

公民與政治權利國際公約及經濟社會
文化權利國際公約中華民國初次報告
國際審查秘書處第1次會議

會議資料

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目 錄

1. 人權事務委員會審查締約國報告之程序.....	1
2. 經濟社會文化權利委員會審查締約國報告之程序.....	3
3. Human Rights Committee - Working Methods.....	6
4. Committee on Economic, Social and Cultural Rights - Working Methods	16
5. 總統府人權諮詢委員會第七次委員會議紀錄摘要.....	30
6. 國家人權報告書審查委員名單諮詢小組第二次會議建議之國際專家名單	33
7. 兩公約施行監督聯盟建議書.....	41
*如何設計符合《兩公約施行法》第六條的國家報告制度.....	41
*兩公約施行監督聯盟拜會總統府人權諮詢委員會訴求建議書.....	50
8. TAIWAN RELEASES ITS FIRST HUMAN RIGHTS REPORT BASED ON TWO UNITED NATIONS COVENANTS: A GOOD START, BUT A LONG WAY TO GO	61

人權事務委員會審查締約國報告之程序*

壹、國家報告任務編組

人權事務委員會已取消會前工作小組（pre-session working group），改採國家報告任務編組（Country Report Task Force），也不在會議前開會，而是在一般會期內開會。主要目的在於預先確認與報告國會談時的主要問題，以便提升效率並減輕報告國代表之負擔，使其準備可更聚焦。

國家報告任務編組由 4 到 6 位委員組成，其中 1 位擔任國家報告員（country rapporteur），全權負責草擬問題清單（list of issues）。國家報告任務編組的工作方法如下。第一、國家報告員向國家報告任務編組提出問題清單草稿供討論，經任務編組討論採納後，即將問題清單依專長或興趣分配給編組內的委員，並將問題清單提供給報告國進行準備。準備期通常約 2 至 4 個月。秘書處會將報告國之國家分析（country analysis）以及與待審報告相關之文件提供給委員。因此，委員會請相關個人、機構與非政府組織提交相關且適當之資料給秘書處。

貳、審查報告

審查報告的流程如下：（一）由報告國代表作簡介並對第一組問題清單提出答覆，但報告國無需事先提出書面答覆。（二）委員會就答覆的有關事項進行評論與提問，雖然每位委員都可參與討論，但任務編組的委員就事先分配之問題有優先發問權。（三）報告國代表接著就其餘問題提出答覆，再由委員會提出評論與問題。如此反覆進行。（四）初次報告通常會以 3 次會議的時間審查完畢，並再額外以 2 至 3 小時的時間討論結論性意見（concluding observation）。（五）國家報告員由秘書處協助草擬結論性意見供委員會討論而決定。結論性意見之固定格式為導言、積極方面、阻礙公約落實的因素與困難、主要關注問題和建議。也會建請報告國廣為散發結論性意見，並要求報告國針對特定議題於一定時間（通常是一年）內提出新增資料給委員會。結論性意見經採用後通常在議程最後一天公開並轉知報告國。

參、報告審查完畢之後續行動

委員會應指定一名特別報告員，說明於一定期間內自報告國所收到的資訊以

* 資料來源：<http://www2.ohchr.org/english/bodies/hrc/workingmethods.htm>

及為符合委員會之建議已經採取哪些措施加以落實。

肆、文件

委員會會收到報告國之國家檔案，裡面含有秘書處所收到的正式報告、非政府組織或國際政府組織提供之資訊以及相關文件。

伍、聯合國相關專門機構之參與

委員會邀請聯合國專門機構提供與報告國相關的書面資訊，或由其代表提出口頭報告。甚至於在秘書長與委員會商討之後，可將報告國的報告提供給專門機構，由專門機構提出評論。

陸、非政府組織之參與

委員會邀請非政府組織及國家人權機構於審查報告之前以書面提供各該國家之資訊，委員會將每次全體會議的第一天上午留給非政府組織代表以口頭表達意見。此外，在審查報告開始前的午餐時間也可以安排讓非政府組織進行口頭簡報。委員會有權決定是否將非政府組織的報告列為委員會之正式文件。

經濟社會文化權利委員會審查締約國報告之程序*

壹、會前工作小組（pre-sessional working group）

由主席指定 5 名委員組成會前工作小組。（第 22 段）主要目的在於預先確認與報告國會談時的主要問題，（第 23 段）報告國因此也可以預先準備更精確及詳細的答案。（第 24 段）會前工作小組的每一位委員負責詳細閱讀一份報告並向工作小組提出初步的問題清單（list of issues），工作小組的其他委員也可以加入意見，工作小組最後會提出問題清單的確定版本。（第 25 段）秘書處必須將報告國之國家分析（country analysis）以及與待審報告相關之文件提供給委員。因此，委員會邀請相關個人、機構與非政府組織提交相關且適當之資料給秘書處。秘書處也應確保與該國相關之資訊已定期放入國家分析的檔案內。（第 26 段）

問題清單會送給報告國，並註明這僅是委員們可能會問的部分問題，希望報告國預先以書面回覆，以利委員審酌。（第 27 段）工作小組的其他任務尚包括：如何分配每份報告的審查時間、如何回應各國提出的補充報告等。

貳、審查報告

審查報告的流程如下：（一）由報告國代表作簡介並補充新的資訊；（二）委員會按照公約第 1-5、6-9、10-12、13-15 條之順序進行報告審查與提問；主席請委員對每項議題提問或評論，然後再請報告國代表就不需要進一步研究的問題立即回覆，其餘問題留待下個議程處理或以書面答覆；（三）委員可針對答覆自由追問，但委員會要求委員不要有下列行為：1、勿就公約以外的範圍提問；2、勿重複提問；3、不當地就已有許多問題的事項再增加問題；4、每次發言不超過 5 分鐘。（第 29 段）（四）秘書處草擬結論性意見（concluding observation），由委員會以秘密會議取得共識而決定。結論性意見之固定格式為導言、積極方面、主要關注問題和建議。（第 30 段）結論性意見經採用後通常在議程最後一天公開。（第 31 段）通常委員會審查初次報告需要 3 次會議，每次各 3 個小時，再以秘密會議討論結論性意見。（第 32 段）

參、報告審查完畢之後續行動

* 資料來源：經濟社會文化權利委員會於 2010 年 5 月及 11 月舉行第 44 及 45 次會議(E/2011/22 - E/C.12/2010/3)，會議報告第 19 至 59 段是關於委員會工作方法（working method）之說明，可供締約國及有興趣者參考。以下簡單說明之。

委員會要求所有國家在下次提交定期報告時應說明對於結論性意見所提建議已經採取哪些措施加以落實。也可以特別要求報告國在下次定期報告屆期之前，先提出更多資訊或統計數據，或先回應結論性意見所提到的特定迫切問題。這些預先提出的資訊會由下次的會前工作小組加以審查。(第 36 段) 若委員會仍然無法取得所需要的資訊，則可請求報告國接受委員會指派的 1 至 2 名委員前往報告國做實地訪查 (on-site visit)。(第 37 段) 目前已適用於 2 個國家，都是很正面的經驗。(第 39 段)

肆、對於不交或遲交報告甚久之締約國之處置 (略)

伍、合併報告 (略)

陸、委員會從締約國以外取得資訊之處置

除了締約國以外，其他相關個人或組織也會提供資訊給委員會作為審查報告之參考。這些資訊是委員會與締約國進行建設性對話的資訊之一，秘書處應於審查報告之前提供給締約國。(第 43 段)

有時候主要是非政府組織在報告審查及結論性意見完成之後仍會向委員會提出資訊，委員會只會就其中關於在結論性意見有特別要求的事項予以審酌，(第 44 段) 並建請將資訊直接提供給締約國政府以協助其落實結論性意見。(第 45 段)

柒、總體討論日 (略)

捌、其他諮詢

委員會盡最大努力與其他條約機構協調工作期能各展所長。也會徵詢聯合國其他專門機構、特別報告員等人權專家的專業意見。(第 50 段) 並邀請學有專精的專家參與討論。(第 51 段)

玖、非政府組織參與委員會之工作

委員會以及會前工作小組都接受非政府組織以書面提供的相關資訊，會前工作小組還會接見非政府組織。此外，委員會在每項議程的第一天會撥出一些時間讓非政府組織的代表以口頭提供資訊。這些資訊應 (1) 精確地聚焦於經社文公約的條文；(2) 與委員會審查之事項有直接關係；(3) 有可信度；(4) 非辱罵性質。相關會議係開放且提供翻譯與媒體服務，但不做摘要紀錄。(第 52 段)

委員會要求秘書處應盡速將非政府組織提供給委員會的資訊也提供給報告

國。通常是在會前將資訊刊登於人權高級專員辦公室網站，並推定締約國已經了解該資訊。

Human Rights Committee - Working Methods*

Overview of the working methods of the Human Rights Committee

I. Introduction

....

II. Guidelines for reporting by States parties

The Committee has noted that some of the reports submitted initially were so brief and general that the Committee found it necessary to elaborate general guidelines regarding the form and content of reports. These consolidated guidelines for State reports under the ICCPR (CCPR/C/66/GUI/Rev.2) were designed to ensure that reports are presented in a uniform manner and to enable the Committee and States parties to obtain a complete picture of the situation in each State as regards the implementation of the rights referred to in the Covenant.

The guidelines provide for comprehensive initial reports, prepared on an article-by-article basis, and focused periodic reports geared primarily to the Committee's concluding observations on the previous report of the State party concerned. In their periodic reports, States parties need not report on every single article of the Covenant, but only on those provisions identified by the Committee in its concluding observations and those articles in respect of which there have been significant developments since the submission of the previous report.¹

Despite the guidelines, however, some reports are still so brief and general that they do not satisfy the reporting obligations under article 40. Even reports which were in their form generally in accordance with the guidelines have in substance been incomplete. In these cases the Committee can grant, during the examination of the report, the possibility to the State party to complement this information within a specified deadline.²

* 資料來源：<http://www2.ohchr.org/english/bodies/hrc/workingmethods.htm>

¹ Human Rights Committee, Recent decisions on procedures: 26/10/2001, A/56/40, paras. 50-54.

² Rule 70 of the Rules of Procedure of the Human Rights Committee.

II. Consideration of reports of States parties by the Committee

Once the State party has ratified the Covenant it should submit, one year after the Covenant enters into force, its initial report to the Committee. For periodic reports, it is the Bureau of the Committee, at the end of the session at which the State party report is examined, which decides the number of years after which the State party should present their next report. The general rule (ever since this system was started two years ago) is that State parties should present their periodic report to the Committee every four years. However, the Bureau can add or subtract one year to this four-year period depending on the level of compliance with the Covenant's provisions by the State party.³

The Committee does not have rules on the number of reports to be examined each session, but this can vary from four to six reports; five reports being the average number of reports examined. Preference is given to those reports which have arrived earlier. Geographic criterion is usually not applied when selecting which reports are to be examined by the Committee.

A. Pre-session working group

The Human Rights Committee has replaced the working group on article 40 of the Covenant with **Country Report Task Forces**, which instead of meeting before the session meet during the plenary session. The principal purpose of the Country Task Force is to identify in advance the questions which will constitute the principal focus of the dialogue with the representatives of the reporting State. The aim is to improve the efficiency of the system and to ease the task of States' representatives by facilitating more focused preparations for the discussion.

The Country Report Task Force has between four and six members, taking account of the desirability of a balanced geographical distribution and other relevant factors. One of these members is the country rapporteur who is the person overall responsible for the drafting of the list of issues.

³ Rules 66 and 70A of the Rules of Procedure of the Human Rights Committee.

The working methods of the Country Report Task Force are as follows: First, the country rapporteur presents the draft list of issues for discussion to the Country Report Task Force. Once the members have made their observations, the list of issues is adopted by the Task Force as a whole. The Task Force then allocates to each of its members principal responsibility for a certain number of questions included in the list of issues, based in part on the areas of particular expertise or interest of the member concerned. Once the list of issues is adopted and edited, it is transmitted to the State party. Since 1999 the lists of issues has been adopted at the session prior to the examination of the State report, thereby allowing a period of two to four months for States parties to prepare for the discussion with the Committee.⁴

In preparation for the Country Report Task Force, the secretariat places at the disposal of its members a country analysis as well as all pertinent documents containing information relevant to each of the reports to be examined. For this purpose, the Committee invites all concerned individuals, bodies and non-governmental organizations to submit relevant and appropriate documentation to the secretariat.

The replacement of the pre-sessional working group, by Country Report Task Forces meeting during the plenary, has freed time for a **pre-sessional working group on communications** to meet, for five days, prior to each of the Committee's sessions. This working group is composed of at least five members of the Committee nominated by the Chairperson, taking account of the desirability of a balanced geographical distribution and other relevant factors. This working group is entrusted with the task of making recommendations to the Committee regarding communications received under the Optional Protocol. The Committee may designate special rapporteurs from among its members to assist in the handling of communications.⁵ The secretariat facilitates the work of the special rapporteurs and the working group by assisting in the research and drafting of the requisite number of recommendations on complaints ready for action (normally 25 to 30 per session).

⁴ Human Rights Committee, Recent decisions on procedures: 26/10/2001, A/56/40, paras. 50-54.

⁵ Rule 89 of the Rules of Procedure of the Human Rights Committee.

B. Constructive dialogue

It is the practice of the Committee, in accordance with Rule 68 of its Rules of Procedure, to examine reports in the presence of representatives of the reporting States. All States whose reports have been examined in this way have cooperated with the Committee but the level, experience and the number of representatives have varied. The Committee wishes to state that, if it is to be able to perform its functions under article 40 as effectively as possible and if the reporting State is to obtain the maximum benefit from the dialogue, it is desirable that the States representatives should have such status and experience (and preferably be in such number) as to respond to questions put, and the comments made, in the Committee over the whole range of matters covered by the Covenant.⁶

On occasion, States have announced that they would appear before the Committee but have not done so on the scheduled date. The Committee has decided that, if a State party has submitted a report but does not send a delegation to the Committee, the Committee may notify the State party of the alternative date on which it intends to consider the report or may proceed to consider the report at the meeting that had been initially scheduled. If the latter takes place, the Committee will examine the report and prepare provisional concluding observations which will be submitted to the State party. The Committee will mention, in its Annual Report, that these provisional concluding observations were prepared, but their text will not be published.⁷

The following procedure is generally used for the examination of State party reports: The representative of the State party is invited to introduce the report by making brief introductory comments, followed by the replies to the first group of questions included in the list of issues. It should be noted that States parties are encouraged to use the list of issues to better prepare for a constructive discussion, but are not expected to submit written answers. After this intervention, the Committee members will provide comments or further questions in relation to the replies provided.

⁶ General Comment No. 2: Reporting Guidelines, 1981, Thirteenth Session. See HRI/GEN/1/Rev.6.

⁷ Rule 68 of the Rules of Procedure of the Human Rights Committee.

Although all Committee members participate in this dialogue, the members of the Country Task Force who are responsible for a pre-assigned number of questions, will have priority when asking questions to the representatives of the State party. The representative of the State party is then invited to reply to the remaining questions on the list of issues, to which will again follow the comments and questions of the Committee.

In general, the Committee devotes two meetings (of three hours each) to the examination of periodic reports and three meetings (of three hours each) to the examination of initial reports. In addition, it generally devotes between two and three hours towards the end of the session, in private, to the discussion prior to the adoption of the concluding observations.

Individual members of the Committee refrain from participating in any aspect of the consideration of the reports of the States of which they are nationals in order to maintain the highest standards of impartiality, both in substance and appearance.

C. Concluding observations/comments

The final phase of the Committee's examination of the State report is the drafting and adoption of its concluding observations. For this, the country rapporteur prepares, with the assistance of the secretariat and based on the constructive dialogue held during the plenary session, draft concluding observations for the consideration of the Committee.

