

審查各機關對結論性意見與 建議的初步回應第 4 次會議

補充資料

2013 年 6 月 6 日（四）上午 9 時 30 分

法務部 2 樓簡報室

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2013 年 06 月 05 日

臺南市西拉雅民族自治條例草案

(黃俊杰委員修訂)

第一條 西拉雅為立基於臺南市（以下簡稱「本市」）具有代表臺灣先民文化傳承，最早與荷蘭往來之民族，先於中華民國憲法存在，應有立法特別保護必要之族群，特制定臺南市西拉雅自治條例（以下簡稱「本自治條例」）。

說明：本自治條例，爰為西拉雅族在尚未經中央頒訂具有法律位階身分之前，所制訂之暫時(過渡)條例。在獲得國家認定為原住民身分及原住民族之時，得因時制宜予以修改或廢止。

第二條 本自治條例為肯認本市原鄉獨特之西拉雅原住民族之平等地位，並尊重其自主發展之意願而制定。

第三條 本自治條例之主管機關為臺南市政府（以下簡稱市政府），執行機關為市政府西拉雅原住民事務委員會（以下簡稱雅原會），市政府有關局、處、會、公用事業機構、學校及區公所應配合辦理。

第四條 本自治條例適用之對象為設籍本市，符合本市市定西拉雅原住民之身分，身分認定要件為具有日治時代直系親屬種族登記為「熟」者為限。

說明：

(一) 本自治條例實施範圍為本市轄區內，至少分為四大領域，案類實施。(1)屬現行西拉雅群聚部落，依人口、分布、密度及可追溯(60年)已上之居住歷史或遷徙史。(2)近代十年投身族群復興之指標性聚落。(3)固有傳統歷史空間、歷史性聚落場域、(文獻及考古學、語言學、歷史學等所稱本族五大社及其支社、大武壠社)等。(上述地理、聚落、環境、歷史場域應尊重民族關係及地理鄰接等因素劃定之)。

(二)本市應設西拉雅市民服務專責平臺(窗口/處)，針對西拉雅部落及市定西拉雅身分之個人提供諮詢與服務。

第五條 本市應妥善維護西拉雅傳統領域，保障西拉雅族於傳統部落之生存、居住及土地不被剝奪之權利，永續西拉雅部落之存留。前項所稱西拉雅傳統領域，由本市另以公告界定之。

第六條 本市應重視西拉雅原鄉價值，其傳統領域所在之學校應優先保存延續與發展，得設以西拉雅為主題之教育文化產業。

說明：本市為維護發揚西拉雅族文化，提昇西拉雅族謀生知能及增強(科技)時代智識，裝備專業能力及人才，應自行或輔導民間設立西拉雅族推廣相關教育機構，並為長遠之奠基，得協助推動設置西拉雅大學。

第七條 本市市有之土地得為西拉雅文化、語言之發展，作為西拉雅之共用區域。

第八條 本市為辦理西拉雅語言、文化、展演、展示、藝術、教育、樂舞、體育、傳統技藝傳習及文化，得設西拉雅文化園區。對前項內容具卓越貢獻之個人或團體，本市得以獎勵。西拉雅族族語之認證辦法，由本市另訂之。

說明：

- (一) 本條例係為透過教育政策，推動學校等機關進行西拉雅族語言復育、文化傳承與推廣設制之。
- (二) 本市應設置西拉雅族語言情境化學習教室及公共空間，以提供普遍化、自然化之族語學習環境。
- (三) 為鼓勵語言學習，應定西拉雅族族語認證辦法，通過認證者應予實質獎勵。本市應獎勵西拉雅族家庭、部落或組織推動族語復育、傳承文化等推行成效卓者。
- (四) 本市對大眾傳播媒體，以保存、傳授及發展西拉雅族文化為目的，提供頻道、版面、製播節目或發行書刊，其成效卓著者，市政府得予以表揚或獎勵。從事文化、藝術或大眾傳播之工作人員，以保存、傳授及發展原住民族之文化為目的之創作，市政府得予以表揚或獎勵。

第九條 本市為辦理西拉雅文化及節慶活動，並促進國內外西拉雅個人、團體、部落之文化事務合作與交流等事項，得自訂西拉雅日。

第十條 本市應設置西拉雅族文物保存機構，以提供原住民族文物典藏、展示、研究、文化學習及推廣教育。

說明：

- (一) 西拉雅傳統部落祭典及節慶除推廣外，相關文化資產、文化遺跡保存應應全面調查、蒐集、彙整，並設西拉雅資料庫、數位典藏。
- (二) 本市市立圖書館得設置西拉雅族文化書籍教材專區或專櫃，其他社教、公營機構得提供西拉雅之文宣、導覽、錄音或現場解說服務。

第十一條 本市得設西拉雅自治政府及行政中心，其組織由本市依族群平等互重互惠原則另訂之。(保留)

本自治條例自公布日施行。

102.6.6 台灣原住民民族政策協會提供

兩公約審查結論性意見書原住民民族權利相關部分之中文翻譯修改建議

項次	英文原文	法務部翻譯	建議翻譯	說明
31.	It is reported that indigenous peoples' reserve lands and traditional lands that are still in the application process, are in the meantime already being used for development projects, consequently depriving indigenous peoples of access to their land and sources of livelihood. Reports cite as one example, the Shikti Fishing Port which has been built in Fengpin Village in Hualien County on traditional land of the Amey people that they had registered with the township government as "reserve land" from 1990 to 1993.	據報導，原住民保留區的土地和傳統土地中仍在運用階段者，同一時間卻已經被作為開發計畫所使用，因此剝奪了原住民取得其土地和生計資源的途徑。報告中引用了一個例子，花蓮縣豐濱鄉的石梯漁港建立在阿美族的傳統土地之上，阿美族人從1990年到1993年已向鄉公所將其登記為「保留區土地」。	根據報告內容，仍在申請認定階段的原住民民族保留地和傳統土地中，同一時間卻已經被作為開發計畫所使用，因此剝奪了原住民取得其土地和生計資源的途徑。報告中引用了一個例子，花蓮縣豐濱鄉的石梯漁港建立在阿美族的傳統土地之上，阿美族人從1990年到1993年已向鄉公所將其登記為「保留地」。	<ol style="list-style-type: none"> 專家是依據報告內容提出此點建議，而非根據媒體報導。 依據此案例，阿美族人已向鄉公所提出劃定該區土地為原住民民族保留地，但因行政疏失，導致該區已提出申請，該筆土地卻仍被開發計畫所利用，因此，此處是指某筆土地在認定為原住民民族保留地的申請階段，而非運用階段。 台灣並沒有原住民民族保留區，原翻譯「原住民民族保留區的土地和傳統土地」，易被誤解為「原住民民族保留區內的土地和傳統土地」，與原本的英文原意「原住民民族保留地和傳統土地」相差甚遠。 「保留區土地」指的是保留區內的土地，但台灣並無原

