CCPR

International Covenant on Civil and Political Rights

公民與政治權利國際公約

List of Issues to be taken up in connection with the

Consideration of the initial report of Republic of China (Taiwan)

Replies of Republic of China (Taiwan) to the list of issues

委員會審查中華民國(臺灣)初次報告所考慮的問題清單

中華民國(臺灣)對問題清單的回應

[8 February 2013]中英併陳版本

壹、共同核心文件問題清單及政府機關回應

條文	編號	問題內容(原文)	中文參考翻譯
共同核心文件	1.	**National Institution for the Protection and Promotion of Human Rights (preface and para. 143)** Taiwan has not yet established a national human rights institution that complies with the Paris Principles adopted by United Nations General Assembly resolution 48/134 of 1993. What progress is being made towards the setting up such an institution?	**保障與促進人權的國家機構（國家報告前言及第 143 段）** 台灣尚未建立與聯合國大會 1993 年 48/134 號決議通過之「巴黎原則」相符的國家人權機構。請說明為建立此等機構已取得之進展?

中文回應

一、依總統府人權諮詢委員會第六次會議臨時提案「請國家人權諮詢委員會討論『成立國家人權機構規劃小組』」建議案，經決議：「成立國家人權機構研究規劃小組」，及第七次會議「兩公約內國法化之檢討」報告案決定：「成立國家人權委員會之必要性，可於下次委員會討論」。議事組依上開決定（議）於總統府人權諮詢委員會第八次會議提出「總統府人權諮詢委員會『成立國家人權機構研究規劃小組』草案」，經決議「照案通過。國家人權機構研究規劃小組幕僚工作由行政院指定部會擔任。」行政院已於 101 年 8 月 22 日指定法務部擔任該小組幕僚工作。法務部身兼總統府人權諮詢委員會議事組之幕僚工作，將依行政院之指示及 101 年 6 月 13 日總統府人權諮詢委員會第八次會議提出規劃辦理。（詳附件 1）

二、依該規劃，國家人權機構之籌備成立事涉政府機關建制及修憲、修法等程序，總統府人權諮詢委員會負有提供　總統政策諮詢之任務。小組研究規劃階段性成果，皆須提案由總統府人權諮詢委員會議事組（即法務部）彙整列入全體委員會議討論通過後，呈報　總統作為政策諮詢參考，並依　總統指示，據以進行下階段之研究規劃工作，如經政策指示成立國家人權機構，即由行政院著手進行相關籌備工作。因我國已通過「經濟社會文化權利國際公約」，故如成立國家人權機構，應包含經濟、社會及文化權利之分析。

英文回應

1. An impromptu motion was raised in the 6th meeting of the Presidential Advisory Committee on Human Rights to "request the national Advisory Committee on Human Rights to discuss a proposal that aims at establishing a task force to plan for a national human rights institution". It was decided in the meeting to "establish a research and planning task force for a national human rights institution". In the 7th meeting on "the review of the incorporation of the two Covenants into domestic laws", it was decided "the necessity of establishing a national human rights institution can be discussed at the next committee meeting". Following the above decision, the Conference Service Section proposed "the draft of establishing a research and planning task force for a national human rights institution" in the 8th meeting of the Presidential Advisory Committee on Human Rights. It was decided in the meeting that "the proposal was passed and staff support for the research and planning task force will be assumed by an agency designated by the Executive Yuan." On Aug 22, 2012, the Executive Yuan designated the Ministry of Justice (MOJ) as the staff unit to assist the task force. The MOJ, also functioning as the Conference Service Division of the Presidential Advisory Committee on Human Rights, follows the instructions of the Executive Yuan and the 8th meeting of the Presidential Advisory Committee on Human Rights on June 13, 2012, to do planning accordingly. (Please see the appendix 1.)
2. Based on the planning, to establish a national human rights institution involves the organization of government agencies and procedures to amend the Constitution and laws, and the Presidential Advisory Committee on Human Rights undertakes the mission to provide policy advice to the President. The research and planning results for each stage by the task force shall be compiled by the Conference Service Section (i.e. MOJ), discussed by all committee members and proposed to the President as policy advice. The next-stage research and planning depends on the President's instructions, and if a policy is shaped to establish a national human rights institution, the Executive Yuan will start the preparatory work. Since the R.O.C has signed and ratified the ICESCR, a national human rights institution, if established, will include economic, social and cultural rights analysis.