The agreed structure of the concluding observations is as follows: introduction; positive aspects; factors and difficulties impeding the implementation of the Covenant; principal subjects of concern and suggestions and recommendations. Concluding observations also include a recommendation requesting the wide dissemination of the concluding observations in the State party concerned, as well as a paragraph requesting that additional information be provided to the Committee, within a specified deadline (usually of one year), on specific points of the concluding observations. The concluding observations also set out the provisional date when the State party's next periodic report is due.

This draft is discussed by the Committee in private session with a view to adopting it by consensus. The concluding observations, once adopted, are usually not made public until the day preceding the end of the session. They are forwarded to the State party concerned and included in the Committee's annual report.

IV. Follow-up to concluding observations/comments

After the adoption of the concluding observations, a follow-up procedure shall be employed in order to establish, maintain or restore a dialogue with the State party. For this purpose and in order to enable the Committee to take further action, the Committee shall appoint a special rapporteur, who will report to the Committee. The special rapporteur will report with regard to the information received from the State Party (within a specified deadline) as to the steps taken, if any, to meet the recommendations of the Committee. This sessional follow-up progress report will prompt the Committee plenary to make a determination of the date/deadline for the submission of the next report. This follow-up procedure does not apply in cases of examination of country situations (i.e. when the Committee examines the measures taken by the State party in the implementation of the Covenant in the absence of a State report).

V. Strategies to encourage reporting by States parties

The Committee notes, as appears from its annual reports, that only a small number of States have submitted their reports on time. Most of them have been submitted with delays ranging from a few months to several years and some States parties are still in default, despite repeated reminders by the Committee.

Since reporting by States parties is the fundamental mechanism by which the Committee discharges fully its obligation to monitor the observance of obligations under the Convention, the Committee has adopted special procedures for considering the situation of States parties that have failed to honour their reporting obligations.

When the State party has not presented a report, the Committee may, at its discretion, notify the State party of the date on which the Committee proposes to examine the measures taken by the State party to implement the rights guaranteed under the

Covenant. If the State party is represented by a delegation, the Committee will, in presence of the delegation and in public session, proceed with the examination on the date assigned. If the State party is not represented, the Committee may, at its discretion, either decide to proceed to consider the measures taken by the State party to implement the guarantees of the Covenant at the initial date or notify a new date to the State party. In both cases the Committee will prepare provisional concluding observations which will be transmitted to the State party. The Committee will mention, in its Annual Report, that these provisional concluding observations were prepared, but their text will not be published.⁸

VI. Documentation supplied by the Secretariat

The Committee will be provided with country files on the reporting State party. These files will include all material received by the secretariat, such as the official report, NGO and IGO information and other relevant documents.

VII. Interaction with specialized agencies and bodies of the United Nations

The Committee invites specialized agencies and other bodies of the United Nations to cooperate in its work. The Committee invites specialized agencies to provide written reports containing country-specific information on States parties whose reports are before them. Representatives of these entities are also invited to address the Committee at the beginning of each session of the Human Rights Committee. Moreover, the Secretary-General can, after consultation with the Committee, transmit to specialized agencies parts of the reports received from State parties which may fall within their field of competence. The specialized agencies may then submit comments on those parts of the reports.⁹

VIII. Participation of non-governmental organizations and national human rights institutions in the activities of the Committees

⁸ Rule 68 of the Rules of Procedure of the Human Rights Committee.

⁹ Rule 67 of the Rules of Procedure of the Human Rights Committee.

In order to ensure that it is as well informed as possible, the Committee invites non-governmental organizations and national human rights institutions to provide reports containing country-specific information on States parties whose reports are before them. Such information should be submitted in writing, preferably well in advance of the relevant session. The Committee sets aside the first morning meeting of each plenary session to enable representatives of non-governmental organizations to provide oral information. In addition to this, lunch-time briefings are organized to allow non-governmental organizations to provide further information to Committee members before the examination of the State report by the Committee. The Committee, in its Annual Report (2002) stated that it reserved the right to determine, at a later stage, whether other briefings by non governmental organizations should also become part of the Committee's official.¹⁰

IX. General comments/recommendations

Interpreting the Covenant so that there can be no doubts about the scope and meaning of its articles has become an important function of the Human Rights Committee. General comments are normally directed at States parties and usually elaborate the Committee's view of the content of the obligations assumed by States as party to the Convention.

As at April 2004, the Committee had adopted 31 general comments: amongst these, General Comment No. 24 on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, General Comment No. 29 on states of emergency and General Comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant.

During the process of formulation of general comments, consultations take place with specialized agencies, non-governmental organizations, academics and other human rights treaty bodies, allowing for broader input into the process of elaboration of the general comment.

¹⁰ Paragraph 12, Annex III, Annual Report of the Human Rights Committee (2002), A/57/40 (Vol. I).

X. Statements adopted by the Committee

The Human Rights Committee does not adopt any statements to clarify and confirm its position with respect to major international developments and issues that bear upon the implementation of the Covenant.

XI. Individual Communications

Since the Optional Protocol to the ICCPR entered into force in March 1976, the Committee allocates time at each of its sessions to examine the communications received as well as the recommendations made by the pre-sessional working group on communications. The Committee considers these communications at private meetings and all documents related to the communications remain confidential. Only the final decision on any given complaint (inadmissibility decision or decision on the merits) becomes a public document.

Individual members of the Committee refrain from participating in any aspect of the consideration of the communications if: a) the State of which they are nationals is a party to the case; b) if the member has any personal interest in the case; c) if the member has participated in any capacity in the making of any decision on the case covered by the communication.¹¹

The Committee has established follow-up procedures for communications by designating special rapporteurs for follow-up on views for the purpose of ascertaining the measures taken by the States parties to give effect to the Committee's views.

¹²The special rapporteur shall make recommendations for further action by the Committee as necessary and shall regularly report to the Committee on follow-up activities.

XII. Other matters

Early-warning measures and urgent procedures

In the 1990s the Committee requested that several States facing serious difficulties in the implementation of Covenant rights (Bosnia and Herzegovina , Croatia , Federal

¹¹ Rule 84 of the Rules of Procedure of the Human Rights Committee.

¹² Rule 95 of the Rules of Procedure of the Human Rights Committee.

Republic of Yugoslavia , Burundi , Angola , Haiti , Rwanda and Nigeria) either present their overdue initial/periodic report without delay or prepare ad hoc reports on specific issues. Only Bosnia and Herzegovina , Croatia and the Federal Republic of Yugoslavia reacted to this initiative and submitted ad hoc reports. In March 2004, the Committee's Bureau discussed the possibilities of reviving the urgent procedure / ad hoc report procedure.

Meetings of chairpersons of the human rights treaty bodies and inter-committee meetings

Besides attending the meetings of chairpersons of the human rights treaty bodies, the Chairperson of the Human Rights Committee addresses the Commission on Human Rights since 2003.

Other consultations

Since October 2000, all States parties to the ICCPR have been invited to attend a meeting, every two years, to discuss issues of concern with regard to the implementation of the Covenant.

Committee on Economic, Social and Cultural Rights - Working Methods*

Excerpt from the Report on the Forty-Fourth and Forty-Fifth Sessions (E/2011/22 - E/C.12/2010/3), paras. 19-59

Overview of the present working methods of the Committee

19. This chapter of the Committee's report aims at providing a concise and up-to-date overview and explanation of the ways in which the Committee carries out its various functions, including information about recent developments in its working methods. It is designed to make the Committee's current practice more transparent and readily accessible so as to assist States parties and others interested in the implementation of the Covenant.

20. Since its first session, in 1987, the Committee has made a concerted effort to devise appropriate working methods that adequately reflect the nature of the tasks with which it has been entrusted. In the course of its 45 sessions it has sought to modify and develop these methods in the light of its experience. These methods will continue to evolve.

1. General reporting guidelines

21. The Committee attaches major importance to the need to structure the reporting process and the dialogue with each State party's representatives in such a way as to ensure that the issues of principal concern to it are dealt with in a methodical and informative manner. For this purpose, in 2008 the Committee has adopted revised reporting guidelines on treaty-specific documents to be submitted by States parties under articles 16 and 17 of the Covenant¹, with a view to assisting States in the reporting process and improving the effectiveness of the monitoring system as a whole.

* 資料來源：<http://www2.ohchr.org/english/bodies/cescr/workingmethods.htm>

¹ *Official Records of the Economic and Social Council, 2009, Supplement No. 4 (E/2009/22-E/C.12/2008/3), annex VIII.*

B. Examination of States parties' reports

1. Work of the pre-sessional working group

22. A pre-sessional working group meets for five days prior to each of the Committee's sessions. It is composed of five members of the Committee nominated by the Chairperson, taking account of the desirability of a balanced geographical distribution and other relevant factors.

23. The principal purpose of the working group is to identify in advance the questions that will constitute the principal focus of the dialogue with the representatives of the reporting States. The aim is to improve the efficiency of the system and to ease the task of States' representatives by facilitating more focused preparations for the discussion.²

24. It is generally accepted that the complex nature and diverse range of many of the issues raised in connection with the implementation of the Covenant constitute a strong argument in favour of providing States parties with the possibility of preparing in advance to answer some of the principal questions arising out of their reports. Such an arrangement also enhances the likelihood that the State party will be able to provide precise and detailed information.

25. With regard to its own working methods, the working group, in the interest of efficiency, allocates to each of its members initial responsibility for undertaking a detailed review of a specific report and for putting before the working group a preliminary list of issues. The decision as to how the reports should be allocated for this purpose is based in part on the areas of expertise of the member concerned. Each draft by a country rapporteur is then revised and supplemented on the basis of observations by the other working group members and the final version of the list is adopted by the working group as a whole. This procedure applies equally to both initial and periodic reports.

26. In preparation for the pre-sessional working group, the Committee has asked the secretariat to place at the disposal of its members a country analysis as well as all

² *Ibid.*, 1998, *Supplement No. 4* (E/1988/14-E/C.12/1988/4), chap. IV, para. 361.

pertinent documents containing information relevant to each of the reports to be examined. For this purpose, the Committee invites all concerned individuals, bodies and non-governmental organizations to submit relevant and appropriate documentation to the secretariat. It has also asked the secretariat to ensure that certain types of information are regularly placed in the country files.

27. The lists of issues drawn up by the working group are sent to the State party concerned, with a note stating the following:

The list is not intended to be exhaustive and it should not be interpreted as limiting or in any other way prejudging the type and range of questions which members of the Committee might wish to ask. However, the Committee believes that the constructive dialogue which it wishes to have with the representatives of the State party is greatly facilitated by making the list available in advance of the Committee's session. In order to improve the dialogue that the Committee seeks, it strongly urges each State party to provide in writing its replies to the list of issues and to do so sufficiently in advance of the session at which its report will be considered to enable the replies to be translated and made available to all members of the Committee.

28. In addition to the task of formulating the lists of issues, the pre-sessional working group is also entrusted with a variety of other tasks designed to facilitate the work of the Committee as a whole. These have included: discussing the most appropriate allocation of time for the consideration of each State report; considering the issue of how best to respond to supplementary reports containing additional information; examining draft general comments; considering how best to structure the day of general discussion; and other relevant matters.

2. Consideration of the reports

29. In accordance with the established practice of each of the United Nations human rights treaty monitoring bodies, representatives of the reporting States should be present at the meetings of the Committee when their reports are examined in order to ensure a constructive dialogue with the Committee. The following procedure is generally observed: the representative of the State party is invited to introduce the

report by making brief introductory comments and providing any new information that may be relevant to the dialogue. The Committee then considers the report by clusters of articles (usually articles 1–5, 6–9, 10–12 and 13–15), taking particular account of the replies furnished in response to the list of issues. The Chairperson will normally invite questions or comments from Committee members in relation to each issue and then invite the State party representatives to reply immediately to questions that do not require further reflection or research. Any remaining questions are taken up at a subsequent meeting or, if necessary, may be the subject of additional information provided to the Committee in writing. Members of the Committee are free to pursue specific issues in the light of the replies thus provided, although the Committee has urged them not to (a) raise issues outside the scope of the Covenant; (b) repeat questions already posed or answered; (c) add unduly to an already long list on a particular issue; or (d) speak for more than five minutes in any one intervention.

30. The final phase of the Committee's examination of the report consists of the drafting and adoption of its concluding observations. For this purpose, the Committee usually sets aside a brief period in closed session immediately after the conclusion of the dialogue to enable its members to express their preliminary views. The country rapporteur then prepares, with the assistance of the secretariat, a draft set of concluding observations for consideration by the Committee. The agreed structure of the concluding observations is as follows: introduction, positive aspects, principal subjects of concern and suggestions and recommendations. At a later stage, the Committee then discusses the draft, again in private session, with a view to adopting it by consensus.

31. The concluding observations, once formally adopted, are generally made public on the final day of the session. They are forwarded as soon as possible to the State party concerned and included in the Committee's report. If it so wishes, the State party may address any of the Committee's concluding observations in the context of any additional information that it provides to the Committee.

32. In general, the Committee devotes three meetings (of three hours each) to its public examination of States parties' reports. In addition, it generally devotes between two and three hours towards the end of the session, in private, to its discussion of each set of concluding observations.

3. Comments by States parties on concluding observations

33. Once the Committee has adopted its concluding observations on the report of a State party, and if the latter submits any comments thereon to the Committee, these are made public, as submitted, and mentioned in the annual report. Comments from States parties are published for information purposes only.

34. During the reporting period, the Committee received comments from the Netherlands on the concluding observations that the Committee adopted at its forty-fifth session in relation to the combined fourth and fifth periodic report submitted by the Netherlands (E/CN.12/NLD/4-5).

4. Postponement of the consideration of reports

35. Last-minute requests by States to postpone the consideration of a report that has been scheduled for examination at a particular session are extremely disruptive for all concerned and have in the past caused major problems for the Committee. Accordingly, the Committee's long-standing policy is not to grant such requests and to proceed with its consideration of all scheduled reports, even in the absence of a representative of the State party concerned.

C. Follow-up procedure in relation to the consideration of reports

36. At its twenty-first session³, the Committee decided that:

(a) In all concluding observations, the Committee would request the State party to inform the Committee, in its next periodic report, about steps taken to implement the recommendations in the concluding observations;

(b) Where appropriate, the Committee may, in its concluding observations, make a specific request to a State party to provide more information or statistical data at a time prior to the date that the next periodic report is due to be submitted;

³ On 1 December 1999 (53rd meeting).

(c) Where appropriate, the Committee may, in its concluding observations, ask the State party to respond to any pressing specific issue identified in the concluding observations prior to the date that the next report is due to be submitted;

(d) Any information provided in accordance with (b) and (c) above would be considered by the next meeting of the Committee's pre-sessional working group;

(e) In general, the working group could recommend that the Committee take one of the following measures:

(i) That the Committee take note of such information;

(ii) That the Committee adopt specific additional concluding observations in response to that information;

(iii) That the matter be pursued through a request for further information; or

(iv) That the Chairperson of the Committee be authorized to inform the State party, in advance of the next session, that the Committee would take up the issue at its next session and that, for that purpose, the participation of a representative of the State party in the work of the Committee would be welcome;

(f) If the information requested in accordance with (b) and (c) above is not provided by the specified date, or is patently unsatisfactory, the Chairperson, in consultation with the members of the Bureau, could be authorized to follow up the matter with the State party.

37. In situations in which the Committee considers that it is unable to obtain the information it requires on the basis of the above-mentioned procedures, it may decide to adopt a different approach. In particular, the Committee may request that the State party concerned accept a visit from one or two members of the Committee. The purposes of such an on-site visit would be: (a) to collect the information necessary for the Committee to continue its constructive dialogue with the State party and to enable it to carry out its functions in relation to the Covenant; and (b) to provide a more comprehensive basis upon which the Committee might exercise its functions in relation to articles 22 and 23 of the Covenant concerning technical assistance and advisory services. The Committee would state specifically the issue(s) with respect to

which its representative(s) would seek to gather information from all available sources. The representative(s) would also have the task of considering whether the programme of advisory services administered by the Office of the United Nations High Commissioner for Human Rights could be of assistance in connection with the specific issue at hand.