				住民族保留區，何來保留區內的土地？此指的是原住民保留地。
32.	The Experts recommend that the Taiwan Government closely monitor the processing of development project plans to ensure that such plans do not infringe on the right of indigenous peoples to their territories, and to provide access to effective remedies in the instances where such infringements have already occurred.	專家們建議中華民國（臺灣）政府密切監督開發計畫的過程，以確保這樣的計畫不會侵害到原住民的領域權，並且在已發生這類侵害時能夠提供有效的救濟管道。	專家們建議中華民國（臺灣）政府密切監督開發計畫的進行程序，以確保這樣的計畫不會侵害到原住民對其領域的權利，並且在已發生這類侵害時能夠提供有效的救濟管道。	<p>根據英文原文語義及審查會議時的討論，專家所提的建議是針對開發計畫提出後的處理過程，包含政府審查、環評到執行等過程，而非僅僅是開發計畫本身的執行過程。</p> <p>2. 「領域權」易被誤解為排他、私人財產的個人私有權，然而，英文原文指的是原住民對其傳統領域的權利，此權利為集體性質，並非絕對排除他的個人擁有權，往往是指涉擁有、使用、開發和控制該領域、且不受侵害的權利。（請見聯合國原住民權利宣言第 25 條至第 32 條）。</p>
33.	It has come to the attention of the Experts that the nine Ping Pu lowland aboriginal tribes have not been granted recognition as indigenous peoples by the Government of Taiwan despite evidence of their distinct	專家們注意到，九個平埔低地原住民部落並未被中華民國（臺灣）政府承認為原住民，儘管有證據顯示他/她們有著具區別性的歷史、文化、語言、風俗和傳	專家們注意到，九個平埔低地原住民部落並未被中華民國（臺灣）政府承認為原住民，儘管有證據顯示他/她們有著具區別性的歷史、文化、語言、風俗和傳	<p>根據原住民民族基本法第二條之定義：</p> <p>部落：係指原住民於原住民族地區一定區域內，依其傳統規範共同生活結合而成之團體，經中央</p>

	history and culture, language, customs and traditions.	統。	統。	<p>原住民主管機關核定者。</p> <p>原住民族：係指既存於臺灣而為國家管轄內之傳統民族，包括阿美族、泰雅族、排灣族、布農族、卑南族、魯凱族、鄒族、賽夏族、雅美族、邵族、噶瑪蘭族、太魯閣族及其他自認為原住民族並經中央原住民族主管機關報請行政院核定之民族。</p> <p>英文 tribe 常被混用來指稱部落或族群，但平埔族並非單一民族，也並非只有九個部落，平埔族為居住在臺灣平野地區的「原住民族」的統稱，而事實上包含多個不同語言、不同文化的民族，區分說法各異，但至少可分作凱達格蘭族、噶瑪蘭族、道卡斯族、巴賽族、巴布拉族、巴布薩族、洪雅族、西拉雅族及馬卡道族。因此，此處之 tribes 指的是族群，而非部落。</p>
34.	The Experts recommend that the government clarify its policy of identifying indigenous peoples based on international human rights standards set out in the two Covenants as well as in the UN Declaration on	<p>專家們建議政府應澄清其對於原住民族身分認同的政策，應以兩人權公約、聯合國原住民族權利宣言以及國際勞工組織關於原住民及部落居民的第 169 號公約</p>	<p>專家們建議政府應澄清其對於認定原住民族的政策，應以兩人權公約、聯合國原住民族權利宣言以及國際勞工組織關於原住民及部落居民的第 169 號公約所列</p>	<p>認同與認定是不同概念，認同往往是指內化的、主動的個人身份認知與同意，認定則是外在的、被動的被他者辨認與核定，此處所指是政府所制定的政策，在於</p>

	the Rights of Indigenous Peoples, and the ILO Convention No. 169 on indigenous and tribal peoples, and to apply a human rights based approach in its engagement of the various indigenous groups in the country.	所列明的國際人權標準做為基礎，採取一種以人權為本的方法來與國內各原住民族進行互動。	明的國際人權標準做為基礎，採取一種以人權為本的方法來與國內各原住民族進行互動。	如何辨認、認定某一族群為原住民族，即政府曾認定某一族群是否為原住民族的政策。
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第31及32點農委會修正回應

點次	結論性意見 (中文部分僅為草稿，非確定版本)	主辦機關/協辦機關	初步因應措施	預定完成時程	備註
31	<p>It is reported that indigenous peoples' reserve lands and traditional lands that are still in the application process, are in the meantime already being used for development projects, consequently depriving indigenous peoples of access to their land and sources of livelihood. Reports cite as one example, the Shihti Fishing Port which has been built in Fengpin Village in Hualien County on traditional land of the Amei people that they had registered with the township government as "reserve land" from 1990 to 1993.</p> <p>據報導，原住民保留區的土地和傳統土</p>	原委會、農委會	<p><u>林務局</u>：</p> <p>原住民族傳統領域於日據時期由日本政府宣告為官有。台灣光復後，中華民國接收日產為國有。原住民保留地於1968年起，由臺灣省政府民政廳管理，惟現已改為原民會管理。原住民族傳統領域土地之劃定刻由原民會研訂中。行政院於2007年1月12日核定「補辦增劃編原住民保留地實施計畫」，公有土地如係原住民於1988年2月1日前即已使用其祖先遺留土地且迄今仍繼續使用者，原住民可申請將公有土地增劃編為原住民保留地。</p>	(農委會)持續辦理	

點次	結論性意見 (中文部分僅為草稿，非確定版本)	主辦機關/協辦機關	初步因應措施	預定完成時程	備註
32	<p>地中仍在運用階段者，同一時間已經被用作開發計畫的用途，因此剝奪了原住民取得其土地和生計資源的途徑。報導引用了一個例子，花蓮縣豐濱鄉的石梯漁港是建立在阿美族的傳統土地，阿美族人從 1990 年到 1993 年已先向鄉公所將其登記為「保留區土地」。</p> <p>The Experts recommend that the Taiwan Government closely monitor the processing of development project plans to ensure that such plans do not infringe on the right of indigenous peoples to their territories, and to provide access to effective remedies in the instances where such infringements have already occurred. 專家們建議臺灣政府密切監督開發計畫的過程，以確保這樣的計畫不會侵害到原住民的領土權，並且在這樣的侵害已經發生時能夠提供有效的修復管道。</p>	<p>原住民會、內政部、經濟部、交通部、環保署、農委會</p>	<p>林務局： 依原住民基本法第 21 條第 1、2 項及第 22 條規定，農委會於訂定涉及原住民權益之法規或政策前，應與當地原住民或原住民諮商，取得其同意，並建立共管機制。農委會與原住民委員會已共同訂定發布「原住民地區資源共同管理辦法」，並建立共管機制，例如：農委會林務局已依該辦法於 2004 年與阿里山鄒族原住民成立資源共管會及 2012 年與臺東縣原住民部落成立自然保育與生態旅遊諮詢委員會。</p>	<p>因涉原住民會權責，農委會將配合原住民會規劃時程辦理。</p>	

