based on conditions in individual subparagraphs under Article 57 of the Criminal Code and accompanied by related descriptions. For the offender, confirmation on the lack of regret and the impossibility to be moralized and turn over a new leaf, treatment of human life as trifles in the extreme, which obviously is beyond correction and moralization through other forms of education and corrective sentences and hence necessitates death penalty, weighing of the ideas of fairness and justice and the need for social justice, the necessity to maintain national security, public order and good social customs, and boost public interest, the belief that the crime the defendant has committed is beyond pardon and it is impossible to plead for life, the necessity to separate them from society permanently, and the subjective malicious intention and subjective criminal act should all be precisely considered. The reasons for necessary deprivation of the offender's right of life must be described in detail to be careful. The verdict must leave nothing to

be desired before it is made. "It is advised, however, to monitor if there is any difference between the actual sentencing in individual death penalty verdicts and the aforementioned criteria.

82. There were a total of 47 cases between 2006 and 2011 to which the Supreme Court gave finalized death sentence. In the cases 49 defendants (all male) were sentenced to death with no chance of appeal. Two of the cases involved five homicide victims, one involved four homicide victims, five involved three homicide victims (three cases involved minor victims), 20 involved two homicide victims (three cases involved minor victims), and 19 involved one homicide victims (two cases involved minor victims), respectively. In other words, the criminal acts of all the defendants constituted the crime of homicide. Some of the defendants were also charged for violating sexual autonomy, robbery, or kidnapping for ransom.

83. The Ministry of Justice reviews the execution of death penalty cases in accordance with the Implementation Guidelines for Reviewing Enforcement of Death Sentence. If the inmate requests Grand Justice interpretation, retrial, or extraordinary appeal while the proceedings are ongoing or there is the condition of mental incapacity or pregnancy as established in the Amnesty Act and Article 465 of the Code of Criminal Procedure, the enforcement shall be suspended for the time being in accordance with the aforementioned Guidelines. After the pregnant woman has given birth to a baby, enforcement shall still require order from the Ministry of Justice. According to the current practice, the family is not informed before the convict on death row is executed as the Penalty Enforcement Handbook requires that related staff keep the whole process confidential after they receive order from the Ministry of Justice to execute a convict. Whether this meets the Covenant's requirements or not should be taken seriously.

84. The Amnesty Act does not specify whether the decision to pardon should be made or not on a death row convict's request for a waiver. Neither are related procedures and criteria or relief measures included if the convict disagrees with the decision. It does not, however, deny a death row convict's right to request a waiver.

85. According to Article 3 of the Rules for Executing Death Sentences, death penalty can be executed through lethal injection or execution by firing squad. For the execution by firing squad, the current aim is the heart. For inmates who are organ donors, the prosecutor shall demand that the sharpshooters aim at their heads and anesthesia shall be used prior to execution.

86. As of 2011, there were still 55 inmates with finalized death sentence but pending execution, among which 21 were at least 25 years old but younger than 40; 28 were at least 40 years old but younger than 55; five were at least 55 years but younger than 65 and one was 65 and above years old. All of them were male. There were no minorities.

87. From 1992 to 2001, there were 23.6 confirmed death penalty verdicts and 22.9 convicts executed on average each year. From 2002 to 2011, there were 7.7 confirmed death penalty verdicts and 3.1 convicts executed on average each year. The comparison shows that the number of confirmed death penalty verdicts for the past nearly ten years has decreased by 67.4%. The number of convicts being executed has also dropped by 86.5% (including one by court-martial in 2001).

**Table 15 Statistics of Death Penalty Convicts with No Chance of Appeal and Number of Executed Convicts between 1992 and 2011**

Unit: Persons

| Year | Number of convicts with finalized sentence | Number of convicts executed | Year | Number of convicts with finalized sentence | Number of convicts executed |
|------|--|-----------------------------|------|--|-----------------------------|
| 1992 | 35   | 35                          | 2002 | 7  | 9                           |
| 1993 | 19   | 18                          | 2003 | 5  | 7                           |
| 1994 | 15   | 17                          | 2004 | 5  | 3                           |
| 1995 | 19   | 16                          | 2005 | 9  | 3                           |
| 1996 | 23   | 22                          | 2006 | 11   | -                           |
| 1997 | 35   | 38                          | 2007 | 4  | -                           |
| 1998 | 34   | 32                          | 2008 | 2  | -                           |
| 1999 | 25   | 24                          | 2009 | 15   | -                           |
| 2000 | 20   | 17                          | 2010 | 4  | 4                           |
| 2001 | 11   | 10                          | 2011 | 15   | 5                           |

Source: Department of Statistics, Ministry of Justice

88. No death row convicts were executed between 2006 and 2009, when the Covenant was not approved yet. After the Covenant was approved, however, nine death row convicts were executed from 2010 to 2011. In 2011, in particular, there were 15 people with confirmed death sentences. The number of convicts tops the list in the past ten years.

### **The Xizhi Trio Case**

89. In 1991, Wu Ming-han and his wife were found robbed and brutally murdered inside their apartment in Xizhi Township, Taipei County (current Xizhi District, New Taipei City). In the wake of the trial, the defendants, Bing-Lang Liu, Lin-Xun Zhuang, and Jian-He Su, filed a complaint with the Control Yuan, claiming that they were wrongly sentenced to death by the Supreme Court for the crime of banditry as the evidence had been destroyed by the police officers handling the case and confession extracted by means of torture. The Control Yuan launched an investigation and found major wrongdoings throughout the trial, including: (1) The apparent false arrest of the three defendants, illegal searches of their residences, interrogation by torture, forged documents, failure to submit relevant authentic evidence, and violations of multiple laws, including, the Constitution, the Code of Criminal Procedure, the Code of Court Martial Procedure, and the Criminal Code. (2) The judges reached the verdict based on confessions obtained through unlawful arrests, illegal detentions, unlawful interrogations by torture, and the contradictory and flawed confessions of co-defendants. The confessions of individual defendants and unfavorable statements from the co-defendants were adopted as the sole evidence for the verdict. These actions constitute violations of the Code of Criminal Procedure and Supreme Court Jurisprudence. Although the verdict of death sentence has been finalized, relentless efforts from the defenders and civil organizations prompted the Supreme Court to grant a retrial. Court proceedings are ongoing for the case.

### **Guoqing Jiang's Case of Injustice**

90. The murder of a young girl surnamed Xie occurred at the former Air Combat Command base in 1996. The following year, soldier Guoqing Jiang was sentenced to death and executed by the former Air Combat Command. The Control Yuan launched an investigation and found significant illegalities, including: (1) The handling of the case by non-judge advocates and the counter-intelligence corps of military police; (2) The involvement of illegal torture and unlawful evidence gathering; (3) Failure to verify the facts and carelessness in evidence gathering. The Control Yuan proposed a correction in 2010. The following year, the Ministry of National Defense issued a public apology to Jiang's family, and the military court decided to run a retrial of the Guoqing Jiang's case of injustice and rendered a "not guilty" verdict. This time, the entire

trial was independent of any intervention and was done in compliance with the law. Later in the same year, another defendant, who had in fact committed the crime, was indicted by prosecutors at the Taiwan Taipei District Court (Taipei District Court). The defendant was sentenced to 18 years of imprisonment in November 2011. The verdict has not yet been finalized.

91. The Northern Region Military District Court, Ministry of National Defense, exercised exercise the procedure of provisional seizure on November 29, 2011 in order to keep intact the criminal compensation fund of NT\$103,185,000 due of the eight people, including Chao-Min Chen, the Commander at the Air Combat Command. On the same day, the court submitted a request for provisional seizure to the Taipei District Court, and the request was granted. The Northern Region Military District Court has also requested the Civil Execution Department at Taipei District Court to carry out the procedure.

92. In order to gradually minimize the imposition of death sentence, related legislation and measures have been adopted, including: (1) Crimes that are eligible for absolute death penalty have all been revised to crimes for relative death penalty. There are currently no crimes to which absolute death penalty shall apply; (2) Applicable laws have set restrictions on the imposition of death sentence. Starting from July 01, 2006, to people under the age of 18, death sentence or life in prison shall not be imposed; (3) Parole requirements for life-sentence prisoners and the upper limits for termed sentence as part of cumulative punishment are increased so that judges are more willing to impose life in prison; (4) Prosecutors have been advised not to plead capital punishment in the indictment or during trial. Those that are under deliberations and yet to be consolidated include: (1) All defendants involved in crimes to which death penalty shall be imposed shall be eligible for compulsory advocacy during the first and the second instance proceedings, but not the third instance proceedings. The Judicial Yuan has planned to amend the laws to allow compulsory advocacy also during the third instance proceedings and the feasibility of a compulsory debate court with a selected lawyer to serve as the defender; (2) The Judicial Yuan has deliberated on the feasibility to change how a death sentence is made, from the current facts-based determination to a unanimous decision among judges on the collegiate bench, so as to minimize misjudgment. As far as sentencing is concerned, on the other hand, the Ministry of Justice suggests that a unanimous decision among judges on the collegiate bench is also required



before a death penalty verdict can be made. (3) The Judicial Yuan has proposed the amendment draft to Article 289 of the Code of Criminal Procedure. On the date of trial, which occurs after investigation of evidence, facts, and legal debates have been completed, debates should be focused on the scope of sentence.

93. Despite the fact that the Ministry of Justice formed the Research and Implementation Group on Gradual Abolishment of Death Penalty in 2009, meetings of the Group were unsuccessful multiple times in 2011. As such, no substantial progress has been made with regard to alternatives to abolishment of death penalty.

94. Although there are quite a few people in Taiwan at the moment who disagree on the abolishment of death penalty, death penalty is brutal from the perspectives of humanity and the Covenant. Therefore, how to strike a balance between public opinions and protection of human rights is something that needs to be taken into consideration when national human rights policies are being made. The Republic of China has approved the Covenant but policies on whether or not and how to abolish the death penalty are yet to take shape. As such, it is necessary to have a mechanism in place that facilitates sensible dialogues among people with different stances and promote related education on human rights in order to realize abolishment of the death penalty in an effective way.

### **Abortion**

95. The Eugenics and Health Care Act allows abortions for medical reasons or on the conditions that the conception was against the will of the mother and that pregnancy or giving birth to a child will undermine the mother's mental health or family life. The actual conditions on abortion and the number of abortions, including abuse and misuse of contraceptive drugs, teenager and pre-marriage pregnancy, and the manipulation over fetal sex, however, may require precise investigations and more proactive solutions.

### **Human Organ Transplant**

96. The Statute For Human Organs Transplantation stipulates that a doctor must wait till the attending physician has pronounced the organ donor dead to collect the organ from the corpse and perform the transplant surgery. When the death is a cerebral death, applicable procedures of the Department of Health, Executive Yuan (the "Department of Health") shall be followed. The

physician involved in the death determination shall not be the one that collects the organ and performs the transplant surgery. The collection of organs from the corpse must be based on the written consent or consent given in the will of the deceased or the written consent of the deceased's closest relative. Proactive organ recruiting efforts or education on organ donation to inmates have not been seen for the past few years. It is always the inmates spontaneously expressing their desire to donate organs at the moment.

### **Restrictions on Use of Force by Military and Police**

97. Although applicable regulations are in place to govern the use of force by the military and police in the Republic of China, comprehensive reflections are recommended in accordance with the Basic Principles for Law Enforcers to Use Force and Weapons. There was one case of civilian death as a result of improper use of police instruments between 2006 and 2011. The policeman who opened fire has received criminal and disciplinary punishments. The Ministry of the Interior will continue to provide necessary education and training.

98. The Republic of China maintains a strong military force and war readiness capability for the sake of national security. It follows international regulations not to develop nuclear weapons or other weapons of mass destruction. It only researches and develops necessary defensive weapons which do not pose a threat to other countries. Since 1995, the International Atomic Energy Agency (IAEA) has conducted six nuclear safeguard inspections on the Chung-shan Institute of Science and Technology and has confirmed that the Republic of China is not engaged in the development of nuclear weapons.

## **Article 7**

### **Brutal Penalty**

99. Brutal penalty is the treatment intentionally inflicted upon people under the control of public power that leads to physical or mental pain or fear and is meant to punish certain unlawful acts or to obtain specific information, such as to extract confession by means of torture. Physical brutal penalty includes torture, battery, finger or genital electrocution, long-term standing with guard instruments on, being pushed against the walls or floors, water-pouring or being retained in high-temperature or cold rooms. Brutal psychological punishment, on the other hand, refers to

discontinued supply of food, deprived sleep, lack of basic sanitary facilities, long-term solitary isolation, deprived freedom to communicate with others or the outside world, and/or lack of sufficient recreational facilities, among others.

100. Punishments for civil servants who exercise brutal penalty include Article 125 of the Criminal Code that applies to public officials charged with the duty of investigation or bringing offenders to justice who use threat or violence with purpose to extract confession and Article 126 of the Criminal Code that applies to public officials charged with the custody, or conveyance of prisoners who commits an act of violence or cruelty to a prisoner and involves the sentence of imprisonment for no less than one year but not more than seven, or Article 134 of the Criminal Code about the crime of non-pure misconduct in office, and Article 277 about legal action against the crime of intentional injury. It is established in the Educational Fundamental Act that no corporal punishment shall be given to students. When teachers counsel and discipline students, they shall provide advice or correct students' behavior and avoid slandering, public insults, or threat. The Mental Health Act also specifies that no physical or mental abuse shall be allowed toward people with mental disorders. There are, in fact, allegations and cases of extraction of confessions by means of torture, criminal dismemberment, corporal punishment, and abuse against people with mental disorders.

101. Civil servants, teachers or healthcare professionals involved in brutal penalty shall be subjected to criminal and administrative liabilities. In the event that a civil servant is ordered by his or her supervisor to exercise the brutal penalty, as is indicated in Paragraph 1, Article 17 of the Civil Service Protection Act, the civil servant is not obligated to obey the order in case it violates any criminal law. In other words, when a civil servant exercises the brutal penalty upon his or her supervisor's order, he or she is still liable.

102. Article 98 of the Code of Criminal Procedure stipulates that an accused shall be interrogated in an honest manner; violence, threat, inducement, fraud, exhausting interrogation or other improper means shall not be used. Also in the same Code, Article 100 says that the confession of an accused and other unfavorable statements as well as facts stated in his favor and the method of proof indicated shall be clearly noted in the record. Article 100-1 stipulates that the whole process of an accused being interrogated by the judge and prosecutor or questioned by

the police should be recorded, without interruption, in audio and in video. The audio or video data are to be kept by the authority separately to avoid misplacement or alteration; It is established in Article 156 that confession of an accused must be given on the basis of free will to be admitted as evidence. Confession extracted by violence, threat, inducement, fraud, exhausting interrogation, unlawful detention or other improper means shall not be admitted as evidence. In the event that the accused uses interrogation by torture as the counter argument, related investigations should be started by performing immediate inspections on and taking photos of the accused's body to verify the claimed injuries. If the said confession is presented by the public prosecutor, the court shall order the public prosecutor to indicate the method that he has used to prove that the confession is obtained under the free will of the accused.

103. A criminal defendant shall assign a defender at any time to avoid extraction of confession by means of torture. A victim of brutal penalty shall file a criminal charge or lodge an accusation with, or submit a petition to the public prosecutor or claim that he or she is a victim of brutal penalty in front of the public prosecutor or judge. Prisoners who are brutally treated shall file a complaint with the prison or its supervisory authority. From 2006 to 2011, however, corrective institutions or police supervisory authorities did not receive any of such complaints.

104. In terms of the violation of Article 125 of the Criminal Code (penalty for abuse of power in legal action), six, five, three, and six civil servants from 2005 to 2008, respectively, were indicted. One civil servant was verified to be guilty in 2009. One civil servant was indicted in accordance with Article 126 of the same Code (crime of criminal dismemberment) in 2007. One civil servant was verified to be guilty in 2005. With regard to indictments and convictions in accordance with Article 134 (crime of non-pure misconduct in office) and Article 277 (crime of intentional injury) of the Criminal Code for having interrogated defendants or inmates by means of torture, there were one and two civil servants in 2002 and 2003, respectively and none more recently.

105. Article 13 of the State Compensation Law stipulates that the provisions of the Law shall apply to any civil servant having the duty of a trial judge or a prosecutor who infringes upon the freedoms or rights of the people while acting within the scope of his or her office or employment, and is adjudicated to have committed a crime when he or she performed the duty of trial or prosecution. The legal process shall be identical to that for other ordinary cases. The court,

however, did not rule any lawsuit filed in accordance with Article 13 of the State Compensation Law in favor of the plaintiff yet between 2006 and 2010.

106. Trainings provided to administrators in detention facilities all include prohibited brutal penalties or improper treatments. The Detention Act Amendment Draft has already followed the spirit of the Covenant. It was submitted to the Legislative Yuan for review on July 15, 2010. The Legislative Yuan, however, has not been able to approve it so far.

### **Treatment for Death Row Convicts**

107. All death row convicts are placed in small rooms that can accommodate two to three people and are closer to the central station with properly arranged roommates. Prisoners on death row are allocated 30 minutes of exercise per day. Except for moralization, meeting with visitors, getting medical care or other special occasions, they spend most of time in their cells. Their rights are generally the same as those of other inmates.

### **Principles for Deporting Criminals**

108. The Republic of China does not have applicable laws in place at the moment that stipulate that aliens who violate laws in Taiwan shall not be deported if their home countries allow brutal penalty or cruel and inhumane treatment. In practice, when the NIA deports aliens, their home countries are prioritized options. The current draft of Handling Measures for Compulsory Deportation of Aliens also specifies that when it is inappropriate to deport an alien to his or her home country, the alien will be deported to a third country or region for which he or she holds a valid travel document or the country or region that he or she previously stayed in before coming to Taiwan. The draft Refugee Law has also been completed. Before the aforementioned laws are promulgated, it will be determined on a case to case basis and the alien to be deported will be helped to go to a safe country or region if his or her home country allows brutal penalty or cruel and inhumane treatment. Current extradition treaties with ten countries that the Republic of China has diplomatic ties with do not have related notes on refused deportation. Therefore, there are no applicable dispositions and actions in practice. The Government should ask individual authorities not to send criminals to countries that allow brutal penalty or cruel and inhumane treatment when executing deportations or sending criminals back to their home countries.

109. People from mainland China who claim that they are leaders of democratic movements with substantial facts on their outstanding performance and are hence at imminent risk of prosecution, as long as they are approved by the Ministry of the Interior through a project to stay for a long term in Taiwan, will not be deported back to mainland China. For the management mechanism regarding mainland Chinese people seeking political asylum in the Republic of China, the amendment draft to Article 17 of the Act Governing Relations between the Two Areas is completed with reference to related international covenants and the draft Refugee Law initiated by the Ministry of the Interior. It has been submitted to the Legislative Yuan for review.

### **Ban on Corporal Punishment**

110. On April 10, 2004, people initiated the friendly campus alliance and held activities celebrating the 10th anniversary of the 410 Education Reform aiming at terminating corporal punishment and creating a friendly campus. On December 27, 2006, the Educational Fundamental Act was amended and promulgated to prevent students from any corporal punishment that results in physical and mental harm. A total of 371 cases of corporal punishment or improper discipline were reported by schools at all levels between 2006 and 2011. There were 281 cases involving penalties for the teachers and three cases where victims of corporal punishment by their teachers filed for state compensation from 2006 to 2011. Random sampling among junior high school students between March 2007 and December 2011 by the Ministry of Education shows an increase from 72.3% to 95.3% in the answer that they have never been punished by teachers at schools among the students interviewed.

### **Human Trial**

111. The Republic of China has established the Good Clinical Practice Guidelines and related policies guiding human research and ethics in accordance with the Nuremberg Code and the Declaration of Helsinki. Legislation is seen in the Medical Care Act and the Human Biobank Management Act. Subjects must be informed in advance in ways comprehensible for them, including the risk of clinical trials and information on the compensation and treatment upon damages. Voluntary written consent from the subject must be obtained before a clinical trial involving human subjects can be conducted. In addition, subject's name in all clinical trial data must be encoded. It is established in the Guidelines for Recruitment of Clinical Trial Subjects

that the recruiting advertisement shall only be published with prior approval from the Institutional Review Board and shall not be posted on campuses of junior high schools or schools of a lower level. It is also prohibited to claim or imply that the drug is safe and effective and medical care services will be provided or include inducing or encouraging charts. It is disallowed to recruit subjects in certain places, such as the military, jail, or mental asylum. Upon any serious adverse events experienced by the subject, the study sponsor and health regulatory authority should be informed immediately.

## **Article 8**

### **112. Legislation against Human Trafficking:**

(1) The Republic of China formed the Executive Yuan Anti-Human Trafficking Coordination Panel in February 2007 comprising representatives from related government agencies such as the Ministry of the Interior, Ministry of Justice, and CLA, experts, and scholars. The political administrator at the Executive Yuan serves as the convener to call for meetings on a regular basis where various anti-human trafficking operations are discussed.

(2) The Republic of China started to enforce the Human Trafficking Prevention Act in June 2009, which has specific definition of human trafficking. It also specifies that the crime of human trafficking means the engagement in human trafficking and violation of the Act, the Criminal Code, the LSA, the Child and Youth Sexual Transaction Prevention Act or other applicable crimes. Provisions on criminal punishments for human trafficking are added in Articles 31 to 34 of the Act, too, to supplement the insufficiency of current applicable laws. On the other hand, to facilitate recognition of victims of human trafficking by law enforcers, the Ministry of Justice amended the Guidelines for Determining Victims of Human Trafficking on February 13, 2009 and established the reference criteria for determination of victims. Detailed reference guidelines for interrogating victims are included to help with adequate determination of victims and adoption of proper protective measures.

(3) On the preventive side, future promotion will focus on assistance from the Ministry of Justice and Judicial Yuan in expediting investigations and trials and keeping the victims adequately informed of the progress in order to protect their rights. To join efforts from the

international society for joint prevention against human trafficking, immigration affairs divisions based in individual countries will proactively approach immigration agencies of the host countries in order for them to sign the memorandum of understanding with the immigration agency of the Republic of China.

113. Ban on Forced or Compulsory Labor: Article 5 of the LSA bans employers from forcing workers to be engaged in labor: Article 42 of the Act specifies that the employer shall not force the worker to work outside normal working hours for the sake of the worker's health or other legitimate reasons. Articles 49 to 52 ban women from working late at night and establishes that wages shall still be paid during maternity leave and the request for easier and simpler assignments during pregnancy shall be allowed. There are also protective provisions on the breastfeeding time, etc.

114. Child worker: Protective regulations for child workers are specified in Articles 44 to 48 of the LSA of the Republic of China. Employers violating the regulations are subjected to up to six months in prison, short-term imprisonment, and/or a fine of up to NT\$300 thousand. Employers shall not have child workers work over eight hours a day. In addition, working on official holidays and at nights is prohibited. Article 20 of the Labor Safety and Health Act, on the other hand, stipulates that employers shall not have child workers engaged in dangerous or harmful tasks. Article 2 of the Determination Criteria for Banned Dangerous or Harmful Tasks for Female Child Workers also includes the determination criteria for dangerous or harmful tasks.

**Table 16 Number of child workers throughout Taiwan between 2007 and 2011**

Unit: Persons

| Item \ Year | 2007  |       |       | 2008  |       |       | 2009  |       |       | 2010  |       |     | 2011  |       |       |
|-------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-----|-------|-------|-------|
|             | Total | M     | F     | Total | M     | F     | Total | M     | F     | Total | M     | F   | Total | M     | F     |
| Total       | 4,049 | 2,074 | 1,975 | 3,886 | 2,307 | 1,578 | 2,801 | 1,503 | 1,298 | 2,627 | 1,660 | 967 | 2,433 | 1,196 | 1,237 |
| Region      |       |       |       |       |       |       |       |       |       |       |       |     |       |       |       |
| Northern    | 1,703 | 731   | 972   | 1,697 | 988   | 709   | 1,020 | 654   | 366   | 973   | 691   | 282 | 1,202 | 639   | 563   |
| Central     | 1,493 | 881   | 612   | 1,454 | 989   | 466   | 1,244 | 552   | 692   | 1,036 | 643   | 393 | 775   | 399   | 376   |
| Southern    | 782   | 405   | 377   | 685   | 313   | 371   | 495   | 270   | 226   | 568   | 326   | 242 | 419   | 128   | 291   |
| Eastern     | 72    | 57    | 15    | 50    | 17    | 33    | 43    | 28    | 15    | 50    | 0     | 50  | 37    | 30    | 7     |

Source: "Manpower Survey", Directorate General of Budget, Accounting and Statistics, Executive Yuan

Description: According to the Labor Standards Act, people aged 15 and above but younger than 16 and hired to work are child workers.