38. At the conclusion of the visit, the representative(s) would report to the Committee. In the light of the report presented by its representative(s), the Committee would then formulate its own conclusions. Those conclusions would relate to the full range of functions carried out by the Committee, including those relating to technical assistance and advisory services, to be provided by the Office of the High Commissioner.

39. This procedure has already been applied in relation to two States parties and the Committee considers the experience to have been a very positive one in both instances. In a case where the State party concerned does not accept the proposed mission, the Committee will consider making whatever recommendations might be appropriate to the Economic and Social Council.

D. Procedure in response to non-submitted and considerably overdue reports

40. The Committee believes that a situation of persistent non-reporting by States parties undermines one of the foundations of the Covenant.

41. Accordingly, the Committee resolved at its sixth session to begin in due course to consider the situation concerning the implementation of the Covenant in respect of each State party whose reports are very significantly overdue. At its seventh session it resolved to begin scheduling consideration of such reports at its future sessions and to notify the States parties concerned. At its thirty-sixth session, the Committee adopted the following procedure:

(a) To review three lists of States parties whose reports are overdue:

- (i) States parties with reports that were due within the past eight years;
 - (ii) States parties with reports that were due from 8 to 12 years ago;
 - (iii) States parties with reports that were due more than 12 years ago;
- (b) To send reminders to States parties as follows:
- (i) The first letter will be sent to all States parties about the dates on which their reports are due; those with overdue reports will be reminded of and requested to submit those reports as soon as possible;
 - (ii) A second letter will be sent to States parties with the most outstanding and overdue reports that do not respond to the reminder, informing them that the Committee plans to consider the overdue report(s) at a specific session in the future, and requesting that those reports be submitted in sufficient time to allow a constructive dialogue to take place;
 - (iii) A third letter will be sent if no response is received to the second letter, confirming that the Committee will proceed to review the implementation of the Covenant in the State party at the session communicated in the earlier letter in light of all available information;
- (c) In situations where the State party concerned indicates that a report will be provided to the Committee and upon a request from the State party, the Chairperson may decide to defer its consideration of the implementation of the Covenant in the State party for one session.

E. Consolidation of reports

42. At its 55th meeting, held on 22 November 2006 (thirty-seventh session), the Committee reviewed the situation of overdue reports, including recent submissions of several long overdue reports, and decided as follows:

- (a) The Committee will accept from States parties that have never submitted a report under the Covenant, a one-time submission of up to three reports consolidated in a single document, in order to bring them up to date with their reporting obligations;
- (b) A consolidated report should contain a general overview of important developments in relation to the implementation of the Covenant over the entire period

covered by the reports submitted and present detailed information on the present situation.

F. Action by the Committee with regard to information on economic, social and cultural rights received from sources other than the States parties

1. Information provided in connection with the consideration by the Committee of a State party report

43. The Committee also takes into account the information provided to it by sources other than the State party in connection with its consideration of a State party's report. That information, being an integral part of the Committee's constructive dialogue with a State party, is made available by the secretariat to the State party concerned in advance of the Committee's consideration of the report of that State party.

2. Information received following consideration by the Committee of a State party report and adoption of concluding observations

44. On various occasions in the past, the Committee has received information, mainly from non-governmental organizations, after consideration of the State party's report and adoption of concluding observations thereon. In fact this was follow-up information on the Committee's conclusions and recommendations. Not being in a position to consider and act upon such information without reopening its dialogue with a State party (except in cases specifically addressed in concluding observations), the Committee will consider and act upon the information received from sources other than a State party only in cases where such information has been specifically requested in its concluding observations.

45. The Committee considers that, following its consideration of the State party report and adoption of concluding observations, the primary responsibility for their implementation lies with the national Government, which is bound to report on measures taken in this respect to the Committee in its next periodic report. Therefore, the Committee recommends that information referred to in the preceding paragraph be

submitted by authors directly to national competent authorities with a view to assisting them in implementing the Committee's concluding observations.

3. Information provided with respect to non-reporting States parties

46. The Committee has also been receiving information from international and national non-governmental organizations on the status of the implementation of economic, social and cultural rights by:

(a) States parties that have not submitted any report at all since ratification of the International Covenant on Economic, Social and Cultural Rights and its entry into force;

(b) States parties with long overdue periodic reports.

47. In both cases the States parties' failure to comply with their obligations under the Covenant, and in particular with their reporting obligations, had made it impossible for the Committee to monitor effectively the implementation by those States of the economic, social and cultural rights set forth in the Covenant in accordance with the mandate conferred on the Committee by the Economic and Social Council.

48. At its thirtieth session in 2003, the Committee, in a spirit of open and constructive dialogue with States parties, decided that, in both cases referred to above, it may take the following action on a case-by-case basis:

(a) The Committee may informally bring to the attention of the State party concerned the information received and urge the State party to submit its overdue report without further delay;

(b) The Committee may formally — through a letter from the Chairperson — bring to the attention of the State party concerned the information received and urge the State party to submit its overdue report without further delay. The Committee may formally request the State party to provide it with information addressing issues raised in the submissions of non-governmental organizations and to submit its overdue report without further delay. That letter will also be made available to the non-governmental organizations concerned upon request.

G. Day of general discussion

49. The Committee may decide to devote one day of a session, usually the Monday of the third week, to a general discussion of a particular right or of a particular aspect of the Covenant. The purpose is threefold: such a general discussion assists the Committee in developing in greater depth its understanding of the relevant issues; it enables the Committee to encourage inputs into its work from all interested parties; and helps the Committee to lay the basis for a future general comment. The issues that have been the focus of discussions held to date by the Committee may be found in annex V to the present report.

H. Other consultations

50. The Committee has sought to coordinate its work with that of other bodies to the greatest extent possible and to draw as widely as it can on available expertise in the fields of its competence. The Committee has also sought to draw on the expertise of the relevant specialized agencies and United Nations bodies, both in its work as a whole and, more particularly, in the context of its general discussions. It has also consistently invited individuals such as special rapporteurs of the Human Rights Council and the former Commission on Human Rights and Sub-Commission on the Promotion and Protection of Human Rights, chairpersons of Council and Commission working groups and others to address it and engage in discussions.

51. In addition, the Committee has invited a variety of experts who have a particular interest in, and knowledge of, some of the issues under review to contribute to its discussions. These contributions have added to its understanding of some aspects of the questions arising under the Covenant.

I. Participation of non-governmental organizations in the work of the Committee

52. In order to ensure that the Committee is as well informed as possible, it provides opportunities for non-governmental organizations to submit relevant information to it. They may do so in writing at any time prior to the consideration of a given State party's report. The Committee's pre-sessional working group is also open to the submission of information in person or in writing from any non-governmental

organization, provided that it relates to matters on the agenda of the working group. In addition, the Committee sets aside part of the first day at each of its sessions to enable representatives of non-governmental organizations to provide oral information. Such information should: (a) focus specifically on the provisions of the International Covenant on Economic, Social and Cultural Rights; (b) be of direct relevance to matters under consideration by the Committee; (c) be credible; (d) not be abusive. The relevant meeting is open and provided with interpretation and press services, but is not covered by summary records.

53. The Committee has requested the secretariat to ensure that written information formally submitted to it by non-governmental organizations in relation to the consideration of a specific State party report is made available as soon as possible to the representatives of the State party concerned. Prior to a session, this is normally done through posting on the website of the Office of the High Commissioner for Human Rights. The Committee therefore assumes that if any of this information is referred to during the dialogue with the State party, the latter will already be aware of the information.

54. In an effort to secure the most effective and widest possible participation of non-governmental organizations in its activities, the Committee adopted, at its twenty-fourth session in 2000, a document that explains the modalities of their participation in the Committee's work and provides detailed guidelines for non-governmental organizations with a view to facilitating their cooperation with the Committee.⁴

J. General comments

55. In response to an invitation addressed to it by the Economic and Social Council, the Committee decided to begin, as from its third session, the preparation of general comments based on the various articles and provisions of the Covenant, in particular with a view to assisting the States parties in fulfilling their obligations under the

⁴ *Official Records of the Economic and Social Council, 2001, Supplement No. 2* (E/2001/22-E/C.12/2000/21), annex V: "Non-governmental organization participation in the activities of the Committee on Economic, Social and Cultural Rights".

Covenant. As of 19 November 2010, the Committee had adopted 21 general comments (see annex III to the present report).

56. By the end of its forty-fifth session (19 November 2010), the Committee and the governmental expert sessional working group, which existed prior to the creation of the Committee, had examined partial reports concerning rights covered by articles 6–9, 10–12 or 13–15 of the Covenant, and comprehensive reports covering all the substantive articles, submitted by 121 of the 160 States parties to the Covenant. They represented all regions of the world, with different political, legal, socio-economic and cultural systems. The reports submitted to date have illustrated many of the problems that might arise in implementing the Covenant.

57. Through its general comments, the Committee endeavours to make the experience gained through the examination of States' reports available for the benefit of all States parties in order to assist and promote their further implementation of the Covenant; to draw the attention of the States parties to insufficiencies disclosed by a large number of reports; to suggest improvements in the reporting procedures; and to stimulate the activities of the States parties, international organizations and the specialized agencies concerned in achieving progressively and effectively the full realization of the rights recognized in the Covenant. Whenever necessary, the Committee may, in the light of the experience of States parties and of the conclusions drawn there from, revise and update its general comments.

58. At its twenty-first session, the Committee adopted the outline for drafting general comments on specific rights enshrined in the Covenant⁵. The Committee agreed that the subject matter of a particular general comment would influence the overall structure of that comment and observed that the outline was not intended to be strictly adhered to. However, the outline provided useful signposts, a checklist of issues to be considered in the process of drafting a general comment. In this respect, the outline would assist in ensuring consistency in the content, format and ambit of general comments to be adopted by the Committee. The Committee emphasized the

⁵ Ibid.

importance of ensuring that general comments are reader-friendly, of reasonable length and readily understandable to a broad range of readers, primarily States parties to the Covenant. The outline will assist in ensuring consistency and clarity in the structure of the general comments, thus promoting their accessibility, and strengthening the authoritative interpretation of the Covenant provided by the Committee through its general comments.

K. Statements adopted by the Committee

59. With a view to assisting States parties to the Covenant, the Committee adopts statements to clarify and confirm its position with respect to major international developments and issues bearing upon the implementation of the Covenant. As of 19 November 2010, the Committee had adopted 17 statements (see annex IV to the present report).

總統府人權諮詢委員會第七次委員會議紀錄摘要

時間：101年1月17日（星期二）上午9時30分

地點：總統府3樓視訊會議室

主席：召集人蕭副總統萬長

記錄：法務部 高慧芬
孫魯良

出席：柴副召集人松林、陳委員冲、蘇委員永欽、陳委員進利、王委員幼玲、李委員永然、李委員念祖、張委員珽、陳委員惠馨、黃委員俊杰、黃委員瑞汝、黃委員默、蔡委員麗玲

列席：總統府高副秘書長朗（請假）、第一局余局長新明、公共事務室陳主任永豐（黃參議大鈞代）、內政部林常務次長慈玲、內政部簡執行秘書慧娟、內政部鄭簡任視察寶珠、內政部黃組長淑奐、法務部陳常務次長明堂、法務部彭司長坤業、法務部黎專門委員翠蓮、法務部郭檢察官銘禮、外交部蒲組長國慶

壹、召集人蕭副總統致詞：（略）

貳、確認第六次委員會議紀錄：

決 定：洽悉。

參、報告事項：

一、議事組工作報告

（三）總統府人權諮詢委員會第六次委員會議討論事項（二）陳委員惠馨、蔡委員麗玲及王委員幼玲提案「如何決定並邀請聯合國人權審查委員，協助進行國家人權報告書審查」後續辦理情形（詳如會議資料第3頁），請 討論。

黃委員默

兩公約施行監督聯盟建議由律師公會擔任獨立秘書處之工作，建請一併討論。

彭司長坤業

行政工作如由民間機構擔任，將以發包之方式處理。本年1月11日召開之小組會議決議，由議事組擔任行政工作，並邀請民間人士參與審查小組，所有會議過程都將公開，公信力問題即可解決，此節議事組將尊重委員會決議。

李委員永然

當天會議決議由議事組擔任行政工作，並邀請民間人士參與，如此可提高透明度，也彰顯獨立性。

陳委員惠馨

當天會議建議由議事組擔任行政工作，係考量秘書處是處理行政事務，並非政策決定者。另國際人權專家之人選已參考兩公約施行監督聯盟提出之名單，也歡迎民間團體建議更好的名單，邀請國際人權專家之工作應儘速進行。

召集人蕭副總統

- (1) 發包程序複雜，且外界不瞭解國家人權報告之定位、目標及性質，建議由議事組擔任行政幕僚，以本會委員為中心，再邀請民間人士參與。
- (2) 本案採乙案，依所列11位國際人權專家之順序邀請，邀請3位到5位。不滿3位則繼續邀請。經費部分如各部會無法分攤，總統府的業務費應可支援。
- (3) 由民間團體擔任的4位委員產生方式，請議事組列出名單並簽請召集人勾選，本人勾選前會先與副召集人討論，副召集人如有需要亦會徵詢委員意見。

決 定：洽悉。

陸、散會：(中午12時30分)

議事組工作報告案（三）

總統府人權諮詢委員會第六次委員會議討論事項（二）陳委員惠馨、蔡委員麗玲及王委員幼玲提案「如何決定並邀請聯合國人權審查委員，協助進行國家人權報告書審查」後續辦理情形

本年1月11日召開國家人權報告書審查委員名單諮詢小組第二次委員會議，結論如下：

- 1、秘書處工作小組之行政業務由議事組擔任。
- 2、秘書處工作小組諮詢委員成員建議為7人，其結構分列甲乙2案：
 - （1）甲案：由總統府人權諮詢委員會委員中選任7人。
 - （2）乙案：由總統府人權諮詢委員會委員中選任3人，另4人由民間人士擔任。
- 3、提出國際人權專家名單及建議邀請之順序如下：
 - （1）Ando Nisuke 安藤仁介，男性，日本
 - （2）Heisoo Shin，女性，南韓
 - （3）Theodoor Cornelis van Boven，男性，荷蘭
 - （4）Manfred Nowak，男性，奧地利
 - （5）Virginia BONOAN-DANDAN，女性，菲律賓
 - （6）Yankin ERTÜRK，女性，土耳其
 - （7）Philip ALSTON，男性，澳洲
 - （8）Jerome Alan Cohen，男性，美國
 - （9）Denise Scotto，女性，美國
 - （10）Asma Jahangin，女性，巴基斯坦(或 Hina jilani，女性，巴基斯坦)
 - （11）華籍國際法人權學者或 NGO。

國家人權報告書審查委員名單諮詢小組第二次會議建議之國際專家名單

(以下編號係推薦之優先順序)

No.	姓名	國籍	性別	現職	重要經歷	聯絡方式
01	Ando Nisuke 安藤仁介	日本	男	京都人權研究所 主任 國際法名譽教授	*人權事務委員會委員 (1987-2006) *人權事務委員會主席 (1993-1994) *常設仲裁法院成員(2001年~) *國際貨幣基金行政法庭法官(1994年~) *國際法學會成員(1999年~) *日本國際法學會 (1959年~為會員，1991-1993為總編輯，1998-2000為會長) *美國國際法學會終身會員 (1962年~)	
資料來源：2011年國際人權研討會手冊						
No.	姓名	國籍	性別	現職	重要經歷	聯絡方式
02	Heisoo Shin	韓國	女	聯合國經濟社會 文化委員會委員 韓國梨花女子大 學國際研究研究 所兼職教授	*消除對婦女一切形式歧視公約委員會委員 (2003-2004擔任副主席，2001-2004任期，以及 2005-2008任期) *韓國國家人權委員會委員 (2005-2008) *慶南婦女人權國際研討會召集人 (2008-2009) *聯合國秘書長的國際諮詢委員會委員，關於深入研	