102.6.6 台灣原住民族政策協會提供

對中華民國（臺灣）政府落實國際人權公約初次報告之審查

國際獨立專家通過的結論性意見與建議

台灣原住民族政策協會（ATIPP）提出「第 30 點至第 35 點」之平行回應

項次	專家結論性意見與建議	各權責機構提出初步回應及預計完成檢討的期程	預定完成時程	民間團體平行回應
30	The Experts are concerned about the fact that lands of indigenous peoples, such as on Orchid Island, have been designated by the Government for the purpose of permanent disposal of nuclear waste. In reply to the list of issues, the Government stressed that, according to the “Indigenous Peoples Basic Law” (Article 31), the Government shall not store hazardous materials in the indigenous peoples’ regions without the agreement of the indigenous peoples. With respect to the envisaged nuclear waste site in Daren Township in Taitung County and Wuchiou Township in Kinmen County, the Experts	<p>(原能會)</p> <p>1.說明蘭嶼低放射性廢棄物設施是暫貯存場並非最終處置場。處置場設置後蘭嶼貯存場的所有低放射性廢棄物會送至最終處置場安全處置。</p> <p>1. The low-level radioactive waste facility at Orchid islet is a temporary storage site and not a permanent disposal site. In the future, when the low-level radioactive waste final disposal site is available, the low-level radioactive waste at Orchid islet storage</p>	(原能會) 已結案	<p>一、蘭嶼低放射性廢棄物設施確實僅是暫時貯存場，且是自 1982 年起，在惡意欺瞞的情況下，便「暫時」存放至今。有鑑於蘭嶼貯存場的土地續租至今仍未被蘭嶼鄉公所上審會通過，有違《原住民保留地開發管理辦法》之規定，故貯存場土地實際上是違法佔用。原策會及蘭嶼部落文化基金會強烈要求，核廢料應該立即遷出蘭嶼，莫以最終處置場未定作為拖延藉口。</p> <p>二、在最終處置場未定案前，由蘭嶼貯存場遷出的核廢料，可以先行存放在本島三座高階核廢料貯存場，三處場址擁有設備遠較蘭嶼先進、周全的貯存設施</p>

	<p>are encouraged by the plan to hold a referendum. They recommend, however, strongly that it is the indigenous peoples most directly affected and not the overall population of the respective counties who shall decide in such referendum.</p> <p>原住民居住的土地（例如蘭嶼）已經被政府指定為核廢料的永久儲存場，對此議題專家特別關注。在回應這一連串的議題時，政府強調，根據原住民民族基本法第三十一條，政府不會未經原住民族同意，就將危險的核廢料安置在他們的居住地。對於政府選擇台東達仁鄉與金門烏坵鄉作為預定的核廢料儲存場址，專家更因而提出舉辦公投的構想。不過，專家特別指出，參加公投的人應該是原住民族，而非這兩個候選場址所處鄉鎮的所有住民，因為他們才是最直接受到核廢料影響的人。</p>	<p>facility will all be transported and safely disposed of at the final disposal site.</p> <p>2.經濟部在辦理地選址地方公投時，會優先尊重當地原住民族意願。候選場址除縣公投須通過外，將採計場址所在鄉原住民投票結果，須有百分之五十以上同意，始得核定為候選場址。</p> <p>2. In the future, when the Ministry of Economic Affairs (MOEA) holds a county-level referendum based on the 'Act on Sites for Establishment of Low-Level Radioactive Waste Final Disposal Facility' (Article 11), the agreement of the indigenous peoples will be taken into account as the first priority. This means that even the county-level referendum is agreed, the</p>		<p>及設備，比起蘭嶼貯存場是更安全也更符合公平正義的選擇。今年4月4日蘭嶼部落文化基金會拜會行政院，江宜樺院長已初步同意朝此方向進行研擬。</p> <p>三、對於蘭嶼貯存場自1982年起因存放不當導致核廢桶鏽蝕、輻射外洩等問題，原能會應規劃交由第三方公正組織進行跨世代、長期追蹤的達悟族人健康狀況調查及蘭嶼全島輻射偵測，並採取相應健康照顧政策、賠償措施以保障族人的健康權。</p> <p>四、《低放射性廢棄物最終處置設施場址設置條例》第11條關於地方性公投的規定，應由場址所在縣市舉行公投的現行規定，朝向一定範圍「影響圈」內進行公投的方向修正。以台東縣達仁鄉南田村的候選場址為例，其距離屏東縣牡丹鄉僅10公里，距離台東市卻超過60公里（參見附件一）。權利受影響民眾無從透過公投表達意見、遠距離外低度受影響甚至幾乎不受影響的民眾卻能參與公</p>
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		<p>candidate site will not be approved if less than 50 percent of the votes cast are 'yes' at the indigenous township of the recommended candidate site. Otherwise, the MOEA may obtain indigenous peoples' consent by holding a Tribe Meeting or other measures.</p> <p>3. 結論性意見「..專家更因而提出舉辦公投的構想..」中譯有誤，應是「專家支持公投的構想」，請法務部修正。</p> <p>(中選會)</p> <p>查依「低放射性廢棄物最終處置設施場址設置條例」第11條第1項規定，低放射性廢棄物最終處置設施核定建議候選場址之公告，應於該場址所在地縣（市）辦理地方性公民投票，經同意者，</p>	<p>投，這是非常荒謬、完全違反兩公約規定的情況。</p> <p>五、除《低放射性廢棄物最終處置設施場址設置條例》應得到修正外，《原住民族基本法》第31條規定亦應完全落實。該條保障之原住民族同意權，絕不等同於「優先採計場址所在鄉原住民投票結果」；首先，受影響原住民並非僅限於場址所在鄉，鄰近鄉鎮可能存在受影響更大之部落；其次，以行政區為原則劃分下個人公民投票的結果，並不同於「民族意願」，屬人頭的方式也和原住民族透過討論形成共識的傳統方式並不相同。僅以公投優先採計所在鄉原住民投票結果，便認為可充分反映原住民族意願，是不尊重《原住民族基本法》、不尊重兩公約保障之自決權、不尊重聯合國原住民族權利宣言精神的作法。</p> <p>六、強烈要求相關機關從現有部落會議、民族議會機制中，建構出能真正讓在地族人獲知充分訊息、公開參與討論</p>	<p>投，這是非常荒謬、完全違反兩公約規定的情況。</p> <p>五、除《低放射性廢棄物最終處置設施場址設置條例》應得到修正外，《原住民族基本法》第31條規定亦應完全落實。該條保障之原住民族同意權，絕不等同於「優先採計場址所在鄉原住民投票結果」；首先，受影響原住民並非僅限於場址所在鄉，鄰近鄉鎮可能存在受影響更大之部落；其次，以行政區為原則劃分下個人公民投票的結果，並不同於「民族意願」，屬人頭的方式也和原住民族透過討論形成共識的傳統方式並不相同。僅以公投優先採計所在鄉原住民投票結果，便認為可充分反映原住民族意願，是不尊重《原住民族基本法》、不尊重兩公約保障之自決權、不尊重聯合國原住民族權利宣言精神的作法。</p> <p>六、強烈要求相關機關從現有部落會議、民族議會機制中，建構出能真正讓在地族人獲知充分訊息、公開參與討論</p>
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		<p>得為候選場址。復查該條例之主辦機關為經濟部，該部認為必要時，本會自當配合提供行政協助。</p> <p>(經濟部)</p> <p>政府從未指定原住民居住之土地為低放射性廢棄物(核廢料)之最終處置場(永久儲存場)，2006年「低放射性廢棄物最終處置設施場址設置條例」(簡稱選址條例)立法施行，經濟部為選址條例之法定主辦機關，經會同主管機關原能會指定台電公司為選址作業者，並邀集各相關部會代表及各專業領域之專家學者依法組成選址小組，負責辦理選址作業。</p> <p>選址小組係以台灣全域為範圍，依據原能會訂定之「低放射性廢棄物最終處置設施場址禁置地區之範圍及認定</p>		<p>的方式，由此形成的部落與民族共識，才不違背原住民傳統文化、亦符合原住民民族自決自治之精神，這才是「原住民民族同意」。只有地方性公投同意與取得原住民民族同意都做到，始能設置最終處置場。</p>
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		標準」及考量場址之社會經濟、場址環境及工程技術等因素，經由「可能潛在場址」、「潛在場址」之篩選過程，逐步縮小範圍。其篩選過程均係秉持公正客觀立場及專業考量，最後票選「台東縣達仁鄉」及「金門縣烏坵鄉」為「建議候選場址」。選址條例第 11 條規定建議候選場址經公民投票同意者，得為候選場址。		
		蘭嶼貯存場則為低放射性廢棄物暫時貯存場所，政府於 2002 年承諾將暫時貯存於蘭嶼之低放射性廢棄物桶搬遷至最終處置場。		
		原住民族委員會依據原住民族基本法第 31 條規定「政府不得違反原住民族意願，在原住民族地區內存放有害物質。」於 2009 年邀請法務部、經濟部、行政院原子能		