115. In response to the situation where students under business-education cooperation projects tend to be underpaid and their rights are not well protected, Chapter VIII of the LSA includes related protective measures for apprentices. The CLA and local authorities in charge of labor administration will investigate and handle incidents involving undermined rights of students who take part in business-education cooperation projects accordingly upon any finding or receipt of complaints about businesses violating the LSA and inform the Ministry of Education at the same time in order for the latter to supervise improvements. In 2010 and 2011, the CLA performed inspections among students under business-education cooperation projects along with authorities governing education administration. Fifty-one businesses were inspected in 2010 and a total of 79 violations were found. Fifty businesses were inspected in 2011 and a total of 60 violations were found.

116. Alien worker:

(1) Although the ESA bans employers from assigning tasks other than those permitted to alien workers, violations have never stopped. In the event that the violations are not attributable to the alien worker, the CLA will allow the alien worker to apply for switch of employers or jobs in accordance with applicable regulations in order to protect his/her employment right.

(2) To prevent alien workers against improper labor and exploitation, there are inspectors under individual local governments in the Republic of China to inspect the work and life of alien workers. Statistics show that among the 166,494 inspections in 2011, 111,935 were performed at homes (1,699 were found to be violating applicable regulations of ESA), 53,323 were at businesses (830 were found to violating applicable regulations of ESA), and 1,206 were at private employment service institutions (177 were found to be violating applicable regulations of ESA). Meanwhile, the 1955 24-hour toll-free bilingual protection consultation hotline for alien workers is established. There are information desks for alien workers at airports, too, to offer departure/arrival pick-up services and communicate information on related laws and regulations and complaint or consultation channels so that the rights of alien workers are protected.

(3) For alien workers engaged in domestic work, there are no applicable requirements under the LSA at the moment. No related regulations governing their paid leave of absence, days off on official holidays, or special leave are available. The vacation system is determined through the agreement entered into by and between alien workers and their employers days base on mutual understandings prior to their arrival in Taiwan. The government has discussed and proposed the draft of Labor Protection Act for Domestic Workers. The review, however, is not completed yet.

117. Investigation, seizure, and indictment of human trafficking cases: With regard to the number of human trafficking cases found by the judicial police of the Republic of China, there were 88 cases in 2009, 123 cases in 2010, and 126 cases in 2011. As far as the number of related human trafficking cases indicted by public prosecutors at individual district courts is concerned, there were 118 cases in 2009, 115 cases in 2010, and 151 cases in 2011.

118. Protection services and measures for victims of human trafficking: In terms of protection for victims, the NIA and CLA have established placement shelters with joint efforts from civil organizations and statistics show that a total of 329 new victims in 2009, 324 in 2010, and 319 in 2011 were accommodated. Statistics also show that between June 2009 when the Human Trafficking Prevention Act came into force and December 2009, the NIA approved and issued 187 temporary visit permits and the CLA approved and issued 193 work permits; In 2010, NIA approved and issued 105 temporary visit permits and the CLA approved and issued 188 work permits; In 2011, NIA approved and issued 204 temporary visit permits and the CLA approved and issued 175 work permits. Article 17 of the Human Trafficking Prevention Act stipulates that personal safety protection, necessary medical assistance, interpretation service, legal assistance, counseling, interpretation services and presence of social works at interviews, and other necessary assistances shall be provided to protected victims in placement shelters. .Educational training on general knowledge of the prevention against human trafficking, practical seminars on investigation, seizure, and authentication, and international workshops should continue to be held to enhance knowledge of human trafficking among the citizens and aliens. For ships, aircrafts or other transportation tools registered under the Republic of China that are engaged in human trafficking, punishments such as suspension or abolishment of licenses, occupational licenses or eligibility can be imposed.

119. In principle, inmates should all participate in programs aiming to develop their work skills unless under special circumstances. The actual time needed at present is about four to five hours a day. The programs shall be discontinued on national holidays, bereavement leave or whenever necessary. Inmates are not forced to work overtime under the programs. No complaints regarding slavery or forced labor have been received for the past five years. It is not compulsory for inmates at detention houses to participate in programs.

120. Type and contents of hard labor, community service, compulsory work, and obligatory labor as part of criminal punishments: Hard labor is the alternative punishment when the criminal is unable to pay the fine in full. The criminal has to be jailed to provide hard labor. Community service is to provide unpaid labor service. It is an alternative to imprisonment of shorter than six months, short-term imprisonment, or hard labor for shorter than a year instead of paying a fine. It is disciplinary in nature. Compulsory work means that the defendant has to enter a labor site to provide labor. Obligatory labor is to be provided to designated public interest groups, local government bodies or communities and lasts no shorter than 40 hours but not longer than 240 hours within a certain period of time.

## **Article 9**

### **Personal Freedom Should be Protected**

121. Article 8 of the Constitution stipulates that personal freedom of the people should be protected. In no case except that of flagrante delicto, which shall be separately prescribed by law, shall any person be arrested or detained other than by a judicial or police authority in accordance with statutory procedures. No person shall be tried or punished other than by a court in accordance with statutory procedures. Any arrest, detention, trial, or punishment not carried out in accordance with statutory procedures may be resisted. The Grand Justice has also made multiple interpretations of the Constitution to protect personal freedom.

122. Conditions under which personal freedom can be deprived according to the Code of Criminal Procedure include arrests with warrants, arrests without warrants, arrests, and detentions. The Juvenile Delinquency Act disallows detention of juvenile defendants unless under necessary circumstances. The Drug Prevention And Control Act specifies that monitoring

and compulsory abstinence should be exercised for first-time users of narcotics and compulsory treatment for those who tend to continue using narcotics in the future. The Mental Health Act allows emergency placement or compulsory hospitalization for serious patients. For criminal defendants with serious mental disorders, as long as they meet the criteria for compulsory hospitalization as defined in the Mental Health Act, they shall be hospitalized in accordance with the Act while they are in detention. The Communicable Disease Control Act enables implementation of isolation care for patients with highly contagious diseases. The Immigration Act allows temporary accommodations for aliens under certain conditions. The government does not mandate accommodations for the homeless. The Child and Youth Sexual Transaction Prevention Act allows emergency placement of children and teenagers who are engaged in sexual transactions. The Social Order Maintenance Act allows the court to decide to place those with certain behavior against social order in custody.

123. Paragraph 2, Article 8 of the Constitution stipulates that when a person is arrested or detained on suspicion of having committed a crime, the authority making the arrest or detention shall transfer the said person to the court for trial within 24 hours. The said person or another person shall also petition the court to request arraignment from the authority making the arrest within 24 hours. Any one under arrest or detention shall follow the Habeas Corpus Act by requesting arraignment by the court in writing or verbally. When the court believes that it is grounded, it shall arraign the said person from the authority making the arrest within 24 hours. After the authority making the arrest receives the arraignment order, it shall surrender the said person within 24 hours. If the court believes that the said person should not be detained after interrogations, the said person should be released right away. There have not been successful arraignments in judicial practice so far.

### **Protection of Rights of People Whose Personal Freedom Is Restricted**

124. The Code of Criminal Procedure only specifies that before a defendant or crime suspect is examined or interrogated, he or she should be informed of the crime of which he or she is suspected, his or her rights to remain silent, to select a defender, and to request investigation of favorable evidence. It does not stipulate that the aforementioned rights should be made known immediately upon arrests with warrants or arrests; when the detained or arrested defendant or

crime suspect can start seeking medical treatment; or when his or her family can be informed. As such, revision to the Code of Criminal Procedure is recommended. It is the same with the Juvenile Delinquency Act and hence revision is also required.

125. The police can put someone in custody and restrict his or her personal freedom for up to 24 hours based on arrest warrant, the wanted notice or when arresting active criminals or quasi-active criminals and performing emergency arrests with warrants. They, however, usually will hand over the detained person to the public prosecutor within 16 hours. The public prosecutor must perform preliminary investigations within the next eight hours to decide whether to release the said person, to put a limitation on his or her residence, to handle, to allow a bail, or to petition the court to detain the said person.

126. Facilities where people are held in custody are managed by several authorities. There is no single cross-institutional inquiry mechanism available at the moment to facilitate inquiries yet.

### **Detention**

127. The pre-trial detention is to be filed by the public prosecutor with the court. It shall not last over two months and can be extended once if necessary. Upon disappearance of reasons for the detention, the detention should be lifted immediately. During an investigation performed by the public prosecutor, the defendant, his or her defender, and his or her defender shall file for lift of the detention.

128. Statistics of remand defendants who are not released after court proceedings have begun are shown in Table 17.

**Table 17 Number of remand criminal defendants at district courts, high courts, and their branch courts between 2007 and 2011**

Unit: Persons

| Year | District Court               |   | High Court and Branch Court  |   |
|------|------------------------------|---|------------------------------|---|
|      | Detained throughout the year | Still detained at the end of the year (month) | Detained throughout the year | Still detained at the end of the year (month) |
| 2007 | 4,898                        | 705   | 1,574                        | 405   |
| 2008 | 4,609                        | 425   | 1,393                        | 374   |
| 2009 | 3,312                        | 317   | 1,036                        | 272   |
| 2010 | 2,975                        | 339   | 961                          | 238   |
| 2011 | 2,711                        | 311   | 836                          | 210   |

Source: Statistics Office, Agency of Corrections, Ministry of Justice

Description: Summoning and temporary imprisonment, extended detention, and detention filed by the public prosecutor are not included.

129. There are no terrorism suspects who are placed in custody without indictments in the Republic of China.

#### **Prevention against Solitary Confinement and Related Status**

130. There are two kinds of cells, the single cells and the group cells, as is indicated in the Prison Act. Solitary confinement means that there is only one inmate in one cell. Except for inmates who are significantly malicious and are likely to undermine other inmates and hence should be confined individually, most inmates are placed in group cells. Solitary confinement or discontinuation of outdoor activities shall not do inmates' physical or mental health any harm.

131. The reasons for and headcount of people being confined individually are shown in Table 18.

**Table 18 Reasons for individually confined inmates at corrective institutions between 2006 and 2011**

Unit: Persons

| Headcount \ Reason for solitary confinement | Year  |       |       |       |       |       |
|---|-------|-------|-------|-------|-------|-------|
|   | 2006  | 2007  | 2008  | 2009  | 2010  | 2011  |
| Forbiddance of interview                    | 97    | 105   | 165   | 155   | 134   | 123   |
| Discontinuation of outdoor activities       | 509   | 528   | 515   | 434   | 507   | 457   |
| Separation for protection                   | 206   | 256   | 231   | 208   | 320   | 232   |
| Contraction of contagious disease           | 339   | 269   | 301   | 294   | 382   | 328   |
| Other                                       | 16    | 18    | 16    | 21    | 23    | 19    |
| Total                                       | 1,167 | 1,176 | 1,228 | 1,112 | 1,366 | 1,159 |

Source: Agency of Corrections, Ministry of Justice

132. Confinement at the Tainan Military Prison, Ministry of National Defense, is normally in group cells. Only in the case of serious violations, protective separation due to special identity, and/or contraction of disease is solitary confinement allowed with the warden's prior approval. Statistics of solitary confinement show 50 persons (49 with violations and one because of special identity) in 2006, 46 persons in 2007 (20 with violations, 1 with special identity, and 25 with disease contraction); 30 persons in 2008 (14 with violations, 1 with special identity, and 15 with disease contraction); 35 persons in 2009 (20 with violations, 3 with special identity, and 12 with disease contraction); 24 persons in 2010 (16 with violations, 3 with special identity, and 5 with disease contraction); and 29 persons in 2011 (26 with violations, and 3 because of special identity);

133. For the public prosecutor's supervision over the enforcement of compulsory disposal by judicial police, see Table 19.

**Table 19 Prosecutor's supervision over the enforcement of compulsory disposal by judicial police**

| Judicial police shall exercise compulsory disposal                                       |  |  | Prosecutor supervision mechanism   | Outcome of prosecutor's disapproval of compulsory disposal                 |
|--|--|--|--|--|
| Type   | Prerequisite   |  |  |  |
| Arrest with a warrant  | The crime suspect is informed in accordance with law but does not appear without a justified reason (Paragraph 1, Article 77-1 of the Code of Criminal Procedure). |  | Report to the public prosecutor for issuance of the arrest warrant ex ante.  | Do not arrest  |
|  | Arrest without a warrant   | Emergency arrest (Paragraph 1, Article 88-1 of the Code of Criminal Procedure)     | When it is not too late to report to the public prosecutor, report to the public prosecutor for issuance of the arrest warrant ex ante.                      | Do not arrest  |
|  |  |  | When it is an emergency and cannot be reported to the public prosecutor in time, report to the public prosecutor for issuance of the arrest warrant ex post. | Release the defendant  |
|  |  |  | Defendant is wanted.   | The wanted notice is signed by the public prosecutor during investigation. |
|  | Arrest   | Active criminal (Paragraphs 1 and 2, Article 88 of the Code of Criminal Procedure) |  | Send the criminal under escort to the public prosecutor for interrogations |
| Quasi-active criminal (Paragraphs 1 and 3, Article 88 of the Code of Criminal Procedure) |  |  |  |  |
|  |  | Defendant is wanted.   |  | The wanted notice is signed by the public prosecutor during investigation. |

Source: Department of Prosecutorial Affairs, Ministry of Justice

### **Transformation from Wrongful Imprisonment Compensation Act to Law of Compensation for Wrongful Detentions and Executions**

134. To consolidate the criminal procedure compensation mechanism in the Republic of China, the Criminal Compensation Act has been overhauled (formerly known as the Wrongful Imprisonment Compensation Act). Important changes and contents in the amendment announced in 2011 are as follows:



(1) The type of treatment eligible for compensation is expanded: Besides the original detention, accommodation, criminal punishments, moral education, and compulsory work, it is added that security measures against personal freedoms other than detention for examination and compulsory work, such as supervision, forbiddance, compulsory treatment under the Criminal Code and monitoring, rehabilitation, or compulsory abstinence or treatment under the Statute For Narcotics Hazard Prevention And Control are eligible for compensation, too. The scope of procedural causes eligible for compensation is expanded: Besides the original non-prosecution disposition, or not-guilty and dismissal verdicts, and other dispositions such as not to be submitted for trial or not to be put on protection and cancellation of the compulsory work, the compensation is extended to the withdrawal of indictment, adjudicated dismissal of indictment, dismissal of a case, cancellation of security measures or withdrawal of the petition for security measures, the sentence beyond the guilty verdict during the period when personal freedom is restricted or security measures, and repeated judgments of the same case. Causes that are not eligible for compensation are reduced in order to establish a fair statutory compensation system: There are defined criteria for the determination of compensation value. The attributable causes are also considered for victims who request compensation.

(2) Between 2006 and 2011, first instance courts handled a total of 1,676 cases of wrongful imprisonment (now part of criminal compensation), 321 of which had been approved for compensation; First instance courts handled a total of 331 cases of wrongful imprisonment (now part of criminal compensation), 113 of which had been approved for compensation;

135. The Wrongful Imprisonment Compensation Law applies to military trials since 2007. Status of compensation is as follows:

(1) Retroactive cases: The compensation for wrongful imprisonment by court martial is retroactive after the Wrongful Imprisonment Compensation Law was promulgated on September 1, 1959. The time limit to request is two years. 280 requests were submitted, and the total compensation value came to NT\$195,728,935.

(2) Non-retroactive cases: There were six cases of compensation for wrongful imprisonment by court martial since 2007 and the total compensation value came to NT\$1,537,000.

## Records of Compensation for Unjustified Rebellion and Espionage Trials during Period of Martial Law Rule

136. The Compensation Act for Wrongful Trials on Charges of Sedition and Espionage during the Martial Law Period was promulgated in 1998. In accordance with the aforementioned Compensation Act, the Executive Yuan founded the Improper Martial Law Period Insurgency and Espionage Convictions Compensation Foundation to take charge of the compensation, research, and restoration of reputation, among other tasks, for those who were ruled to be guilty or adjudicated to be sent for moral education for the crime of insurrection, treason, or for violating the Espionage Prevention Act During the Period for Suppression of Communist Rebellion during the period of Martial Law rule. The review status is shown in Table 20.

**Table 20 Number of cases reviewed and value of compensation provided by the Improper Martial Law Period Insurgency and Espionage Convictions Compensation Foundation**

| Unit: Cases; NT\$1000                        |                  |
|--|------------------|
| Item   | Value (NT\$1000) |
| Appropriated quota                           | 20,253,236       |
| Number of cases handled                      | 9,582            |
| Number of cases reviewed                     | 9,452            |
| Number of cases approved for compensation    | 7,526            |
| Number of cases disapproved for compensation | 1,926            |
| Amount of compensation approved              | 19,599,900       |
| Number of cases with reputation restored     | 3,864            |

Source: Improper Martial Law Period Insurgency and Espionage Convictions Compensation Foundation

Description: The statistics were generated for the period from 1999 to 2011.

## **Protective Measures for Mental Patients**

137. The Government began promoting the Mental Health Network plan in 1986 and phased in care for mental patients in communities and development of the community mental rehabilitation model. The mental care information management system was established to enhance management of patients with mental disorders in the community, and has begun care operations such as registration of cases, hospital discharge preparation programs, referrals, and community follow-up. As of 2011, a total of 123,748 patients received follow-up care. The Department of Health has also promoted tiered care in accordance with the severity of each patient's condition. Public health nurses under county and city governments periodically follow up and manage the patients.

138. The Mental Health Act amended and enforced on July 4, 2008, specifies requirements for compulsory hospitalization, the review procedures, duration of compulsory hospitalization, penalty, relief mechanisms, and precautions. It is established that compulsory hospitalization shall not exceed 60 days and shall be extended by additional 60 days at maximum each time. If the patient or his or her family has concerns over the decision made by the Review Committee, a petition for adjudication to discontinue emergency placement or compulsory hospitalization shall be filed with the court. Related public interest groups on the promotion of patient rights, as long as they are approved by the central competent authority, shall also file a petition with the court to request the said discontinuation for the best interest of critically ill patients. There has, however, not been any public interest group on the promotion of patient rights applying with the Department of Health for approval yet so far. The approval ratio since 2008 by the Department of Health Review Committee is over 90%. A total of 1,251 cases were submitted in 2011, among which 1,203 were approved. Statistics of the Judicial Yuan show the number of cases handled and number of cases finalized by individual district courts between 2008 and 2011 were 0 and 0 in 2008, 18, and 15 in 2009, 73 and 67 in 2010, and 103 and 106 in 2011, respectively. When a critically ill patient or his or her guardian files a petition with the court for adjudication to discontinue emergency placement or compulsory hospitalization, emergency placement should be discontinued as soon as the court has verified that there is no need for compulsory

hospitalization or the approval for compulsory hospitalization is not obtained within the statutory period. Between 2008 and 2011, 4 cases of compulsory hospitalization and 3 cases of emergency placement were approved to be discontinued. In addition, for the best interest of critically ill patients, 79 cases of compulsory hospitalization and 59 cases of emergency placement were overruled.

139. In November 2011, a female student at some junior college in Taitung was hospitalized through a mandate in accordance with the Mental Health Act after she was escorted by the school, a nurse from the public health center, a policeman, and a firefighter to the hospital for a doctor's diagnosis because she protested during school anniversary celebrations and ceremonies. The Ministry of Education, in particular, also held that it should be considered that "in order for to complete celebrations and ceremonies, the school..." during the National Reporting Review Committee meeting. The case indicates that related staff does not understand the principle of proportionality and the substantial and procedural requirements for compulsory hospitalization as indicated in the Mental Health Act. Education is necessary to establish more precise and complete law enforcement approaches. The Review Committee of the Department of Health often does not have the client appear in the meeting for explanations. Similarly, the judicial relief procedures under the Mental Health Act only encompass ex post written review, which cannot meet the urgent demand. The patient does not necessarily understand or exercise this right, either. The protection of the human rights of patients with mental disorders who are hospitalized through a mandate is not thorough enough.

### **Asylum Seekers and Illegal Immigrants**

140. Information about illegal immigrants: A total of 7,655 illegal aliens were placed in major NIA temporary shelters in 2011 (including repatriation of 53 illegal immigrants from Mainland China). The average length of stay in shelters for aliens and people from mainland China dropped from 83.08 days in 2007 to 56.06 days in 2011. Aliens, who are placed in the shelters because of illegal acts, are informed in writing of the facts, reasons, and legal bases, as well as their rights (e.g. to have an interpreter) and obligations, and receive information available in 12 languages, including English, Vietnamese, Thai, and Indonesian, so that they know their rights and obligations and can receive necessary assistance. Those who disagree with the placement

decision may file a petition with the NIA, and those who do not agree with the petition decision may file for administrative remedy. In addition, Article 38 of the Immigration Act amended and enforced on December 9, 2011 has specified the length of stay at the shelter and revised the original requirement that said the length of stay at the shelter "can be extended until deportation" because the latter is likely to result in an indefinite length of stay.

141. There has not been a case where an asylum seeker was placed in custody in Taiwan.

## **Article 10**

### **Treatment of People Held in Custody**

142. Major laws and regulations governing the treatment of people held in custody include the Code of Criminal Procedure, Prison Act, Detention Act, Mental Health Act, Juvenile Delinquency Act, Statute on Establishment of Juvenile Detention Houses, and the Rules Governing Establishment and Administration of Detention Centers. General reflection is recommended to make sure that the said laws and regulations fall in line with the Standard Minimum Rules for the Treatment of Prisoners, Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Code of Conduct for Law Enforcement Officials, Medical Ethics Rules for healthcare professionals, particularly surgeons, in protecting prisoners or people held in custody against brutal penalty or other cruel, inhumane, or degrading treatment, and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

143. Most supervisory mechanisms at confinement facilities are part of internal control. It is necessary to establish effective external supervisory mechanisms.

144. For managers at confinement facilities, various training and guidance are available. Psychiatrists should attend related education and training programs on compulsory verification, compulsory hospitalization, and compulsory community treatment that add to 12 hours within three years to ensure knowledge of applicable requirements on compulsory measures and patient protection.

145. Authorities in charge of individual confinement facilities are responsible for resolving specific issues facing the confinement facilities, such as over-crowdedness, repairs of cell infrastructure, hygiene, disease, food and nutrition, and violent or aggressive behavior and

provide medical care services through collaborative healthcare facilities, disinfect and clean the cells periodically, supply hot water, increase commissary allowance, and collect food samples for testing, etc.

146. As of 2011, the approved total accommodation capacity of corrective institutions throughout Taiwan was 54,593 people. There were, however, 64,864 people admitted in reality, exceeding the total capacity by 10,271 people. The excess rate is 18.81%. Right now each inmate owns a space equivalent to 0.56 pings (1 ping = 3.3058 square meters). Each of the inmates at the Tainan Military Prison owns a space of around 0.6 pings. The issue of crowdedness at jails is an urgent problem.

### **Mental Healthcare Facilities**

147. To ensure quality service provided by mental healthcare facilities and protect patients' rights to medical care, the Department of Health performs hospital accreditations on a regular basis and follows up on counseling and visit operations from time to time in accordance with the Medical Care Act and the Operational Procedures and Criteria for Accrediting Psychiatric Hospitals and Psychiatric Teaching Hospitals. Local Health Departments, on the other hand, perform periodical supervision and audits on mental healthcare facilities within their territories. As of 2011, there were 45 psychiatric hospitals with valid accreditation certificates, among which 11 were teaching hospitals.