條文	編號	問題內容(原文)	中文參考翻譯
共同核心文件	2.	**United Nations core instruments in the field of human rights (para. 97 and table 53)** Taiwan has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Covenant on Economic, Social and Cultural Rights (CESCR), the Covenant on Civil and Political Rights (CCPR) in the last few years. Is it envisaged to ratify other more recent UN core instruments, notably the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC), the Convention on the Rights of Persons with Disabilities (CPD), and the International Convention for the Protection of All Persons from Enforced Disappearance (CPED)?	**聯合國在人權方面的核心文書（第 97 段及表 53）** 台灣在過去幾年已經批准《消除對婦女一切形式歧視公約》(CEDAW)，《經濟社會文化權利國際公約》(CESCR)以及《公民與政治權利國際公約》(CCPR)。貴國政府是否預定將批准其他較為近期出現的聯合國核心人權公約，特別是《禁止酷刑公約》(CAT)、《兒童權利公約》(CRC)、《保護移徙工人及其家庭成員權利國際公約》(MWC)、《身心障礙者權利公約》(CPD)，以及《保障所有人不受強迫失蹤公約》(CPED)

中文回應

一、《禁止酷刑公約》(CAT):

(一)1984 年聯合國通過禁止酷刑及其他殘酷不人道或有辱人格的待遇或處罰公約，我國雖非聯合國之會員國，無法參與簽約，但對於防止酷刑及維護人格尊嚴、保障人權仍不遺餘力，並透過相關法規之制定，防止有刑求逼供之情事。而且不管在任何情形下，均

未考慮引進具有爭議性之鞭刑。

(二)為免刑求逼供之情事，我國刑法第 125 條規定:「有追訴或處罰犯罪職務之公務員，為左列行為之一者，處一年以上七年以下有期徒刑：一、濫用職權為逮捕或羈押者。二、意圖取供而施強暴脅迫者。三、明知為無罪之人，而使其受追訴或處罰，或明知為有罪之人，而無故不使其受追訴或處罰者(第 1 項)。因而致人於死者，處無期徒刑或七年以上有期徒刑。致重傷者，處三年以上十年以下有期徒刑。」第 126 條規定:「有管收、解送或拘禁人犯職務之公務員，對於人犯施以凌虐者，處一年以上七年以下有期徒刑(第 1 項)。因而致人於死者，處無期徒刑或七年以上有期徒刑。致重傷者，處三年以上十年以下有期徒刑(第 2 項)。」是以我國對於此等犯罪行為有處罰規定，且依刑法第 6 條規定，公務員中華民國領域外犯此類犯罪時，我國仍可依法追訴審判，符合公約之規定。

(三)我國刑事訴訟法已嚴格規範自白得為證據之條件及違法取供之舉證責任，第 156 條規定「被告之自白，非出於強暴、脅迫、利誘、詐欺、疲勞訊問、違法羈押或其他不正之方法，且與事實相符者，得為證據（第 1 項)。被告或共犯之自白，不得作為有罪判決之唯一證據，仍應調查其他必要之證據，以察其是否與事實相符（第 2 項)。被告陳述其自白係出於不正之方法者，應先於其他事證而為調查。該自白如係經檢察官提出者，法院應命檢察官就自白之出於自由意志，指出證明方法（第 3 項)。」是以，自白需出於任意性且與事實相符，方得作為證據，且須有其他補強證據方得認定犯罪事實。在被告對於自白任意性有爭執時，法院即應調查並由檢察官負舉證責任，以避免非法取供情事。