		<p>委員會等機關召開「選址條例」與「原住民族基本法」法律適用討論會議，獲致以下結論：</p> <p>一、為踐行「原住民族基本法」第31條原住民族同意程序，在進行「低放射性廢棄物最終處置設施場址設置條例」第11條公民投票程序時，應優先採計場址所在鄉原住民投票結果，應有百分之五十以上同意，始得通過。</p> <p>二、除前項做法外，主辦機關亦得採用部落會議或其他方式徵得原住民族同意。</p> <p>綜合上述，低放射性廢棄物最終處置場址選擇作業除符合民主程序外，亦考量到當地原住民族之權益。</p> <p>(原民會)</p> <p>蘭嶼並非已被指定為核廢料</p>		
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		<p>的永久儲存場，且為解決核廢料處置問題，相關機關正進行低放射性廢棄物最終處置場址選址作業，候選場址之一達仁鄉為原住民族居住地，為落實原住民族基本法中不得違反原住民族意願在原住民族地區存放有害物質之規定，本會於98年9月14日邀集相關機關召開「低放射性廢棄物最終處置設置場址條例與原住民族基本法法律適用討論會議」，會中決議：「為健行原住民族基本法中之同意程序，在進行低放射性廢棄物最終處置設置場址設置條例第11條公民投票程序時，應優先採計所在鄉原住民投票解果，應有50%以上同意使得通過」，並奉行政院98年11月10日核復「本案有關徵求當地原住民同意及依本設置條例第</p>		
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		11 條辦理之公民投票執行面亦有共識，尚屬妥適」；如此即能充分反應當地原住民族之意願。	
31	<p>It is reported that indigenous peoples' reserve lands and traditional lands that are still in the application process, are in the meantime already being used for development projects, consequently depriving indigenous peoples of access to their land and sources of livelihood.</p> <p>Reports cite as one example, the Shihti Fishing Port which has been built in Fengpin Village in Hualien County on traditional land of the Amei people that they had registered with the township government as "reserve land" from 1990 to 1993.</p> <p>根據報告內容，仍在申請認定階段的原</p>	<p>(農委會) 本會林務局： 原住民族傳統領域土地之劃定刻由原民會研訂中，於該法制定完成前，行政院於 96 年 1 月 12 日核定「補辦增劃編原住民保留地實施計畫」，公有土地如係原住民於 77 年 2 月 1 日前即已使用其祖先遺留土地且迄今仍繼續使用者，原住民可申請將公有土地增劃編為原住民保留地。</p> <p>本會漁業署： 一、 石梯漁港於 48 年至 52 年間由花蓮港務局關</p>	<p>一、根據《原住民族基本法》第 2 條第 5 款之規定：「原住民族土地係指原住民族傳統領域土地及既有原住民保留地」，然而，各行政機關對於「原住民族土地」的理解意涵只停留在原住民保留地。原住民保留地旨在保障原住民具有佔有、使用、管理、參與、保護土地的權利。傳統領域所代表的為原住民族從前的獵區、漁區、採集區、祖靈地、聖地、部落及其周邊耕墾地等，其文化意涵已超越土地權的概念，為傳統知識運作場域。各部會必須對於原住民族土地之概念與原民會做更詳盡的溝通，避免將原住民族傳統領域土地與原住民保留地混淆，並且對於行使各部會職權時之於其概念的運作做出具體的協商。</p>

<p>住民族保留地和傳統土地中，同一時間卻已經被作為開發計畫所使用¹²，因此剝奪了原住民取得其土地和生計資源的途徑。報告中引用了一個例子，花蓮縣豐濱鄉的石梯漁港建立在阿美族的傳統土地之上，阿美族人從 1990 年到 1993 年已先向鄉公所將其登記為「保留地」³</p>	<p>建完成，69 年至 75 年進行原有設施整建及擴建，之後並無再擴建，漁港主管機關為花蓮縣政府。</p> <p>二、 依花蓮區漁會提供石梯地區漁會會員計有 391 人，其中 70% 為原住民，從事鰔旗魚、延繩釣、沿岸採捕等漁業，石梯漁港為其提供便利之漁船停泊環境。</p> <p>三、 花蓮區漁會與當地原住民合作推廣賞鯨生態旅遊，並與部落民宿合作開發原住民風味餐；當地並成立巴歌浪工作室，以原住民文化為背景的人物或主題創作家具、抽象飾品，讓旅客瞭</p>	<p>二、「補辦增劃編原住民保留地實施計畫」與「原住民傳統領域土地之劃定」為蘊含不同涵義的法規，對應農委會林務局之因應措施，當中並無對原住民傳統領域土地之回應。</p> <p>三、農委會林務局所提之「補辦增劃編原住民保留地實施計畫」當中，其對於申請增劃編原住民保留地之申請人規定為以個人為申請人，然而，原住民族文化中的土地資源，對應著多元的土地利用型態，存在著多樣的土地權利類型與產權主體規模。在此計劃當中衝擊著原住民與土地、資源、領域之連結關係，乃因行政機關對於原住民族傳統文化、規範以及制度仍持以忽視、甚至歧視的</p>
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¹ 首先，本平行回應所採取的中文翻譯為本團體所建議之翻譯，並將於註腳說明翻譯擇取之說明。

² 專家是依據報告內容提出此點建議，而非根據媒體報導。

依據此案例，阿美族人已向鄉公所提出劃定該區土地為原住民保留地，但因行政疏失，導致雖已提出申請，該筆土地卻仍被開發計劃所用，因此，此處是指某筆土地在認定為原住民保留地的申請階段，而非運用階段。

³ 台灣並沒有原住民保留區，原翻譯「原住民保留區的土地和傳統土地」，易被誤解為「原住民保留區內的土地和傳統土地」，與原本的英文原意「原住民的保留地和傳統土地」相差甚遠。「保留區土地」指的是保留區內的土地，但台灣並無原住民保留區，何來保留區內的土地？此指的是原住民保留地。