### **Complaint Mechanism and Statistics**

148. The Tainan Military Prison allows prisoners who disagree with punishments given by the prison to file a complaint verbally or in writing within 10 days after they receive punishments to protect rights of the prisoners. The headcount of claimants having received and that having filed complaints about punishments or the use of guard instruments from 2006 to 2011 were 71 and 1 in 2006, 33 and 2 in 2007, 15 and 5 in 2008, 27 and 7 in 2009, 24 and 0 in 2010, and 10 and 0 in 2011, respectively.

149. Inmates who disagree on the punishments given by corrective institutions or their treatment shall file complaints. Statistics of various types of complaints at corrective institutions throughout Taiwan between 2006 and 2011 are shown in Table 21.

**Table 21 Statistics of various types of complaints filed by inmates at corrective institutions throughout Taiwan**

|                       |      | Unit: Case |      |      |      |      |
|-----------------------|------|------------|------|------|------|------|
| Type \ Year           | 2006 | 2007       | 2008 | 2009 | 2010 | 2011 |
| Violation             | 75   | 57         | 49   | 86   | 94   | 65   |
| Parole                | 1    | 0          | 1    | 2    | 2    | 8    |
| Progressive treatment | 1    | 0          | 0    | 2    | 1    | 1    |
| Treatment in life     | 13   | 4          | 4    | 2    | 4    | 3    |
| Other                 | 2    | 0          | 4    | 2    | 5    | 3    |
| Total                 | 92   | 61         | 58   | 94   | 106  | 80   |

Source: Agency of Corrections, Ministry of Justice

## Separation

150. Institutions that accept criminal defendants are called detention centers. For minors less than 18 years old, there are the juvenile detention houses. Women are to be placed at women's detention centers. When women's detention centers are in the same place as men's detention centers, strict separation should be implemented. Inmates on a guilty verdict and serving their sentence or short-term imprisonment shall be placed in prisons. Minor inmates less than 18 years old are to be placed in corrective schools. Minors in temporary shelters should be separated from those who are criminal defendants and are detained. Female minors should also be separated from male minors. The same criteria apply during monitoring and rehabilitation. Article 38 of the Detention Act is unspecific about the treatment of detained defendants by only saying that regulations in Chapter 4, Chapter 11, Chapter 13, and Chapter 14 of the Prison Act shall apply. It is against the Covenant and presumption of innocence. Regarding this issue, reference has been made to Grand Justice Interpretation No. 653 to separate the Detention Act from the Prison Act. The draft Detention Act has been prepared and submitted to the Legislative Yuan for review as a remedy.

151. Currently, among all the juvenile detention houses, only two are independent establishment, one in Taipei and the other in Tainan. All the others are inside detention centers.

Although juvenile defendants are held in different detention facilities and regulations specific to juveniles and on protection requirements such as those in the Juvenile Delinquency Act and the Statute on Establishment of Juvenile Detention Houses shall take precedence, the Detention Act shall apply with regard to the protection of their rights during detention.

### **Rules of Operations**

152. Management and operations at prisons are mainly state-run. Contract or outsourced operations are secondary. The number of prisoners engaged in contract or outsourced operations (including quasi-operations) at the moment accounts for around 90% of prisoners in all operations. The number of prisoners engaged in state-run operations accounts for around 10%. Starting from May 2011, prisoners are selected to attend vocational training at Vocational Training Centers and related institutions under the Employment and Vocational Training Administration of CLA. The Tainan Military Prison also holds vocational training classes.

### **Cultivation Measures**

153. The promotion of important cultivation measures at corrective institutions include study groups to promote reading, art and cultural events, religious teachings, prioritized education for various types of prisoners, and personalized treatment, among others. There are approximately 34 related legislative, administrative, and actual measures on the education, vocational training and counseling of inmates.

### **After-care and Protection Systems and Their Outcome**

154. Under the supervision of the Ministry of Justice, the Taiwan After-care Association works with civil organizations such as religious and charity groups to provide various protective services, including asylum counseling, vocational training, employment assistance, schooling, medical care, emergency rescue, visits and care, travel and medicinal expense sponsorships, returning home or to other places under escort, and business start-up loans, as part of the protection and support system for prisoners who have served their sentence. Starting from 2010, the protective services extend to the families of the rehabilitated offenders by helping the families accept and support the rehabilitated offenders.



### **Supervision and Liability Mechanism for Long-term Geriatric Care and Nursing Homes**

155. There are applicable regulations established in the Senior Citizens Welfare Act regarding the establishment, management, and supervision of, and counseling mechanisms for geriatric welfare institutions. In addition, audits, counseling, supervision, inspections, and accreditations are carried out. Civil, criminal, and administrative liabilities are in place, too. Nevertheless, more than ten old people with disabilities were left floating in the water during the flood caused by a typhoon in 2010. The Ministry of the Interior should discuss and establish more comprehensive and consolidated process flows and response mechanisms in cases of emergency and safety events.

156. As of 2011, there were 1,051 geriatric welfare institutions (41 care institutions, 960 nursing institutions, and 50 long-term care institutions) with a total of 56,089 beds available. There were 42,824 people actually admitted to the institutions. The acceptance rate was 76.4%.

### **Treatment of foreign detainee(s)**

157. People placed in shelters are entitled to freedoms such as meeting with visitors and communications with the outside world. Their ethnic culture is also respected. Foreign government offices in Taiwan, such as those of Indonesia, Vietnam, and Thailand, often send representatives to individual shelters to care for and visit their people. There were, however, immigration officials accused of directing air-conditioners/electric fans at female aliens leading to vomiting, as well as accusations of kissing and fondling female aliens against their will at the shelters in 2007 and 2009. These officials have since been indicted. The court convicted them of torturing or obstruction of sexual autonomy. The verdicts, however, have yet to be finalized. After the incidents, the government has proactively reflected on and strengthened related supervisory mechanisms. At the time a person is admitted to a shelter, he or she will receive a multi-lingual informative brochure that explains his or her rights and will be informed of the channels through which he or she can take advantage of in case of bullying or improper treatment.

### **Management of Housing Facilities for Mainland China Crew**

158. Mainland Chinese are not allowed to come to Taiwan for work yet. However, it is conditionally approved that fishing vessel owners shall hire mainland China crew to help with

fishing operations in waters 12 nautical miles off Taiwan. Fishing vessels carrying mainland China crew enter fishing harbors equipped with housing facilities for a layover. The mainland China crew can stay in the housing facilities or on the boats. Except for going out to sea for work on the fishing vessels or for medical treatment, they shall not leave the facilities. Currently there are seven fishing harbors equipped with housing facilities that can accommodate a total of 2,791 people. The housing facility at Nanfangau Fishing Harbor accommodated 221 people on average per day, which was the highest of all, while that at Hsinchu Fishing Harbor accommodated only six people on average per day, which was the lowest of all, in 2011. As long as mainland China crew are not interfering with others while at housing facilities, their action and personal health needs will not be restricted.

## **Article 11**

### **Custody upon Failure to Fulfill Public Monetary Obligations**

159. When the debtor is capable of fulfilling his or her obligations but fails to fulfill them or hides his or her property, the creditor or the administrative enforcement authority may apply to the court for a ruling of taking the debtor into custody. This means that under certain conditions, the government or the creditor can force the debtor to fulfill his or her obligations or submit his or her property by restricting his or her personal freedom. Arrests and custody handled by the court: From 2005 to 2011, the number of arrests with warrants and custody requests were 454, 1,644, 2,699, 1,205, 711, 325, and 256, respectively. The newly lodged from 2007 and 2011 showed a steady decline.

## **Article 12**

### **Freedom of Domestic Movement**

160. In principle, nationals and non-nationals of the Republic of China can move freely within the country. There are restrictions, however, for certain people or areas, including defendants whose residence is limited, areas of military drills, and ecological reserve areas, etc. Despite the household registration system, people are allowed to live at a non-registered household. Declaration is not necessary. The domicile of the husband and the wife is in principle to be

determined by mutual agreement; without an agreement or with unsuccessful agreement, a court decision shall be applied for. Before the court makes a decision, it will be presumed the common household is the domicile of the husband and the wife.

### **Freedom of Immigration**

161. During the Martial Law rule and the period of national mobilization for suppression of the Communist rebellion, many overseas dissidents were unable to return to Taiwan due to blacklisting. Grand Justice Interpretation No. 265 of 1990 indicated that the regulation in the contemporary law authorizing the government to restrict major suspects' freedom to entry or exit on the facts-supported belief that they would undermine national safety or social security was constitutional. After the Martial Law rule was lifted and the period of national mobilization for suppression of the Communist rebellion was terminated, people have been able to make cross-strait travel and visits relatives. The government, however, continues to adopt criminal sanction in its entry/exit restriction. Grand Justice Interpretation No. 558 of 2003 indicated that criminal punishments against nationals who entered the country without a permit were infringing on their freedom to return to their home country but did not give a timeline for amendment to the legislation. Instead, the Legislative Yuan was given the freedom to make its own decision. Complete deletion of the criminal sanction upon violation of entry/exit restriction did not happen until 2011.

162. The Immigration Act is the main legislation that prohibits the entry or exit of Republic of China nationals. Reasons for rejected exits and related statistical data are given in Table 22. The biggest reason for rejected exit is outstanding tax and other public debts, followed by criminal cases. The number of prohibited exits has been on a steady year-on-year decline; For citizens with residences registered in the Taiwan area, they are entitled to enter the country at any time without a permit. There is no ban on the entry of nationals.

**Table 22 Type of exit restriction for nationals**

Unit: Case

| Type \ Year                    | 2007    | 2008   | 2009   | 2010   | 2011   |
|--------------------------------|---------|--------|--------|--------|--------|
| Financial and taxation control | 55,571  | 30,731 | 23,056 | 20,662 | 18,084 |
| Administrative enforcement     | 25,637  | 20,815 | 14,858 | 8,590  | 4,576  |
| Judicial investigation control | 7,569   | 8,088  | 7,308  | 7,324  | 6,964  |
| Military service control       | 415     | 449    | 275    | 300    | 275    |
| Protection case                | 17,003  | 17,259 | 19,219 | 20,308 | 21,826 |
| Other control(s)               | 377     | 375    | 352    | 17     | 12     |
| Total                          | 106,572 | 77,717 | 65,068 | 57,201 | 51,737 |

Source: National Immigration Agency of the Ministry of the Interior

Description: The statistics are based on the number of regulated cases.

163. As is indicated in Articles 18 and 21 of the Immigration Act, circumstances under which alien entry and exit shall be prohibited and related statistical data are shown in Table 23. The most common circumstances are overstaying and working illegally followed by criminal cases and involvement in terrorism. The number of prohibited alien entry or exit cases is around 80,000 each year.

**Table 23 Circumstances under which alien entry or exit is prohibited and related statistical data**

Unit: Case

| Type \ Year   | 2007   | 2008   | 2009   | 2010   | 2011   |
|---|--------|--------|--------|--------|--------|
| Information from the International Criminal Police Organization | 9,019  | 9,017  | 9,016  | 8,819  | 5,419  |
| Overstaying and working illegally                               | 56,097 | 60,526 | 61,716 | 59,586 | 51,767 |
| Involvement in terrorism and violence                           | 5,890  | 5,969  | 6,119  | 6,135  | 6,602  |
| Criminal case   | 2,235  | 2,530  | 2,835  | 3,034  | 3,259  |
| Counterfeited or altered passport                               | 1,361  | 843    | 769    | 703    | 588    |
| Prostitution  | 381    | 522    | 643    | 705    | 633    |
| AIDS infection  | 690    | 738    | 765    | 778    | 810    |
| Other control(s)  | 722    | 1,106  | 1,446  | 1,915  | 3,278  |
| Total   | 76,395 | 81,251 | 83,309 | 81,675 | 72,356 |

Source: National Immigration Agency of the Ministry of the Interior

Description: The statistics are based on the number of prohibited cases.

164. For people who are HIV positive and not Republic of China nationals, comprehensive prohibition on their entry to Taiwan has been enforced since 1980. Starting in 1997, people who acquired HIV while receiving medical care in Republic of China or from their spouses, are allowed to file an appeal from overseas for lifting of the entry prohibition. To protect family rights and maintain marital status, the Act was amended in 2007 to allow the entry prohibition for Republic of China nationals without registered permanent residences but with relatives within the second degree of kinship who have registered households in the Taiwan area to be lifted upon acceptance of their appeals. They shall stay in Taiwan while their appeals are being processed. From July 2007 to 2011, 37 aliens who were HIV positive filed appeals within ROC. Sixteen of them acquired HIV from their spouses who were Republic of China nationals. Twenty-one of them filed appeals with the reason that they are Republic of China nationals without registered permanent residences but have relatives within the second degree of kinship

who have registered households in ROC. All of them were approved and their entry prohibition has been lifted. In addition, short-term visas and temporary stay permits have been issued since 2005 for people who are HIV positive and are not nationals of the Republic of China, and hence do not have the right to appeal. Their length of stay shall not exceed 14 days per quarter. To catch up with future trends in favor of the international human rights of people who are HIV positive, the removal of entry restriction for people who are HIV positive and not nationals of the Republic of China will be discussed.

165. According to Subparagraph 5, Article 3 of the Immigration Act promulgated on May 21, 1999, nationals without registered permanent include those with registered permanent residences in Taiwan but currently reside overseas. To protect the rights of overseas Chinese, the Nationality Act maintains its acquiescence of dual nationality. Article 4 of the Additional Articles of the Constitution also re-enforce the retention for of overseas-elected legislators. Considering the huge number of overseas Chinese and the fact that it is impossible in practice to mandate nationals without registered permanent residence to pay their taxes and serve the military, among other obligations for nationals, registered permanent residence is hence used as the basis for the endowment of national rights and obligations. There are also adequate regulations in the Immigration Act and the Household Registration Act on the procedure for nationals without registered permanent residence to enter, stay or reside in, and have their households registered in Taiwan. To streamline entry procedures for overseas Chinese and secure the rights of nationals without registered permanent residence to stay and reside in Taiwan, the Ministry of the Interior started to amend related regulations. For example, the amendment to Articles 5, 9, and 10 of the Immigration Act relaxed related requirements for entry to and temporary or long-term resident in Taiwan. The Executive Yuan also submitted the amendment to the Legislative Yuan for review on May 3, 2011. Meanwhile, the Ministry of the Interior amended Articles 6, 8, and 10-1 of the Regulations governing the Approval of Residency or household registration for Nationals without Registered Permanent Residence, which was enforced on October 18, 2010. Under the Guidelines, when nationals without registered permanent residence apply for the entry permit, the NIA shall assign an Identification No. It should also be noted that for nationals without registered permanent residence who have lineal relatives by blood, spouses, siblings or parents of

their spouses with registered permanent residence in the Taiwan area, an entry permit with the same duration as their passports shall be issued to facilitate their return to Taiwan.

166. For the stay of the offspring remaining in Taiwan of national armed forces deployed to northern Thailand and Myanmar, the Ministry of the Interior will relax related requirements taking into consideration their individual unique circumstances. The NIA has revised Paragraph 3, Article 16 of the Immigration Act and the Regulations governing the application for residency or household registration for the offspring of the national army member from Thailand and Myanmar for permission to remain in Taiwan. Overseas Chinese who entered Taiwan between May 21, 1999 and December 31, 2008 holding authentic passports that prove that they are the offspring of national armed forces deployed to Thailand and Myanmar shall apply for stay in accordance with the Regulations governing the application for residency or household registration for the offspring of the national army member from Thailand and Myanmar for permission to remain in Taiwan. Those approved to stay and have lived in Taiwan for two consecutive years and over 270 days per year shall apply for permanent residency, register their household, and get the National ID. On the other hand, situations of offspring of national armed forces deployed to Thailand and Myanmar holding a counterfeited, altered passport or using another person's identity, for which compulsory deportation is impossible, shall be handled as a special case. In accordance with Paragraph 3, Article 16 of the Immigration Act, those who apply and are approved to stay in the ROC and have lived in the ROC for three consecutive years, or have lived in the ROC for five consecutive years of which they reside in the country for over 270 days per year, or for seven years of which they reside in the country for over 183 days per year, may apply for permanent residency, register their household, and receive a National ID.

167. As of 2011, nine people from mainland China have attempted to seek asylum in the Republic of China. Of these nine people, eight entered Taiwan without permits and one entered Taiwan legally. Although they did not meet the requirements stipulated in Paragraph 4, Article 17 of the Act Governing Relations between the Two Areas and Article 17 of the Regulations Governing the Permission of Join-family Residency, Long-term Residency, or Household Registration of People from Mainland China in the Taiwan Area , joint discussion with authorities concerned and the subsequent investigation in accordance with the Handling

Procedures for Mainland Chinese Seeking Political Asylum proved their claims of political prosecution. For the sake of humanity, the Ministry of the Interior coordinated with related authorities such as the MAC and approved their stay in Taiwan as a special case in accordance with Subparagraph 2, Article 12 of the Regulations for Approval of Mainland Chinese to Enter Taiwan (approval as a special case with the Ministry of the Interior coordinating with related authorities such as the MAC in cases of major, sudden events or serious undermined interest of Taiwan) established under authorization of Article 10 of the Act Governing Relations between the Two Areas. Meanwhile, efforts continue to be made to seek channels for transferring the asylum seekers to other countries. Their freedom of action is not restricted while they stay in Taiwan. Nevertheless, these people have not been given the right to work or register a household.

168. For the entry, exit, and temporary stay or permanent residency of mainland Chinese spouses, it is specified in Articles 10 and 17 of the Act Governing Relations between the Two Areas. In accordance with applicable requirements in the Act Governing Relations between the Two Areas amended and enforced on August 14, 2009, the accumulated length of stay required for mainland Chinese spouses to apply for the National ID has been shortened from eight years to six years. In other words, after mainland Chinese are married to Taiwanese and are approved to come to Taiwan to reunite with their Taiwanese spouses and have registered their marriage, they shall apply for stay with local relatives. After they have stayed with their Taiwanese relatives for four years, with the length of their legitimate stay in Taiwan over 183 days each year, they can apply for long-term stay; after they have stayed in Taiwan for two years from the acquisition of long-term stay eligibility, with the length of their legitimate stay in Taiwan over 183 days each year, they can apply to reside in Taiwan and have their household registered. Statistics of the Ministry of the Interior show that the numbers of mainland Chinese spouses who came to Taiwan to reunite with their Taiwanese spouses and register their marriages between 2006 and 2011 were sequentially 13,964 (323 men and 13,641 women), 14,721 (371 men and 14,350 women), 12,274 (371 men and 11,903 women), 12,796 (452 men and 12,344 women), 12,807 (562 men and 12,245 women), and 12,800 (686 men and 12,114 women). The above statistics show a slight increase on a yearly basis in the number of mainland Chinese men registering marriages with Taiwanese women. This trend continues to be observed. In addition,



there are no applicable restrictions on freedoms and rights of mainland Chinese spouses such as their action or residence.

169. In the event that mainland Chinese spouses are engaged in activities against the approval and are believed to be involved in criminal acts with supporting facts or are believed to be endangering national security or social stability with supporting facts, law enforcement shall deport them directly. Article 18 of the Act Governing Relations between the Two Areas amended on August 14, 2009 stipulates that before a mainland Chinese spouse is deported through a mandate, the NIA shall convene a review committee meeting to give the party concerned the opportunity to state opinions to show respect for human rights and protect the rights of the party concerned.

170. When a high-ranking ROC civil servant goes to mainland China or when it involves national secrets or security, prior application is required and must be reviewed and approved by the Review Committee jointly formed by the Ministry of the Interior, National Security Bureau, Ministry of Justice, and MAC.

### **Relocation of Indigenous Tribes**

171. Taiwan promulgated the Land Administration Guidelines for the Province of Taiwan in 1951 to encourage relocations of indigenous peoples in stages from mountainous areas to locations with greater ease of access. After that, there were also the Reporting Requirements for Relocating Indigenous Peoples and Precautions for Indigenous Peoples Applying for Relocations. These were the first policies on the relocation of aboriginal tribes in the Republic of China. In light of the fact that early destinations of the relocation are disaster-prone areas where disasters are frequent as a result of insufficient flood prevention budget, the government again activated village relocation policies for tribal safety and conservation of national land, such as the relocation and reconstruction after the 921 Earthquake and the relocation of villages after the 88 Flood.

172. The IPBL and the Special Act for Reconstruction for Post-Typhoon Morakot Disaster stipulate that except for immediate and obvious danger, the government shall not force aboriginals out of their homeland; reconstruction in disaster-hit areas should be based on the respect for local people, their social (tribal) organizations, culture, and life styles. The

government shall designate certain sections within disaster-hit areas that are thought to be unsafe or on the land with illegal buildings to disallow residence or mandate relocation of residences or villages by a given deadline after having discussed and reached an agreement with existing residents and should adequately resettle the residents. Policies on the relocation of residences or villages established by the government for the sake of protecting disaster-affected people's life and property must be based on the respect for the said people. The people's consent must be obtained before the policies are implemented. Designation of specific areas is shown in Table 24.

**Table 24 Designation of specific areas of national land**

Unit: Case

| Type of Region \ Result | Number of areas designated | Specific areas |           | Safety concern |
|-------------------------|----------------------------|----------------|-----------|----------------|
|                         |                            | Approved       | Announced |                |
| Indigenous area         | 62                         | 26             | 26        | 36             |
| Non-indigenous area     | 98                         | 72             | 72        | 26             |
| Total                   | 160                        | 98             | 98        | 62             |

Source: Morakot Post-Disaster Reconstruction Council, Executive Yuan

173. A majority of those placed at the permanent housing foundation after Typhoon Morakot was aboriginal. To respect the free will of existing residents, for dangerous areas with disagreement on the designation after negotiation, areas of safety concern are added to facilitate disaster-affected people who are willing to relocate their residences or villages to be eligible for getting assigned permanent houses. Results of the survey (See Table 25) show that around 7,328 people choose to stay in their existing residences, accounting for 52.68% of the aboriginals within specific areas or areas of safety concern.

**Table 25 Results of relocation survey**

Unit: Household; Person (s); %

| Options \ Results              | Number of households | Number of people |       |
|--------------------------------|----------------------|------------------|-------|
|                                |                      | Number of people | (%)   |
| Applying for permanent housing | 1,881                | 6,583            | 47.32 |
| Staying in original residence  | 2,673                | 7,328            | 52.68 |

Source: Morakot Post-Disaster Reconstruction Council, Executive Yuan

174. Relocation and reconstruction at Gogan Tribe and Hagay Tribe in Fuxing Township, Taoyuan County: On August 24, 2004, Typhoon Aere devastated Sanguang Village and Gaoyi Village in Fuxing Township, Taoyuan County because of mudslides brought about by the heavy rain. The land shifted, resulting in cracked houses, and continued residence was not recommended. Therefore, measures were taken to relocate the disaster affected residents. Joint inspections done by the Soil and Water Conservation Bureau, Executive Yuan together with other authorities concerned indicated that for Sanguang Village, continued residency in Neighborhoods 3, 4, and 6 was not recommended and Neighborhood 5 was no longer habitable; for Gaoyi Village, Neighborhood 1 was no longer habitable. Thirty-four households that were affected in Sanguang Village were relocated to Gogang Tribe while 21 households from Gaoyi Village were relocated to Hagay Tribe. The Taoyuan County Government has completed determination of dangerous areas in the original residences and approved the reconstruction foundations at Gogang Tribe and Hagay Tribe. Alteration of land registration, the soil and water conservation plan, public facilities, and other facilities have all been completed for the site of relocation.

### **Land Expropriation**

175. Compulsory relocation as a result of land expropriation affects many civil and political rights, including the right of life, right of personal safety, right to non-interference with privacy, family, and home, and the right to the peaceful enjoyment of possessions. When it is necessary to dislodge the people, applicable regulations of the International Human Rights Law should be strictly followed and the principle of proportionality must be met upon enforcement. Legal procedures include adequate negotiation, advance notice, supply of information, time of implementation, legal relief and assistance, etc. For affected people, all appropriate measures should be taken to provide them with new housing, residence, or productive land.