(四)我國迭有輿論認為應對於性侵害犯罪者施以鞭刑。惟考量刑法學以矯正刑取代應報刑，為現代刑罰趨勢，鞭刑為專制時期刑罰報復主義下的產物，不符現代刑罰思潮。又參酌世界立法例，90%以上之國家並未採取鞭刑，況且我國已簽署兩公約，而「公民及政治權利國際公約」第 7 條規定「任何人不得施以酷刑或予以殘忍、不仁道或侮辱之處遇或懲罰。」是以，我國始終認為如引進鞭刑恐與上開公約之精神及國際刑罰趨勢相扞挌是，因而未採鞭刑。

(五)綜上，禁止酷刑及其他殘酷不人道或有辱人格的待遇或處罰公約內容之精神，已落實於我國法制，且實務上亦少見是類案例，應無設立禁止酷刑委員會之必要，目前尚無簽署該公約之規劃。

二、《兒童權利公約》(CRC）及《身心障礙者權利公約》(CPD):

(一)1989 年聯合國通過兒童權利公約，我國雖非聯合國之會員國，無法參與簽約，但對於維護兒童人權、保護兒童權益的殷切熱情卻絲毫不減，依然秉持著兒童權利公約的精神，積極制定各項保障兒童少年權益的法律，尤其在立法方面一直遙遙領先亞洲各國，

不亞於歐美先進國家，其中以性侵害犯罪防治法、家庭暴力防治法、家庭教育法、兒童及少年福利與權益保障法，以及性別平等教育法，都和兒童人權有關；期使每一個兒童及少年都能藉由政府規劃的兒童教育、福利、醫療、文化等完整的措施及家庭的照顧下平安、健康、快樂的成長。

(二)為踐行兒童權利公約精神，及回應國際兒童福利發展潮流，我國於1993年修正之兒童福利法中宣示：維護兒童身心健康，促進兒童正常發育，保障兒童福利，並增列保護專章以落實兒童保護理念；並為保障兒童之權益，特別參採聯合國「兒童權利公約」之精神，將兒童各項權益措施納入；2003 年將「兒童福利法」及「少年福利法」合併修正為「兒童及少年福利法」，使我國對兒童少年之照顧更周延具體與有一致性之規範，也更符合聯合國兒童權利公約對 18 歲以下兒童一體照顧之精神，2004 年完成施行細則等13項子法。

(三)我國為能更積極保障兒童及少年的各項基本人權，及因應社會與家庭結構變遷趨勢，並和國際兒童少年人權接軌，也在 2011 年 11 月 30 日公布修正「兒童及少年福利與權益保障法」，條文由現行 75 條增列至 118 條，該法係以「聯合國兒童權利公約」內涵為目標，增訂身分、健康、安全、受教育、社會參與、表意、福利、保護及遊戲休閒與發展機會等權益，將各項基本權益法制化，將隱私權保護、高風險家庭關懷輔導、媒體管理與規範、兒童及少年機構專業人員消極資格、兒童及少年表意權、社會參與權之精神納入，並增列國內收養為優先之原則規範，以提供兒童及少年更完善的福利，周延地維護兒童及少年的權益，展現我國落實聯合國兒童權利公約的努力。

(四)有關兒童權利公約內容我國已透過立法程序訂定有關兒童人權之法律規定外，亦積極推動各項兒童少年福利政策，維護兒童人權及提供福利服務，創造兒童及少年安全的成長環境。對於兒童權利公約第7條至第11條有關兒童國籍、身分保護、禁止與雙親分離、家人團聚及遏止非法移送國外等規定，均已落實在我國相關法律規定。

(五)依「性別工作平等法」第 23 條規定，僱用受僱者二百五十人以上之雇主應設置托兒設施（Child-care facilities）或提供適當托兒措施（Child-care measures）；另對於雇主設置托兒設施或提供托兒措施，主管機關應給予經費補助。我們依據「性別工作平等法」規定，訂定「托兒設施措施設置標準及經費補助辦法」，對於企業提供托兒服務者，不限事業單位僱用員工規模人數多寡，均給予經費補助，以鼓勵雇主辦理托兒設施或提供適當托兒措施，協助員工解決子女托育需求，建構工作與家庭平衡友善職場，落實性別工作平權。