	<p>解阿美族文化及讓部落孩子學習及傳承。</p> <p>(原民會)</p> <p>相關開發案涉及原住民族土地者(包含原住民保留地及原住民族傳統領域土地)，本會均密切注意該開發計畫，並要求開發單位依照原住民族基本法之精神，與當地原住民族進行諮詢並取得其同意，以為族群和諧及地方發展的雙贏局面。</p>		<p>態度。對此，不但強烈建議各個行政機關加強多元文化教育，並且提出實踐於任責之計劃，更必須立即修正計劃規定。</p> <p>四、原民會所提及均密切注意石梯漁港及所有涉及原住民土地之之開發計畫，於其官方公開之發言、調查、網站等資料皆未明確指出其「密切注意」之方式與其監測彙整報告文件。</p> <p>建議原民會公開確實落實其追蹤的相關資料，如何時、以什麼方式進行其所言之『密切注意』、是否有發文或是以任何確實做為以要求開發單位依照原住民族基本法之精神，與當地原住民族進行諮詢並取得其同意、是否有相關會議記錄，並請將所有該會「密切注意」之開發案及「注意方式」詳細列表，予各政府單位和民間參考並檢視。</p> <p>五、原民會於回應指出「要求開發單位依照原住民族基本法之精神，與當地原住民族進行諮詢並取得其同意」，卻未明確建立、規範、理順所謂的「取得同意</p>
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				機制」的方式及內容，以致於此「同意」過於草率，且恐有行政疏失之疑慮，故強烈建議原民會應積極完善「所有在原住民生活領域（包含：原住民保留地、傳統領域、生活空間等）開發案取得同意機制」。
	<p>The Experts recommend that the Taiwan Government closely monitor the processing of development project plans to ensure that such plans do not infringe on the right of indigenous peoples to their territories, and to provide access to effective remedies in the instances where such infringements have already occurred.</p> <p>32 專家們建議中華民國（臺灣）政府密切監督開發計畫的進程序⁴，以確保這樣的計畫不會侵害到原住民對其領域的權利⁵，並且在已發生這類侵害時能夠提</p>	<p>(環保署)</p> <p>本署將視後續主辦機關原民會所提因應措施，再與協助辦理。</p> <p>(經建會管考處)</p> <p>有關各項開發計畫之監督，係屬主管機關權責；未來本會審議相關計畫，若涉及本議題將配合辦理。</p> <p>(經濟部)</p> <p>1. 有關礦業開發申請案，</p>	<p>(環保署)</p> <p>配合原民會所提因應措施之時程。</p> <p>(經建會管考處)</p> <p>隨案辦理。</p> <p>(經濟部)</p> <p>持續辦理。</p>	<p>一、環保署不僅要尊重原民會的決策，更是要在自己執掌的範圍內，落實原住民基本法中的各該條文，例如在進行環境評估時，涉及到原住民土地，本應依《原住民族基本法》第 21 條事先徵詢原住民同意，始無違《兩公約》與《聯合國原住民權利宣言》所揭示的 FPIC 原則。</p> <p>二、經濟部所用「領土權」之用詞，依據英文原文「the right of indigenous peoples to their territories」應解釋為「原住民對其領域的權利」，權利不單指對</p>

⁴ 根據英文原文語義及審查會議時的討論，專家所提的建議是針對開發計畫提出後的處理過程，包含政府審查、環評到執行等過程，而非僅僅是開發計劃本身的執行過程。

⁵ 「領域權」易被誤解為排他、私人財產的個人私有權，然而，英文原文指的是原住民對其傳統領域的權利，此權利為集體性質，並非絕對排他的個人擁有權，往往是指涉擁有、使用、開發和控制該領域、且不受侵害的權利。（請見聯合國原住民權利宣言第 25 條至第 32 條）。

	<p>供有效的救濟管道。</p>	<p>因經濟部依法徵得原住民族主管機關依原住民保留地開發管理辦法第6條規定取得原住民族同意後方得開發，以確保開發行為不會產生侵害原住民族領土權情形。</p> <p>2. 對於興建水資源開發係以整體公共利益為優先考量，並以不侵害原住民族的領土權為原則。由於氣候變遷，天然水資源越來越不穩定，水庫開發為考量穩定供水不可或缺之必要措施。水庫開發選址上主要是考量是安全性，以及良好的地質、水量、水質條件。惟壩址往往在溪河之上游處，該處多為原住民居住之地方，若水資源開發選址影響原住民領土權部分，造成原住民生活環境影響，提供有效的修復管道部分為，經濟部水利署除依法辦理土地徵收外，地</p>		<p>土地的所有，亦包含了與土地相關連的傳統習俗、生活方式以及文化價值觀等。</p> <p>就上述所說回應經濟部因應措施，「依原住民保留地開發管理辦法的6條規定取得原住民族同意」係因目前原住民保留地為個人為申請單位，所申請之保留地為個人所有，當開發申請案中涉及私人土地，事先徵詢以及依照徵收等正當程序為之，與是否為原住民族無涉。而開發申請案若涉及原住民族土地（包含原住民族傳統領域土地及既有原住民保留地），應依照《原基法》第21條意旨為之。</p> <p>三、水資源的開發若以整體公共利益為優先考量，更應先摒棄先進國家早已排除的做法。1996年9月於日本舉行的「國際水壩高峰會議」當中，就曾宣示「建水壩時代在全世界正逐步告終」。第一個興建水壩的國家——美國，至2012年止已拆除800多個水壩，法國、韓國、澳洲、泰國、日本亦都有停止水壩工程與移除水壩之案例。</p>
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	<p>上物部分亦採合理查估補償，制度上亦設計有施工中之協助原住民地區建設，與營運中之保育回饋費供住民使用，希能將對其影響侵害減至最低。</p> <p>(內政部) 內政部營建署已於「非都市土地開發審議作業規範」中，要求使用原住民族土地前應取得原民會同意，符合「原住民族基本法」規定。</p> <p>(農委會) 本會林務局： 依原住民族基本法第21條第1、2項及第22條規定，農委會於訂定涉及原住民族權益之法規或政策前，應與當地原住民族或原住民族諮商，取得其同意，並建立共管機制。農委會與原住民族</p>	<p>水庫不但有固定年限壽命，龐大的水壓造成水庫結構退化，又台灣河川多屬短小急流，強大的侵蝕力亦會加強河床與河道的侵蝕，並且毀損壩體，種種原因皆促使其壽期縮短。搭配水庫的配套建設，不僅沒有延長庫體的使用年限，更是加劇其帶來的災禍。以石門水庫為例，對土地、自然、人文、資源皆造成了不可逆且永久性的傷害。我國內政部長李鴻源亦公開承認「台灣能蓋水庫的地方沒了」，然而政府竟是用興建新的水庫來解決現有問題。</p> <p>政府應立即停止所有工程計劃，虛心參考民間所提多種的替代方案，例如規劃節水、生態取水等，使用更適切於台灣的方式來解決水資源的問題。</p> <p>四、除水資源政策根本的謬誤之外，現有計劃的決策、推動及興建過程為秘而不宣，隱匿所有行為，放縱政府和私人恣意奪取水資源而壯大自身利益，藐視在地原住民族使用河川資源的權利、踐踏原住民族傳統與自然水資源關係相連</p>	
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	<p>委員會已共同訂定發布「原住民族地區資源共同管理辦法」，並建立共管機制，例如：本會林務局已依該辦法於2004年與阿里山鄒族原住民成立資源共管會及2012年與臺東縣原住民部落成立自然保育與生態旅遊諮詢委員會。</p> <p>(原民會)</p> <p>相關開發案涉及原住民族土地者(包含原住民保留地及原住民族傳統領域土地)，本會均密切注意該開發計畫，並要求開發單位依照原住民族基本法之精神，與當地原住民族進行諮詢並取得其同意，以為族群和諧及地方發展的雙贏局面。</p> <p>(交通部)</p> <p>1. 本部觀光局於劃設國家</p>	<p>的文化價值觀。在新竹縣尖石鄉，官方所舉辦的水庫說明會，並未邀請淹沒區居民參加，且在部落進行大規模地質鑽探時也隱瞞了調查目的。即便當地原住民族查覺真相，會同環保團體提出數據質疑，官方依舊沒有充分揭露資訊。推動過程的不透明、排除原住民族的參與，已違反《原基法》第21條規定、ICESCR第1條第1款、第2條第2款規定及ICESCR第15號意見書第37點。</p> <p>五、根據上述，政府相關政策皆必須公開透明過程與資訊，並確實透過涵括在地原住民族參與的程序，制定長遠及全面性的水資源政策，並立即明確終止現有遺害後代的水庫興建計畫。</p> <p>六、內政部營建署回應已於「非都市土地開發審議作業規範」中，要求使用原住民族土地前應取得原民會同意，符合《原住民族基本法》規定。然而，使用原住民族土地前的同意權行使，應歸屬於當地原住民族，原民會並非正當的同意</p>
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	風景特定區時，依據風景特定區管理規則第4條第2項辦理：原住民族基本法施行後，於原住民族地區依前項規定劃設國家級風景特定區，應依該法規定制得當地原住民族同意，並與原住民族建立共同管理机制。該機制業經行政院原住民族委員會、內政部、交通部、行政院國軍退除役官兵輔導委員會、行政院農業委員會於96年12月18日共同會銜發布「原住民族地區資源共同管理辦法」在案。觀光局另已成立「交通部觀光局原住民族觀光推委會」，定期每6個月召開會議就原住民族地區之觀光建設、活動推廣、行銷等軟硬體設施全力推動，積極配合原民會提昇原住民族部落觀光。	經常性(滾動式檢討)	權使用者。 七、要求營建署、環保署、經濟部、內政部、農委會、交通部及原民會針對「近年全台原住民族地區開發案」確實詳列並提出各部會曾在何時、針對何案、以什麼方式，取得原住民族同意的方式、過程提出報告書，以供人民及相關團體了解政府如何處理「取得原住民族之同意權」的操作模式。 八、重申原民會應立即著手規範、理順「取得同意機制」的方式及內容，並同時建立取得同意監督小組，該小組成員需有一定比例之族群代表，且族群代表必需是獲得部落授權的代表，使原住民族能有效、密切的參與、掌握所有部會及財團、開發案在取得原住民族同意權是否有違法之行為，並提供申訴救濟管道，作為必要之防堵措施。 對此，再次要求政府部會、財團在進行任何政策制定、經濟開發、評估調查皆尊重原住民意願，並遵守原住民族基本
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2. 交通部所屬機關辦理各