176. The Land Expropriation Statute was established in 2000 to govern land expropriation. Procedures for land expropriation are more rigid than before with related compensation rules in place. As far as the expropriation purpose, procedures, and compensation rules are concerned, however, there is still room for improvement in practice.

177. The total area of expropriation came to 5,558.33 hectares from 2006 to 2011 and it is still increasing on a yearly basis. In 2009, the Central Taiwan Science Park Administration, Executive

Yuan expropriated over 589 hectares for the Stage IV development of the Central Taiwan Science Park (Erlin Science Park). Many local governments use development of industrial parks and science parks to be the reason for zone expropriation of agricultural land, too. For example, around 136 hectares of agricultural land were expropriated in the peripheral areas of the Zhunan Base of Hsinchu Science Park in Miaoli County (Dapu Project). The necessity of expropriation and public interest are being questioned. Land expropriation has failed to follow the negotiated price. The expropriation price is based on the latest announced current land value with additional compensation if necessary. There is, however, no resettlement plan in place. Effective communications are lacking during the expropriation process. Therefore, the public questions that the government has failed to place itself in the shoes of its people. The compulsory expropriation approach is also criticized. For example, an excavator entered fields laden with ripe rice and destroyed them. It is infringing on the people's right to property and right of existence.

178. After the excavator entered rice fields in Dapu, Zhunan, Miaoli County, other landlords in Wanbao of Miaoli County, Gongliao of New Taipei City, Stage IV Xiangxiliao of Central Taiwan Science Park in Erlin of Changhua County, HSR Tianzhong Station, Houli and certain areas in Daya of Taichung County, and Erchongpu of Hsinchu County also accused the government of expropriating their land by force. The Executive Yuan approved the Land Expropriation Statute Amendment on August 25, 2011. It passed three readings and was approved by the Legislative Yuan. The president announced it on January 4, 2012. Contents of the amendment include: (1) Before expropriation, it is necessary to evaluate the public interest associated with the establishment taking into consideration social factors, economic factors, cultural and ecological factors, and sustainable development. (2) The Zone Expropriation Proposal should include the demolition and resettlement plan and submitted to the Land Expropriation Review Committee for review.(3) Before an expropriation plan is determined, at least two public hearings should be held and communication procedures should be completed. (4) When the expropriation is compensated for with the market value or the reconstruction value, the resettlement plan should be available for medium to low income families who do not have a place to live as a result of the expropriation.

179. After the Law was amended, expropriation procedures have become more rigid to require both compensation at market value and a resettlement plan. Nevertheless, people are attached to their land for many personal reasons. Therefore, land expropriation should be considered as the last resort. To avoid expropriation disputes and its overuse, pre-expropriation public interest and necessity assessments must be done with civilian participation. Establishing a transparent mechanism for the formation and operation of the Land Expropriation Review Group, making specific announcements about the timing of expropriation by the market value, and avoiding expropriation of certain agricultural areas whenever possible is the only way to consolidate the protection of people's right to property and right of existence.

### **Demining Operation**

180. In response to the attacks mainland China waged against Kinmen and Matzu after 1949, the Republic of China installed landmines in multiple places on the islands. In 2006, however, the Statute for Anti-personnel Landmine Control was approved in accordance with the Covenant on Banned Use, Storage, Production, and Transfer of Anti-personnel Landmines to mandate complete elimination of antipersonnel landmines in the deployment areas by 2013.

### **Nuclear Facilities**

181. There are currently three active nuclear power plants in Taiwan, and a fourth is under construction. Three out of the four plants are located in the northern coastal areas. In light of the Fukushima nuclear disaster, the government embarked on a "Comprehensive Safety Assessment" and consolidated its integrated capabilities to respond to simultaneous disasters. "Ultimate Response Guidelines" were also established to comprehensively prevent serious and uncontrollable conditions in the event of a nuclear accident. Low level radioactive waste is transported to an outlying island named Orchid Island, a policy which is highly contested by the islanders, predominantly comprised of aboriginals, for the long term. In order to solve this problem, the government has completed a candidate site selection process for the disposal of low level radioactive waste. After the site selection process for final disposal is completed and the site is operable, waste from the current storage site on Orchid Island will be relocated and the site itself decommissioned as soon as possible. In addition, to achieve the goal of a "nuclear free homeland" as stipulated in the Basic Environment Act, the government announced a new energy

policy on November 3, 2011 to consolidate various energy-saving, and carbon-reducing, and stable power supply measures in a practical and robust way to create favorable conditions for accomplishing the goal of "gradually moving toward a nuclear free homeland".

### **Isolation for Individuals with Communicable Disease**

182. During the severe acute respiratory syndrome (SARS) outbreak in 2003, multiple cases of infection and death occurred at Taipei City Hospital (Heping branch). The entire staff at the hospital was isolated. The government issued consolation money and/or emergency rescue to those who were isolated and on behalf of those who died. The Communicable Disease Control Act that was amended in 2004 authorizes health authorities to set up disease isolation or quarantine facilities upon the occurrence of an emergency disease outbreak and provide compensations to those being quarantined or isolated. Grand Justice Interpretation No. 690 indicates that, despite the fact that compulsory isolation is not unconstitutional, the maximum duration of compulsory isolation as well as related organizations and procedures upon the decision to enforce compulsory isolation should be specified in regulations. In addition, the mechanism for filing a timely petition to the court for remedies and reasonable compensations should be established. Authorities concerned should have comprehensive discussions about the statutory systems for communicable disease control.

### **Lo-Sheng Sanatorium**

183. Before 1962, the inhumane centralized compulsory quarantine treatment policies were adopted over a long term to treat people with Hansen's disease, resulting in extreme discrimination against and pain suffered by the patients. The Legislative Yuan established the Statute For Hansen's Disease Patients' Human Rights in 2008. The Executive Yuan apologized publicly in 2009 and expressed its desire to care for and offer better medical care. Despite all these, Lo Sheng Sanatorium carries multiple preservation values in terms of human rights, cultural heritage, and the history of medical development and it is where patients with Hansen's Disease live. Also, in light of the concerns expressed by the UN special rapporteurs Paul Hunt and Miloon Kothari about Lo-Sheng Sanatorium on July 20, 2005, the government should pay serious attention to how to protect the rights of Hansen's Disease patients under the Covenant.

## Article 13

### Applicable Regulations on Issuance of Visas

184. The issuance, rejection, voidance, abolishment, and cancellation of visas are to follow the Statute Governing the Issuance of ROC Visas in Foreign Passports, the Enforcement Rules of the Statute Governing the Issuance of ROC Visas in Foreign Passports, and the Operating Guidelines for Overseas Offices of the Republic of China for Interviews with Foreigners Applying to Come to Taiwan After Marrying a Citizen of the Republic of China.

185. When the Ministry of Foreign Affairs and its overseas offices handle visa applications, they should take into consideration the national interests of the ROC, the applicant's conditions, and the relations between the applicant's country and the Republic of China before making a decision. When the applicant has one of the conditions indicated in the Statute Governing the Issuance of ROC Visas in Foreign Passports, the Ministry of Foreign Affairs or its overseas offices shall reject the application without providing a reason or shall void or abolish the visa. For related statistics of visas issued, rejected, voided, and abolished in the past five years, see Table 26.

**Table 26 Statistics of visas issued, rejected, cancelled, and voided between 2007 and 2011**

| Unit: Case |         |          |                                    |
|------------|---------|----------|------------------------------------|
| Year       | Issued  | Rejected | Cancelled<br>(including<br>voided) |
| 2007       | 394,911 | 3,815    | 7                                  |
| 2008       | 395,694 | 2,711    | 20                                 |
| 2009       | 348,990 | 1,931    | 13                                 |
| 2010       | 406,222 | 2,392    | 7                                  |
| 2011       | 467,759 | 4,199    | 185                                |

Source: Department of Treaty and Legal Affairs, Ministry of Foreign Affairs

186. In the event that an alien applies to come to Taiwan to stay with a national of the Republic of China temporarily or permanently as a spouse, he or she shall apply for a visa in accordance with the Statute Governing the Issuance of ROC Visas in Foreign Passports. As soon as the application is reviewed and approved by an overseas office, he or she shall obtain the visa.

187. The draft Refugee Law applies to aliens or stateless persons. Before the Law is approved, however, there is no legal basis for issuing the entry permit to an asylum seeker. Requirements for issuing the entry permit to an asylum seeker as indicated in the draft Refugee Law are as follows: Aliens or stateless persons who are forced out of their original native countries or countries of residence because of a war or natural catastrophe and can no longer live in or be protected by the countries, or who leave their native countries or countries of residence because of their race, religious affiliation, nationality, or affiliation with a specific social group or specific political opinions and have sufficient and legitimate reasons to fear prosecution insofar as they cannot be protected by the countries or are unwilling to return to the countries because of such fear may apply for recognition and determination of refugee status with the Republic of China. For those with confirmed refugee status, the competent authority shall issue a Refugee Certificate. Those holding a Refugee Certificate shall apply for an Alien Residency and refugee travel documentation and apply for permanent residency or naturalization in accordance with the law.

188. Currently there are no applicable laws and regulations on asylum seekers. As far as issuance of visas to aliens is concerned, asylum is not specified as a reason for applying for a Republic of China visa according to Statute Governing the Issuance of ROC Visas in Foreign Passports and its Enforcement Rules.

189. For mainland Chinese who seek political asylum in the Republic of China, the government has established a handling mechanism. When the person concerned is overseas or travels to Taiwan legally for a general reason (e.g. social exchange, professional exchange, sightseeing, etc.), the case shall be handled by the Ministry of the Interior in accordance with the Act Governing Relations between the People of the Taiwan Area and the Mainland Area and the Regulations Governing the Permission of Join-family Residency, Long-term Residency, or Household Registration of People from Mainland China in the Taiwan Area and be approved as a special case for long-term resident in Taiwan based on political considerations. On the other hand, when the person concerned enters the Republic of China without a permit or does not submit an application during a layover in Taiwan, the case shall be handled in accordance with the Handling Procedures for Mainland Chinese Seeking Political Asylum approved by the



Executive Yuan. Meanwhile, the MAC is currently considering applicable requirements in the draft Refugee Law by initiating the statutory process for the Draft Amendment to the Act Governing Relations between the People of the Taiwan Area and the Mainland Area in order to further perfect the handling mechanism for mainland Chinese seeking asylum in Taiwan.

190. There were 12,664 aliens deported in 2007, 11,570 in 2008, 11,736 in 2009, 10,180 in 2010, and 3,968 in 2011. Between 2007 and 2011, a total of 50,118 aliens were deported. According to the current practice, when the police authority investigates a foreign government's request for the status of its national in Taiwan and finds conditions obviously violating the Immigration Act and qualifying the national for deportation according to intelligence provided by the native country about the national's crime and wanted status, the police authority shall verify that the national is the person in question wanted by the foreign government and notify the foreign government's embassy in Taiwan immediately and have the NIA handle all subsequent deportation procedures in accordance with the Police Authority Performing Act. This should be reviewed if the process meets the Covenant requirement on the protection of alien rights.

#### **Application regulations governing deportation of foreigners**

191. For aliens who stay or reside in the Republic of China, Article 95 of the Criminal Code stipulates that any alien receiving sentence more than imprisonment, for whom the deportation decision is made by the court, may be deported after execution or remission of punishment" or the NIA shall enforce deportation when they have any of the conditions under Paragraph 1, Article 36 of the Immigration Act. When aliens have conditions indicated in Subparagraph 2, Subparagraphs 4 to 7, Subparagraph 9 or Subparagraph 10, Paragraph 1, Article 36 of the Immigration Act, the NIA shall mandate that they leave Taiwan within seven days before enforcing deportation.

192. When aliens who stay or reside in Taiwan legally but meet one of the circumstances for deportation as specified in the Immigration Act, the Republic of China shall have the original disciplinary authority enforce the deportation punishment in accordance with the Immigration Act, the Administrative Procedure Act, and the Administrative Execution Law after the disciplinary citation is delivered to the recipient in compliance with legitimate legal procedures. When the recipient does not agree on the deportation punishment, he or she shall file an appeal

or initiate administrative litigation in accordance with the Administrative Appeal Act and Administrative Court Procedure Law of the Republic of China. In current practice, the NIA will wait for related administrative remedy procedures to be completed before enforcing deportation in order to protect the right of aliens to administrative remedies.

193. Aliens who receive the deportation punishment and disagree on the result of an appeal shall initiate administrative litigation and have a court handle the case. Before the court makes a decision, not all aliens will be subjected to restriction of personal freedom (detention). The competent authority shall make a substantial decision depending on the actual facts and the necessity of the detention. In current practice, deportation in the Republic of China is done basically to send the recipient back to his or her home country and does not involve prevention against the recipient returning to his or her home country. Detention or deportation to a third country will not happen, either. Neither will differential treatment. In addition, when the alien to be deported applies for administrative remedies, as long as the court has ruled temporary suspension in the implementation of administrative act, he or she will only be deported after the administrative remedy procedures are completed.

194. For aliens who have obtained the Alien Resident Certificate or Alien Permanent Resident Certificate, the Immigration Act stipulates that unless they give up their right to express opinions in writing or volunteer to leave the country or the court has made the deportation decision and announced it or they are mandated to leave the country in accordance with other laws or are at risk of endangering our national interest, public safety, public order, or engaging in terrorist activities and it is urgent to enforce the punishment immediately, the NIA should convene a review committee meeting comprising experts and scholars before the aliens are deported by force so that they are given the opportunity to express their opinions. The review committee meeting should be called for on a first come first serve basis. Direct enforcement of deportation shall only be done without the review process in an exception. It is the pre-review stage before deportation is enforced.

195. As is indicated in the Immigration Act, deportation is not a formal requirement. Therefore, when an alien has overstayed in Taiwan, he or she shall be temporarily detained in accordance with Subparagraph 2, Paragraph 1, Article 38 or deported by force in accordance

with Subparagraph 8, Paragraph 1, Article 36 of the Act. In addition, Article 3 of the Regulations Governing the Detention of the Aliens stipulates that the decision of compulsory detention must be done in writing and the Bill of Mandatory Detention must be issued when detaining aliens. In principle, those to be deported must be temporarily detained before deportation is enforced. Therefore, the historical number of people having been deported is calculated with the aforementioned number of people held in detention (including those in large shelters). Statistics show that there were a total of 39,125 people who stayed at large shelters and 65,933 people who stayed at temporary shelters between 2007 and 2011.

196. Alien workers who are under judicial investigation or trial because of involvement in a criminal case and are handed over by the Judicial Authority to the NIA are not to be held in detention by the NIA directly. It is advised to make sure that the workers meet the requirements for temporary detention as indicated in Article 38 of the Immigration Act and the detention decision shall only be made when it is necessary. Statistics show that there were 1,112, 1,227, 1,388, 1,184, and 1,295 people who were involved in criminal cases and were held in detention by the NIA, respectively, between 2007 and 2011.

197. Articles 13 and 15 of the Legal Aid Act establish that besides nationals, those who legally reside in the Taiwan area shall apply for legal aid. This takes into consideration of the limited legal aid resources available and international reciprocity. In other words, foreigners visiting or residing in Taiwan legally shall meet the requirements for legal aid. Aliens to be deported, however, are not qualified for legal aid under the Legal Aid Act if they are not legal residents in the Taiwan area. Related statistics and data are not available at the moment as the Legal Aid Foundation (LAF) has not tallied legal aid applications submitted by aliens to be deported. Meanwhile, the NIA deports aliens with a Bill of Mandatory Deportation specifying the recipient's rights to applying for administrative remedies and does not restrict the recipient's right to spontaneously apply for legal aid.

## **Article 14**

### **Court System**

198. Article 77 of the Constitution specifies that the Judicial Yuan is the highest judicial body that handles civil, criminal, administrative litigation and the discipline of civil servants. Article 78 of the Constitution indicates that the Judicial Yuan shall interpret the Constitution and takes charge of the interpretation of laws and orders, too. The power to interpret laws and orders is to be exercised by the Grand Justice of the Judicial Yuan and the Supreme Court, High Court and its Branch Courts, District Courts, Juvenile and Family Courts, Supreme Administrative Court, High Administrative Court, Intellectual Property Rights Court, and the Public Functionary Disciplinary Sanction. Military courts under the Ministry of National Defense include the Military Supreme Court, Military High Court and its Kaohsiung Branch, and two Military District Courts.

### **Appointment of Judges**

199. Judges are appointed in two ways: (1) Those who have completed the National Judges Examination with a passing score need to complete two years of programs and practical training at the Training Institute For Judges and Prosecutors under the Ministry of Justice, including receiving guidance from judges and prosecutors, practicing how to begin a court session, and composing documents at district courts and district prosecutors offices. After having completed tests for various stages with a passing score, they can choose to serve as judges or prosecutors based on their scores and inclinations. (2) Lawyers, professors, adjunct professors, assistant professors who have been approved by the Judicial Yuan to serve as judges must complete programs at the Institute for Judicial Professionals under the Judicial Yuan and receive guidance from judges, practice beginning a court session, and compose documents at district courts. They shall only begin to serve as judges after having completed tests for various stages with a passing score. Judge advocates must receive basic training of military officers first. As soon as they are eligible for serving as judge advocates, the Ministry of National Defense shall assign them according to law.

200. The numbers of male and female judges in general courts from 2006 to 2011 increased from 1,047 to 1,062 and from 621 to 825, respectively. In military courts, on the other hand, the

number of female judge advocates increased from 1 to 11 while that of male judge advocates dropped from 255 to 216.

### **Judge Identity Protection**

201. Articles 80 and 81 of the Constitution stipulate that judges shall be above partisanship and shall, in accordance with law, hold trials independently, free from any interference; judges shall hold office for life; no judge shall be removed from office unless he has been guilty of a criminal offense or subjected to a disciplinary measure, or declared to be under interdiction; no judge shall, except in accordance with law, be suspended or transferred or have his salary reduced. There have been four judges since 2006 who were subjected to disciplinary measures for suspected acts of corruption. The Judge Law approved in 2011 provides safeguard clauses on the restrictions on the removal from office for and suspension of judges and on the transfer to a non-judge position, change in the trial level, or change in the geographical location. The Judicial Yuan also added the Court of Judicial Discipline and Judges Review Committee to handle disciplinary measures for judges, judge identity protection, undermined judicial independence, and review of cases.

### **Appointment of Judge Advocates**

202. Appointment of judge advocates has the age limit. It is not a permanent job. No judge advocate shall, except in accordance with law, have his salary reduced, be suspended, or be removed from office and shall not be assigned a non-trial advocate position without his or her consent. The Act of Punishment of the Armed Forces, Act of Assignment for Officers And Noncommissioned Officers of the Armed Forces, and Act of Military Service for Officers and Noncommissioned Officers of the Armed Forces, however, specify that a judge advocate can still be removed from office or dismissed from military service when he or she commits serious criminal acts, is sentenced, is wanted, or for other major reasons or in consideration of his or her performance.

### **Litigant Confrontation Precedents in Cases Handled by the Grand Justice**

203. The Constitutional Court was legitimized in accordance with the Additional Articles of the Constitution in 1993. There are no precedents for the Grand Justice to follow on the exercise of jurisdiction. The Constitutional Interpretation Procedure Act of the Judicial Yuan, however,

stipulates that litigant confrontation shall be adopted in the Constitutional Court proceedings when the Grand Justice exercises its power of interpretation. There have been seven such cases so far on topics like the definition of treasury bond, protection of personal freedoms, the legitimacy for the Vice President to serve as the Premier at the same time, assembly and procession, Statute For Special Committee For Probing Into March 19 Gunshot Incident, the mandatory fingerprint under the Household Registration Act, and the restriction of the 2011 Social Order Maintenance Act on the stalking by news reporters. In 2011, the whole proceedings were posted on line with positive feedback.

### **Bar Association**

204. There are currently 16 local bar associations and one national bar association in the Republic of China. The highest institution in a bar association is the general meeting where members elect directors and supervisors. When a bar association holds a meeting, the local social administration authority and the industry competent authority should be notified.

### **Subjects of Court Martial**

205. As is indicated in the Constitution and the Code of Court Martial Procedure, non-active duty military personnel is not subjected to court martial unless it is otherwise specified in the Martial Law. Therefore, court martial jurisdiction includes no civilians. The scope of court martial at the time of Martial Law, however, includes non-active personnel. In battlefield, civil cases can also be included if necessary.

206. For the Taiwan area, the Martial Law rule was declared to take effect on May 20, 1949 and end on July 14, 1987. For other regions, such as Kinmen, Matzu, Pratas, and Spratly, it began on December 10, 1948 and ended on November 6, 1992. Current data and statistics show that there were 3,714 non-active personnel tried by court martial in accordance with the Martial Law.

207. The Constitution says that the establishment of a court must be based on laws approved by the Legislative Yuan. The Republic of China does not set up a court or a religious court in accordance with the Common Law.

### **Right to a Public Hearing**

208. Oral argument of litigation and declaration of a judgment in a lawsuit should basically be done in open court. However, when there is a concern of obstruction of national safety, public

order, or good customs or when it involves a juvenile, civil protection order, sexual assault, trade secrets, marriage, interrogations before criminal private prosecution proceedings or to protect the party concerned or privacy of a third party, business secrets, and for conditions in Article 69 of the Children and Youth Welfare Act, the court shall decide not to disclose it. The papers of judgment should be published in the gazette or in other appropriate ways. Except for those that shall not be published as indicated by law, all papers of judgment shall be available for free inquiries online.

### **Presumption of Innocence**

209. Presumption of innocence is a fundamental principle in the Code of Criminal Procedure. Before a defendant is proven and confirmed to be guilty through a trial, he or she shall be presumed to be innocent. Facts of the crime should be determined on the evidence. Without evidence, facts of the crime shall not be determined. Without confession or evidence, it shall not be presumed that the defendant is guilty of a certain crime because he or she refuses to provide a statement or chooses to remain silent. The civil servant performing the criminal procedure shall pay equal attention to conditions to the advantage and disadvantage of the defendant in the case he or she handles. The defendant shall ask the civil servant in the preceding paragraph to make a decision to his or her advantage. When the defendant is in court, his or her body shall not be restricted but there shall be a guard by his or her side. In other words, no guard instruments shall be on the defendant to avoid the presumptive idea that he or she is guilty as a result of the physical restriction. The same shall apply to court martial procedures.

210. Interrogating a defendant who is deaf or speech impaired or speaks a different language should be done with assistance from an interpreter so that the defendant quickly understands the nature of his or her charge and reason for the accusation.

### **Given Sufficient Time and Convenience to Prepare for the Defense and Contact the Selected Defender**

211. Article 27 of the Code of Criminal Procedure stipulates that a suspect shall at any time retain his or her defense attorney while under investigation by judicial police officers or judicial policemen. The police will spontaneously inform the suspect of this right when questioning him or her. Contents of Article 95 of the Code of Criminal Procedure are also information that should

be documented in the written records on police interrogations to ensure that the suspect is aware of his or her rights. Articles 34 and 34-1 of the Code of Criminal Procedure stipulate that the defender shall meet with the detained defendant and correspond with him or her. In principle it is not restricted. Unless there is sufficient material evidence that the defendant destroys, forges, alters evidence or allies with the accomplice or witness, it shall not be restricted. In addition, the restriction petition, once initiated by the public prosecutor, must be signed and approved by the judge. The above right is applicable to both nationals and aliens. Article 272 of the Code of Criminal Procedure stipulates that a summons for the first trial date shall be served at least seven days prior thereto, and for the cases specified in Article 61 of the Criminal Code, such summons shall be served at least five days prior to the first trial date. The court should give the defendant an adequate period of time prior to a trial so that he or she can be fully prepared for the defense before the trial date. The same shall apply to court martial procedures.