					<p>究一切形式暴力侵害婦女 (2005-2006)</p> <p>*聯合國前往阿富汗高級代表團成員 (2006年8月)</p> <p>*「亞太婦女論壇，法律與發展」成員，有關對婦女施暴的特別工作組 (1992-1999)，指導委員會 (1995-1999)，婦女人權工作組 (2000-2007) 和組織委員會 (2009~)</p> <p>*韓國司法部性別政策委員會主席 (2006年至今)</p> <p>*Korean Council for the Women Drafted for Military Sexual Slavery by Japan代表 (2004-2007)</p> <p>*總統府永續發展委員會專員 (2002-2005年) 任官方發展援助特別委員會主席</p> <p>*韓國人權基金會董事會成員 (1999-2005)</p> <p>*韓國婦女熱線主席 (1995-2003)</p> <p>*韓國婦女聯合會聯合代表 (1999-2002)</p>	
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資料來源：2011年國際人權研討會手冊

No.	姓名	國籍	性別	現職	重要經歷	聯絡方式
03	Theodoor Cornelis van Boven	荷蘭	男	荷蘭馬斯特里赫特大學國際法榮譽教授	<p>*Official of the Netherlands Ministry of Foreign Affairs (1960 - 1977)</p> <p>*Lecturer in Human Rights Law, University of Amsterdam, Netherlands (1967 - 1977)</p> <p>*Netherlands representative on the United Nations</p>	

				<p>Commission on Human Rights (1970 - 1975)</p> <p>*Director of the Division of Human Rights of the United Nations (1977 - 1982)</p> <p>*Visiting Professor at Harvard School of Law (1987) and New York University School of Law (1990)</p> <p>*Member of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities (1975 - 1976, 1986 - 1991)</p> <p>*Special Rapporteur of the United Nations Sub-Commission on the Rights to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms (1990- 1993)</p> <p>*Member of the Group of Independent Experts of the International Labour Organization to Monitor Sanctions and Other Measures against Apartheid (1990 - 1993)</p> <p>*Registrar of the International Criminal Tribunal for the Former Yugoslavia (1994)</p> <p>*Head of the Netherlands delegation to the United Nations Diplomatic Conference for the Establishment of an International Criminal Court (Rome, 1998)</p>	
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					*Member of the UN Committee on the Elimination of Racial Discrimination (1992 - 1999)	
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資料來源：2011年國際人權研討會手冊

No.	姓名	國籍	性別	現職	重要經歷	聯絡方式
04	Manfred Nowak	奧地利	男	維也納大學國際法與人權教授 Director of Ludwig Boltzmann institute of human right	*聯合國禁止酷刑與其他反殘酷，非人道與壓迫人性待遇特別調查員 (2004-2010年)	*Address:Freyung6, 1. Hof, Stiege 2, 1010 VIENNA, AUSTRIA *TEL:(+43)1 4277 27446 *Email:Manfred.nowak@univie.ac.at

資料來源：http://en.wikipedia.org/wiki/Manfred_Nowak

No.	姓名	國籍	性別	現職	重要經歷	聯絡方式
05	Virginia BONOAN-DANDAN	菲律賓	女	菲律賓大學教授	*現任聯合國「人權與國際團結」獨立專家 *聯合國經濟社會文化權委員會(United Nations Committee on Economic, Social and Cultural Rights) 特別報告員(1993-1997);專家委員 (1999--2010);主席(1999-2007) *參與菲律賓三處原住民族社區人權計畫 *參與菲律賓與紐西蘭雙邊人權委員會計畫	*Address:15 A. Bautista Area 2,University of the Philippines Diliman, Quezon City,Philippines *Telephone:9261110 *Mobile:0918-9051833 *Email:vbdandan@yahoo.com

(2008-2010)

資料來源：兩公約監督聯盟提供之「Manfred Nowak 教授推薦之國際專家名單」

No.	姓名	國籍	性別	現職	重要經歷	聯絡方式
06	Yakin ERTÜRK	土耳其	女	European Committee on the Prevention of Torture	*聯合國反婦女歧視特別專員 (United Nations Special Rapporteur on Violence Against Women) *中東科技大學社會學教授及性別及女性研究學程 主任 Middle East Technical University (METU) *聯合國Division for the Advancement of Women (DAW) 主任	Council of Europe F-67075 Strasbourg Cedex France Tel.: France: 03 88 41 39 39, Int.: +33 3 88 41 39 39 Fax: France: 03 88 41 27 72, Int.: +33 3 88 41 27 72 E-mail: cptdoc@coe.int Internet: www.cpt.coe.int

資料來源：兩公約監督聯盟提供之「Manfred Nowak 教授推薦之國際專家名單」

No.	姓名	國籍	性別	現職	重要經歷	聯絡方式
07	Philip ALSTON	澳洲	男	紐約大學法學院 教授(紐約大學法 學院人權與全球 正義中心主席與 副主任)	*「歐洲國際法期刊」總編(1996-2007) *澳洲國際法年鑑共同編輯 *聯合國經濟社會文化權利委員會(United Nations Committee on Economic, Social and Cultural Rights) 報告員(1987-1990);主席(1991-1998)	*Address: New York University School of Law 40 Washington Square South, 305 New York, NY 10012 *Telephone: (212) 998-6173

					*聯合國人權事務高級專員辦事處千禧年人權發展目標特別顧問(2002-2010) *聯合國人權理事會(United Nations Human Rights Council)「法外、草率與任意處決」特別報告員(2004-2010)	*Facsimile: (212) 995-4030 *Email: philip.alston@nyu.edu
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資料來源：兩公約監督聯盟提供之「Manfred Nowak 教授推薦之國際專家名單」

No.	姓名	國籍	性別	現職	重要經歷	聯絡方式
08	Jerome Alan Cohen	美國	男	紐約大學法學院教授暨亞美法研究中心(U.S.-Asia Law Institute)共同主任	*美國知名中國及東亞法律專家前哈佛大學法學院副院長 *創立紐約大學亞美法研究中心 *耶魯法學雜誌(The Yale Law Journal)總編 *第一批訪問北韓的美國學者之一 2000年諾貝爾和平獎得主	*Address : New York University School of Law 40 Washington Square South, 310 B New York, NY 10012 * Telephone: (212) 998-6169 * Facsimile: (212) 995-3662

資料來源：<http://its.law.nyu.edu/facultyprofiles/profile.cfm?personID=19840>

<http://zh.wikipedia.org/wiki/%E5%AD%94%E5%82%91%E6%A6%AE>

No.	姓名	國籍	性別	現職	重要經歷	聯絡方式
09	Denise Scotto, Esq.	美國	女	紐約州律師	*前任聯合國經濟及社會文化公約之社會事務委員會委員 *聯合國非政府組織婦女地位委員會(NGOCSW)副主席 *國際女律師聯合會(FIFCJ)聯合國代表(2003-2007)	*Address : 320 WEST 56TH STREET NYC, NY 10019 *Email: DENISE.SCOTTO@GMAIL.COM

資料來源：<https://sites.google.com/site/denisescottocom/home/about>

No.	姓名	國籍	性別	現職	重要經歷	聯絡方式
010	Asma Jahangir	巴基斯坦	女	最高法院律師公會會長	*聯合國特別報告員Special Rapporteur on Extrajudicial, Arbitrary, and Summary Executions(1998-2004) *世界銀行首席經濟顧問(2001~) *獲提名為2005 年諾貝爾和平獎候選人 *1981年共同創立巴基斯坦第一所女性律師事務所 *1986年參與創設巴基斯坦人權委員會(Human Rights Commission of Pakistan)，現任主席	HRCP's Complaint cell 0333-2006800 -/- 042-35845969 Aiwan-I-Jamhoor, 107-Tipu Block New Garden Town, Lahore.

資料來源：兩公約監督聯盟提供之「Manfred Nowak 教授推薦之國際專家名單」

No.	姓名	國籍	性別	現職	重要經歷	聯絡方式
011	Ms. Hina Jilani	巴基斯坦	女	an advocate of the Supreme Court of Pakistan and a human-rights activist from Lahore in Punjab, Pakistan.	*1986年參與創設巴基斯坦人權委員會 (Human Rights Commission of Pakistan)，現任副主席 *聯合國秘書長維權人士特別代表United Nations Special Representative of the Secretary-General on Human Rights Defenders (2000-2008) *聯合國蘇丹達佛國際調查委員會(2006) *聯合國宗教及信仰自由特別專員(2004~) *反恐人權小組著名法律學者Member of the Eminent	HRCP's Complaint cell 0333-2006800 -/- 042-35845969 Aiwan-I-Jamhoor, 107-Tipu Block New Garden Town, Lahore.

					Jurists Panel on Terrorism, Counter-terrorism and Human Rights	
資料來源：兩公約監督聯盟提供之「Manfred Nowak 教授推薦之國際專家名單」						

兩公約施行監督聯盟建議書

*如何設計符合《兩公約施行法》第六條的國家報告制度

2009年5月14日，聯合國兩大人權公約：《經濟、社會與文化權利國際公約》(International Covenant on Economic, Social and Cultural Rights)、《公民與政治權利國際公約》(International Covenant on Civil and Political Rights)經總統批准生效；2009年12月10日，《公民與政治權利國際公約及經濟社會文化權利國際公約施行法》正式施行；自此，兩公約所揭示的國際人權標準成為我國國內法的一部分。2010年12月10日，兩公約暨其施行法生效一周年之際，總統亦宣佈總統府人權諮詢委員會正式運作，並表示主要功能包括定期審議國家人權報告。¹此後，身為非聯合國會員的台灣，應如何撰擬國家人權報告、又應如何審查，便備受外界關注。

《公民與政治權利國際公約及經濟社會文化權利國際公約施行法》(下稱《兩公約施行法》)第三條明定：「適用兩公約規定，應參照其立法意旨及兩公約人權事務委員會之解釋。」第六條亦明定：「政府應依兩公約規定，建立人權報告制度。」對於如何依「兩公約規定」建立人權報告制度，本建議書提出說明如下。

聯合國如何規定遞交報告的程序？

《公民與政治權利國際公約》與《經濟、社會與文化權利國際公約》分別於第40條與第17條規定締約國提出報告之義務與程序。兩項公約所規定的程序，略有不同。《公民與政治權利國際公約》第40條明確寫出締約國應於締約生效一年內提交初次報告(initial report)，而《經濟、社會與文化權利國際公約》在第17條第1項則規定報告程序遵照經濟及社會理事會(Economic and Social Council)的決議。

根據人權事務委員會(Human Rights Committee，為《公民與政治權利國際公約》主管委員會)及經濟及社會理事會所做的決議，²兩項公約的報告頻率與方法如下：

¹ 總統府新聞稿：總統偕同副總統出席「總統府人權諮詢委員會」第一次委員會議，2010/12/10。

² CCPR/C/19/Rev.1 of 26 August 1982.

Economic and Social Council resolution 1988/4 of 24 May 1988.

公民政治權利國際公約，締約國批准生效後一年內遞交首次報告，其後每四年遞交一次；向人權事務委員會(Human Rights Committee)報告經濟社會文化權利國際公約，締約國批准生效後兩年內遞交首次報告，其後每五年遞交一次；向經濟社會文化權利委員會(Committee on Economic, Social and Cultural Rights)報告聯合國人權高級專員辦公室(Office of the United Nations High Commissioner of Human Rights, OHCHR)於2009年6月3日，提出一份〈編寫擴充核心文件、提交具體條約報告的準則以及根據國際人權條約提交報告的協調準則(Harmonized Guidelines on Reporting Under the International Human Rights Treaties, Including Guidelines on A Core Document and Treaty-Specific Documents)〉³ (下稱〈協調準則〉，簡體中文版本如【附錄】)，好讓締約國了解如何滿足報告義務。〈協調準則〉首先強調：「締約國應把編寫報告、提交條約機構的過程看成不僅僅是履行其國際義務的一個方面，而且也是一個為規劃落實政策而估量其管轄範圍內人權保護情況的機會。」⁴ 因此，報告編寫過程的目的，是讓每個締約國都有機會：

1. 全面檢查為使國內法律和政策與有關的國際人權條約的規定協調一致而採取的措施；
2. 監測在全面增進人權的情況下促進條約所規定的各項權利的享有方面取得的進展情況；
3. 確定在其履行條約的方法方面存在的問題和缺點；
4. 籌畫和擬訂爭取實現這些目標的有關政策。⁵

〈協調準則〉認為報告程序是「一國持續不斷承諾致力於尊重、保護和落實其加入的條約所規定的各項權利過程中的一項關鍵內容」，⁶ 因此在聯合國的規畫中，報告遞交給委員會之後，必須歷經問題清單(list of questions)、建設性對話(conclusive dialogue)、結論性建議(concluding observation)等程序，並且在下次遞交報告前，締約國應據建議改善。如此，報告程序是一個不斷循環的「週期迴圈(reporting cycle)」。⁷

³ HRI/GEN/2/Rev.6. http://www2.ohchr.org/english/bodies/icm-mc/docs/9th/HRI-GE-W-Rev6_ch.pdf 亦可見【附錄】第3頁。

⁴ 出處同上，亦可見【附錄】第5頁。

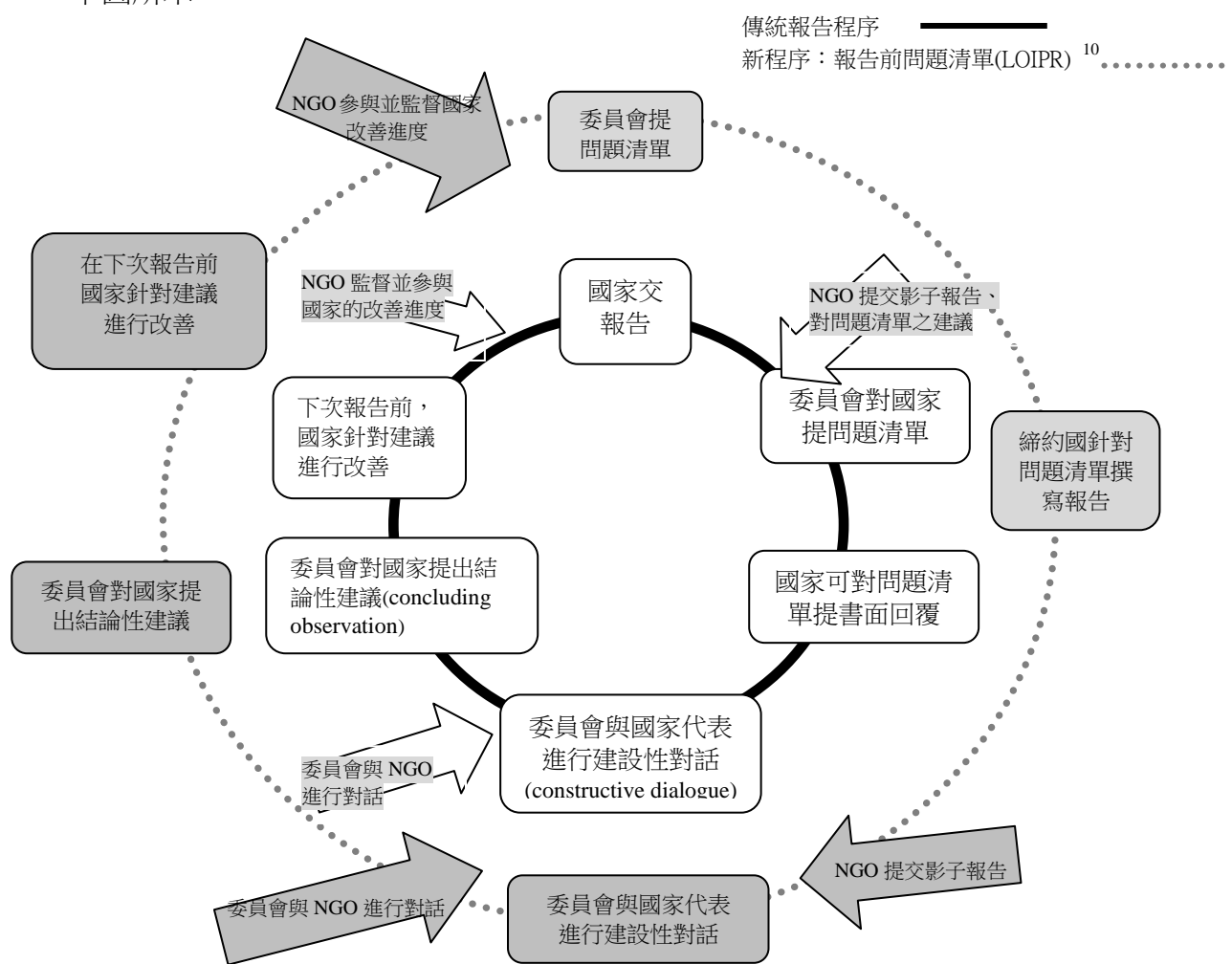
⁵ 出處同註3。

⁶ 出處同註3。

⁷ 詳見 Human Rights Committee 的 working method:

這之中，也必須要有公民社會的參與。〈協調準則〉強調：「報告程序應在國家層級鼓勵和便利公眾對政府政策的監視，抱著合作和相互尊重的精神，與公民社會的有關角色進行建設性的對話。」⁸ 兩項公約的事務委員會所擬定的「工作方法 (working method)」中皆列有「非政府組織及國家人權機構參與委員會活動 (Participation of non-governmental organizations and national human rights institutions in the activities of the Committees)」一項，表示為了讓委員會能盡可能得知詳情 (well-informed)，委員會在對國家報告進行審查之前，歡迎非政府組織遞交相關資訊。

綜上所述，《兩公約施行法》第六條所謂「符合兩公約規定」的報告過程，應如下圖所示。⁹



<http://www2.ohchr.org/english/bodies/hrc/workingmethods.htm#a2a>


⁸ 出處同註 3。

⁹ 本圖出處請見 <http://www2.ohchr.org/english/bodies/docs/ReportingCycle.gif>

¹⁰ 「報告前問題清單(List of issues prior to reporting, LOIPR)」(CCPR/C/99/4) 是 2010 年 11 月 1 日才開始啟用的新程序。已經交過首次報告的國家，下一輪報告時，可先不交報告，而是由公約委員會針對上次報告的建議，提出問題清單，國家再就該清單寫新報告。其後的程序則相同。此新程序可以簡化程序，且讓締約國所交文件聚焦在委員會希望看到的資訊上。此程序只適用於交過初次報告後的國家，若還未交過初次報告，必須先照傳統方式遞交初次報告。「報告前問題清單」是任擇性的，在交過首次報告後，國家可於下一輪報告審查時選擇用新程序，或仍以傳統方式遞交報告。請見：<http://www2.ohchr.org/english/bodies/hrc/loipr.htm>

為了促進前述「公民社會的建設性對話」，多數民主國家在遞交國家報告前、及獲得結論性建議後，會舉辦全國各地的公聽會，向大眾說明相關內容。美國於2010年首次向聯合國「普遍性定期審查(Universal Periodical Review, UPR)」遞交報告前，在各州舉辦了至少十場以上的座談會。¹¹ 而在國家遞交報告後，公民社會、以及該國的獨立國家人權機構，也還會再遞交影子報告、或相關文件，供聯合國公約委員會參考，以採納在對該國的審查程序及建議中。

以英國 2008/7/7-25 會期接受《公民與政治權利國際公約》報告審查為例，一個正常的締約國，接受公約委員會審查報告時，將呈現出以下的資訊。¹² 可以看出，當英國接受審查時，不僅是英國國內的 NGO 會提交資料讓委員會參考，國際性的 NGO (如 Amnesty International, Human Rights Watch, International Commission of Jurists)、以及英國的國家人權委員會 (Equality and Human Rights Commission, Northern Ireland Human Rights Commission)，也會提交資料。而這些資料都會呈現在公約委員會的網頁上，向國際社會展現。

States Reports	Timetable	State Reports and Country Situations	List of Issues	Written Replies	Delegation List & Statement	NGO Information	Concluding Observation	Comments and Follow-up Response
 UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND	Wednesday, 9 July 2008 p.m. & Thursday, 10 July 2008 am SR.2545 SR.2546	Fourth periodic report CCPR/C/FRA/4/4 E F S	CCPR/C/FRA/Q/4 E F S	CCPR/C/FRA/Q/4/Add.1 E F S	List	Amnesty International Article 19 British Irish Human Rights and Summary Children's Commissioner for England Children's Rights Alliance for England Committee on the Administration of Justice 1-2 Conscience and Peace Tax International Equality and Human Rights Commission Family Planning Association FIACAT and ACAT Global Initiative to end all corporal punishment of children Human Rights Watch International Commission of Jurists Liberty and Justice Minority Rights Group and Abbrev. Northern Ireland Human Rights Commission Redress War Resisters' International Human Rights Consortium	CCPR/C/GBR/CO/6 E F S	

¹¹ <http://www.ushrnetwork.org/content/campaignsection/upr-consultations>

¹² <http://www2.ohchr.org/english/bodies/hrc/hracs93.htm>

聯合國如何規定遞交報告的內容?

對於報告義務，兩公約的公約委員會除了在程序上有如上規範，內容上也有明確指示。《公民與政治權利國際公約》與《經濟、社會與文化權利國際公約》的公約委員會，各有提出報告準則。《經濟、社會與文化權利國際公約》的報告準則，更是於 2008 年 12 月才更新過，相對於《公民與政治權利國際公約》的報告準則更為切實完整。¹³ 除了公約委員會本身的文件，上文提及的〈協調準則〉亦是所有締約國向各公約委員會遞交報告皆可適用的普遍準則。

這些文件中，對於報告內容的基礎規範包括：

1. 報告內容應分為「共同核心文件(common core document)」與「條約專要文件(treaty-specific documents)」兩部分。
 - 1.1 共同核心文件部分：應包括報告國一般情況的資料、保護和增進人權的一般性框架（批准公約情形、國內立法情形、國家專責人權機構的設立等）、關於反歧視與平等和有效補救措施的資料。
 - 1.2 條約專要文件部分：應就公約具體條文部分（《公民與政治權利國際公約》第 1-27 條、《經濟、社會與文化權利國際公約》第 1-15 條），逐條說明。在《經濟、社會與文化權利國際公約》報告準則中，對於第 1-15 的逐條說明中應談及哪些細節，亦有詳述（請見【附錄】第 29 頁）。
2. 向公約委員會提交的條約專要文件，應該參照委員會的一般性意見(general comments)，載入具體資料介紹公約各條在法律和事實上的執行情況，並列入資料說明近期有哪些法律和政策的發展，影響公約權利的充分實現。並應列出資料說明為達到該目標，採取的具體措施以及取得的進展¹⁴。
3. 甚至，為了充分確保報告內容切中核心，《經濟、社會與文化權利國際公約》報告準則建議報告中必須參照兩項資料：(1)〈協調準則〉附錄 3（見【附錄】第 24-26 頁，包括城鄉人口比例、失業率、消費物價指數、婦女參政比例等指標）、以及(2)聯合國人權事務高級專員(OHCHR)列出的說明性指標框架和清單。¹⁵

¹³ E/C.12/2008/2. 或請見【附錄】第 27 頁。

¹⁴ 出處同註 6，或請見【附錄】第 28 頁。

¹⁵ 說明性指標(illustrative indicators)由人權高級專員辦公室(OHCHR)於 2008 年提出，詳見 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/423/62/PDF/G0842362.pdf?OpenElement>

上述文件中，甚至對於報告格式都有所建議。¹⁶ 這些規定既為現行國際慣例，即使我國並無法進入委員會進行審查，在設計報告制度時，仍應高度參照，以符合《施行法》第六條規定。本建議書亦附上韓國 2007 年 6 月 27 日遞交的「《經濟、社會與文化權利國際公約》第三次定期報告」，以供對照參考。

非聯合國會員的台灣，如何設計報告制度？

台灣並非聯合國會員國，無法進入公約委員會，接受例行審查。但是《施行法》第六條既已明定：「政府應依兩公約規定，建立人權報告制度」，那麼我國自然不能無視於兩公約所規定之程序內容，自創報告制度。並且，也唯有不自外於國際人權體系，按照兩公約所規定來自我審查，我國單邊簽署兩公約以昭信於國際社會的效益，才能最大化，也才能高度彰顯總統所宣示的，「使國際社會感受到台灣雖被排拒在聯合國之外，但願意承擔國際義務的精神與決心」¹⁷。參照上述兩公約文件與準則，本建議書認為設計台灣的報告方案時，相關單位應思考下列問題。

內容方面：

1. 根據兩公約規定，《公民與政治權利國際公約》應於批准後一年內提出首度報告，而《經濟、社會與文化權利國際公約》則規定應於兩年內提出首度報告；政府已錯失於批准一年內（亦即 2010 年 12 月 10 日）提出《公民與政治權利國際公約》首度報告的機會，應當不再延遲，兩項公約的首度國家報告，應於今年 12 月 10 日前提出，且應為《公民與政治權利國際公約》與《經濟、社會與文化權利國際公約》各一份報告。
2. 應參照聯合國相關準則文件所示，規劃國家報告格式與內容。中文報告完成後，應提出英文全文譯本。
3. 報告完成後，應於全國北中南東四地，各進行公開座談會，供社會了解兩公約報告目的、報告內容，並提出意見。
4. 為求報告內容之專業與完整，除了現行跨部會工作小組彙整報告資料、掌控進度之外，應投入專職人力，籌組較具規模的執行撰寫小組，小組成員除法

¹⁶ 出處同註 3，或請見【附錄】第 6-7 頁。

¹⁷ 總統府新聞稿：總統出席「全力反貪腐，用心保人權」－反貪倡廉郵票發行暨兩公約施行法施行聯合典禮，2009 年 12 月 9 日。

務部外，應含納行政院研考會、外交部條法司等相關單位。

程序方面：

5. 應邀請國際人權專家、前聯合國人權事務官員各 4-6 人，¹⁸ 針對兩份公約報告，各組成一組**獨立且具公信力之國際審查小組**，以替代公約委員會，進行**報告審查**。
6. 審查程序應照上述「周期迴圈」之設計。並且，在我國高度比照兩公約之公約委員會設計來審查報告的前提之下，報告頻率也宜照兩公約規定，分別以四年及五年為周期。政府亦可考慮在周期第二年與第三年時，發表兩公約的「期中落實報告」。

因審查程序的細節，需要相關政府部會審酌經費、時程等客觀條件後，才能具體設計；本建議書認為，**即使籌設國際審查小組作業須更多作業時間，仍宜於今年 12 月 10 日首度國家報告完成後，先行宣布將採國際小組審查方式來履行《兩公約施行法》第六條規定之國家報告義務**，而後再就客觀條件提出時程與執行辦法。

而針對時程與執行辦法，本建議書認為值得考慮以下問題：

- 6.1 問題清單：我國將國家報告英文全文譯本傳送給國際審查小組後，國際審查小組應於一定時間內提出問題清單，我國亦應就問題清單提出書面回應。在國際小組對我政府提出問題清單前的一定作業時間之內，國際審查小組歡迎 NGO 遞交相關文件。
- 6.2 建設性對話：我國既將採行自願性報告審查之創舉，於首輪國家報告審查中、與國際小組進行建設性對話時，可配合聯合國的固定會期，於日內瓦聯合國辦公室周邊場地同步進行。¹⁹ 若國際審查小組由國際重量級人權專家組成，且審查程序與聯合國同步舉行，而我國能以正式外交方式發布此一訊息，使其廣為周知，將大為彰顯我國加入世界人權體系之決心，爭取國際社會對我之正面觀感。
- 6.3 國際審查小組完成報告審查後，對我國提出「結論性建議」時，則應至

¹⁸ 此處設定 4-6 人，是參照《公民與政治權利國際公約》的報告審查工作方法。Human Rights Committee 審查締約國報告時，考慮地區分布及各種因素後，會指派 4-6 個公約締約國組成「工作小組(task force)」。詳見 <http://www2.ohchr.org/english/bodies/hrc/workingmethods.htm#a2a>

¹⁹ 人權事務委員會(Human Rights Committee)每年固定於三月在紐約、七月與十一月則於日內瓦，舉行審查報告會期。而經濟、社會與文化權利委員會則是每年固定於五月及十一月，在日內瓦舉行審查報告會期。

台灣以正式、公開方式舉行。

7. 於獲得結論性建議後，應再於全國北中南東進行公開座談會，向社會說明結論性建議之內容，及政府未來改善之時程與計畫。
8. 應於相關部會的官方網站中設置專門中英網頁，揭示報告審查之各相關文件與紀錄，以向國際社會透析我國人權之現狀與進展。

台灣的第一次，也是世界的第一次

自願單邊批准兩公約，是我國人權史上的大事。總統在 2009 年 12 月 9 日「兩公約施行法施行典禮」上表示，「無論如何中華民國已經開始在此議題上與國際接軌了，我們希望這不只是一個宣示，還要有具體承諾以及具體行動，做到真正的保障。」並表示：「我們如果能夠徹底執行，相信中華民國不論在國內或國外都能得到實質的肯定。」民間 40 多個社團組成的兩公約施行監督聯盟，相當同意此一態度。我們認為，台灣自發性批准兩公約，正是示範了台灣從形式民主走向實質民主，向世界宣告台灣是一個以人權與法治為內涵的民主國家。尚不論照《兩公約施行法》第六條依法行政，是最基本的義務，既然我國已經向世界昭示批准兩公約為自願自發之舉，後續作業更不容虎頭蛇尾，草率視之。必須以充分自重自尊、符合程序的方式來進行，為世界創下一個典範。而兩公約施行監督聯盟身為民間監督力量，亦不會推卸應盡之責，願藉各種機會與相關單位、人員對話討論，以促進相關制度的良好設計與執行。

兩公約施行監督聯盟

召集人 高涌誠

台北律師公會司法改革委員會召集委員

民間司法改革基金會常務執行委員

台灣人權促進會、民間司法改革基金會、台北律師公會人權保護委員會、台灣法學會、台灣國際醫學聯盟、中華民國律師公會全國聯合會、台灣勞工陣線、國際特赦組織台灣總會、台灣國際法學會、中華民國智障者家長總會、中華民國殘障聯盟、小米穗原住民文化基金會、台灣環境法律人協會、中華民國全國教師會、中華民國愛滋感染者權益促進會、中華民國銀行員工會全國聯合會、公民監督國會聯盟、日日春關懷互助協會、台北市上班族協會、台北市女性權益促進會、台灣太平洋發展協會、台灣少年權益與福利促進聯盟、台灣北社、台灣企業社會責任協會、台灣自由緬甸網絡、台灣性別人權協會、台灣促進和平基金會、台灣原住民族非政府組織聯盟、台灣原住民族政策協會、台灣原住民族學院促進會、台

灣婦女團體全國聯合會、台灣勞動與社會政策研究協會、台灣新聞記者協會、台灣圖博之友會、台灣青年逆轉本部、外省台灣人協會、東吳大學張佛泉人權研究中心、社區大學全國促進會、國家人權委員會推動聯盟、基督教恩友中心、綠色陣線協會、綠黨、廢除死刑推動聯盟、澄社、鄭南榕自由基金會