		項重大交通建設開發時，如開發過程中涉及原住民族地區土地時，皆依原住民族基本法第 21 條規定，與當地原住民族協商並取得同意後，始進行開發。	法及國際公約之規定。 九、重申強烈要求原民會於近期之內儘速公佈其「密切注意之開發計畫」的監控方式與其監測彙整報告文件，並將此份文件公布於其官方網站，予人民及相關單位參考檢討。
33	It has come to the attention of the Experts that the nine Ping Pu lowland aboriginal tribes have not been granted recognition as indigenous peoples by the Government of Taiwan despite evidence of their distinct history and culture, language, customs and traditions. 專家們注意到，九個平埔低地原住民族群並未被中華民國（臺灣）政府承認為	(原民會) 本會業已完成平埔族群取得原住民身分法治策略與影響評估委託研究案，有關平埔族群身分認定相關問題，刻正研擬相關政策中。	一、平埔族之身分認定，應將集體權與個人權脫鉤，以優先承認平埔族為擁有集體權之原住民族為方向，讓頻臨滅絕的平埔文化、語言能夠得到政策、法規的保障而得以保存。至於個人身分相關權利或福利，則可以留待各界取得共識後再進行。 二、原民會之政策評估、研擬工作，應更加透明、公開，令社會各界、特別是

⁶ 根據原住民族基本法第二條之定義：部落：係指原住民族一定區域內，依其傳統規範共同生活結合而成之團體，經中央原住民族主管機關核定者。原住民族：係指既存於臺灣而為國家管轄內之傳統民族，包括阿美族、泰雅族、排灣族、布農族、卑南族、魯凱族、鄒族、賽夏族、雅美族、邵族、噶瑪蘭族、太魯閣族及其他自認為原住民族並經中央原住民族主管機關報請行政院核定之民族。

英文 tribe 常被混用來指稱部落或族群，但平埔族並非單一民族，也並非只有九個部落，平埔族為居住在臺灣平野地區的「原住民族」的統稱，而其事實上包含多個不同語言、不同文化的民族，區分說法各異，但至少可分作凱達格蘭族、噶瑪蘭族、道卡斯族、巴宰族、巴布拉族、巴布薩族、洪雅族、西拉雅族及馬卡道族。因此，此處之 tribes 指的是族群，而非部落。

	原住民族，儘管有證據顯示他/她們有著具區別性的歷史、文化、語言、風俗和傳統。			權利受影響的群體得以隨時掌握進度、表達意見。
34	<p>The Experts recommend that the government clarify its policy of identifying indigenous peoples based on international human rights standards set out in the two Covenants as well as in the UN Declaration on the Rights of Indigenous Peoples, and the ILO Convention No. 169 on indigenous and tribal peoples, and to apply a human rights based approach in its engagement of the various indigenous groups in the country.</p> <p>專家們建議政府應澄清其對於認定<u>原住民族的政策</u>⁷，應以兩人權公約、聯合國原住民族權利宣言以及國際勞工組織關於原住民族及部落居民的第 169 號公約所列明的國際人權標準做為基礎，採</p>	(研考會)本項經檢討尚無涉及本會職掌。	一、UNDRIP 地位	<p>1. 宣言（特別是和人權有關的宣言）乃是一種普世價值的宣告，也是一個國際道德要求，透過此一宣告，要求國家採取措施實現宣言的內容，因此，宣言對未來的國際法及國際習慣法產生影響。</p> <p>2. 宣言中所確立的原住民族各項權利，或者說至少也有部分權利，已經藉由部分英美法系國家法院判決（如：美國、加拿大、紐西蘭、澳洲，以及美洲人權法院等）一致性的適用，達到國際習慣法的地位得以作為拘束各國的依據（Anaya, 2004: 68-69）。相對於此，國際法理論中強調法律實證主義（Positivism）與現實主義（Realism）</p>

⁷ 認同與認定是不同概念，認同往往是指內化的、主動的個人身份認知與同意，認定則是外在的、被動的被他者辨認與核定，此處所指的是政府所制定的政策，在於如何辨認、認定某一族群為原住民族，即政府肯認某一族群是否為原住民族的政策。