### **Compulsory Defense**

212. Although the right to compulsory defense for people with intelligence impairment in the Code of Criminal Procedure has already been extended to the public prosecutor's investigation procedure, it only applies where the accused is unable to make a complete statement due to unsound mind, and does not extend to those due to autism, mental disorders, learning disorders or other similar conditions. Without assistance from a defender, it is obviously insufficient to protect the rights of the said people. In addition, when the defendant has not selected a defender and is a low income earner, it requires a court's decision before a defender can be assigned and compulsory defense does not apply. The protection for the disadvantaged in society is incomplete. The Code should be revised as soon as possible to protect people's right to defense as indicated in the Covenant. Until such a revision is made, the relevant authorities handling people who are unable to provide complete statements on their own and/or persons with impaired comprehensibility beyond statutory conditions should honor the Covenant by providing such people with necessary assistance immediately.

213. The LAF was established in accordance with the Legal Aid Act to offer assistance to people who are not adequately protected by law because of financial inability or for other reasons. It currently has 21 branches. In the event that the defendant cannot assign a defender to



accompany him or her during interrogations or to defend him or her because of financial inability (Note: the LAF has criteria for determining financial inability of people receiving financial aid. It is unnecessary, however, to review the financial capability of the applicant charged with a criminal felony. Legal aid is always provided.) or for other reasons, he or she shall apply for legal aid in accordance with Articles 13 and 14 of the Legal Aid Act.

214. There were 6,822, 9,600, 12,677, 14,176, 16,035, and 16,064 cases (criminal defendants) applying for legal aid, respectively, from 2006 to 2011. For approved legal aid, on the other hand, there were 4,444, 6,937, 7,580, 9,029, 10,356, and 10,483 cases (defendants), respectively, from 2006 to 2011.

215. From 2008 to 2011, there were 15,712, 12,151, 9,163, and 8,268 cases of compulsory advocacy by public defenders, respectively. There were 2,155, 2,025, 2,491, and 1,855 cases of compulsory defense by volunteer defenders, respectively. There were 5,070, 7,375, 7,724, and 7,842 cases of compulsory defense with legal aid, respectively.

216. Articles 13 to 15 of the Legal Aid Act stipulate that people who reside in Taiwan legally shall apply for legal aid as long as they are financially incapable or meet the requirements for a waiver of the financial review as indicated in the Legal Aid Act. There is no legal aid available at the moment for aliens who reside in the Republic of China illegally and are involved in a lawsuit because they do not meet the aforementioned qualification. In addition, for humanitarian consideration, legal aid will be discussed for aliens determined by the prosecutor or police to be the victims of human trafficking and placed by the country within its territory whose situations and financial capability meet the requirements under the Legal Aid Act to protect their human rights.

#### **Assistance from an Interpreter in Judicial Proceedings**

217. Free interpretation services are available during investigations and trials conducted by the public prosecutor and the judge, including Taiwanese, Hakka, aboriginal languages, various foreign languages, and sign language.

#### **Immediate Trial Unless Delay is Justified**

218. The average number of days spent in the investigation by a public prosecutor for the past few years is around 50. For criminal proceedings with civil action in 2002 and 2003, the average

number of days required for district courts to close a case was around 126.95 and that for the high court was around 97.27. The Judicial Yuan took substantial measures in 2004 to urge judges in the Criminal Division to make independent judgment on the merits with civil action. After individual courts adopted the practice, the average number of days required for district courts to close a case of criminal proceedings with civil action from 2006 to 2010 dropped to 67.74 and that for the high court dropped to 85.31. There is currently no data available regarding the average number of days required to close a criminal, civil, or administrative litigation.

### **Right of Direct Access to Case Files**

219. Article 33 of the Code of Criminal Procedure stipulates that the defender may examine the case file and exhibits and make copies or photographs thereof. A defendant without a defender shall make advance payments during trial to request provision of copies of the written records in the file. The court, however, shall restrict provision of photocopies of written records whose contents are irrelevant to facts that the defendant is being accused of or are sufficient to undermine investigation of a separate case or involve the privacy of the party concerned or a third party or business secrets.

### **Examination Proceedings**

220. When the Code of Criminal Procedure was amended in 2003, it adopted part of the American cross examination rules. After the presiding judge has examined the witness or expert witness's identity, the public prosecutor, defendant, defense attorney, or the agent of defendant will begin the cross examination proceedings directly. The party calling the witness or expert witness shall do the direct examination first while the other parties will do the cross examination, followed by redirect examination and recross examination. Other parts of the Code of Criminal Procedure, however, remain unchanged.

### **Appellate system**

221. The Code of Criminal Procedure stipulates that a prosecutor or a defendant shall appeal to the appellate court when he or she disagrees on the judgment of a lower court. Where a complainant or victim disagrees on the judgment of a lower court, he/she may request the prosecutor to appeal with reasons set forth. A prosecutor, to honor his or her objective obligations, may appeal for interests of the defendant. The court of second instance may not

pronounce a sentence heavier than the one in the original judgment for an appeal filed by a defendant or for interests of the defendant. This rule does not apply if the judgment of the original court is set aside because of the law was wrongly applied.

222. The review system is adopted for second instance proceedings. That is, a court of second instance shall begin substantial proceedings on the whole case. Between 2006 and 2010, there were 6,920 people on average each year with reduced sentence through appeal to a court of second instance that overruled the original judgment, accounting for 20.65% of all defendants having filed appeals to courts of second instance. In other words, around 20% of defendants appealed and got their sentence reduced.

**Table 27 Elimination of the right to appeal in criminal proceedings**

Unit: Case; %

| Year | Ratio of sentence bargaining among criminal cases at district courts |                                    |       | Ratio of second instance cases at the high court denied appeal because of conditions in Article 376 of the Code of Criminal Procedure |  |       |
|------|--|------------------------------------|-------|---|--|-------|
|      | Number of bargaining cases   | Number of public prosecution cases | Ratio | Number of Shang-Yi-Zi cases closed  | Number of second instance cases closed | Ratio |
| 2006 | 6,174  | 158,097                            | 3.91  | 6,548   | 22,539                                 | 29.05 |
| 2007 | 8,968  | 185,874                            | 4.82  | 8,233   | 25,845                                 | 31.86 |
| 2008 | 12,132   | 202,825                            | 5.98  | 8,285   | 25,399                                 | 32.62 |
| 2009 | 8,775  | 192,313                            | 4.56  | 7,792   | 22,196                                 | 35.11 |
| 2010 | 5,911  | 188,479                            | 3.14  | 7,371   | 21,172                                 | 34.81 |
| 2011 | 8,061  | 185,086                            | 4.36  | 7,616   | 20,460                                 | 37.22 |

Source: Statistics Department, Judicial Yuan

Description: 1. District court ratio = (Number of sentence bargaining cases closed/number of public prosecution criminal cases closed) \*100.

2. High court ratio = (Number of Shang-Yi-Zi cases closed/Number of second instance criminal cases closed) \*100.

3. Appeal is not allowed for bargaining judgment as indicated in Article 455-10 of the same Code unless with circumstances in the proviso. Appeals filed with the Supreme Court are subjected to the restrictions in Article 376 of the same Code.

**Table 28 Ratio of cases approved to be submitted to the higher court for review**

Unit: Case; %

| Year | District Court                     |                                   |                  | High Court                         |                                   |                  |
|------|------------------------------------|-----------------------------------|------------------|------------------------------------|-----------------------------------|------------------|
|      | Number of cases granted appeal (A) | Number of cases denied appeal (B) | Ratio (A/ (A+B)) | Number of cases granted appeal (A) | Number of cases denied appeal (B) | Ratio (A/ (A+B)) |
| 2006 | 140,962.5                          | 8,784.5                           | 94.13            | 12,871.5                           | 6,778.0                           | 65.51            |
| 2007 | 169,881.0                          | 6,215.0                           | 96.47            | 13,707.5                           | 8,018.0                           | 63.09            |
| 2008 | 184,798.5                          | 6,605.5                           | 96.55            | 13,553.0                           | 8,727.5                           | 60.83            |
| 2009 | 173,133.0                          | 7,146.0                           | 96.04            | 12,152.0                           | 8,707.0                           | 58.26            |
| 2010 | 167,907.0                          | 6,096.5                           | 96.50            | 11,325.0                           | 8,296.5                           | 57.72            |
| 2011 | 164,561.0                          | 5,376.5                           | 96.84            | 10,374.5                           | 8,479.5                           | 55.03            |

Source: Statistics Department, Judicial Yuan

Description: 1. Criminal procedure cases closed at the high court and district courts.

2. Ratio of cases approved to be reviewed by a higher court = (Number of cases granted appeal/ (Number of cases granted appeal + cases denied appeal)\*100.

223. The appeal system established in the Code of Court Martial Procedure is generally identical to that in the Code of Criminal Procedure. In addition, whenever the defendant disagrees on an imprisonment or above judgment made by the military court, he or she shall appeal to the judicial authorities claiming the judgment to be illegal.

**Table 29 Figures of related appeals of court martial cases**

Unit: Case

| Contents \ Year   | Year  |       |       |       |       |      |
|---|-------|-------|-------|-------|-------|------|
|   | 2006  | 2007  | 2008  | 2009  | 2010  | 2011 |
| Total number of cases in military courts at all levels  | 1,878 | 2,294 | 1,388 | 1,532 | 1,362 | 836  |
| Number of cases with sentences changed or remanded  | 147   | 110   | 67    | 76    | 85    | 56   |
| Number of cases with defendants (or those considered to be defendants) filing appeals after court martial judgments | 264   | 201   | 175   | 242   | 224   | 143  |
| Number of cases with prosecutors filing appeals after court martial judgments                                       | 39    | 47    | 47    | 60    | 44    | 55   |
| Number of cases with both defendants  | 23    | 26    | 23    | 22    | 75    | 29   |

| Year  | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
|---|------|------|------|------|------|------|
| Contents  |      |      |      |      |      |      |
| (or those considered to be defendants)<br>and prosecutors filing appeals after court<br>martial judgments |      |      |      |      |      |      |
| Number of cases with trial by default   | 0    | 0    | 0    | 0    | 0    | 0    |

Source: All military courts and the prosecutors' offices under the Ministry of National Defense

224. Taiwanese people are not entitled to petition to a higher court for retrial in certain cases with guilty rulings. For example, cases with not guilty rulings in courts of first instance and guilty rulings in courts of second instance shall not be appealed to courts of third instance. Although extraordinary appeal and retrial are available, they are not identical to those indicated in the Covenant and General Comment No. 32.

**Juvenile trials should take into account the age of the defendant and the desire to help the defendant to readapt to social life when proceedings are being determined**

225. Juvenile cases are to be handled by juvenile courts. Juvenile criminal acts that are subjected to military jurisdiction shall also be tried by juvenile courts in accordance with the Juvenile Delinquency Act. The protection for and rights of teenagers during a lawsuit do not vary because of their identity or age.

226. There are three types of corrective institutions for juveniles, the juvenile detention house, juvenile reformatory school, and juvenile correction school: (1) Juvenile detention houses are meant for teenagers aged 12 and above but younger than 18 who are under protection or are criminal defendants.(2) Juvenile reformatory schools target teenagers under protection and to receive reformatory education as defined in the Juvenile Delinquency Act.(3) Juvenile correction schools include Chengjheng High School and Ming Yang Correctional High School, which are meant to reinforce the efficacy of corrective education for teenagers by combining school education, correction, and rehabilitation in one.

227. Based on the survey performed by the juvenile probation officer, the juvenile court shall rule no trial after appropriate evaluation supporting the mild nature of the offense, and refer the juvenile to a child or juvenile welfare or reformatory institution for proper counseling. In other

words, it is a redirection measure that refers a delinquent juvenile to the social welfare service system through judicial dispositions. The number of teenagers referred through this mechanism was 57, 67, 110, 97, 73, and 85, respectively, from 2006 to 2011.

228. For any student to be released within a week, the current practice is that the student's schooling data are sent to the local branch of the Taiwan After-Care Association in the area the court of original jurisdiction is based and local education, police administration, social administration, among other authorities, are informed through official letters requesting assistance to the teenager in schooling and employment. In one month after the student leaves the institution, the class teacher or guidance counselor will follow up with the student by phone on his or her status at home. Upon discovery of any issue, the student is referred to a related counseling institution immediately. When it is necessary, a representative will visit the student or his or her parent to help resolve problems facing the student, such as employment, schooling, and adaptation to society. Currently, survey is only done on the employment and schooling of students having received vocational training. Among the students, 48% are employed, 7% are serving the military, 21% are schooling, 4% are between jobs, and 9% are lost to follow up.

## **Article 15**

### **Principle of Legality of Crimes and Punishments**

229. The principle of legality of crimes and punishments is a fundamental principle in criminal laws. Article 1 of the Criminal Code clearly indicates that a conduct is punishable only when expressly so provided by the law at the time of its commission. This also applies to a rehabilitative measure which puts restrictions on personal freedom. There is no application by analogy or analogy and quotation. The Criminal Code of the Armed Forces of the Republic of China applies to the principle of crimes and punishments by law as Article 1 of the Criminal Code. In other words, the principle of crimes and punishments by law applies both in peace and at war in the Criminal Code and the Criminal Code of the Armed Forces with no exception.

### **Applicability of Old and New Laws**

230. The principle of applying the older or the more lenient law applies to both investigation and trial in the Republic of China. Paragraph 1, Article 2 of the Criminal Code stipulates that

when the law is amended after the commission of an offense, the law in force at the time of the commission shall apply. When the amended law is favorable to the offender, however, the most favorable law shall apply. When the law is changed or the sentence is reduced after the commission of the offense, principle of applying the older or the more lenient law shall apply.

231. The principle of applying the older or the more lenient law is adopted in the Criminal Code. The principle of applying the newer or the more lenient law only applies to security measures against personal freedoms.

232. When the law is changed after a judgment is made according to the older law with more severe punishments, the sentence shall still be executed based on the judgment.

## **Article 16**

### **Criteria for Obtaining Legal Personality**

233. Article 7 of the Constitution and Articles 6 and 7 of the Civil Code stipulate that the people of the Republic of China are born with equal legal capacity without differential treatment. An unborn child is considered as if it were already born with regard to its interests, except when it is subsequently born dead.

234. An alien or person without a nationality currently residing in the territory of the Republic of China shall apply for naturalization in accordance with the Nationality Act. A total of 100,127 people obtained the nationality of the Republic of China through naturalization between 1982 and 2011.

### **Birth Registration System**

235. As is indicated in the Nationality Act, the nationality of the ROC is granted basically taking into consideration of the nationality of the applicant's father or mother. When the father or mother is unknown or both the father and mother have no nationalities, the nationality is determined by the applicant's birth place.

236. The Children and Youth Welfare Act amended and announced on November 30, 2011 already requires that the government assist children and teenagers yet to complete household registration, yet to obtain a nationality, or without a permit for temporary stay or household registration permission in getting their household registered, naturalized, and the permit for

temporary stay or household registration permission while at the same time protecting their rights to social welfare services, medical care, and schooling.

237. Newborns without the ROC nationality or an ID in the Taiwan area, e.g. having given birth by unmarried mothers with unknown fathers and not deported together with the mothers back to their home countries, for whom the birth mothers cannot be located by diplomatic means, can become orphans in Taiwan. The Ministry of the Interior has handled three such cases: (1) Child A completed birth and adoption registrations in 2010.(2) Child B was born in Taiwan without a Birth Certificate and the mother was an alien worker who already left Taiwan and was unwilling to come back to Taiwan. There are no documents available for reference either. The actual caretaker of the child will be given access to consultation. The child will be declared an abandoned baby or a court ruling will be requested for subsequent management. (3) Child C received the Temporary Residence Certificate in 2011. The NIA is currently preparing for bringing forth the case for discussion to remove the mother's custodianship so that the child can leave Taiwan.

## **Article 17**

### **Statutory Regulations Protecting People's Privacy**

238. Regulations on the protection of and non-interference with people's privacy and freedom of communication are available in the Criminal Code, Code of Criminal Procedure, Social Order Maintenance Act, Communications Protection And Surveillance Law, and Police Authority Performing Act.

239. The communication surveillance petition filed by judicial police to facilitate investigation of criminal cases must be reviewed and approved by the prosecutor first and then filed with the court by the prosecutor. In other words, the procedure goes through two levels of judicial control. The highest ranking official in charge of the national intelligence agency is the Director General of the National Security Bureau (NSB), who is authorized to issue the communication surveillance warrant directly without approval from a judge when the subject under surveillance does not have a registered permanent residence in the Republic of China and it is considered necessary to collect intelligence on foreign force or hostile overseas force. When the subject



under surveillance has a registered permanent residence in the Republic of China, however, the surveillance requires prior approval from the responsible judge at the high court. In case of an emergency and the judge does not grant the approval within 48 hours, the approval can be supplemented upon ex post notice. In other words, the communication surveillance warrant issued by the Director General of the NSB is not or to the lesser extent subjected to judicial control.

240. The Communications Protection And Surveillance Law stipulates that contents of or evidence derived from eavesdropping seriously against the law shall not be entered as evidence during judicial investigation, trial, or other proceedings. Both the Communications Protection And Surveillance Law and Police Authority Performing Act have regulations on related relief when people's lives are disturbed as a result of illegal communications surveillance and illegal or improper ways or procedures in which the police exercise their powers.

### **Press Freedom and Privacy**

241. Grand Justice Interpretation No. 689 holds that the control over the news covering behavior as indicated in Subparagraph 2, Article 89 of the Social Order Maintenance Act is appropriate and in compliance with the principle of proportionality. In addition, the disputed provision specifies that the police have the power to determine the punishments, which is hardly in violation of the principle of due procedure of law. The number of cases reported to be in violation of Subparagraph 2, Article 89 of the Social Order Maintenance Act, the number of violators involved, and their punishments from 2007 to 2011 were as follows: one case and one violator (fine) in 2007; two cases and two violators (fine) in 2008; three cases and three violators (two fines and one waiver) in 2009; four cases and six violators (three fines and one admonition) in 2010; and three cases and three violators (two fines and one admonition) in 2011.

### **Regulations Governing Searches**

242. To apply for a search warrant during investigation, the judicial police must get approval from the prosecutor before a petition is filed with the court for issuance of the search warrant. The search warrant carries information such as the location and scope of search, which should be followed upon enforcement of the search. When the search is targeting an accused, crime suspect, or a third party, it shall be based on the necessity and supported by probable cause. When a

petition is filed for issuance of a search warrant during investigation, it shall be kept secret and shall not be disclosed. The file shall not be given to and reviewed by the defender, either. After the judge receives the petition, he or she should review and make a decision in a quickly and timely manner. Because a search is likely to undermine the reputation of the party being searched and it is governed by the principle of the presumption of innocence, it must be done cautiously and kept secret.

### **Categories of Personal Data and Revision of the Personal Information Protection Act**

243. Grand Justice Interpretation No. 603 says that the information privacy over personal data is to protect the people's right to decide if, to what extent, when, how, and to whom they will disclose the data and their right to know and control the use of their personal data and correct those recorded wrong. The 2010 Personal Information Protection Act retains the aforementioned rights but includes some important revisions as follows: (1) The object of protection is extended and is no longer limited to personal information processed through computers; manually processed information is now accepted. (2) The subject of application is extended. The limitation to non-government agencies and industries is deleted. (3) Direct or indirection collection of personal information, except under circumstances justifying a waiver of notice, the collector is obligated to inform the person of the purpose of the collection and the type of information being collected so that the person is aware that his or her personal information is being collected. (4) Class action is allowed so that private charity groups, once authorized by the person to file a lawsuit, may file an action for damages in its name on behalf of the person and make a joint effort to promote the protection of personal information.

244. The Taiwan Biobank is a biobank exclusively built in the Taiwan area. It is of long-term follow-up research design. People aged 30 to 70 are invited to participate in various studies aiming to follow up over a long term on common native chronic diseases and to investigate the interaction between genes and the external environment (including lifestyle, diet, habit, and occupation) in the common chronic diseases. The contents collected in the Taiwan Biobank include: (1) biological samples; (2) physical examination data; and (3) structured questionnaires that contain demographic data, personal health practices, exposure in daily environment, related questions for females, the diet survey, personal health condition, simplified intelligence

assessment, and the Chinese medicine body composition survey. However, because it connects with existing household registration and National Health Insurance databases, any imperfection in information safety management can result in disclosure and serious infringement on personal privacy.

245. Major contents of the DNA database include the following: (1) DNA types and basic information of legitimate subjects; and (2) DNA types and basic information of crime scene evidence aiming primarily to investigate crimes: the file is established to facilitate comparison and contrast according to law.

246. If a stakeholder believes that radio coverage or contents of programs and commercials on satellite TV are wrong, he or she can request correction or a chance to provide explanations for protecting his or her own rights in accordance with Article 23 of the Radio and Television Act and Articles 30 and 31 of the Satellite Broadcasting Act. The NCC will decide on the punishment for the radio or TV media concerned according to law if it does not make corrections or provide reasons for the non-corrections and refuses to give the party being criticized a chance to explain by the given deadline.

247. When a financial institution becomes aware of a client's financial privacy by possessing the said client's basic information and transaction data with respect to his or her savings, loans, remittance, insurance, and trading of securities and futures, the financial institution and related staff are obligated to keep them confidential per applicable financial regulations governing banking, securities, and insurance, unless it is specified otherwise in the laws. Between 2006 and 2011, there were a total of 14 cases of financial institutions violating the requirements which were verified and punished by the Financial Supervisory Commission of the Executive Yuan.

248. The establishment of the Archives Act is meant to normalize the management of archives and to promote archival access and use for maximum benefits. To protect individuals' legitimate rights, however, respective agencies shall refuse application for use of the said archives in accordance with Article 18 of the Archives Act. The Operation Directions for Applications for the Return of Private Documents in the Archives to Victims of Political Oppression was established in 2011 with applicable operational regulations in place. The return of the said documents was completed for the first application in the same year. After the inventory of private

documents of political victims in archives is archived, the victims or their families will be approached spontaneously to complete the return operations.

### **Regulations on Protection for Individuals upon Illegitimate Infringement on Personal Reputation**

249. Protection over personal reputation and credit is available in Articles 184 and 195 of the Civil Code, Article 309 (Crime of public insult), Article 310 (Crime of defamation), Article 312 (Crime of indignity to a dead body), and Article 313 (Crime of hampering credit) of the Criminal Code, Article 104 of the Civil Servants Election And Recall Act (CSERA), and Article 90 of the Presidential and Vice Presidential Election and Recall Act (PVPERA). Between 2006 and 2011, there were 45 people convicted in accordance with Article 104 of the CSERA and zero in accordance with Article 90 of the PVPERA.

## **Article 18**

### **Religious Equality**

250. Articles 7 and 13 of the Constitution say that the people, regardless of their religion, are equal before the law and are entitled to the freedom of religious belief. The Republic of China does not have its own state religion. Therefore, there is no prevailing religion and it does not sponsor a specific religion.

### **Statistics**

251. The Republic of China does not conduct surveys of religious beliefs. It only has a registry of the number of followers spontaneously reported by individual religious organizations. Therefore, the statistics below are tallied by individual local governments on the basis of data provided by or application data of religious organizations. There were a total of 15,211 temples or corporate churches registered with the governments in 2010, including 9,296 Taoist temples, 2,333 Buddhist temples, 207 I-Kuan Tao temples, 15 Confucius temples, eight temples of the Divine Yellow Emperor, six temples of the Li Sect, five temples of the Celestial Virtue Sect, 740 Catholic churches, 2,552 Christian churches, 22 Tenrikyo churches, and five Islamic churches. Other religious beliefs with less than five temples or churches or whose temples or churches are not registered include Maitreya Great Tao, the Lord of Universe Church, Huang Chung, Bahá'í

Faith, Mahikari Church, Church of Scientology, Unification Church, Mormonism, Ism, Hai Tze Tao, the Chinese Holy Religion, Universe Mealler Faith, Pre Cosmic Salvationism, Chinese Heritage and Mission School, and others (religions not listed at time of survey).