聯絡方式

葉亭君

社團法人台灣人權促進會 政策倡議部主任

104 台北市天祥路 61 巷 22 號 2 樓

電話 02-25969525、傳真 02-25968545、電子信箱：tahr@seed.net.tw

＊兩公約施行監督聯盟拜會總統府人權諮詢委員會訴 求建議書

一、台灣的國家人權報告制度，可規劃設計一套優於聯合國的制度與 議事規則

1. 國家人權報告制度應透過進一步的法制化加以完成

根據《公民與政治權利國際公約及經濟社會文化權利國際公約施行法》（以下簡稱兩公約施行法）第六條規定：「政府應依兩公約規定，建立人權報告制度。」締約國簽署和批准國際公約的實際意義在於，必須在國家層級落實和執行條約中所規範的實體權利，並有義務向相關的條約機構定期提交報告。台灣政府因為特殊的外交處境，無法完成公約存放的要件，因此，透過兩公約施行法來將國家人權報告體制化，具有特殊的意義，但由於條文本身欠缺實質內容，致使政府單位在初次國家人權報告的撰寫工程中無所適從。

有鑑於此，兩公約施行監督聯盟建議，政府應積極參考聯合國各條約機構過去審閱各締約國人權報告的經驗¹，並參考2011年聯合國秘書長就條約機構的改革措施所作的報告²，以避免條約機構因審閱過多報告而造成的種種限制。政府應在這些基礎上，著手研擬《依國際人權公約撰寫國家人權報告之制度》草案，並至遲在第二次依兩公約提交國家人權報告之前一年，完成立法。

聯盟對於人權報告審查制度的建議如下：

- a. 人權報告的審查機制，必需有組織、人事、職權獨立性與客觀性。
- b. 人權報告的審查機制，必需法律化：以法律明訂審查之組織、人員、程序、職權、且明訂各中央機關提供報告之義務與承辦之人員與組織。
- c. 人權報告的審查機制，必需國際化：審查委員的資格，必須具備國際審查的經驗。
- d. 人權報告的審查機制，必需有NGO的參與，提出相對報告或可以質詢。
- e. 人權報告的審查機制，必需有追蹤與管考機制。

2. 台灣的國家人權報告國際審查，應超越聯合國條約機構的限制

¹ 請參閱兩公約施行監督聯盟於2011年4月7日的政策建議書〈如何設計符合《兩公約施行法》第六條的國家報告制度〉。

² 請參閱聯合國秘書長2011年9月7日的報告〈進一步提高條約機構體系的成效並進一步加以統一和改革的措施〉(A/66/344)。

締約國政府提交國家人權報告的目的在於，應將整個過程視為不僅僅是履行一項國際義務，更重要的是當作一種為國家人權政策進行規劃與執行的機會，並藉機總結其管轄範圍內的人權保護狀況，檢討國家法律與政策是否符合公約規範、監督人權落實的程度、檢測政府落實人權的問題和缺點，評估現有的人權需求與目標、並規劃可行的人權政策。

雖然台灣政府的國家人權報告無法送交聯合國條約機構，並參與正規的國際審查。乍看之下是台灣被排除在國際人權體系之外，但若正面看待，台灣政府也因此獲得一個難得契機，可超越聯合國條約機構目前所面臨的限制與困境。既然台灣政府已一再向國際社會表示自願加入國際人權規範的決心和作為，並掌握上述國家人權報告的目的精神，那麼應可規劃設計一套優於聯合國的制度與議事規則。

根據2011年9月7日聯合國秘書長向大會所報告的〈進一步提高條約機構體系的成效並進一步加以統一和改革的措施〉，由於各條約機構的批准國家日益增多，所提交的報告數量越來越及時³，但所規劃的人力資源與經費⁴無法跟上龐大的工作負荷⁵。雖然近幾年各條約機構都有增加會議的時間⁶，但根據計算⁷，若要以目前的審查品質來審閱完所有締約國定期提交的報告⁸，所增加的會議時間仍

³ 2000年，6項核心國際人權條約的批准文書共有927個。到2011年8月，9項核心國際人權條約的批准文書增加到1206個。

⁴ 差旅費預算已經從2000-2001兩年期的4,323,900美元增加至2010-2011兩年期的10,746,500美元，其原因是成員人數已經從2000年的74名專家增加至2011年的172名專家。大會在認可許多此類擴大的同時，沒有從總體上全額提供所需要的相應資源。因此，實際費用超出了核定預算的增加速度。

⁵ 雖然條約機構專家的總人數從2000年的74人增加到2011年的172人，成員人數增加不一定會提高整個委員會開展工作的能力，因為通過所有結論都必須在全體會議上批准。

⁶ 專門用於條約機構開展工作的會議時間總量在過去十年中已經從2000年的51個星期增加到2011年的72個星期。

⁷ 截至2011年5月，共累積了積壓的待審議報告263份報告，為了審查目前正在等待條約機構審議的263份報告，條約機構總共需要106個星期，以便在一年內審查完正在等待他們審查的報告，而為審查締約國報告分配的時間是59個星期(2012年)。換句話說，如果假設目前的報告數量保持不變(大約每年收到140份報告)，隔年的時間缺口至少是47個星期。

⁸ 條約機構通常花一整天時間在全體會議上審議一份締約國定期報告，每一份報告花大約半天時間準備與締約國代表團的面對面對話(方法通常是在屆會前工作組會議上通過問題清單)，每一份報告花另外半天時間通過相應的結論性意見。他們認為兩天時間足以對一個相關國家的人權狀況進行一次妥善評價。這意味著，如果條約機構僅僅著重審查締約國報告，每週平均可審查2.5份

然是不足的⁹。因此聯合國秘書長在報告中明白指出：「在某個時候，在審查締約國報告方面的延誤超過有關條約預見的期限時，該體系將崩潰。」

若台灣完成國家人權報告制度的立法，其所成立的獨立審查委員會或機構，在每個審查會期，就只需要審查台灣的國家報告，因此，每個審議的會期無需過長，委員會審查的品質也必能提高，且審查的壓力也會大大的降低。若該法案中明確規定審查委員的人數和遴選機制，人數可控制在適當的規模，那麼相對應的經費資源也不會像聯合國條約機構那樣龐大到無法負擔。

台灣的獨立審查委員會在擺脫了聯合國現有的條件限制下，甚至可以在人權報告制度法案中，規定分配更多的時間精力在與台灣的非政府組織之間進行交流，甚至可為民間的影子報告召開正式的溝通會議，讓民間報告的地位提升至與國家報告平行的地位。再者，當委員會審查完國家報告並正式公布結論性觀察建議（concluding observations）之後，委員會也可分配時間協助締約國政府進行後續追蹤與落實的工作，並在進入下一次會期的期中，可以再提出一份期中監督落實報告，給予台灣政府適度的壓力，透過這種在地性較強的建設性的對話與作為，相信台灣政府在落實國際人權公約的成效上，應該會比其他締約國參與正規國際審查的成效要來的大、來得紮實。

二、應建立一個常設的、獨立的機構，以作為國際公約事務的專責機構。

1. 短期而言，至少在初次的兩公約國家報告審查，國際審查工作小組七人諮詢委員會，應具有獨立性、充分的資源、並確保資訊公開。

目前政府已經定案的在政府內部成立「國際審查工作小組七人諮詢委員會」¹⁰，此方案雖然並非兩公約施行監督聯盟所能接受的審查方式，但為了配合現狀，聯盟仍然重申，該諮詢委員會必須具有最基本的獨立性，委員會所做成的決議，絕對不能受到委員會以外的政治力干預，否則初次國家人權報告的審查程序將面臨嚴重的質疑，將會有「球員兼裁判」的問題。

除了「國際審查工作小組七人諮詢委員會」之獨立性必須要獲得確立之外，該委

締約國報告。

⁹ 雖然目前只有三分之一締約國及時履行提交報告的義務。但即便履行義務水準如此之低，各條約機構在應對目前的工作量方面依然面臨嚴重困難。

¹⁰ 諮詢委員會由4位民間推派的代表以及3位總統府人權諮詢委員會所推派的代表所組成，而行政作業的秘書處則由總統府人權諮詢委員會議事組負責，議事組的工作人員全部皆為公務人員。

員會也應該具有公開透明性，且應具有充分的、足以良好運作的人力資源與經費預算。就公開透明性而言，聯盟建議可舉辦公聽會，並讓相關會議資訊可以全部上網並即時更新，接受社會大眾公評。就財務經費方面，聯盟建議應提供充分的人力與經費資源，讓「國際審查工作小組七人諮詢委員會」可以順利地進行國際審查相關且必要的工作。

2. 中期而言，應設計一套不受政府政治力干預的獨立審查程序，並委由具獨立性質的外部組織辦理該事務。

根據聯合國人權事務委員會（Human Rights Committee）於2012年1月11日所修訂完成的「人權事務委員會議事規則」¹¹，以及兩公約施行監督聯盟2011年10月13日所提出的政策建議書〈符合《兩公約施行法》第六條的國家人權報告制度應參照聯合國運作模式〉，聯盟再次重申，審閱締約國報告的專家委員，如果缺乏一套不受政府政治力干預的獨立審查程序，以及一個獨立秘書處¹²來協助相關工作，那麼專家委員將無法順利地進行審閱國家人權報告的任務和工作。必須強調的是，根據「人權事務委員會議事規則」的第19條：「主席應履行《公約》、本議事規則和委員會的決定所授予主席的職能。主席在履行其職能時，應始終處於委員會的權力之下。」換句話說，一個負責審理締約國報告的條約機構，其職責與任務必須服從於《公約》本身，且委員會必須具有獨立性，不受任何政治力的干預。而秘書處的任務應包括蒐集締約國的背景資料供委員參考、輔助委員進行調查、協助專家委員草擬「議題清單」、「結論性觀察」等文書作業、安排專家委員與國際非政府組織和該國非政府組織溝通聯繫與會面等等。

就算上述的「國際審查工作小組」有一獨立的審查程序確保其不受政治力的干預，但若該工作小組始終都設在政府機構裡面，如此仍難擺脫其作為一政府機構的性質，其獨立性始終會遭到質疑。有鑑於此，兩公約的國際審查工作，也應該循2009年CEDAW公約的模式，由政府的經費預算設立一個外於政府的基金會，以作為國際審查的獨立專責機構，也可扮演研究與蒐集資料的功能，並透過法制化的方式，確保基金會的運作不會受到政府政治力的干預，且可擁有一套獨立的審查程序。因此，聯盟再次就具有獨立性的審查程序與秘書處的條件，提出以下

¹¹ 聯合國文件編號：CCPR/C/3/Rev.10，資料來源：

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/400/66/PDF/G1240066.pdf?OpenElement>

¹² 可參考「人權事務委員會議事規則」第23條至第27條。

建議：

- a. 應訂定一套獨立、不受政府干預的國家人權報告審查程序。
- b. 可成立一個外於政府且較具獨立性質的專責基金會，來擔任秘書處的角色，政府僅提供經費而不介入秘書處的運作。次要選擇由具有豐富經驗、獨立的國際人權團體來擔任秘書處角色，如International Commission of Jurists、International Federation of Human Rights 等等具國際公信力的國際組織。三可考慮由國內律師團體或大學院校之人權研究中心擔任秘書處角色。

依照一般國際審查經驗，獨立秘書處會進入審查期時，將設立籌備會前工作組，而審查委員會通常會要求秘書處為其成員準備一份國情分析，以及所有相關的文件，包括每份待審報告的有關資料。為此，委員會會請所有有關個人、機構和非政府組織向秘書處提交相關和適當的檔案。委員會還會請秘書處確保定期將某些類別的資料存入國別檔案。除編寫議題單的任務之外，會前工作組還承擔其他許多工作，為整個委員會的工作提供便利。這些任務有：討論審議每一份締約國報告最適當的時間安排；考慮如何對載有新資料的補充報告作出最佳反應；研究起草一般性意見；審議一般性討論日的最佳安排；其他有關事項，包括蒐集締約國的背景資料供委員參考、輔助委員進行調查、協助專家委員草擬「議題清單」、「結論性觀察」等文書作業、安排專家委員與國際非政府組織和該國非政府組織溝通聯繫與會面等等。

3. 長期而言，應成立符合巴黎原則「獨立、透明」的國家人權委員會，扮演聯合國的中立角色，負責相關的工作。

台灣首次進行國家人權報告審查的經驗，是2009年的《消除對婦女一切形式歧視公約》（CEDAW）中華民國(台灣)初次國家報告的發表暨專家諮詢會議，而從撰寫報告到舉行審查會議，主導這整個過程的是行政院婦女權益促進委員會以及半官方的財團法人婦女權益促進發展基金會¹³。而當前還在進行中的兩公約初次國家報告審查，主導的單位是總統府人權諮詢委員會、議事組以及統籌兩公約「人權大步走」計畫的法務部。

不論是CEDAW 公約還是兩公約的國家人權報告，政府皆以任務編組、無固定預算資源的委員會來統籌整個過程。以當前的總統府人權諮詢委員為例，在組織

¹³ 請參考陳瑤華，2010，〈台灣CEDAW 的初次國家報告與人權的監督機制- 一個聯合國體系之外的獨特案例〉

上，其成員還包括各院的副院長，本應扮演執行總統決策之角色的行政院，卻反過來成為提供總統及副總統諮詢意見的角色，而本應為獨立憲法機關的司法院和監察院，也成為這個任務編組的委員會成員。也因為是任務編組，所有委員均為兼職，且僅具有提供諮詢意見的職權，若政府本身沒有仔細思考應有的人權政策，而只想依賴總統府人權諮詢委員所提出的意見，顯難以建構完整的人權政策。再就行政院婦女權益促進會或應因組織再造而轉型的性別平等會而言，也有類似的問題，該會並非常設機構、無設專責委員、各部會兼任委員的首長並非全心投入，亦無正式編制人員及固定預算，只要內閣改組，召集人就會跟著替換，導致婦權會或性平會的事務無法獲得累積與傳承，其業務的推行與運作也會欠缺時效性及穩定性，其實際運作往往達不到實際的效用，決議事項無法充分落實¹⁴。除了內部機制的問題之外，外部的問題也相當艱鉅。由於台灣政府特殊的外交處境，以致於直到目前為止，政府所簽署和欲批准的三個國際人權公約，皆無法完成存放聯合國秘書長的批准要件，使得台灣政府即使非常有意願加入國際人權體系，且自願接受聯合國條約機構的國際審查與監督，但卻始終被聯合國拒於門外，無法像其他正常國家一樣參與國家人權報告的審查。

再者，雖然台灣政府目前只有將三個國際人權公約內國法化，但不排除未來將陸續完成其他六項國際人權公約的內國法化（參見聯盟的第五點建議訴求）。若未來台灣政府完成九項公約，屆時政府在撰寫各國家人權報告的事務上，勢必會形成龐雜混亂的工作。因此，為了讓所有國際人權公約的審查是有節奏且有效率地進行，台灣勢必得有一個獨立的專責機構來負責國際公約的國際審查事務。

因此，長遠來看，為了解決台灣無法參與聯合國國際審查的問題，以及上述總統府人權諮詢委員會以及行政院性別平等會所面臨的問題，聯盟建議政府應審慎思考成立符合巴黎原則「獨立、透明」的國家人權委員會，除了應扮演巴黎原則所規範的既有功能之外¹⁵，在台灣更應扮演聯合國條約機構的中立角色，作為監督

¹⁴ 請參考廖福特於 2011 年國際人權公約研討會中所發表的〈我國人權機制之發展及省思〉。

¹⁵ 黃文雄先生：「國家人權委員會雖然只是補正常立法、行政、司法及監察之不足的機構，其設立的必要性---尤其是對脫離國家人權體系已久的台灣---可以從其功能中看出來：（一）調查可能侵犯人權（尤其是歧視不公）案件，進行調解和仲裁，必要時並得協助受害者團體或個人進行訴訟；（二）依據憲法及國際人權標準，審查研究國內既有法規和立法草案，提出修法、立法、修憲的建議；（三）規劃國家人權政策，包括國際人權及人道救援政策，並提出建議；（四）規劃並推廣學校內外人權教育，包含司法官、律師、軍警及其他公務員的人權教育；（五）提出年