(六)另為保障16歲以下童工之勞動權益，查勞動基準法第44條至第48條，針對童工之年齡、工作性質、法定代理人之同意、工作時

間及夜間工作之禁止訂有相關規定，並訂有相關罰則。上開規定業已符合「兒童權利公約」第 32 條第 2 項所定之各項工作，惟有關是否預定批准「兒童權利公約」部分，因牽涉議題甚廣，仍需審議評估。

三、《身心障礙者權利公約》(CPD):

(一)身心障礙者提早請領勞工保險老年年金給付部分：

1. 勞保年資 15 年、年滿 60 歲者，得請領全額老年年金給付，身障勞工有提前請領老年給付之需求時，得提前 5 年請領減額年金給付。又本會刻正規劃失能年金給付評估機制，擴大失能年金給付之範圍，未來被保險人如經個別化專業評估工作能力減損達一定百分比，即得請領失能年金給付。
2. 又勞工保險係提供被保險人適當之生活保障，僅為社會安全制度之一環，而失能者之生活照顧，應分別由社會保險、社會福利、職業重建及醫療保險等制度予以通盤考量。

(二)我國於 96 年 7 月 11 日修正公布之身心障礙者權益保障法，訂定時已充分參考聯合國身心障礙者權利公約之精神及內容，將其轉化為具體法規條文，公約保障之權益已落實於我國法制。目前重點工作為協調各單位落實執行法規內容，尚無簽署身心障礙者權利公約之規劃。

四、因我國非聯合國會員國，有關我國批准或加入之條約未能存放，致生效要件不完備，故在我國尚未恢復聯合國代表權前，我國已草擬「條約締結法草案」及「多邊公約國內法化暫行條例（草案）」，期能解決我國締結之國際公約批准書、加入書、接受書、贊同書等無法交存及相關配套問題。惟在上開草案未完成立法前，我國為積極與國際接軌，已組成專案小組，依國際公約之性質擇定國內法化之方式，並推動執行，目前已積極推動下列國際公約之內國法化，包括瀕臨絕種野生動植物國際貿易公約、維也納領事關係公約、維也納領事關係公約關於取得國籍之任擇議定書、維也納領事關係公約關於強制解決爭端之任擇議定書、維也納條約法公約、聯合國氣候變化綱要公約、制止向恐怖主義提供資助的國際公約、聯合國打擊跨國有組織犯罪公約、聯合國打擊跨國組織犯罪公約關於預防、禁止及懲治販運人口(特別是婦女和兒童)補充議定書、聯合國反腐敗公約、聯合國禁止化學武器公約等國際公約。至於《保障所有人不受強迫失蹤公約》及《保護移徙工人及其家庭成員權利國際公約》，日後將規劃納入專案小組檢討之。

英文回應

1. **Convention against Torture (CAT):**

(1) In 1984, the UN passed the Convention against Torture (CAT) and other instruments against atrocity and inhumanity and also the conventions against humiliation and penalty. Our country is not a US member, so that we are not able to join in the signing of these documents, but still we have left no stone unturned in preventing atrocity, upholding human dignity and protecting human rights. As evidence, we have made laws and statutes to prevent extracting confession through torture. Besides, we have refused to adopt lash punishment under any circumstances.

(2) To prevent torture confession, the Criminal Code of our country provides:

A. "A public official charged with the duty of bringing offenders to justice who commits one of the following offenses shall be punished with imprisonment for not less than one year but not more than seven years: (i) Abusing his authority in arresting or detaining a person, (ii) Using threat or violence to extract evidence, (iii) Unknowingly causing an innocent person to be prosecuted or punished or causing a guilty person not be prosecuted or punished (Paragraph 1). If death results from the commission of the offense, the offender shall be punished with imprisonment for life or for not less than three but not more than ten years."