### **Freedom and Protection of Religious Missionaries**

252. Taiwan fully respects missionary freedom. Religious groups can publicly lecture on or communicate their teachings or provide religious teachings seminars to specific people. They can also publish books or produce CDs that elaborate on the teachings of their religions or promote missionary campaigns through TV, radio, or the Internet. They can hold prayer rituals or religious assemblies in public places or religious parades, too. Article 246 of the Criminal Code stipulates punishments for insulting religious buildings and rituals. Nevertheless, there were cases of conflicting dietary habits between employers and their foreign workers as a result of different cultures and religious beliefs in 2010 and 2011. The government should reinforce its education to the people on the respect for different dietary habits or cultures associated with different religious beliefs.

### **Application for Establishment of Religions and the Qualification & Election of the Supervisor of Religious Groups**

253. Religions such as Buddhism and Taoism can follow the Statute for Supervision of Temples and Rules for Registration of Temples and apply for registration. For religions such as Catholicism, Christianity, and Islamism, corporate churches can be established through application in accordance with applicable regulations in the Civil Code. All religions can establish their own religious societies through application in accordance with the Civil Associations Act. The aforementioned regulations mainly govern the organization, operation, and property and financial management of religious groups. There are no restrictions and regulations on the internal ideas, speech, beliefs, and spiritual beliefs of religions. How the leaders of religious groups are generated, however, is restricted. In order to further protect people's rights to religious belief, efforts should be made in the future to respect their religious systems and regulations and the forms they choose at the time of establishment in response to the reality for the protection of the autonomy of religious groups and organizations.

## **Religious School**

254. In light of the fact that religious neutrality should be the goal of public schools, private schools shall hold specific religious events meeting their establishment purposes or that are educational in nature. The free will of faculty, staff, and students, however, should be respected. They should not be discriminated against as a result of not attending such events. For the time being, regulations in the Private School Law should still be followed in the establishment of academies of religious studies.

255. For religious education given to minors by their parents, the Educational Fundamental Act stipulates that parents are responsible for counseling their children during the compulsory education stage, and shall decide on the methods and contents of education, and are entitled to participate in school education affairs according to law for the best interest of their children. During the compulsory education stage, parents are required to follow legal regulations while deciding on how their minor children will be educated.

## **Tax Deductions for Religious Groups**

256. Religious groups that meet requirements under the Income Tax Act, Stamp Tax Act, Land Tax Act, and House Tax Act are entitled to tax exemptions.

## **Religion-Related Alternative Military Service**

257. For the constitutional dispute arising from the refusal to serve the military draft for religious reason, Grand Justice Interpretation No. 490 in October 1999 already clarified that religious people shall not reject serving the military draft for religious reasons. After the interpretation was announced, the alternative military service system put into enforcement in 2000 took into consideration both the respect for the freedom of religious belief and the obligation to serve the military duty. Under the system, draftees who have religion for over two years and whose mindsets are no longer fit for military services shall apply for alternative military service that lasts for one year and two months. The president also granted special pardon to 19 prisoners of conscience (POC) who refused to serve in the military for religious reason in the same year. As of 2011, 426 draftees carried out alternative military service for religious reason. All were assigned to social welfare institutions for social service-related work.

## Article 19

### Circulation of Media and Information

258. The government previously controlled the media for quite some time. It was not until 2003—when the ruling party changed for the first time—that the Legislative Yuan added a clause into the Radio and Television Act, the Cable Radio and Television Act, and the Satellite Broadcasting Act which stipulated that political parties may not own media companies. The non-stop efforts of powerful companies to enlarge their "slice of the media pie" with solid capital will result in seriously adverse effects as a result of concentrated media ownership. The Public Television Act stipulates that Public Television belongs to the whole body of citizens. Its operation is independent and autonomous. There are, however, disputes over the operation of the Public Television Board of Directors at the moment pending discussions and improvements.

**Table 30 Status of the radio and television industry**

Unit: No. of companies; No. of channels

| Type   | No. of companies/No. of channels |
|--|----------------------------------|
| Radio station  | 171                              |
| TV station   | 5                                |
| Community antenna television   | 8                                |
| Satellite Broadcasting<br>(Satellite radio and TV live services<br>operator) | 8                                |
| Satellite broadcasting<br>(Satellite radio and TV programs<br>supplier)      | 108/284                          |
| Cable TV system operator   | 59                               |
| Cable TV transmission system   | 3                                |

Source: National Communications Commission

Description: Data and statistics as of 2011.

**Table 31 Number of satellite TV companies approved and their number of channels**

Unit: No. of companies; No. of channels

| Year             |               | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
|------------------|---------------|------|------|------|------|------|------|
| No. of companies | Domestic      | 60   | 63   | 66   | 79   | 82   | 83   |
|                  | International | 18   | 20   | 23   | 29   | 30   | 34   |
| No. of channels  | Domestic      | 130  | 132  | 136  | 152  | 167  | 169  |
|                  | International | 45   | 48   | 57   | 80   | 101  | 115  |

Source: National Communications Commission

**Table 32 Number of radio stations and TV stations**

Unit: No. of companies

| Year  | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
|-------|------|------|------|------|------|------|
| Radio | 180  | 178  | 177  | 172  | 171  | 171  |
| TV    | 5    | 5    | 5    | 5    | 5    | 5    |

Source: National Communications Commission

259. Taiwan abolished the Publication Act on January 25, 1999. The release and operation of domestic printed media and circulation of foreign newspapers and periodicals, except for magazines and newspapers from mainland China, Hong Kong, and Macau that are regulated under the Act Governing Relations between the Two Areas, are not subjected to prior review and approval from or issuance of a permit by the government. The release of newspapers by companies and corporations shall follow applicable requirements of the Company Act or the Business Registration Act and is subjected to prior registration with the Commerce Department of the Economic Affairs, municipal or city (county) government. The number of domestic printed media between 2007 and 2011 is shown as follows:



**Table 33 Number of domestic printed media outlets between 2007 and 2011**

|                                   |      | Unit: No. of companies |       |       |       |       |
|-----------------------------------|------|------------------------|-------|-------|-------|-------|
| Name of media                     | Year | 2007                   | 2008  | 2009  | 2010  | 2011  |
|                                   |      |                        |       |       |       |       |
| Newspaper                         |      | 2,216                  | 2,065 | 2,063 | 2,137 | 2,210 |
| Communications and correspondence |      | 1,275                  | 1,321 | 1,471 | 1,746 | 2,014 |
| Magazine                          |      | 5,395                  | 5,711 | 6,457 | 7,544 | 8,765 |

Source: Commerce Department, Ministry of Economic Affairs

### **Violence Against News Reporters**

260. On November 6, 2008 a policeman on duty hurt a news reporter covering the demonstration people initiated against the chairman of the Association for Relations Across the Taiwan Strait (ARATS). The government visited the injured reporter, issued an official apology, and reached settlement after the incident. The National Police Agency (NPA) under the Ministry of the Interior has comprehensively enhanced the ability of police to respond to gathering crowds to prevent similar situations from happening again.

### **Control Over Media Licensing**

261. The Radio and Television Act, the Cable Radio and Television Act, and the Satellite Broadcasting Act have related regulations on the application for, reasons for approval and rejection, renewal, and removal of, and other control measures for the radio and TV, cable radio and TV, and satellite radio and TV business licenses. In the case of TV stations being unable to renew their licenses as well as TV stations being unable to be established, retrospective analyses and improvements should be made.

### **Coverage by Foreign Reporters and Information Circulation**

262. Publications, movies, recorded programs, and radio and TV programs from mainland China, with prior approval from the competent authority, shall enter the Taiwan area or be released, sold, produced, played, exhibited, or observed in the Taiwan area.

263. Within the Republic of China, international and domestic reporters are entitled to the same rights and protection of the freedom of speech. There is no difference between domestic and international reporters in news coverage or access to information during various news conferences held or news released by government agencies.

### **Laws Restricting Freedom of Speech**

264. Related regulations and reasons for the regulations in the Criminal Code, CSERA, and PVPERA on the restriction of freedom of speech are summarized in Table 34. Reflections and improvements are recommended to honor the spirit of the Covenant.

**Table 34 Regulations of Criminal Code, Public Officials Election and Recall Act, and Presidential and Vice Presidential election and Recall Act and Reasons for Restricting Freedom and Speech**

| No. | Title of law  | Article                         | Crime  | Reason for the regulation  |
|-----|---------------|---------------------------------|--|--|
| 1   | Criminal Code | Paragraphs 1 and 2, Article 140 | Insult to a civil servant or public office                                       | To maintain national sovereignty, government power, and government authority |
| 2   | Criminal Code | Article 153                     | Inciting another to commit an offense, violate the law, or disobey a legal order | To maintain social order   |
| 3   | Criminal Code | Article 155                     | Inciting a person in the armed services to commit mutiny                         | To maintain national security and social order                               |
| 4   | Criminal Code | Article 157                     | Instigating or contracting for a lawsuit   | To prevent against obstruction of public order                               |
| 5   | Criminal Code | Paragraph 1, Article 160        | Dishonoring the emblem or national flag  | To protect national dignity and social order                                 |
|     |               | Paragraph 2, Article 160        | Insulting the portrait of the national father                                    | To respect the founder of the Republic of China                              |
| 6   | Criminal Code | Article 234                     | Public obscenity   | To protect good customs and secrecy of personal sexual behavior              |
| 7   | Criminal Code | Article 235                     | Distributing obscene objects   | To protection good customs   |
| 8   | Criminal Code | Paragraph 1, Article 246        | Insulting a religious building or memorial site                                  | To protect freedom of religious belief and good customs                      |
| 9   | Criminal Code | Article 309                     | Public insult  | To keep personal reputation from unreasonable damage by others               |

| No. | Title of law  | Article     | Crime   | Reason for the regulation   |
|-----|---------------|-------------|---|---|
| 10  | Criminal Code | Article 310 | Defamation                                      | To keep personal reputation and privacy from unreasonable damage by others  |
| 11  | Criminal Code | Article 312 | Indignity to a dead body                        | To protect reputation of the family, the descendents, the deceased, and the respect and reverent affection the descendents or society has toward the deceased |
| 12  | Criminal Code | Article 313 | Hampering credit                                | To protect credit of the victim   |
| 13  | CSERA         | Article 104 | Disseminating rumors or spreading false sayings | To protect national security, social order, and the justice and fairness of elections   |
| 14  | PVPERA        | Article 90  | Disseminating rumors or spreading false sayings | To protect national security, social order, and the justice and fairness of elections   |

Source: Department of Prosecutorial Affairs, Ministry of Justice

## Article 20

### Ban on Promoting Wars and Hatred

265. The Republic of China does not have any particular legislation that prohibits the promotion of wars or discrimination against other nations, religions, and races.

266. Article 3 of the Statute of Punishments for Genocide stipulates that a person who publicly instigates others to kill members of a certain nation, race, or religious group is subjected to life imprisonment or seven years and above in prison. For the crime of instigating genocide, there are defined criminal liabilities.

## Article 21

### Assembly and Parade Act in Violation of the Covenant

267. Article 29 of the Assembly and Parade Act (APA) stipulates that the chief violator who disobeys the competent authority's order demanding dispersal of the assembly or parade by continuing regardless of intervention is subject to up to two years of imprisonment. The only prerequisite for the punishment is the reason that the assembly and parade is against the police's

dispersal order and continues regardless of intervention. Reflections and improvements are recommended in order to protect the people's right to peaceful assembly as specified in the Covenant. Recommended improvements include: (1) Changing the approval system to the registration system; (2) Limiting the police's power to mandate dispersal and meet the principle of proportionality; (3) Deleting the criminal punishment requirement and return to the common Criminal Code; (4) Relaxing the registration deadline; (5) Restricting exercise of the dispersal order; (6) Deleting the requirement concerning continuous punishment; and (7) Lowering the upper limit and deleting the lower limit for administrative fines. The government should continue to reinforce promotion of related regulatory amendment procedures and accordingly strengthen the protection of people's right to assemble and hold parades.

268. The right to assembly and procession is closely related to the consolidation of people's right to deliver speeches and express political opinions. Members of the Alliance of Public Education illegally assembled on July 5, 2005 in front of the Ministry of Education without prior approval to protest against the Ministry of Education's policy allowing individual public and private universities to freely increase their tuitions and other fees without prior public debates. The Taiwan High Court has ruled that the accused was guilty and the ruling is finalized. In 2008, two university instructors protested against the restriction over people's right to freedom of speech and freedom of opinion and expression in the Assembly and Parade Act at the Legislative Yuan and in front of the Liberty Square. Their petition and sit-in, however, were indicted by the public prosecutor. The court ruled one of the instructors to be not guilty for lack of evidence in 2011. The public prosecutor, however, appealed. As for the other instructor's case, the trial judge petitioned the Judicial Yuan for constitutional interpretation by the Grand Justice. The interpretation, however, has not yet been completed.

269. According to the Act to Implement the ICCPR and the ICESCR, the power of the Covenant supersedes that of domestic laws. Government agencies at all levels should meet regulations in the Covenant whenever they exercise their duties. Since Article 29 of the APA is already against the Covenant's protection of a person's right to peaceful assembly and expression of opinions, government agencies at all levels should consider which substantial measures to take to consolidate the protection of Covenant rights.

270. The NPA already issued official letters to individual police stations on November 22, 2011, notifying them of the fact that Articles 4 and 9 of the APA are in violation of the Covenant and requesting that the police should protect people's rights to peaceful assembly and procession against any infringement and proactively promote the rights. Except for individual circumstances under Article 11 of the APA, which will not be approved for the necessity to protect national security or public stability, public order, public health or customs, or the rights and freedoms of others in democratic society, others should be approved and the principle of proportionality should be followed. Later, the aboriginal assembly and parade took place in Hualien on December 23, 2011. The handling procedures were found to be flawed. The competent authority imposed applicable punishments. The case has also been included as part of the human rights teaching materials for educational purpose.

## **Article 22**

### **Civil Associations Act Excessive Limitations on Freedom of Association**

271. The Civil Associations Act specifies that at least 30 initiators are required to apply for the establishment of a private organization. After the establishment application is approved, the initiator meeting is called for and the preparations committee is formed before submission to the competent authority for registration approval. The registration system has not been enforced so far. The government should reflect on the restriction over its people's right of association and seek improvements in the future.

272. As of 2011, there had been a total of 209 political parties registered with records on file and 43 nationwide political associations whose establishment was approved. Between 2006 and 2011, two political parties among those filing for records and political associations whose establishment was approved were denied filing of records for reference.

273. For professional groups, as of 2011, there were a total of 5,213 industrial, commercial and freelance groups throughout the nation (including 173 industrial organizations, 2,399 commercial groups, and 2,641 freelance groups).

274. The organization of a labor union varies significantly as a result of the amendment to the Labor Union Act. Before 2011, organization of a labor union required prior approval by the competent authority before related preparations could begin and there were limited types of labor unions. It was also difficult for inter-union allies. In addition, there were no substantial regulations to deter improper measures employers were likely to take against organization of labor unions. The group negotiation mechanism for labor unions was not in place. All of these resulted in unfavorable organization of labor unions. In 2011, the Labor Union Act, the Collective Agreement Act, and the Act for Settlement of Labor-Management Disputes were amended. The amendment included simplified labor union registration procedures, relaxed types and categories of labor unions, free inter-union allies, specified obligation of employers to withhold fees for members of their labor unions, regulations over honest negotiation of terms and conditions in group agreements, restrictions over non-members to benefit from the hitchhike clause as a result of labor union negotiations, simplified procedures for labor unions to conduct controversial behavior, establishment of the types of improper labor behavior, disciplinary mechanism, and efficacy against subsequent violations in order to promote the autonomous ability of the labor union and reduce intervention from the employers and other administrative competent authorities to accordingly enhance the willingness of workers to organize labor unions and the functionality of the established labor unions.

275. The CLA started to establish the labor administration and management system in 2011. Labor unions that have applied for establishment and registration, regardless of their approval status, are registered in the system with updates made to reflect new revisions according to applicable laws. Between May 1, 2011 and December 31, 2011, an additional 189 labor unions were registered with an additional 21 pending registration. Another 56 labor unions were denied registration for reasons mostly attributable to repeat applications by the same group of people or incomplete eligibility of the establishment.

### **Related Labor Union Statistics**

276. Labor Unions and Members: There were a total of 5,042 labor unions in 2011, with 3,321,969 members, an increase of 468 labor unions and 295,461 members from 2007. The labor union members and organization rate was 37.6%, which also increased by 1.8%. There were 225

alliances of trade unions, 889 enterprise labor unions that comprised 529,685 members, and 3,891 professional unions with 2,757,499 members. The number of industrial labor unions is gradually decreasing, which is also the case for the rate in organizations.

**Table 35 Labor Unions and Members from 2007 to 2011**

Unit: Labor union; Person (s); %

| Year \ Type |  | Total  |                       |                   |      | Alliance of trade unions |       |                          |     |                       |     | Enterprise labor unions |                  | Industrial unions |                  | Professional unions |                  |
|-------------|--|--------|-----------------------|-------------------|------|--------------------------|-------|--------------------------|-----|-----------------------|-----|-------------------------|------------------|-------------------|------------------|---------------------|------------------|
|             |  | Unions | Institutional members | Personal members  |      | General                  |       | Corporate and industrial |     | Professional          |     | Unions                  | Personal members | Unions            | Personal members | Unions              | Personal members |
|             |  |        |                       | Organization rate |      | Institutional members    |       | Institutional members    |     | Institutional members |     |                         |                  |                   |                  |                     |                  |
| 2007        |  | 4,574  | 4,912                 | 3,026,508         | 35.8 | 75                       | 3,790 | 36                       | 329 | 105                   | 793 | 982                     | 573,161          | -                 | -                | 3,376               | 2,453,347        |
| 2008        |  | 4,663  | 5,228                 | 3,043,223         | 36.1 | 77                       | 4,253 | 35                       | 291 | 104                   | 684 | 959                     | 523,289          | -                 | -                | 3,488               | 2,519,934        |
| 2009        |  | 4,759  | 5,298                 | 3,177,591         | 37.8 | 78                       | 4,327 | 35                       | 284 | 104                   | 687 | 947                     | 518,073          | -                 | -                | 3,595               | 2,659,518        |
| 2010        |  | 4,924  | 5,317                 | 3,216,502         | 37.3 | 78                       | 4,342 | 34                       | 287 | 104                   | 688 | 890                     | 520,947          | -                 | -                | 3,818               | 2,695,555        |
| 2011        |  | 5,042  | 5,298                 | 3,321,969         | 37.6 | 81                       | 4,232 | 37                       | 318 | 107                   | 748 | 889                     | 529,685          | 37                | 34,785           | 3,891               | 2,757,499        |

Source: Council of Labor Affairs, Executive Yuan

Description: Statistics are categorized in accordance with the Labor Union Act amended and taking effect on May 1, 2011.

277. Distribution of enterprise labor unions and industrial unions by the sector: As far as the number of enterprise labor unions and industrial unions is concerned, an observation conducted in 2011 found that the manufacturing sector had the most unions, 590 in total, followed by the transportation and warehousing sector's 101 unions and the financial and insurance industries' 54 unions in 2011.

278. Distribution of professional unions by the profession: Observation has found that in 2011, there were 1,073 professional unions for technicians and related workers, the most among all the professional unions, followed by the 951 professional unions for service providers and sales representatives and then the 452 professional unions for operators and assistant professionals.

279. Article 4 of the Labor Union Act stipulates that all workers shall have the right to organize and join labor unions, whereas military personnel in service and employees in the munitions industry affiliated with and supervised by the Ministry of National Defense, shall

organize no labor union. Association and organization of civil servants at all levels of governments and public schools shall be governed by other applicable statutes.

280. Teachers may organize and join labor unions in accordance with the Act. However, in light of the fact that labor-management negotiations on campus can lead to labor-management conflicts, which is likely to bring about serious impacts on the schools. To prevent against undermined right to education of the students, it is specified that teachers shall not use the school as a unit to organize their union following the enterprise labor union practice. Nevertheless, they can organize and join industrial and professional unions and the unions can sign a group agreement with individual schools the members teach at. As of December 2011, 29 professional unions and industrial unions of teachers were formed throughout Taiwan. The founding general assembly of the National Federation of Teachers Unions was held on July 11 of the same year. The current number of members has exceeded 80,000. For non-teacher staff hired by educational institutions, they can also organize or join related unions based on their free will following the enforcement of the new Labor Union Act. The government still has efforts to make regarding the fact that teachers are prohibited from forming enterprise labor unions.

281. The Labor Union Act has taken into consideration the spirit of International Labor Conventions and the principle of fair treatment for nationals by deleting the restriction that directors and supervisors of labor unions must have the Republic of China nationality. Foreign workers can organize and join labor unions on their own and serve as the director, supervisor, and person in charge of the labor union.

282. Rules and restrictions on labor unions' exercising of the right to strike: Article 54 of the Act for Settlement of Labor-Management Disputes states that a labor union shall not call a strike and set up a picketing line unless the strike has been approved by no less than one half of the members in total via direct and secret balloting. The interpretation of this argument implies that a labor union essentially has the right to strike. In addition, for the sake of public interest, exceptional requirements are available for the following types of workers and circumstances:

- (1) With respect to the prohibition of teachers and employees of the Ministry of National Defense and its subordinate agencies or institutions from strike, Article 25 of the Act for Settlement of Labor-Management Disputes has established a mechanism to



address the interest disputes of workers and labor unions in these labor categories with the employers. The Article states that if any party to the disputes applies to the competent authority of the local special municipality, county or city for arbitration, the competent authority shall conduct compulsory arbitration in accordance with the law and shall not be restricted by the requirement that both labor and management shall agree to the arbitration. The purpose is to seek rapid solutions to the dispute and to reduce the damages to employees who may otherwise be deprived of their right to strike.

(2) To avoid serious impacts on the public life and safety, national security, or important public interests as a result of workers exercising their right to strike, the new Act for Settlement of Labor-Management Disputes extends regulations to water utility businesses, electricity and fuel suppliers, hospitals, financial information service sectors that handle transfers and liquidation of capital among banks, businesses dealing with the transaction, settlement, and management of securities and futures, and other businesses handling the payment system and operations. Both employers and employees should agree on necessary service terms and conditions before labor unions can declare a strike. If the labor and management are unable to reach a mutual agreement, any party to an interest dispute may apply to the central competent authority for arbitration in order to obtain administrative remedies, as outlined in Article 25 of the Act for Settlement of Labor-Management Disputes.

(3) For Type 1 telecommunications enterprises that have in possession basic communications network facilities, in light of their public utilities nature and the fact that their maintaining basic voice services concerns communications of important messages regarding national safety and defense, people's life, and social security, it is established that Type 1 telecommunications enterprises shall only exercise their right to strike on the condition that their basic voice communication services are uninterrupted.

283. To prevent employers from exercising their power to suppress the organization and operation of labor unions, the Labor Union Act specifies the types of improper labor behavior and a brand new management mechanism is established in the Act for Settlement of Labor-Management Disputes. The professional and impartial Improper Labor Behavior

Arbitration Committee established by the CLA can handle improper labor behavior cases rapidly and reinstate related benefits of undermined workers quickly. In addition, to deter employers' improper labor practice, the new Act for Settlement of Labor-Management Disputes specifically indicates that the employers should be punished when the labor practice is determined to be improper and relief orders can be given to the employers to demand certain action or non-action. In the event that relief orders are not followed, punishments can then be imposed.

## **Article 23**

### **Definition of Family**

284. According to Articles 1122 to 1124 of the Civil Code, a family comprises a group of people who live in the same household with the object of maintaining the common living permanently. Persons belonging to the same family, except for the head of the house, are referred to as members of the family, including relatives and non-relatives. All members of the family are entitled to presume or be presumed as the head of the house. Relative and non-relative family members, despite the fact that they maintain the common living permanently and are obligated to support one another, are entitled to different legal rights and protection in terms of marriage, property, insurance, medical care, and inheritance because of the different scopes and contents of family and relative.