政府落實國際人權公約的專責機構，不但每年都應該提出監督台灣政府落實人權狀況的委員會本身的報告，更應在政府面臨提交國家人權報告的階段，培訓公務機關自己撰寫國家人權報告的能力，並扮演條約機構秘書處的角色，讓國家人權報告可以受到獨立客觀的審查，以及受到後續落實的監督。

聯盟此一建議，應與總統府人權諮詢委員會的想法是相一致的，人權諮詢委員會曾經針對該會的定位、功能與重點工作項目與目標，進行相關討論。召集人蕭萬長副總統明確指出，目前的人權諮詢委員會並非符合巴黎原則之下的人權專責機構，然而也期待諮詢委員會可以進一步研議循序設置我國國家人權專責機構的可能性。

此外，在 2011 年 1 月 8 日總統府治國週記，副總統再次表示，關於國家人權專責機構，總統府人權諮詢委員會未來將研議，循序設計符合「巴黎原則」的國家人權專責機構¹⁶。

全世界已有超過一百個國家已經設立國家人權委員會，這是近代國際人權非常重要的發展趨勢，若政府真的著重與國際人權接軌的話，就應該宣示成立國家人權委員會之決心。但必須要說的是，國家人權委員會恐怕不適宜於監察院之下設立之，而應是獨立之機構，為維護其獨立性，其應是五院之外的獨立機構如此最能保護其獨立性，並妥善施行其功能¹⁷。

三、行政機關應持續檢討和修改不符合兩公約的法律及行政措施，並提出對策，與立法院合作積極修正、廢止不符合公約的法律，並建立符合國際公約的法律。

行政院為因應兩公約及其施行法之施行，曾核頒「人權大步走計畫」，並依據兩公約施行法第八條：「各級政府機關應依兩公約規定之內容，檢討所主管之法令及行政措施，有不符兩公約規定者，應於本法施行後二年內，完成法令之制（訂）定、修正或廢止及行政措施之改進。」之規定，清查不符兩公約規定之法令及行政措施後，認為有219 項不符兩公約，而製作清冊追蹤管考¹⁸，要求於2011 年

度及針對特定議題之國家人權報告。這些不都正是我國早該有，而至今仍不具備的推展人權的基本建設嗎？」（黃文雄，2000，〈台灣亟待設立國家人權委員會〉，《中國時報》，時論廣場，2000 年1月4 日。）

¹⁶ 請參考陳俊宏的研考會委託研究案〈落實兩公約施行法之政策研究〉

¹⁷ 請參考廖福特於 2011 年國際人權公約研討會中所發表的〈我國人權機制之發展及省思〉。

¹⁸ <http://www.humanrights.moj.gov.tw/lp.asp?ctNode=27273&CtUnit=8930&BaseDSD=7&mp=200>。

12月10日前修正或改進完畢。然而，法務部於2011年12月9日公布之「法務部對違反兩公約法令及行政措施檢討情形之說明」新聞稿¹⁹，統計各主管機關檢討之219則及民間團體所提44則違反兩公約案例之辦理情形，截至2011年12月9日止，263案中已辦理完成者共計187案、占71%；未能如期完成檢討之案例則有76案，占29%，其中法律案計54案(50案已送請立法院審議、另4案尚有疑義)；命令案計21案(需配合母法修正)；行政措施案計1案。其中包括「監督寺廟條例第8條」、「集會遊行法第9條」、「人民團體法」、「工業團體法」、「商業團體法」、「集會遊行法第4條」、「監督寺廟條例第12條」、「消防法第19條」、「建築師法第4條」與「消防法第7條第3項」等應修正之法律，無法依限在2011年12月10日前修正完成，而確定違反兩公約第八條。

惟如前所述，兩公約施行法第八條所指之「各級政府機關」，應包含總統、行政、立法、司法、考試、監察機關，然而行政院在清查不符兩公約規定之法令及行政措施時，並未見立法或監察機關同時清查不符兩公約規定之法令及行政措施²⁰。何況所謂「完成法令之制(訂)定、修正或廢止」，並非僅依靠行政機關提出法律修正草案即完事，還須待立法機關審議通過，故上開無法依限完成法律修正之責任，應由行政與立法機關共同承擔²¹。

再者，聯盟對於政府這兩年多來，僅進行2009年那一波草率的法規檢討，且檢討過程中幾乎沒有引用聯合國條約機構對公約進行權威解釋的一般性意見，深表遺憾與不滿。雖然兩公約施行法第八條所規定的兩年期限已過，但這並不表示政府對於法規檢視與修法的責任已經解除，施行法第八條更重要的立法意旨在於其確立了施行法本身作為特別法的位階，亦即至少高於國內一般法律及行政措施，在這個意義下，凡違反兩公約之法律與行政措施，皆應不受期限進行檢討與修法。兩年之規定，應解釋為政府機關有責任義務在施行法通過之後採取積極措施盤點國內所有違反兩公約的法律。因此，聯盟建議政府應持續檢討和修改不符合兩公約的法律及行政措施，並提出對策，與立法院合作積極修正、廢止不符合公約的法律，並建立符合國際公約的法律。

四、司法院應加強司法人員在審理案件時引用國際人權公約的意識，

¹⁹ <http://www.moj.gov.tw/ct.asp?xItem=252458&ctNode=27518&mp=001>

²⁰ 見前揭註19。

²¹ 請參考高涌誠於2011年國際人權公約研討會中所發表的〈兩公約與其施行法之適用與解釋---並評論我國實務運作之幾個事例〉

而其他各院也應加強人權意識的教育訓練，並建立常設的人權監督機制。

兩公約及其施行法自2009年12月10日生效施行至今，將近二年。兩公約施行監督聯盟曾於2010年12月10日提出《一年又七個月來政府落實兩公約及其施行法之檢討》²²報告，聯盟召集人高涌誠律師於附錄2中撰有〈兩公約施行一年來司法判決之觀察〉，就兩公約施行一年時，各級法院對於兩公約應用之情形，提出觀察心得，當時之結論為各級法院對於國際人權法相當陌生，適用兩公約之比例極低。如今又經過將近一年多，法院適用兩公約作為判決理由之情形已逐漸提高，但仍未見有在判決書中論述一般性評論者²³，法院實務運用還未盡如人意，司法實務界應持續開展兩公約的論述²⁴。

聯盟認為，若要提升司法實務界對於國際公約的運用，根本的解決之道在於，應儘速加強新進與在職法官對於兩公約所保障之人權的教育培訓，以防止法官由於對國際人權法不甚了解，下意識的避免引用兩公約之規定作為裁判之依據。因此，除了馬總統所要求對法官及檢察官之職前訓練，加強對於國際公法之相關訓練之外，聯盟建議不論是司法官訓練所亦或司法人員研習所，在培訓課程的規劃上，應持續進行人權教育的培訓，特別是有關國際人權法的訓練，同時針對不同對象應有不同層級的培訓課程。司法院同時應就兩公約之位階適用及不同類型訴訟等問題進行內部研究及培訓，並就個案運用所發現之問題於各級法院法律座談會中，提出討論與決議。

除了司法院之外，其他各院也應加強人權意識的教育訓練。從長遠的規劃而言，應審慎考慮設立一個健全的國家培訓機構的可行性，將人權培訓制度化，並建立制度化人權培訓的評估機制，針對培訓的效果進行分析與評價。儘管台灣有相對豐富的法律、人文與社會科學的人才，然而知識界對人權研究的忽略，卻是一個明顯的事實。此一「知識赤字」的問題，已經成為人權進一步發展的瓶頸。

因此未來可以考慮在國家教育研究院之下設立一個人權資源中心，或是仿效國家衛生研究院的模式以財團法人的形式成立。這些中心負責以下幾項任務：(a) 人

²² <http://www.tahr.org.tw/files/2010report.pdf>。

²³ 台北高等行政法院100年度停更一字第1號裁定，係由律師引用一般性評論作為論述理由之第一個案件。

²⁴ 請參考高涌誠於2011年國際人權公約研討會中所發表的〈兩公約與其施行法之適用與解釋---並評論我國實務運作之幾個事例〉

權研究；(b) 人權教材的編撰、翻譯與收集；(c) 國際人權文件的收集與彙編；(d) 人權培訓；(e) 協助執行國際上舉辦的人權教育合作項目；(f) 人權教育的推廣服務等，以補強目前我國在國際人權領域中，因為知識、經驗與人才三者嚴重短缺所造成的問題²⁵。除了人才培訓機制的建立之外，為了讓有志進入公務機關服務的人員具備基本的人權意識，聯盟建議應在所有公務人員的國家考試中，除了現有的憲法人權保障之外，加考國際人權公約的科目。有鑑於CEDAW施行法通過時，其一附帶決議為「政府應依公約規定，成立消除對婦女一切形式歧視監督機制；其設置要點由行政院、立法院、監察院、考試院分定之。²⁶」聯盟建議，各院也應依兩公約之規定，建立人權監督機制，以下就各院不同屬性建議之：

- a. 監察院的人權保障委員會應該規劃監察院實踐憲法及三個國際人權條約之權利的內涵及方法，如此監察院才可能扮演人權保護者之角色。
- b. 立法院應增設一個常設的人權委員會，如此立法院在審查法案時亦可加入人權之概念，如果立法院在審查法案時即做人權思考，如此或可減少法案違憲及侵犯人權之可能性。
- c. 考試院可應業務需要而設立人權保障委員會，作為考試院內部機制，負責思考如何實踐憲法基本權保障及三個國際人權條約之權利內涵。
- d. 司法院亦可在院內設立人權委員會，以負責思考在不違背司法獨立之前提下，三個國際人權公約應該如何於司法院之審判實務中實踐，同時也可以作為思考司法院所負責之各種法規是否有可以增進人權保障之處之機制。²⁷

五、政府應持續完成其他六大核心國際人權公約的內國法化

目前政府僅將《公民與政治權利國際公約》、《經濟社會文化權利國際公約》、以及《消除對婦女一切形式歧視公約》，透過施行法的方式進行內國法化。然而，聯合國目前還有其他六個核心公約，包括《消除一切形式種族歧視國際公約》、《禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約》、《兒童權利公約》、《保護所有移徙工人及其家庭成員權利國際公約》、《保護所有人免遭強迫失蹤國際公約》、《身心障礙者權利公約》。

²⁵ 請參考陳俊宏，2011，〈台灣落實兩大人權公約的初步檢視：以「種子講師培訓計畫」為焦點〉，台灣人權學刊第一卷第一期。

²⁶ <http://lis.ly.gov.tw/ttscgi/lgimg?@1004200;0051;0061>

²⁷ 請參考廖福特於2011年國際人權公約研討會中所發表的〈我國人權機制之發展及省思〉，以及陳俊宏的研考會委託研究案〈落實兩公約施行法之政策研究〉。

雖然聯合國目前共分九大核心人權公約，但其實這九個人權公約是整體且密不可分的體系。《公民與政治權利國際公約》和《經濟社會文化權利國際公約》作為綱領性的兩公約，其雖然涵蓋所有重要的基本人權價值與規範，但內容難免較抽象而不易運用和理解，因此後續衍伸的其他七部人權公約，就是從兩公約的其中一條衍伸為更具體的公約內容。此時，專門處理單一議題的人權公約，就扮演補充兩公約內容的角色和功能。

因此，聯盟建議，政府應持續完成其他六大核心國際人權公約的內國法化。

兩公約施行監督聯盟

召集人 高涌誠

台北律師公會司法改革委員會召集委員

民間司法改革基金會常務執行委員

執行團體：

台灣人權促進會、民間司法改革基金會、台北律師公會人權保護委員會、台灣勞工陣線、國際特赦組織台灣總會、台灣國際醫學聯盟、環境法律人協會、廢除死刑推動聯盟、台灣促進和平基金會、台灣原住民族政策協會、社區大學全國促進會、台灣國際法學會、台灣企業社會責任協會、小米穗原住民文化基金會、

參與團體：

台灣法學會、中華民國律師公會全國聯合會、中華民國智障者家長總會、中華民國殘障聯盟、中華民國全國教師會、中華民國愛滋感染者權益促進會、中華民國銀行員工會全國聯合會、公民監督國會聯盟、日日春關懷互助協會、台北市上班族協會、台北市女性權益促進會、台灣太平洋發展協會、台灣少年權益與福利促進聯盟、台灣北社、台灣自由緬甸網絡、台灣性別人權協會、台灣原住民族非政府組織聯盟、台灣原住民族學院促進會、台灣婦女團體全國聯合會、台灣勞動與社會政策研究協會、台灣新聞記者協會、台灣圖博之友會、台灣青年逆轉本部、外省台灣人協會、東吳大學張佛泉人權研究中心、國家人權委員會推動聯盟、基督教恩友中心、綠色陣線協會、綠黨、澄社、鄭南榕自由基金會

聯絡方式

施逸翔

社團法人台灣人權促進會 執行秘書

104 台北市天祥路61 巷22 號2 樓

電話02-25969525、傳真02-25968545、電子信箱：tahrwebmail@gmail.com

April 20, 2012

**TAIWAN RELEASES ITS FIRST HUMAN RIGHTS
REPORT BASED ON TWO UNITED NATIONS
COVENANTS: A GOOD START, BUT A LONG WAY TO
GO**

Mark L. Shope^{*}

INTRODUCTION

The nine articles of the Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (the “Covenants”) (公民與政治權利國際公約及經濟社會文化權利國際公約施行法) (the “Taiwan Act”) no doubt were implemented to strengthen Taiwan’s human rights protection system.¹ But a government’s responsibilities towards its domestic population do not end with implementation alone; each State is required to engage in a comprehensive campaign to see that every Covenant obligation is addressed.

On April 20, 2012, Taiwan released its first human rights report “based on” the Covenants. How the Covenant provisions can be implemented in the domestic legal system and how subsequent Covenant obligations should be reported has proven to be an ongoing learning process for both Taiwan’s government and its civil actors. Through an initial reporting process, however, Taiwan may learn how to further

^{*} J.D. Candidate, 2012, Indiana University Robert H. McKinney School of Law; LL.M., 2009, National Taiwan University College of Law; B.F.A., 1999, Carnegie Mellon University. Mark was an Intern at the Centre for Civil and Political Rights in Geneva, Switzerland where he was deeply involved in all aspects of the State reporting process for the ICCPR. He can be contacted at markshope@gmail.com. This Editorial is based on, and contains excerpts from, my article, *The Adoption and Function of International Instruments: Thoughts on Taiwan’s Enactment of the Act to Implement the ICCPR and the ICESCR*, 22 IND. INT’L & COMP. L. REV. 159 (2012).

¹ Taiwan Act, art. 1 (“This Act is made . . . to strengthen our country’s human rights protection system.”). *See also id.* arts. 2-9.

implement and realize these human rights guarantees. Implementation in the domestic legal system and the concurrent reporting process represent just the birth of the Covenants, which will continue far beyond the initial State report.

Basically, there are three major players involved in fulfilling Covenant obligations: the State, national NGOs, and the Committees. The State has created their initial report, which should be seen, in theory, as setting the whole mechanism of State reporting in progress.

STATE REPORTING OBLIGATIONS UNDER ARTICLE 40 OF THE ICCPR AND ARTICLE 16 OF THE ICESCR: TO WHOM SHALL TAIWAN REPORT?

Articles of the ICCPR regarding reporting include Article 40, it states that “States Parties to the [ICCPR] undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights. . . . Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant. . . . [A] Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, [back] to the States Parties.”