B. Article 126 of the same law states: "A public official charged with the custody, conveyance, or detention of prisoners who commits an act of violence or cruelty to a prisoner shall be punished with imprisonment for no less than one year but not more than seven years. If death is resulted from the commission of the offense, the offender shall be punished for life or for not less than seven years; if serious bodily harm results, the offender shall be punished with imprisonment for not less than three but not more than ten years (Paragraph 2)." This is to say such crimes are to be punished in our country. Article 6 of the Criminal Code stipulates that this Code shall apply to a public official of the Republic of China who commits same crime beyond the territory of the Republic of China, indicating our law is consistent with the UN convention.

(3) The Code of Criminal Procedure of our country strictly defines the confessions good for proof and the burden of proof. Article 156 provides that confession of an accused not extracted by violence, threat, inducement, fraud, exhausting interrogation, unlawful detention or other

improper means and consistent with facts may be admitted as evidence. Confession of an accused, or a co-offender, shall not be used as the sole basis of conviction and other necessary evidence shall still be investigated to see if the confession is consistent with facts. If the accused states that his confession has been extracted by improper means, his confession shall be investigated prior to investigating other evidences; if the said confession is presented by the public prosecutor, the court shall order the public prosecutor to indicate the method to prove that the confession is obtained under the free will of the accused." This is to say that if a confession is disputed by a defendant, the court shall make an investigation, in which the burden of proof falls on the shoulder of the prosecutor so that unlawful extraction of confession can be avoided.

(4) Our media have repeatedly urged the application of lashing as punishment for sexual assault criminals. But we know correction has replaced retribution in modern criminology and this has become the trend of crime penalty. Punishment by lashing, as a product of feudal period, is inconsistent with the thought of modern terminology. More than 90% of world nations have not adopted lashing punishment and, still, our country has endorsed two UN conventions, and Article 7 of the International Covenant on Civil and Political Rights states that nobody shall have the "Right to Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment." Consequently, our government always believes the introduction of lash punishment is inconsistent to the foregoing Covenant and, therefore, we have not adopted lash punishment.

(5) To sum up, the spirit of banning the use of torture and other atrocious and inhumane punishment has been carried out in our country and, therefore, there is no need to set up a committee on banning the use of torture. At present, we have no plan to endorse the Covenant.。

2. **the Convention on the Rights of the Child (CRC) :**

(1) The Convention on the Rights of the Child was adopted by the United Nations in 1989. As not a member state of the United Nations, Republic of China (Taiwan) has not yet signed up the Convention but has always upheld the spirit of the Convention and devoted itself to the protection of children's rights and interests. Taiwan has been far ahead of the other Asian countries in the legislation of various laws and acts to protect the human rights of children and adolescents. With a quality in legislation rivaling that of the advanced countries in Europe and America, Republic of China (Taiwan) has already stipulated many laws related to children's human rights, including the Sexual Assault Prevention Act, the Domestic Violence Prevention Act, the Family Education Law, the Protection of Children and Youths Welfare and

Rights Act, and Gender Equity Education Act. It is hoped that every child and adolescent can grow safely, healthily, and happily under by the education, welfare, health care, culture and family care systems planned and designed by the government.

(2) To fulfill the spirit of Convention on the Rights of the Child and respond to the trend of international child welfare development, Taiwan declared in its Child Welfare Act amended in 1993 that the aim of adding a special chapter to the Act is to maintain the physical and mental health of children, to promote the normal development of children, and to protect the welfare of children. Moreover, with reference to the spirit of Convention on the Rights of the Child adopted by the United Nations, all the measures to protect the interests of children were included in our Child Welfare Act. The Child welfare Act and Youths Welfare Act were amended and consolidated into the Child and Youths Welfare Act in 2003, so that our children and adolescents can be taken care of in accordance with a more comprehensive, specific and consistent specification, which is also more in line with the spirit of Convention on the Rights of the Child adopted by the United Nations on the custody of children under the age of 18. It was in 2004 that 13 sub-laws, including their Enforcement Rules, were completed.