### **Family Court**

285. In 2011, there were a total of 108 judges handling exclusively or partially family cases at district courts throughout Taiwan. The Organic Act For Juvenile And Family Court was established in 2010. The Kaohsiung Juvenile and Family Court is expected to be established in 2012 to handle various family cases of the first instance. For areas without juvenile and family courts, family cases will be handled by the Family Division at district courts. Judges handling professional cases should attend at least 12 hours of professional seminars each year.

### **Legal Requirements and Effect for Marriage**

286. Marriage, as defined in the Civil Code, is the legitimate conclusion of a relationship between a man and a woman with the object of maintaining lifetime common living. It is a monogamous marital system. The Legislative Yuan sets the registration and monogamy

requirements for a marital relationship to take effect. In other words, the marriage accepted in the Civil Code only includes heterosexual relationships. In addition, identity protection similar to that in a marriage is currently not available for homosexual or non-marital heterosexual relationships. The Ministry of Justice is deliberating on how to protect the rights of the aforementioned partner relationships.

287. The minimum age required to get married is 18 years old for men and 16 years old for women.

288. The Act of Marriage for Military Personnel stipulated that the marriage would be invalid without consent from the supervisor. The Act was abolished on December 7, 2005, however, courts of different levels shall still follow the abolished law on the cases to determine whether a marriage before the abolishment of the Act was invalid. The Act and the fact that courts continue to follow abolished law undermine the protection of the Covenant over families and children.

### **Rights of Homosexual Partners**

289. Despite the fact that multiple benefits in Taiwan do not exclude their applicability to diversified genders at the moment in Taiwan and that the Domestic Violence Prevention Act even includes cohabitation in the definition of a family member, protection of related rights of homosexual (and non-marital heterosexual) families is not available, including certain rights to receive social protection and other social protective measures, the right to preferred rent, the right acquire get legitimate residence or immigration, retirement and compensation benefits, employment right, surgery or invasive examinations, or treatment consent, medical visit right, rights to participate in public life and cultural life, right to enjoy adequate life standards, etc. Therefore, reflections and improvements should be made.

290. Paragraph 1, Article 23 of the Covenant protects each person's right to marry and found a family. Individual general comments also specify and recognize that the protection for a family should encompass various non-marital partnerships and diversified families. Signatories are obligated to make all efforts possible to eliminate discrimination resulting from sexual orientation and gender identity.

## **Rights and Obligations of Spouse**

291. The husband and the wife are under mutual obligation to cohabit, unless for a good cause they cannot live together. In daily household matters, the husband and the wife act as agents for each other. The payment for living expenses of the household will be shared by the husband and the wife according to each party's economical ability, household labor or other conditions unless otherwise provided for by law or mutual agreement.

292. For matrimonial properties, there are the statutory regime and the contractual regime. The contractual regime can be further divided into the community of property regime and separation of property regime. The husband and the wife may, before or after getting married, adopt by contract one of the contractual regimes as their matrimonial property regime and register with the court. When they do not contract the holding of matrimonial property, the statutory regime shall apply.

293. Statutory regime

(1) Property acquired before marriage and in marriage: The husband or the wife would manage, use, collect fruits from, and dispose his or her own property, acquired before marriage or in marriage, respectively. The husband or the wife is respectively liable for his or her own debts, too.

(2) The husband or the wife is under a mutual obligation to inform the other of the condition of his or her property acquired in marriage.

(3) The husband and the wife shall agree on a certain amount of money as the free disposable fund. With the exception of the living expenses of the household, the husband and the wife may contract a certain amount of money paid by one for the other's free disposition.

(4) Upon dissolution of the statutory marital property regime, the husband or the wife who has less property shall claim for distribution of the remainder of the property acquired by the wife or husband, who has more property. Upon dissolution of the statutory marital property regime, the remainder of the property acquired in the marriage, with that irrelevant to contributions to the marriage deducted (including inherited property, gift, and consolation money), should be equally distributed to the husband and the wife. If results of the distribution are to the disadvantage of the wife or the husband, however, request for adjustment or a waiver

can be filed with the court. By dissolution of the statutory marital property regime, it includes the change to other property regime.

(5) When the husband or wife claims for distribution of the remainder of the other's property by fraud during the continuance of the marriage, such other shall apply with the court for its annulment.

294. For contractual properties, the community of property regime and separation of property regime continue. The husband and the wife can choose one to suit their needs. The community of property regime features shared property ownership. The management, use, return, disposal, and debts are also shared. On the other hand, the husband and the wife have ownerships over their respective properties under the separation of property regime. The management, use, return, and disposal are also separate. They are responsible for paying off their own debts, too.

295. The surname of a child is normally determined by the parents through written agreement.

296. In the exercise of parental rights, parents are obligated to protect, educate, and nurture their minor child. Parents are the legal representatives of their minor child. The parents shall jointly exercise their rights and assume their duties in regard to their minor child, unless otherwise provided by law. If one parent cannot exercise such rights, the rights shall be exercised by the other. If the parents cannot assume the duties jointly, the duties shall be assumed by the parent who has the ability to do so. If there is inconsistency between the parents in the exercise of the rights in regard to the grave events of the minor child, they may apply to the court for the decision in accordance with the best interests of the child. Before the decision of the preceding paragraph is made, the court shall give the minor child, the competent authorities, or the social welfare institution a hearing.

297. Where the parents are not divorced but do not continue their cohabitation for over a certain period of time, exercise of the rights or assumption of duties to the minor applies *mutatis mutandis* to Articles 1055 to Article 1055-2 unless the inability to cohabit is supported by legitimate reasons or separate legal regulations, as is indicated in Article 1089-1.

298. Succession: Starting in 2009, an heir inherits only the estate of the decedent and is obligated to the debts of the decedent to the extent of the property acquired from the estate. This is to prevent the successor from being tied down by the decedent's debts as a result of general

assumption and hence unable to honor the purpose of protecting families. Based on the foregoing paragraph, heirs, male or female, married or not, minor or major, inherit debts from the decedent to the extent of the property acquired from the estate only despite the fact that they generally assume all the rights and obligations pertaining to the estate of the decedent unless they renounce succession.

### **Divorce System**

299. For the dissolution of marriage, the Civil Code defines three regimes, respectively by agreement (mutual consent), judicial decree of divorce and court mediation or court settlement.

### **Exercise of Parenthood after Divorce**

300. After the husband and the wife effect a divorce, one party or both parties of the parents will exercise the rights or assume the duties in regard to the minor child by mutual agreement. If the mutual agreement did not or could not be done, the court may decide by the applications of the husband or the wife, the competent authority, the social welfare institution or any other stakeholder, or may decide by its authority. Among the 1,722 divorce cases with additional conditions on child's custodianship finalized by individual district courts in 2010, 616 were ruled in favor of the fathers, accounting for 35.77% and 1,003 were ruled in favor of the mothers, occupying 58.25%. Another 75 cases were ruled to be under joint custodianship of the parents. Among the same cases above, of which a total of 1,591 were closed in 2011, 517 were ruled in favor of the fathers, accounting for 32.50%, and 992 were ruled in favor of the mothers, accounting for 62.35%. Seven cases were ruled to be under joint custodianship of the parents. When a court makes a decision, it shall take into consideration the best interests of the child, all conditions, and visitation reports completed by social workers in accordance with Article 1055-1 of the Civil Code.

301. There were a total of 5,923 people who acquired the Republic of China nationality through naturalization, among which 5,784 were female (97.65%) and 139 were male (2.35%), in 2011. Seven hundred and forty people lost their Republic of China nationality, among which 428 were female (57.48%) and 312 were male (42.16%). Six hundred and one people had their Republic of China nationality reinstated, among which 438 were female (72.88%) and 163 were male (27.12%). In terms of the reason for naturalization, becoming a spouse of a national had the

highest percentage of 95.59%. Most of them were women. According to the original nationality of those naturalized, Vietnam accounted for 76.40%, the most of all throughout the year, followed by Indonesia, the Philippines, Myanmar, and Thailand. Southeast Asian countries accounted for 98.50% of all the naturalizations throughout the year.

302. The Public Assistance Act amended and announced in 2010 had the minimum living expenses adjusted and reasonably relaxed the review threshold for low income families. The determination criteria for and rights of low/middle income households have become statutory. Career counseling for and incentive measures for social participation from low income families have been reinforced, too, to help the disadvantaged people enhance their competitive advantages and get rid of poverty, and further legitimize and perfect the public assistance system. In addition, to maximize the care for disadvantaged populations who do not meet the criteria for assistance defined in the Public Assistance Act, such as medium to low income children and teenagers, the elderly, disabled, aboriginals, and veterans and their families, various living assistance services are available in respective welfare regulations to take care of up to 2.2 million people. In addition, according to the Act of Assistance for Family in Hardship, women or girls who are from single-parent families or are pregnant without marriage, they shall apply for various benefits under emergency living assistance from the beginning of the second trimester.

303. To solve the problem of grand-parenting and the child-rearing burden and parenting issue for single-parent families, the government provides various child and teenager living assistance, child care subsidies, education support, and medical care support, among other related financial assistance measures to children from disadvantaged families. For children from dysfunctional families, kinship foster care, family foster care, and institutional care are available. The complete adoption services system is in place, too, to protect the rights of children to grow up in a normal family. The Ministry of the Interior established the Community Care Service Program for Children and Teenagers from Disadvantaged Families in 2008. Individual local governments are authorized to evaluate needs within their jurisdictions, combine, and subsidize social welfare institutions and groups to provide disadvantaged families with parenting difficulties or care stress with family visits, phone consultations, psychological and group therapies, after-class day care and voluntary counseling services, among other supportive, supplementary, and preventive service measures.

## **Preventive Measures Against Domestic Violence**

304. Domestic violence, as is defined in the Domestic Violence Prevention Act, refers to any act of exercising any infringement, mentally or physically, amongst family members. (1) Person who is commented as a spouse, or ex-spouse. (2) Person who has or has ever had ongoing cohabitation, or de-facto cohabitation, parental and/or dependent relationship; (3) Person who is or has been a lineal-blood relative or a lineal-blood-by-marriage relative; and (4) Person who is or has been a lateral blood or a lateral-blood-by-marriage relative up to the fourth degree of kinship.

305. Article 50 of the Domestic Violence Prevention Act and Article 8 of the Sexual Assault Crime Prevention Act stipulate that those responsible for reporting suspicious domestic violence or sexual assault incidents they become aware of while performing duties should report the said incidents to local competent authorities within 24 hours. Besides the aforementioned parties responsible for reporting the said incidents, the general public can also spontaneously report to local domestic violence prevention centers or simply dial 113 for reporting. In 2011, 78,575 cases of domestic violence, 25,740 cases of child and teenager protection, and 13,686 cases of sexual assault were reported. The disclosure rates were 62%, 61%, and 78%, respectively.

306. The NPA compiled the Handbook for Prevention of Domestic Violence for police authorities in 2010 and configured domestic violence prevention officers (159 people) at individual police departments. Women and Children Protection Brigades (447 people) were formed at various police departments throughout the nation in September 2005. Community domestic violence prevention officers (1,569 people) were deployed at individual police stations in October 2007 to handle exclusively domestic violence and children and women-related cases. Risk assessments for domestic violence cases started and continued, too, to facilitate joint discussions with authorities within the network of effective protective measures and proactive action against high-risk cases. For the inflictors and victims in domestic violence, there are the disciplinary admonitions and care visits, respectively, to prevent against repetition by the inflictors and protect the safety of the victims. Statistics show that a total of 37,512 cases of domestic violence were handled by police authorities in 2011, among which 1,820 were referrals upon violation of restraining orders and 1,754 were referrals upon offense of domestic violence.



In addition, there were 13,924 petitions for restraining orders filed by police authorities and a total of 19,623 restraining orders enforced.

307. Substantial accomplishments on the prevention of domestic violence: The Ministry of the Interior proactively promotes the tertiary preventive tasks: (1) Primary prevention: Promotion on the protection hotline 113 is reinforced through newspapers, TV, radio, and the Internet, among other communication platforms to encourage the general public to consolidate community reporting. From 2007 to 2011, around 219,789,263 rounds of related promoting audio and visual materials were estimated to have been played. (2) Secondary prevention: The mandatory reporting mechanism is reinforced. Reporting channels are available for people. The 113 hotline answered a total of 1,720,344 calls in 2011. (3) Tertiary prevention: The risk management mechanism is normalized to consolidate the victim's personal safety plan and dispositions for the inflictors. Various subsidies criteria for victims have been established. Individual protection centers are given assistance in providing victims with emergency rescue, medical care, medical examination and collection of evidence, emergency relocation, psychological therapy, and legal consultation, among other protective and supporting measures. Governments at the municipal, city, and county levels provide various protective and supporting measures to victims in accordance with the Domestic Violence Prevention Act. A total headcount of 2,853,598 victims of domestic violence were supported from 2006 to 2011, among which 625,242 were men and 2,228,356 were women. The total value of the support and assistance has come to NT\$1,564.22 million.

### **Right to Family Reunification**

308. The right to stay in Taiwan must be applied for in accordance with the Statute Governing the Issuance of Visas in Foreign Passports, Immigration Act, and Regulations Governing Visiting, Residency, and Permanent Residency of Aliens. Before entering Republic of China one should apply for a resident visa that is valid for over 60 days without a note from the visa issuing authority that extension is disallowed or of other restrictions. After entering ROC with a valid foreign passport and the said visa, the person should apply for alien residence with offices of the NIA at the municipal, city, or county level within 15 days. Only with the Alien Residency issued by the NIA can the person be entitled to reside in Taiwan legally.

309. Mainland Chinese spouses coming to Taiwan can go through four stages: family reunification, join-family resident, long-term resident, and permanent residence. Anyone that comes to Taiwan for family reunification through application with legal documents, has passed the interview, and is approved to enter Taiwan can register their marriage at the Household Registration Office and then apply with the NIA for staying as a dependent with his or her Taiwanese relatives. After he or she has lived in Taiwan for a certain period of time, he or she can apply for long-term resident and permanent residence.

310. With regard to out-coming populations, nationals of the Republic of China or aliens who are allowed to stay in the Republic of China can have their spouses or minor children apply for staying in Taiwan with them. For parents of foreign spouses who come to Taiwan for visiting relatives, on the other hand, the NIA coordinates with the Bureau of Consular Affairs, MFA to issue visitor visas that are valid for 60 days with possibility of extension so that each of their stays can last for up to six months. For mainland Chinese spouses, the restrictions are also relaxed. While they stay as dependents in Taiwan, their parents can apply for visiting relatives in Taiwan. For those who are over seven months pregnant or have given birth for less than two months, their parents can apply for extension of the stay in Taiwan. In addition, children of the spouses who stay in mainland China and visit relatives in Taiwan for the first time at the age of 14 and below can apply for an extension of their stay and the right to attend school in Taiwan. As long as they have stayed in Taiwan for four consecutive years with over 183 days of legitimate stay in each of the years, they can apply for permanent residence in Taiwan as a special case.

## **Article 24**

### **Protection for Children**

311. To honor the spirit of the Convention on the Rights of the Child and go with the international trends in the development of child welfare, the Republic of China has devoted a section in the Children Welfare Act amended in 1993 to putting the idea of child protection into practice. The Child and Youth Sexual Transaction Prevention Act was established in 1995 to support proactive intervention in and protection against sexual exploitation targeting children and teenagers. Later the Sexual Assault Crime Prevention Act was announced in 1997 as efforts

to further prevent against sexual assault and sexual abuse among children and teenagers. The Juvenile Delinquency Act amended in 2000 features protective dispositions for juveniles with deviant behavior in the form of referrals to child welfare institutions for counseling. The Children Welfare Act and the Youth Welfare Law were combined in 2003 into the Children and Youth Welfare Act. The title was changed to the Children and Youth Welfare and Rights Protection Act in 2011 to better the care for children and teenagers in the Republic of China. The protective measures adopted by the Republic of China for non-native children are identical to those for native children. The numerous serious child abuse cases that have happened for the past few years are attracting public attention. The government has established a cross-network reflection mechanism and introduced coordinating and intervening strategies for improving professional networks. In addition, extensive resources are invested to help local governments hire more child and youth protection social workers, proactively promote high-risk family care and treatment services and spontaneously care for disadvantaged children less than six years old, and relocate and take care of inmates' children, among others, as well as reinforce public education and communication, in order to prefect the child abuse prevention system. Despite all the efforts, current protection for children and teenagers is not perfect. The government needs to continue to reflect on the issues and make further efforts.

**Table 36 Statistics of child mortality as a result of abuse between 2007 and 2011**

Unit: Persons

| Year | Child and youth population | Number of children and teenagers receiving protection | Number of deaths as a result of abuse |                      |          |
|------|----------------------------|---|---------------------------------------|----------------------|----------|
|      |                            |   | Subtotal                              | Child abuse to death | Filicide |
| 2007 | 5,002,123                  | 13,687  | 26                                    | 9                    | 17       |
| 2008 | 4,868,304                  | 13,703  | 22                                    | 5                    | 17       |
| 2009 | 4,745,159                  | 13,400  | 24                                    | 8                    | 16       |
| 2010 | 4,595,767                  | 18,454  | 21                                    | 9                    | 12       |
| 2011 | 4,469,350                  | 17,667  | 21                                    | 12                   | 9        |

Source: Child Welfare Bureau, Ministry of the Interior

### **Special Protection for Children during Judicial Proceedings**

312. Protective measures adopted in the Juvenile Delinquency Act include: (1) assignment of a defender at any time; (2) non-disclosure of investigation and trial; (3) remove such data of expired juvenile cases and treatment of the affected juveniles as having never been declared against; (4) the prosecutor's discretion over not to conduct trial during the inquiry session with reference to the nature of the case, the physical and mental status of the juvenile, and the circumstances; (5) comfortable arrangements while the victims are providing statements and the right to respond to inquiries in private.

### **Special Protective Measures Available for Children in All Aspects**

313. There were 230 suspected cases of campus bullying and 625 confirmed cases, in 2011. The total came to 855. The Ministry of Education recorded bullying situations by reported events, beginning in 2011. However in 2012, the MOE will begin reporting bullying situations by gender. For campus bullying, our government has devised substantial strategies. The substantial efficacy should be discussed. To prevent undesirable individuals and organizations from entering schools, the MOE has been promoting the 2006 Implementation Plan for the Improvement of Campus Security and the 2011 Implementation Guidelines for Maintaining Campus Security.

314. According to the Civil Code, rights of children born in wedlock and out of wedlock to succession are identical. There is no discrimination at all. Article 67 of the Act Governing Relations between the Two Areas, however, set the limit of NT\$2 million for each mainland Chinese who inherits the estate of the decedent in the Taiwan area according to law. The NT\$2 million restriction has been lifted since 2009.

315. Incidents of sexual assault constantly occur at schools on all levels, at child and youth placement and educational institutions. Despite the fact that the Ministry of Education and the Ministry of the Interior provide various preventive and protective mechanisms after each incident, it is difficult to follow all high-risk situations that may need intervention. In some cases, post-incident investigations are carried out.

316. A special education school in southern Taiwan was involved in group sexual assault and harassment events. Reporting of related cases started in August 2009. Between August 2009 and July 2011, there were 75 suspicious sexual assault and harassment cases, 26 confirmed sexual assault cases, and 24 confirmed sexual harassment cases. It is a serious violation of human rights. The boarding school provides special education to kindergarten to senior high school students with different impairments, which shows the problem that a close-ended institutional special education school deprives their students of the right to integrate with society and receive same quality of education as other students. In addition, it lacks professional faculty and equipment. It is also a case of unprotected human rights in terms of receiving education. The government should continue to reflect on related issues and seek improvements, particularly whether the school investigates and handles gender equity incidents, keeps investigation files and data properly, consolidates the discussion about overall campus security, thoroughly improves campus space, precisely puts disciplinary and counseling measures into practice, provides the inflictors with counseling, and strengthens related professional knowledge and skills of teachers on gender equity. Inflictors in the incidents should also be set up for counseling and assistance to prevent against relapse. As far as special education schools are concerned, on the other hand, should focus on how to redefine special education, precisely implement the periodical accreditation for special education schools, and activate re-placement mechanisms for special education students in order to consolidate students' human rights to receiving education.

### **Protective Measures for Children without Normal Family Life**

317. Placement and educational institutes should aim at meeting the developmental needs of those being placed and reinforcing the functionality of their families. As of 2011, there were a total of 1,604 people receiving a placement ruling from the court and placed at adolescents' homes for mandatory counseling upon authorization from county or city governments (or courts). Each of the teenagers has his or her personal social worker, guidance counselor, and family nurse who offer whole-person services taking care of the teenager's physical, mental, and sociological needs. Various vocational skill development and learning programs are provided and related licensing tests are arranged for the teenagers. Statistics show that the number of teenagers with employment increased from five in 2009 to 39 in 2011.

318. Article 9 of the Regulations Governing the Detention of the Aliens specifies that the inmate must submit a request and the request shall be approved or not at the administrative discretion of the NIA. This regulation is to protect the rights of the inmates and their children less than three years old. Although the children less than three years old are not the inmates, by living together with their mothers they will get maximum protection as their instant needs such as breastfeeding are satisfied and separation of children less than three years old from other mothers is obviously to their disadvantage. As such, they are arranged to stay in separate shelters of the NIA from the general shelters for ordinary inmates. They stay in the same shelter with human trafficking victims. The living space is of a household-like layout that provides related daily care and recreation, entertainment, and children's playroom, among other facilities and equipment. To better protect human rights, however, the NIA will continue to discuss and amend the Regulations Governing the Detention of the Aliens.

### **Prevention of Child and Youth Trafficking**

319. The Human Trafficking Prevention Act targets not only those over 18 years old but also children and teenagers less than 18 years old. To perfect related protection for children and teenagers, however, it is established in the Human Trafficking Prevention Act that Child and Youth Sexual Transaction Prevention Act shall take precedence with regard to conditions of children and teenagers trafficking. Among the protective measures for children and teenagers who engage themselves in or are likely to engage themselves in sexual transactions are the care centers established by individual local governments. They provide children and teenagers with access to assistance and services. Social workers accompany the aforementioned children and teenagers during interrogations and provide them with emergency placements at the end of interrogations to protect them against prosecution by the human trafficking mastermind. They also petition to the court for a ruling on continued placement within 72 hours. When long-term placement is necessary, the children and teenagers are placed in halfway schools or placement and educational institutes for children and teenagers so that they can complete education or learn skills that can support their lives in the future. For children and teenagers for whom placement is no longer necessary, individual governments follow up on them for at least a year according to law to prevent them from relapsing to sexual transactions. On the law enforcement side, to crack

down human trafficking, the NPA has planned the anti-slavery project in accordance with the action items of the Executive Yuan's Anti-Human Trafficking Action Plan since 2007. Individual police authorities are responsible for cracking down human trafficking by seizing the mastermind, nominal spouses, and other suspects in order to stop the crime.

### **Protection for Child Workers**

320. Protective regulations for child workers are specified in Articles 44 to 48, Chapter 5 of the LSA of the Republic of China. Employers violating the regulations are subjected to up to six months in prison, short-term imprisonment, and/or a fine of up to NT\$300 thousand. Based on the aforementioned articles, employees aged 15 and above but younger than 16 years old are child workers. Employers shall not have child workers work over eight hours a day. In addition, working on official holidays and at nights is prohibited. Moreover, except for those who have graduated from junior high schools or the competent authority has determined that the nature and circumstances of the work are such that no harm will result to the worker's physical and mental health, employers shall not hire people less than 15 years old for work. Some occupations (such as entertainers or models) do require employment of people less than 15 years old. In light of this, it is established that businesses shall only hire the said children after the nature of the work and peripheral surroundings related to the work are determined by the competent authority to be free of adverse effects on the physical health or mental development of the children.