	<p>取一種以人權為本的方法來與國內各原住民群體進行互動。</p>		<p>者，則主張國際習慣法客觀上要有國家的實踐，以及主觀上國家對其實踐認為是基於法律義務所生法之確信為其標準與條件（Arend, 2003: 24-25）。</p> <p>二、各公約身份認定相關條文：</p> <ol style="list-style-type: none"> 1. 兩公約共同第 1 條第 1 項：所有民族均享有自決權。（《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》第 2 條：兩公約所揭示保障人權之規定，具有國內法律之效力。） 2. UNDRIP <ul style="list-style-type: none"> 第 3 條：原住民族享有自決權。 第 9 條：原住民族和個人有權按照有關社區或民族的傳統和習俗，歸屬某一原住社區或民族。行使此項權利不得引起任何形式的歧視。 3. 第 33 條第 1 款：原住民族有權按照其習俗和傳統決定自己的身份或歸屬。 4. ILO No. 169 第 1 條：
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			<p>1. 本公約適用於：</p> <p>(a) 獨立國家的部落民族，其社會、文化和經濟狀況使他們有別於其國家社會的其它群體，他們的地位系全部或部分地由他們本身的習俗或傳統或以專門的法律或規章加以確定；</p> <p>(b) 獨立國家的民族，他們因作為在其所屬國家或該國所屬某一地區被征服或被殖民化時，或在其目前的國界被確定時，即已居住在那裡的人口之後裔而被視為原住民，並且無論其法律地位如何，他們仍部分或全部地保留了本民族的社會、經濟、文化和政治制度。</p> <p>2. 自我確定為原住民或部落應被視為是決定本公約條款適用的群體的一個根本標準。</p> <p>三、 立基於人權的途徑 (human rights based approach) :</p> <p>All individuals are equal as human beings and by virtue of the inherent dignity of each person. All human beings are entitled to their human rights without</p>
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			<p>discrimination of any kind. States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments.</p> <p>In a human rights-based approach, human rights determine the relationship between individuals and groups with valid claims (rights-holders) and State and non-state actors with correlative obligations (duty-bearers). It identifies rights-holders and their entitlements and corresponding duty-bearers and their obligations, and works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations.</p> <p><i>Principles and standards</i> derived from international human rights treaties should guide all development cooperation and</p>
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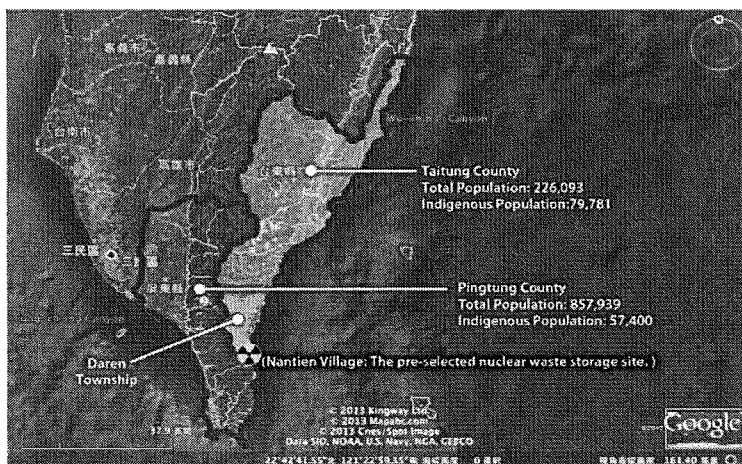
				programming in all sectors and in all phases of the programming process. 四、建議各機關應充分理解上開原則、落實機關內之人權教育工作，並與原民會人權工作小組、民間組織一同檢討我國原住民族政策是否有違相關國際公約、宣言之規定。
35.	The Experts strongly recommend the effective enforcement of Taiwan's Indigenous Peoples Basic Law (IPBL), and the revision of policies and administrative measures that contravene the IPBL. The Experts further recommend clarification of the definition of "indigenous land (territories)" in consultation with and the direct participation of, indigenous peoples. The Experts would also welcome an official endorsement of the United Nations Declaration on the Rights of Indigenous Peoples.	(財政部) 原住民族基本法及相關配套法案、措施，由行政院原住民族委員會主管推動，本部當適時配合辦理。 (內政部) 內政部營建署於修訂「國土計畫法(草案)」、「區域計畫法(草案)」，以及辦理「區域計畫通盤檢討」時，已獲致共識，對於涉及原住民族土地及海域之計畫與相關管制事項，將會同行政院原住	(財政部) 配合主辦機關之時程 (內政部) 102年12月	一、按《公民與政治權利國際公約》及《經濟社會文化權利國際公約》(下合稱《兩公約》)之效力，依據《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》(以下稱《兩公約施行法》)第2條規定：「兩公約所揭示保障人權之規定，具有國內法律之效力」，故立法者認定《兩公約》至少具有「法律」之效力；又按《兩公約施行法》第3條規定：「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」，可知解釋《兩公約》各該條文自應參照兩公約人權事務委員會所為之各該一般性意見書。

<p>專家們強烈建議臺灣原住民民族基本法的有效執行，並且修改與原住民民族基本法抵觸的政策和行政措施。專家們進一步建議必須釐清「<u>原住民土地</u>」的定義，過程中要諮詢原住民，並且有原住民的直接參與。專家們也歡迎聯合國原住民民族權利宣言的官方背書。</p>	<p>民族委員會共同訂定，以有效踐行「<u>原住民基本法</u>」規定，應與原住民或原住民諮商並取得同意之程序。</p> <p>(原民會)</p> <p>原住民土地包括原住民保留地及原住民傳統領域土地，其中原住民保留地部分已有完整增劃編及權力賦予等機制保障原住民土地權益；另有關原住民傳統領域土地，依據原住民基本法第20條規定，本會業將該傳統領域土地劃設程序定於原住民土地及海域法(草案)當中，惟該法案條文因衝擊各部會現行法及機制，爭議性較大，需較長時間與各部會協調，立法時程非本會可掌控，本會經多次會商有關機關，重新檢討修正草案完竣，並於101年11月</p>	<p>二、行政機關基於「依法行政」之要求(例如：行政程序法第4條)，各行政機關為各類行政行為時自應依循「法律」(原則上係指依《中央法規標準法》第4條制定者)之規定，故當依循《兩公約》之規定，解釋各條文自應依循《兩公約》之各一般性意見書，乃屬當然之理。而《原住民基本法》(下稱《原基法》)中許多關於原住民權利之論述多可自《兩公約》各該一般性意見書中找到具體之論述，因此，牴觸《兩公約》以及《兩公約》一般性意見書之「行政命令」自屬無效(憲法第172條)不應適用。</p> <p>三、縱然現時關於《原基法》授權應規定之各該子法(如：原住民土地及海域法)與依《原基法》第34條規定應以《原基法》之原則加以修正、制定或廢止之各該相關法令，皆尚未有初步成果，行政機關仍應依循體現《原基法》原則之《兩公約》以及《兩公約》之一</p>
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		<p>13 日報行政院審議，行政院又於 101 年 11 月 30 日請本會在行協商修正後報院，現正積極辦理其後續作業。</p>	<p>般性意見書，否則「即屬違法」之行政行為。</p> <p>四、如行政院原住民族委員會初步回應中提到「原住民保留地部分已有完整增劃編及權力賦予等機制保障原住民族土地權益」，明顯忽視到國家其他法律，如：《山坡地保育利用條例》、《水土保持法》、《森林法》...等法令對於族人使用原住民保留地限制，縱使《原住民土地及海域法》尚未立法完成，各該行政機關自應優先適用體現《原基法》原則之《兩公約》以及《兩公約》之一般性意見書，否則即屬「違法」之行政行為。</p> <p>五、依據於民國 101 年 12 月 20 日於行政院召開之行政院原住民族基本法推動會第 2 次會議紀錄，具體關於《原基法》第 34 條之後續檢討，可發現除了行政院原住民族委員會（下稱原民會）自己所職掌之法規有相關檢討列表，但其他真正關切之相關部會卻未能有相應的檢討列表，原民會應可主動對於各該相關法</p>
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			<p>規進一步整理，以利落實《原基法》。</p> <p>六、另外，依據《原基法》第3條所設置之行政院原住民基本法推動會，其《行政院原住民基本法推動會設置要點》(101.10.25修正)第四點，可知相關會議以四個月一次為原則。然而，行政院原住民基本法推動會第2次會議於民國101年12月20日召開，距今已逾4個月。後續相關會議資料，應詳實公開於行政院原住民委員會網站，以符政府資訊公開法第7條第1項第10款之規定。</p> <p>七、關於原住民土地政策部分，請參照本平行回應第31點之部分。</p> <p>八、關於國際專家建議《聯合國原住民民族權利宣言》之官方背書部分，並未有相關部會具體回應，作為原住民民族事務之中央主關機關「行政院原住民民族委員會」對於《聯合國原住民民族權利宣言》是否有任何具體行政措施或計畫？</p>
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附件一：達仁鄉相對位置及統計數據