The Committee on Economic Social and Cultural Rights notes that, “in accordance with the letter and spirit of the [ICESCR], the processes of preparation and submission of reports by States can, and indeed should, serve to achieve a variety of objectives.”² The first objective recognizes the importance of the initial report so as to “ensure that a comprehensive review is undertaken with respect to national legislation, administrative rules and procedures, and practices in an effort to ensure the fullest possible conformity with the Covenant.”³ This spirit of reporting is much like that expressed in the ICCPR.

² Comm. on Econ., Soc. & Cultural Rights [CESCR], General Comment No. 1: Reporting by States Parties, para. 1, 3rd Sess., U.N. Doc. E/1989/22, annex III at 87 (1989). The Committee specifically notes seven objectives in their comment. *Id.* paras. 2-9.

³ *Id.* para. 2 (“Such a review might, for example, be undertaken in conjunction with each of the relevant national ministries or other authorities responsible for policy-making and implementation in the different fields covered by the Covenant.”).

Given that Taiwan has recently submitted its State report, I recommend that a review process of the State report occur in the fall of 2013. This will give the to-be-formed ad hoc Committee time to draft a List of Issues during the beginning of 2013, and the State and NGOs will have time to respond accordingly.

AD HOC COMMITTEE?

The biggest hurdle Taiwan needs to overcome regarding its Covenant obligations lies in the fact that it does not have access to the UN Human Rights Committee or the Committee on Economic, Social and Cultural Rights mechanisms. Nonetheless, Taiwan still has to report to someone. Here are my suggestions.

Articles 28 and 31 of the ICCPR refer to the composition of the Human Rights Committee.⁴ Article 28 states that the eighteen-member Committee “shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.”⁵ In addition, Article 28 provides that Committee members serve in their personal capacity and not on behalf of a country.⁶ The Secretary-General of the UN invites States parties to submit nominations for Human Rights Committee membership.⁷ The Secretary-General then submits a list of the nominees to the current Committee for a vote.⁸ Article 31 states that “[t]he Committee may not include more than one national of the same State” and, further, that “consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.”⁹ Considering the requirements of article 31, the Presidential Office Human Rights Consultative Committee cannot be the body that reviews the implementation of the Covenants. This body is there to “implement the covenants” and not to oversee the review of the implementation.

The UN Economic and Social Council (ECOSOC) created the CESCR to

⁴ See ICCPR, arts. 28, 31.

⁵ *Id.* art. 28, para. 2.

⁶ *Id.* art. 28, para. 3.

⁷ *Id.* art. 30, para. 2.

⁸ *Id.* art. 30, para. 3.

⁹ *Id.* art. 31, paras. 1-2.

monitor ICESCR implementation by State parties.¹⁰ ECOSOC resolution 1985/17 states that “[t]he Working Group established by [ECOSOC] decision 1978/10 and modified by Council decision 1981/158 and resolution 1982/33 shall be renamed ‘Committee on Economic, Social and Cultural Rights.’”¹¹ The renamed committee should have eighteen human rights experts elected for a term of four years¹² by the Council from nominees submitted by States parties.¹³ Similar to the Human Rights Committee, the CESCR shall give due consideration “to equitable geographical distribution and to the representation of different forms of social and legal systems.”¹⁴

For Taiwan, I recommend that an ad hoc coalition of both international and domestic academics and NGOs convene to prepare a list of international nominees for one or more ad hoc committees. This list, along with the curricula vitae of nominated parties, should then be voted on by the ad hoc coalition, resulting in around twenty members for each ad hoc committee.

Rule 17 of the Rules of Procedure of the Human Rights Committee states that the “Committee shall elect from among its members a Chairperson, three Vice-Chairpersons and a Rapporteur.” These officers are normally elected for a term of two years, but I recommend that the ad hoc committee officers be elected for four years to account for the time it will take Taiwan to go from initial report to follow-up report. The procedures also provide for Human Rights Committee appointed special rapporteurs. These rapporteurs may have the specific function of communications under the Optional Protocols, which does not apply to Taiwan. The third rapporteur is in charge of the follow-up to the Concluding Observations, which is crucial to the reporting process. Ultimately, Taiwan’s ad hoc committee should mirror as much as possible the composition of the Human Rights Committee and the CESCR.

A. Duty to Create and Importance of the Ad Hoc Committee(s)

¹⁰ U.N. Econ. & Soc. Council Res. 1985/17, Review of the Composition, Organization and Administrative Arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights, pmb1., para. a, 22nd plen. mtg., May 7-31, 1985, ECOSOC, Supp. No. 1, U.N. Doc. E/1985/85, at 15 (May 28, 1985).

¹¹ *Id.*

¹² *Id.* para. c(i).

¹³ *Id.* para. b.

¹⁴ *Id.* para c(ii).

The purpose of the meeting with the reporting State is to “establish a constructive dialogue between the Committee and the State Party.”¹⁵ The Human Rights Committee and the CESCR are neither judicial nor quasi-judicial but are there to “assist States Parties in fulfilling their obligations under the Covenant, to make available to them the experience the committee has acquired in its examination of other reports and to discuss with them any issue related to the enjoyment of the rights enshrined in the Covenant.”¹⁶ The ad hoc committee too should exist to engage representatives in fruitful dialogue.

The Human Rights Committee has noted that its task is to “supervise and monitor the implementation of Covenant obligations by States parties.”¹⁷ Since the Committee is made up of actors from all over the world, there is no “single geographical or national perspective, the Committee speaks with a global voice.”¹⁸ Similarly, Taiwan should strive to have an ad hoc committee made up of international actors with specialties in human rights; the intent being to mirror, as much as possible, the philosophy of the Human Rights Committee and the CESCR.¹⁹

B. Lessons from the CEDAW Ad Hoc Committee

In Taiwan, the CEDAW was ratified by the Legislature and signed by the President in 2007. Professor Wen-Chen Chang notes that the accession “was passed by an overwhelming parliamentary majority”²⁰ The first official State CEDAW report was published in March 2009 and addressed the substantive articles in the Convention.²¹ Further, an international symposium was organized with the aim of

¹⁵ See U.N. Office of the High Comm’r for Human Rights, Manual on Human Rights Reporting Under Six Major International Human Rights Instruments, at 262, U.N. Doc. HR/PUB/91/1 (Rev.1) (1997) (“The main function of the Committee is to assist States Parties in fulfilling their obligations under the Covenant, to make available to them the experience the Committee has acquired in its examination of other reports and to discuss with them any issue related to the enjoyment of the rights enshrined in the Covenant in a particular country.”).

¹⁶ *Id.*

¹⁷ Office of the U.N. High Comm’r for Human Rights, Civil and Political Rights: The Human Rights Committee 14, Fact Sheet No. 15 (May 2005), <http://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf>.

¹⁸ *Id.*

¹⁹ Taiwan’s previous experience with the CEDAW ad hoc committee was less than ideal; the Committee had only three members. See NAT’L ALLIANCE OF TAIWAN WOMEN’S ASSOC’NS, <http://www.natwa.org.tw/>.

²⁰ Wen-Chen Chang, *An Isolated Nation with Global-Minded Citizens: Bottom-up Transnational Constitutionalism in Taiwan*, 4 NAT’L TAIWAN U. L. REV. 203, 221 (2009).

²¹ *Initial Report of Republic of China (Taiwan)*, CEDAW, (Mar. 25, 2009), available at

having independent experts examine the reports, much like if a state were to submit its report to the CEDAW in Geneva. Three ex-CEDAW committee members were invited to this symposium and published their findings.²² Taiwan should use a similar approach but should include more committee members.²³ As with the ad hoc committee's membership and philosophy, I recommend that Taiwan aim to mirror the procedure of the UN committees.

A MESSAGE TO TAIWANESE NGOS: GET INVOLVED, NOW.

There is no doubt that NGOs have held an increasingly prominent role in the Covenant reporting process.²⁴ The Human Rights Committee encourages NGOs to provide detailed, country-specific reports on States parties whose reports will be reviewed by the Committee.²⁵ The Committee also invites NGOs to submit reports to the country task forces in charge of drafting the lists of issues.²⁶ Breakfast or lunchtime briefings are often organized for the members of the Human Rights Committee so that NGOs can have a personal dialogue with and provide current information to the members.²⁷ NGOs also are important once the concluding observations have been issued. Among the activities in which NGOs are engaged after the issuance of the concluding observations are reporting the steps taken by the government to the Human Rights Committee or CESCR, lobbying national government for the effective implementation of the concluding observations, and raising awareness about the concluding observations through media and other

http://www.womenweb.org.tw/doc/CEDAW_Initial_Report.pdf.

²² See Dr. Anamah Tan et al., *Findings of the Taiwan CEDAW Committee*, FOUND. WOMEN RTS. PROMOTION & DEV. (Mar. 27, 2009), http://wrp.womenweb.org.tw/Uploads/%7B18F510E4-B8B8-4920-8F7D-12F8EE2189CE%7D_CEDAW%E5%BD%99%E6%95%B4NEW+%E6%A2%9D%E6%96%87.pdf.

²³ Taiwan had three foreign experts, but the CEDAW is comprised of 23 experts. For a general discussion regarding the CEDAW committee, see Hanna Beate Schöpp-Schilling, *Treaty Body Reform: The Case of the Committee on the Elimination of Discrimination Against Women*, 7 HUM. RTS. L. REV. 201 (2007).

²⁴ See Comm. on the Elim'n of Discrim'n Against Women [CEDAW], *Statement by the Committee on the Elimination of Discrimination Against Women on its Relationship With Non-governmental Organizations* paras. 5-7, 45th Sess. (2010), available at <http://www2.ohchr.org/english/bodies/cedaw/docs/statements/NGO.pdf>.

²⁵ Office of the U.N. High Comm'r for Human Rights, Report on the Working Methods of the Human Rights Treaty Bodies Relating to the State Party Reporting Process, para. 112, U.N. Doc. HRI/ICM/2010/2 (May 10, 2010).

²⁶ *Id.*

²⁷ *Id.* para. 117.

appropriate outlets. Therefore, at each step of the reporting process, it is important for NGOs to be actively involved in providing region-specific information. Taiwan has a number of national NGOs with the capacity to provide detailed reports to the ad hoc Committees.²⁸ These NGOs are capable of and should be pro-active in providing useful information in every aspect of the reporting process.

By way of example, in August 2004 numerous NGOs joined forces, forming a league for promoting the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).²⁹ The League pressed the issue of CEDAW accession with the Government of Taiwan, and on January 5, 2007, the Legislative Yuan passed the accession.³⁰ This NGO coalition was also key in lobbying the government for its initial state report, which was published in March 2009.³¹

The increased involvement of NGOs in lobbying the Taiwanese government should continue under the Covenants.

A. Follow-up Procedures and NGO Involvement

Once the concluding observations of the ad hoc Committee have been issued, “[t]he [Human Rights] Committee may request the State party to give priority to such aspects of its concluding observations as it may specify.”³² Regarding “such aspects,” the Special Rapporteur for follow-up on concluding observations, Sir Nigel Rodley, has suggested, “Once the follow-up information has been received by the Special Rapporteur, he undertakes an assessment, with the assistance of the Secretariat, by carefully analysing whether all the recommendations of the Committee which were selected for follow-up have been addressed by the State party. Based on this assessment, the reply is classified as incomplete, partially incomplete or complete.

²⁸ For detailed information regarding NGOs in Taiwan, see Ministry of Foreign Affairs, *About NGO Affairs Committee*, TAIWANNGO.TW, <http://www.taiwanngo.tw/english/about.asp>.

²⁹ Chang, *supra* note 20, at 225. These included NATWA, the Awakening Foundation, the Taipei Chapter of the Awakening Foundation, Chang Fo-Chuan Center for the Study of Human Right, Human Rights Program Center at Soochow University, Women’s Research Program Center at National Taiwan University, ECPAT Taiwan, Taiwan Women’s Film Association, the Garden of Hope Foundation, and the Taiwanese Feminist Scholars Association. *Id.*

³⁰ *Id.* at 226 & n.82

³¹ *Id.*

³² U.N. Human Rights Comm., Rules of Procedure of the Human Rights Committee, R. 71(5), U.N. Doc. CCPR/C/3/Rev.8 (Sept. 5, 2005).

Where information from non-governmental organizations is available, it is also taken into consideration in the Special Rapporteur's assessment."³³

It is therefore important that NGOs are involved in the follow-up process, not only to fulfill reporting obligations but also to inform the public of Covenant challenges.

NGOs should also maintain contact with the State and Special Rapporteur so they may provide relevant information to the public. Communications between the Special Rapporteur and the States parties are published on the High Commissioner for Human Rights website, and it is important for NGOs to be aware of these communications and to transmit this information to the relevant authorities and media outlets.³⁴ The website contains country specific information as well as follow-up information for all States parties.³⁵ Equally as important, Taiwan must be aware of the communications of the ad hoc Rapporteur in order to aid in appropriate lobbying of relevant governmental bodies. The Government of Taiwan should maintain a similar website so that stakeholders may be aware of similarly relevant information.

Additionally, the UN Office in Geneva maintains a website that contains press releases and meeting summaries.³⁶ These summaries are fairly comprehensive and are valuable for NGOs who cannot attend Human Rights Committee sessions.³⁷ I suggest Taiwan have a similar media outlet so that NGOs and media outlets may stay current with issues during the reporting to the ad hoc committees.³⁸

CONCLUDING REMARKS

The incorporation of the ICCPR and ICESCR into domestic law has provided Taiwan with an exciting opportunity to hold itself accountable for human rights issues and to realize further protections of human rights already enjoyed to a large extent by

³³ *Paper of the Special Rapporteur for Follow-up on Concluding Observations: Strengthening of the Follow-up Procedure*, para. 5, U.N. Doc. CCPR/C/CCPR/C/95/3 (July 2, 2009) (emphasis added).

³⁴ *Id.* para. 34.

³⁵ See Office of the High Comm'r for Human Rights, *Human Rights Bodies*, OHCHR.ORG, <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>.

³⁶ See U.N. Office at Geneva, *Press Releases & Meeting Summaries*, UNOG, <http://www.unog.ch/80256EDD006B9C2E/%28httpPages%29/CBD301FF98AF69B980256EE700376D86?OpenDocument&count=10>.

³⁷ See *id.*

³⁸ Currently, a non-profit umbrella organization called "Covenants Watch" maintains updates on Covenant activities. See COVENANTS WATCH, <http://covenants-watch.blogspot.com/>

Taiwanese citizens. The formation of ad hoc committee(s) in conjunction with other foreign experts can facilitate a fruitful and constructive dialogue between relevant actors so that the human rights situation in Taiwan may become even stronger. The international community should, indeed must, respect this implementation and provide its honest scrutiny of the ongoing implementation of Covenant rights into Taiwanese domestic law.

The domestic and international scrutiny that should result from Taiwan's implementation of the Covenant's will generate valuable performance information and engage domestic and international governance. This will create political consequences for politicians who do not live up to their promises, and ultimately enhance the quality of human rights for current and future generations.

In case you are a more visual person, here is a recommended timeline of events:

April 2012	Submission of State Report
May-Dec. 2012	Creation of ad hoc Committee; NGOs must provide information for the drafting of the list of issues
Jan.-Feb. 2013	Drafting of the list of issues by the ad hoc Committee
Mar. 2013	Pre session adoption of the list of issues
Apr.-Sept. 2013	State must draft written replies to the list of issues; NGOs must provide information for the upcoming examination
Oct. 2013	Session, examination of the State report
Nov.-Dec. 2013	State follow up procedures; NGO follow up process, media awareness
Jan.-June 2014	Implementation of the concluding observations, inform relevant government agencies and ministries; NGOs continue to lobby and create media awareness
July-Sept. 2014	Draft state follow up report; draft NGO progress report
Oct. 2014	Ongoing examination of State progress by civil society

* Repeat every 5 or so years.