321. To consolidate the protective regulations in Articles 44 to 48 of the LSA, the CLA urges county and city governments as well as labor inspection authorities to include the requirements in the LSA while performing labor inspections. Meanwhile, protective regulations for child workers are included as part of the supervision and inspection highlights in the Annual Labor Inspection Directives. In 2009 individual labor inspection authorities conducted a total of 14,552 rounds of labor criteria inspections to factories and found two violations of the Child Labor Law. In 2010 a total of 10,387 rounds of labor criteria inspections to factories were conducted to find 17 violations of the Child Labor Law (one for illegal employment of child workers, six for overtime and excessive working hours for child workers, and ten for having child workers work at nights). Violators were sent to judicial authorities for investigations. As soon as violation of the LSA is found or complaints about violation of the LSA are received, the CLA will fulfill its

responsibilities by investigating and imposing necessary punishments. In addition, the hotline (0800085151) is set up for taking complaints. The complaints are then forwarded to local labor administration competent authorities for investigations and dispositions.

## **Article 25**

### **Rights to Participate in Political Affairs**

322. Applicable statutory regulations on the assessment of environmental impacts in Taiwan stipulate that the assessment of environmental impacts should be open for public review. The protection of people's right to participate in the review, however, continues to be unspecific. The Environmental Protection Administration of the Executive Yuan (EPA) believes that it has made every possible effort to promote publicity of and public involvement in environmental impact assessments. For the review of environmental impact evaluations of major developments, such as the Suao-Hualien Highway project, the Stage III and Stage IV projects of Central Taiwan Science Park, and the Guoguang Petrochemical project, the number of people who observed or expressed opinions in the reviews of their environmental impact assessments was 53, 133, 160, and 304, respectively. Out of the respect for different opinions, the EPA arranged civil organizations' representatives and civilians to observe and express their opinions. In addition, written opinions besides spoken ones from other groups and civilians were also included as the meeting minutes. They were compiled and provided to the development authorities, requesting the latter to respond and handle properly. Non-government organizations (NGOs) found that many police were present while meetings were in session "to maintain order" as well as other inappropriate measures which restrict people's participation, such as wire fencing to keep people outside the EPA, opening the floor to only ten people from each of the pro and con sides to express their opinions, restricting their speaking time to only three minutes, etc. During the actual implementation, the government should try its best to respect the people's rights to participate in various public affairs (e.g. environmental impact assessments and review of urban planning) and express their opinions on how much their rights have been undermined to facilitate optimal communications and coordination.



## Definition of Suffrage Right Laws and Regulations for Citizens

323. Any citizen of the Republic of China who has attained the age of 20 shall have the right to vote in an election and referendum in accordance with the law. Any citizen of the Republic of China who has reached the age of 40 may register as a Presidential or Vice Presidential candidate. Any citizen who has attained the age of 23 may register as a public official candidate in the area he/she is entitled to cast a vote. To be a municipal, county, or city mayor candidate, however, the age requirement is 30 and above. For township head candidates, the age requirement is 26 and above. Any citizen aged 18 and above may take part in civil servant examinations. Any citizen aged 20 and above may apply with the competent authority to set up a private organization.

324. Permanent residents or foreign spouses who have not obtained the Republic of China nationality do not have the right to be a candidate, the right to elect, the right to be elected, the right to vote in a referendum, or the right to hold public office.

325. Any citizen of the Republic of China aged 20 and above has the right to elect and cast a vote in a referendum unless he or she is under effective custodianship declaration. People who have lived in the electoral district or referendum area for four consecutive months or six consecutive months may become electors or voters. The regulation that "denied people deprived of public rights pending reinstatement the right to elect" was once deleted in 2007.

**Table 37 Restrictions on election and voting rights**

| Type                                  | Nationality       | Age          | Residency   | Status                      | Voting method                       |
|---------------------------------------|-------------------|--------------|-------------|-----------------------------|-------------------------------------|
| President and Vice President Election | Republic of China | 20 years old | Six months  | No guardianship declaration | Cast ballots at the polling station |
| Civil Servants election               | Republic of China | 20 years old | Four months | No guardianship declaration | Cast ballots at the polling station |
| Referendum                            | Republic of China | 20 years old | Six months  | No guardianship declaration | Cast ballots at the polling station |

Source: Central Election Commission

326. Article 136 of the Constitution stipulates that the exercise of the rights of initiative and referendum shall be prescribed by law. The Referendum Act was approved in 2003. There are the national referendum and local referendum.

327. Article 18 of the Constitution specifies that the people shall have the right to take public examinations and hold public office. Article 7 of the Civil Service Examination Act stipulates

that citizens of the Republic of China having reached the age of 18 and eligible for taking examinations under the Act may take the examinations.

328. Paragraph 1, Article 21 of the Act Governing Relations between the People of Taiwan Area and the Mainland Area says that mainland Chinese approved to enter the Taiwan area shall not register as public official candidate, hold public office, work for a state-run enterprise (institution), or organize a political party unless they have registered their household in the Taiwan area for ten years or longer, unless otherwise provided by law. They shall not work for intelligence authorities (institutions) or national defense authorities (institutions) unless they have registered their households in the Taiwan area for 20 years and above. Paragraphs 2 and 3 of the same article further regulate that mainland Chinese approved to enter the Taiwan area and having registered permanent addresses in Taiwan may be members of the faculty in universities, researchers at academic research institutes, or professionals at educational institutions that do not involve national security or research of classified technology according to law and are not subjected to the restriction that they must have registered their households for ten years and above. The aforementioned requirements target people in the Taiwan area whose original registered households were in mainland China and are regulations over the said people serving as public officials candidates and holding public official. Despite the fact that it is different from the people in the Taiwan area who have had their households registered locally since the very beginning, the purpose of the legislation took into consideration the contemporary separation of rule and confrontation status and the significant essential differences in political, economic, and social regimes across the Taiwan Strait. In addition, considering the differences in the said mainland Chinese's knowledge of a free and democratic constitutional regime, the fact that it takes time for them to adapt to Taiwan society, and the fact that it takes long-term cultivation for the people in the Taiwan area whose original registered households were in mainland China to get general trust from the general public in their exercise of public power when they hold public office, Article 21 of the Act Governing Relations between the Two Areas hence sets the ten-year period. It is a necessary approach and it falls within the scope of reasonability. Grand Justice Interpretation No. 618 supports the constitutionality of the article.

329. Article 10 of the Nationality Act also sets the ten-year restriction for aliens having naturalized and obtained the Republic of China nationality to hold certain high-ranking public positions (including President, Vice President, deputy minister and above positions at individual ministries and departments, and elected civil servants at local levels).

### **Free and Periodical Elections**

330. Local elections of public officials take place every four years. The tenures for local chief executives and local elected representatives are four years. After the Amending Articles of the Constitution were announced, legislators since 1992 and the president and vice president since 1996 have been elected through direct voting by the people. The elections are held periodically following statutory cycles. Before 1992, there were no periodical legislator elections. Instead, those elected in mainland China in 1947 continued to exercise their powers after they relocated to Taiwan. The Government only held elections for additional legislators from time to time. The number of legislators elected during each of such elections was limited.

### **Factors Undermining Exercise of Voting Right**

331. Electors should cast their ballots at the polling station. As such, staff working in public and private sectors who are on duty, military personnel based out of town, women in labor, hospitalized patients, people in nursing institutions, people with disabilities, people under detention, students pursuing their studies or attending in-service trainings, staff based overseas or citizens overseas will not be able to exercise their voting right. Staff at the polling station, if their household is registered in a different area, municipality, county, or city from the polling station and they are unable to return to the area of household registration to cast their ballots, are unable to exercise their voting right at the polling station, either. All of the above make the exercise of voting power difficult.

332. The current measures taken to facilitate exercise of the voting right by people with physical or mental disabilities still cannot fully satisfy the needs of the disabled and are likely to infringe on the confidentiality of their votes. The government should continue to reflect on the issue and seek improvements. The requirement for candidates to pay the security deposit upon registration is in fact a restriction on a person's right to elect and be elected. This is also not a recommended way to review the authenticity of people's intention to run in the election and their

freedom of intended political speech. The spirit of the Covenant should be reflected upon to seek improvements.

**Table 38 Security deposits for major elections from 2008 to 2012**

| Unit: NT\$        |  |            |
|-------------------|--|------------|
| Election date     | Type of election   | Amount     |
| January 12, 2008  | The 7th legislative election                                     | 200,000    |
| March 20, 2008    | The 12th Presidential and Vice Presidential election             | 15,000,000 |
| December 05, 2009 | County and city mayor election                                   | 200,000    |
|                   | County and city councilor election                               | 120,000    |
| November 27, 2010 | Municipality mayor election                                      | 2,000,000  |
|                   | Municipality councilor election                                  | 200,000    |
| January 14, 2012  | The 13 <sup>th</sup> Presidential and Vice Presidential election | 15,000,000 |
|                   | The 8th legislative election                                     | 200,000    |

Source: Central Election Commission

### **Petition for Annulment of Election Results**

333. Both the PVPERA and the CSERA stipulate that the Election Commission, public prosecutor, or candidates in the same electoral district may petition to the court for annulment of election results with the elected as the defendant. For nationwide constituency and overseas compatriot legislator elections, other registered political parties may also petition for annulment of election results against the elected.

### **Punishments, Disciplines, and Relief for Civil Servants**

334. As is indicated in The Public Functionaries Discipline Act, punishments for civil servants include dismissal, suspension, degradation, reduced salary, demerit, and admonition. Dismissal includes removing the said civil servant from his or her current position and restricts him or her from getting another position within a certain period of time, one year at minimum. Whoever disagrees on the decision of the Commission on the Disciplinary Sanctions of Functionaries can only petition to the Committee for re-deliberations as a relief for a specific reason.

335. Other personnel and administrative acts for civil servants include termination and discharge. If there is a disagreement on the decision, civil servants may petition the Civil Service Protection and Training Commission for re-evaluation. If disagreements continue after the re-evaluation, the Administrative Court shall review if the re-evaluation is legal.

336. High-ranking officers in the military can detain subordinates in the confinement room for a certain period of time as punishment without providing access to relief. Since 1997, however, Grand Justice Interpretation No. 430 and other related interpretations have followed one another to allow military personnel to seek judicial relief for any infringement on their rights. Accordingly, the Act of Punishment of the Armed Forces was amended in 2009 to allow military personnel to plead to higher-ranking authorities with regard to punishments like confinement.

#### **To Take Examinations and Hold Public Office**

337. The Civil Service Examination Act authorizes certain civil service examinations to set limits on the age, physical condition, gender, military service status and other restrictions in order to meet the needs of the agencies in concern. To protect the people's right to examination and public office, the Ministry of Examination has conferred with the respective organizations on numerous occasions the possibility of lifting or relaxing the said conditions or restrictions, including the age limit for 14 items under the Special Examination for Patent and Trademark Application Examiners. As a result, the physical requirements for general examinations were abolished, and the restrictions for special examinations, while maintained, were somewhat relaxed. Gender requirements for three items under the Special Examination for Customs Personnel were gradually repealed. Military service restrictions were either removed or relaxed for six items under the Special Examination for Highway Employees. Currently, among all national examinations, ten maintain an age limit; three hold gender requirements; eight have restrictions on military service status, and 16 further items require physical checkups, including the Level 3 Senior Civil Service Examination; Common Examination for Aircraft Pilots; Aircraft Repairs and Maintenance Personnel; Special Examinations for Investigation Agents, Intelligence Agents and Police; General Special Examination for Police; Special Examinations for Railway Personnel; Civil Aviation Personnel; Customs Personnel; Coast Guard Personnel; Aborigines (bailiffs and prison guards); Diplomatic and Consular Personnel; Economic and Commercial

Personnel; Judges and Prosecutors; Immigration Administrative Personnel and Judicial Personnel. In practice of the spirit of human rights and equality, and in response to the general public's expectations, the government should continue to communicate and carefully review with hiring organizations the necessity, rationality, and suitability of these various restrictions.

338. In 2005 and 2006, physical requirements were principally waived, and were relaxed in special examinations where they had to be maintained.

339. Special Examinations for the Disabled were launched in 1996 and special exam venues for people with disabilities have been available since 1991, with related measures to protect the rights of the examinees. Apart from the basic training available to those accepted through the Special Examination for the Disabled, available since 2009, suitable training environments should continue to be developed in order to protect the learning rights of the disabled, with ongoing reviews and improvements as necessary.

### **Guaranteed Quotas for Women to Participate in Politics**

340. According to Article 4, Paragraph 2 of the Amending Articles of the Constitution and the CSERA, the number of elected female legislators in the national integrated and overseas compatriot legislator elections shall not be less than one half of the total openings.

341. The Local Government Act stipulates that every one out of four municipality, county or city councilors, and township or city representatives to be elected in an electoral district should be a woman. Every one out of four municipality, county, or city councilors to be elected from highland and lowland aborigines should be a woman. Every one out of four township or city representatives to be elected from the lowland indigenous peoples should be a woman.

342. Ratio of women with national political party membership or becoming candidates in elections:

- (1) Central civil service election: Ratios of female candidates in legislative elections of 2008 and 2012 are shown in Table 39.

**Table 39 Ratios of female candidates in legislative elections of 2008 and 2012**

| Unit: Persons; % |   |       |     |     |                                |
|------------------|---|-------|-----|-----|--------------------------------|
| Year             | Type of election  | Total | M   | F   | Ratio of female candidates (%) |
| 2008             | Election of legislators of nationwide constituency and among citizens residing abroad | 128   | 67  | 61  | 47.66                          |
|                  | Regional election of legislators  | 283   | 226 | 57  | 20.14                          |
|                  | Election of legislators by aboriginal constituency                                    | 12    | 9   | 3   | 25.00                          |
|                  | Total   | 423   | 302 | 121 | 28.61                          |
| 2012             | Election of legislators of nationwide constituency and among citizens residing abroad | 127   | 64  | 63  | 49.60                          |
|                  | Regional election of legislators  | 267   | 202 | 65  | 24.34                          |
|                  | Election of legislators by aboriginal constituency                                    | 16    | 13  | 3   | 18.75                          |
|                  | Total   | 410   | 279 | 131 | 31.95                          |

Source: Central Election Commission

(2) Local civil service election: Ratios of female candidates in the county or city mayor and councilor elections of 2009 and the municipality mayor and councilor elections of 2010 are shown in Table 40.

**Table 40 Ratios of female candidates in local elections from 2009 and 2010**

| Unit: Persons; % |                                  |       |     |     |                                |
|------------------|----------------------------------|-------|-----|-----|--------------------------------|
| Year             | Type of election                 | Total | M   | F   | Ratio of female candidates (%) |
| 2009             | County or city mayor election    | 54    | 47  | 7   | 12.96                          |
|                  | Count or city councilor election | 935   | 694 | 241 | 25.78                          |
| 2010             | Municipality mayor election      | 14    | 10  | 4   | 28.57                          |
|                  | Municipality councilor election  | 646   | 458 | 188 | 29.10                          |

Source: Central Election Commission

### **Guaranteed Quotas for Indigenous Peoples to Participate in Politics**

343. Article 10, Paragraph 12 of the Amending Articles of the Constitution stipulates that the state shall, in accordance with the will of the ethnic groups, safeguard the status and political participation of the aborigines. Article 4 of the Amending Articles of the Constitution stipulates that during the legislative election, three legislators each shall be elected from the aborigines in plain areas and highlands. For the electoral district, the CSERA is to be followed. For lowland and highland aborigines, two electoral districts are assigned. Each has three seats.

344. The Local Government Act stipulates that when a municipality has lowland and highland aboriginal populations of over 2,000 people, there should be openings for lowland and highland councilors. When there were mountain townships before reform, there should be openings for aboriginal councilors. When the lowland aboriginal population in a county, city, or township comprises over 1,500 people, there should be openings for lowland aboriginal councilors and representatives. When there are mountain townships, there should be openings for aboriginal councilors.

345. First held in 1956, the Examination for Aboriginal Administrators in the Province of Taiwan, under the special examination category, was intended to select aboriginal administrative and technical personnel to be engaged in local autonomy and economic construction in aboriginal regions. The title of the examination was changed to Civil Service Special Examination for Indigenous Peoples in 2004 and was divided into levels 1, 2, 3, 4, and 5. A total of 902 applicants were accepted between 2006 and 2011, bringing the number of aboriginal civil servants throughout the nation up to 6,572, accounting for 2.92% of all civil servants.

346. To promote employment for indigenous peoples, protect their right to work and have economic life, the Indigenous Peoples Employment Rights Protection Act was established in 2001. With regard to proportional employment of aboriginals, the Act says that all government establishments, public schools, and state-owned enterprises in non-indigenous regions, except the counties of Penghu, Kinmen, and Lianchiang, are required to hire one aboriginal employee for every 100 employees without civil service qualifications hired. Employees of government agencies, public schools, academic institutions, and state-owned enterprises located in indigenous areas who do not possess civil service qualifications shall comprise at least one-third



of indigenous peoples. For employees who are required to have civil service qualifications, the percentage of indigenous employees may not be less than 2% of the current number of employees.

**Table 41 Statistics on the employment of individuals from indigenous communities working in the public sector, 2007–2011**

| Unit: Persons |                |                              |                         |
|---------------|----------------|------------------------------|-------------------------|
| Year          | Civil servants | Five categories of personnel | No. of persons employed |
| 2007          | 6,016          | 4,095                        | 10,111                  |
| 2008          | 6,203          | 4,170                        | 10,374                  |
| 2009          | 6,498          | 4,512                        | 11,011                  |
| 2010          | 6,647          | 4,643                        | 11,289                  |
| 2011          | 7,000          | 4,688                        | 11,688                  |

Source: Human Resources System of the Directorate-General of Personnel Administration, Executive Yuan

Description: Five categories of personnel are defined by law as the following five types of people: contractors; safeguard police; technicians, drivers, janitors, cleaners; toll collectors; and other non-civil service and non-technical positions.

### **Number of Civil Servants with Disabilities**

347. As of 2011, there were a total of 4,954 civil servants with disabilities, among whom 3,100 were men, accounting for 62.58%, and 1,854 were women, occupying 37.42%. The average age was 45.43 years and the average seniority was 15.75 years.

## **Article 27**

### **Minority Races and Language Groups**

348. Ethnic minorities in the Republic of China include 14 tribes officially recognized by the government—the Ami, Atayal, Paiwan, Bunun, Puyuma, Rukai, Tsou, Saisiyat, Yami, Thao, Kavalan, Taroko, Sakizaya, and Seediq—as well as Mongolians, Tibetans, and linguistic minorities such as Hakka speakers, foreign spouses, and migrant workers from Indonesia, the Philippines, Thailand, and Vietnam.

349. There are 14 indigenous peoples recognized by the government. As of 2011, the total population of these groups amounted to 519,984 people, accounting for 2% of the whole population of the nation. Among them, 226,198 relocated to urban areas, accounting for 43.5% of the total aboriginal population. There are other indigenous peoples yet to be recognized by the government. They are making efforts to reinstate their aboriginal status.

350. There are 210 Mongolian households with 461 people and 317 Tibetan households with 558 people.

351. According to the survey of the Hakka Affairs Council in 2011, the subjectively and objectively determined Hakka population accounted for 18.1% to 24.8% of the whole population of the nation.

352. As of 2011, there were a total of 425,660 alien workers, including 227,806 in the industries and 197,854 in social welfare.

**Table 42 Foreign worker statistics, 2011 — by country and industry sector**

Unit: Persons; %

| Country                |                     |         | Indonesia | Malaysia | The Philippines | Thailand | Vietnam | Mongolia |
|------------------------|---------------------|---------|-----------|----------|-----------------|----------|---------|----------|
| Item                   |                     |         |           |          |                 |          |         |          |
| Manufacturing industry | Total No. of people | 215,271 | 20,166    | 3        | 58,667          | 67,268   | 69,167  | 0        |
|                        | %                   | 50.57   |           |          |                 |          |         |          |
| Construction industry  | Total No. of people | 3,865   | 29        | 0        | 48              | 3,407    | 381     | 0        |
|                        | %                   | 0.91    |           |          |                 |          |         |          |
| Fishing (sailors)      | Total No. of people | 8,670   | 7,134     | 0        | 1,109           | 20       | 407     | 0        |
|                        | %                   | 2.04    |           |          |                 |          |         |          |
| Domestic caregivers    | Total No. of people | 185,317 | 145,091   | 0        | 21,336          | 1002     | 17,887  | 1        |
|                        | %                   | 43.54   |           |          |                 |          |         |          |

| Country                  |                     |         | Indonesia | Malaysia | The Philippines | Thailand | Vietnam | Mongolia |
|--------------------------|---------------------|---------|-----------|----------|-----------------|----------|---------|----------|
| Item                     |                     |         |           |          |                 |          |         |          |
| Institutional caregivers | Total No. of people | 10,409  | 1,677     | 0        | 960             | 54       | 7,718   | 0        |
|                          | %                   | 2.45    |           |          |                 |          |         |          |
| Domestic helpers         | Total No. of people | 2,128   | 1,312     | 0        | 721             | 12       | 83      | 0        |
|                          | %                   | 0.50    |           |          |                 |          |         |          |
| Total                    | Total No. of people | 425,660 | 175,409   | 3        | 82,841          | 71,763   | 95,643  | 1        |
|                          | %                   | 100     |           |          |                 |          |         |          |

Source: Bureau of Employment and Vocational Training, Council of Labor Affairs, Executive Yuan

### **International Immigrant Day for New Immigrants**

353. In order for new immigrants to have advanced understanding of their human rights, the government holds the International Immigrant Day event each year, starting in 2008. As of 2011, the headcount of participants in the event already reached over 10,000.

### **Language Education and Dissemination**

354. Elementary school students are asked to choose from among Taiwanese, Hakka, or one of various aboriginal languages to study at school. Electronic dialect dictionaries have been compiled and published online, and efforts have been made to integrate dialect spelling systems and written forms. “Taiwan Native Language Day” is also promoted. The government provides film funds to assist in the filming of movies about minority groups, such as the aboriginal movie “Seediq Bale”, the Hakka movie “1895”, and “The Fourth Portrait”, which portrays new immigrants in Taiwan. The Public Television Act Amendment has already stipulated that the public television channel must serve viewers of diversified ethnic backgrounds.

### **Protection of Traditional and Cultural Rituals of Indigenous Peoples**

355. The IPBL stipulates that indigenous peoples shall hunt wild animals, pick wild plants and fungi, harvest minerals and stones, and utilize water resources, among other non-profit activities, legally for the sake of their traditional culture, rituals, or self-use within aboriginal regions.

Nevertheless, revision to related laws is necessary to consolidate the aforementioned details. This shows that the rights of aborigines to traditional and cultural rituals are not automatically verified as a result of the stipulation of the IPBL.

### **Protection of Indigenous Languages and Culture**

356. To maintain aboriginal culture and ensure its integrity, the government has set up the CIP, established the indigenous TV station, and had various laws and programs on the counseling, development, promotion, and preservation of aboriginal culture in order to enhance indigenous peoples' ability to utilize their mother tongues and lay the groundwork for the learning of aboriginal languages.

### **Promotion of Mongolian and Tibetan Languages and Culture**

357. In the promotion of Mongolian and Tibetan languages and culture, to preserve their traditional spoken and written languages, customs, and enable our nationals to know their culture, the Mongolian and Tibetan Affairs Commission holds classes periodically and organizes the Chinggis Khan Memorial Ceremony each year.

### **Promotion of Hakka Language and Culture**

358. The Hakka Basic Act of 2010 involves policies such as the establishment of priority development areas for the Hakka culture, promotion of the Hakka language as an official language, proactive organization of a Hakka language proficiency certification, establishment of a Hakka language teacher system, a barrier-free environment for the Hakka language, etc.

### **Indigenous Peoples' Court**

359. For the purpose of protecting indigenous peoples' right of access to courts, the IPBL stipulates that the indigenous peoples' court or tribunal may be established. The government shall adequately evaluate and establish the indigenous peoples' court or tribunal with the respect for traditional customs, culture, and values of indigenous peoples.