Daren Township

1. The area marked with orange is the Daren Township, located in the most southern part of Taitung County.
2. In 2012, the total population was 3832, 3481 were Indigenous persons.
3. In the most southern part of the Daren Township, marked with a yellow dot, is where the pre-selected side of the nuclear waste storage, called Nantien Village. It is right next to the neighboring Pintung county.
4. According to the visit to the leaders of the 6 villages in the Daren Township in 2012, many residents in Daren Township moved to urban areas for better job opportunities, since it's about 80 km from the Daren Township to the Taitung city. There are about 2,000 people really reside in the Daren Township.

(Information from the websites of Taitung County and Pingtung County)



The distribution of Indigenous Paiwan communities

1. The total population of Paiwan Peoples: 93,681
2. The distribution of the Pawain communities is across the Taitung County and the Pintung County, marked in pink in the picture.

(Information from the website of the Council of Indigenous Peoples)

United Nations Declaration on the Rights of Indigenous Peoples

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights⁸ and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct

⁸ Resolution 217 A (III).

peoples, or of their cultural values or ethnic identities;

- (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
- (d) Any form of forced assimilation or integration;
- (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and

persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their

empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for

exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior

and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed

consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in

accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

Indigenous and Tribal Peoples Convention, 1989 (No. 169)

Adopted on 27 June 1989 by the General Conference of the International Labour Organisation at its
seventy-sixth session

Entry into force: 5 September 1991

Part I. General policy

Article 1

1. This Convention applies to:
 - (a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
 - (b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.
2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.
3. The use of the term "peoples" in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.
2. Such action shall include measures for:
 - (a) Ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;

- (b) Promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;
- (c) Assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

Article 3

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.
2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

Article 4

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.
2. Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.
3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

Article 5

In applying the provisions of this Convention:

- (a) The social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;
- (b) The integrity of the values, practices and institutions of these peoples shall be respected;
- (c) Policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

Article 6

1. In applying the provisions of this Convention, Governments shall:
 - (a) Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
 - (b) Establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;
 - (c) Establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.
2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

Article 7

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.
2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.
3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.
4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

Article 8

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.
2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.
3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

Article 9

1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.
2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

Article 10

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics.
2. Preference shall be given to methods of punishment other than confinement in prison.

Article 11

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

Article 12

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

Part II. Land

Article 13

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.
2. The use of the term "lands" in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.
2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.
3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.
2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

Article 16

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.
2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.
3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.
4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.
5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

Article 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.
2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.
3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

Article 18

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

Article 19

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

- (a) The provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;
- (b) The provision of the means required to promote the development of the lands which these peoples already possess.

Part III. Recruitment and conditions of employment

Article 20

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.
2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:
 - (a) Admission to employment, including skilled employment, as well as measures for promotion and advancement;
 - (b) Equal remuneration for work of equal value;
 - (c) Medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;
 - (d) The right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.
3. The measures taken shall include measures to ensure:
 - (a) That workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;
 - (b) That workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;
 - (c) That workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;
 - (d) That workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

Part IV. Vocational training, handicrafts and rural industries

Article 21

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

Article 22

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.
2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.
3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

Article 23

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these peoples and whenever appropriate, ensure that these activities are strengthened and promoted.
2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

Part V. Social security and health

Article 24

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

Article 25

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.
2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.
3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.
4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.

Part VI. Education and means of communication

Article 26

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

Article 27

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.
2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.

3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

Article 28

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.
2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.
3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

Article 29

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

Article 30

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.
2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

Article 31

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

Part VII. Contacts and co-operation across borders

Article 32

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

Part VIII. Administration

Article 33

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.
2. These programmes shall include:
 - (a) The planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention;
 - (b) The proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.

Part IX. General provisions

Article 34

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

Article 35

The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

Part X. Final provisions

Article 36

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

Article 37

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 38

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 39

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 40

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 41

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 42

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 43

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
 - (a) The ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 39 above, if and when the new revising Convention shall have come into force;
 - (b) As from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 44

The English and French versions of the text of this Convention are equally authoritative.

6 月 6 日 落實結論性意見會議 發言單

發言者：施逸翔 執行秘書

單位：台灣人權促進會

針對結論性意見第 31 點和 32 點，蘭嶼東清部落的水泥預拌廠工程，是正在發生且違反這兩點結論性意見的案例。

台灣人權促進會於 2012 年 10 月間遠赴蘭嶼舉辦地方人權工作坊，其後與蘭嶼在地之部落行動青年保持密切聯繫。本會於 6 月 5 日晚間收到蘭嶼東清部落自救會（成立於 5 月 29 日）常務監事的來信，表示鄉公所在進行該水泥預拌廠工程之前，並沒有與部落族人事先溝通、沒有舉辦公聽會和協調會，且由於該工程是設置在原住民保留地，是部落族人共同耕種的農地，鄉公所若要進行工程，必須事先通知原民會，但鄉公所並沒有這麼做。蘭嶼的東清部落鄉公所不但不符合程序，也不尊重當地族人的知情同意與意願，明顯違反原住民基本法、公民參與程序、以及兩公約的第 31 點和 32 點結論性建議。

再者，自救會也質疑這個水泥預拌廠根本沒有必要。蘭嶼全島目前已有兩座水泥預拌廠，都在野銀部落。若鄉公所的重建工程需要水泥預拌廠，應該輔導既有的兩座水泥預拌廠如何配合重建工程。

第三，這個水泥預拌廠的工程，預定地是在原住民保留地上，卻完全沒有跟族人討論，沒有召開說明會、協調會等。然後鄉長以「土審會是合議制」的理由，通過這項決議。5 月 29 日當天有怪手進入整地開挖，族人前往抗爭，當天是「全鄉」的警力都過去阻止居民的抗爭。然後鄉長放話，說 6 月 30 日之前要動工，要是居民再來抗爭，就會從台灣調派警力過來。

針對這個目前正在發生並違反結論性意見的案例，請原民會積極瞭解並調查，也請警政署再次發函給蘭嶼當地警察，依警政署 100 年 11 月 22 日有關依照兩公約辦理集會遊行案件的公文（文號：警署保字第 1000191257 號函），要求蘭嶼和台東縣的警察節制，切勿違法濫權。

相關資料：<http://www.newsmarket.com.tw/blog/29247/>