(3) To more actively protect the basic human rights of children and youths, respond to the changing trends in social and family structure, and align the human rights of children and adolescents with the international standards, the government amended and announced its Protection of Children and Youths Welfare and Rights Act on November 30, 2011. With its contents increased from 75 to 118 articles, aiming to reach the same connotation as the UN Convention on the Rights of the Child, we have added into the Act such contents as identity, health, safety, education, social participation, ideography, welfare, protection, recreation, leisure, and development opportunities. We have also legalized all the basic rights, privacy protection, care for high-risk families, media management and standards, negative qualification for professionals to serve at the child and youth agencies, ideographic rights for children and teenagers, and rights for social participation. We have also included domestic adoption as the priority principle. It is hoped that we can fulfill the UN Convention on the Rights of the Child to improve the welfare of our children and adolescents and safeguard their rights and interests.

(4) Our country has not only set relevant laws through legislative processes to protect the human rights of children to meet the requirements of the Convention on the Rights of the Child but has also actively promoted various Child Welfare Policies to safeguard the human rights of children and adolescents, provide them with welfare services, and create a safe environment for the growth of children and adolescents.

With regards to children's nationality, identity protection, prohibition against separation from parents, family reunion, and curb on illegal transfer to foreign countries stipulated by Articles 7 to 11 of the Convention on the Rights of the Child, our country has been implementing them in accordance with the provisions of our relevant laws and regulations.

(5) Child-care service：According to Article 23 of the Act of Gender Equality in Employment, employers hiring more than two hundred and fifty employees are required to set up child-care facilities or provide suitable child-care measures, and competent authorities will provide certain subsidies. Acting in accordance with the Act of Gender Equality in Employment, we has enacted the Rules for the Standards of Establishing Child-Care Facilities and Measures and Providing Subsidies and subsidies are given accordingly to enterprises that provide child-care service, regardless of the number of their employees. The policy is to encourage employers to set up child-care facilities or provide suitable child-care measures to help their employees who are in need of child care, in order to develop friendly environments where work and family can be balanced and gender equality in employment can be ensured.

(6) Labor Standards Act：To protect the rights and interests of workers under 16 years of age, there are regulations and corresponding penalty provisions set forth in Articles 44 to 48 of the Labor Standards Act with regard to the age of children who are permitted to work, the types of work they are permitted to do, the requirement of a letter of consent from their legal guardians, their work hours, and the prohibition of child workers to work the night shift. The said regulations are in compliance with Paragraph 2, Article 32 of the Convention on the Rights of the Child. As for whether the government intends to ratify the said Convention, due to the comprehensiveness of the issues involved, it requires further review and assessment.

3. **the Convention on the Rights of Persons with Disabilities (CPD):**

(1) The disabled filing early claims for Labor Insurance old-age pensions

A. Workers who have had Labor Insurance coverage for 15 years and reached the age of 60 may file claims for full-amount old-age pensions. Those who are physically disabled and have the need to make early claims may file claims for a reduced amount of pension benefits 5 years earlier. The CLA is currently making plans to establish an assessment mechanism for the payment of disability pensions to extend the coverage of workers entitled to file disability pension claims. In the future, insured persons having been assessed by physicians as suffering work capacity impairment to a certain percentage may file their disability pension claims.

B. Labor Insurance is to provide the insured with proper protection so that they can meet their everyday needs. However, it is only one link in the social security system. The work of looking after the life of the disabled should be evaluated comprehensively with social insurance, social welfare, vocational rehabilitation, and healthcare systems all taken into consideration.

(2) When the People with Disabilities Rights Protection Act was amended in 2007, it had not only referred to the spirit of the Convention on the Rights of Persons with Disabilities, also transferred the spirit from CRPD to People with Disabilities Rights Protection Act. We prefer to implement People with Disabilities Rights Protection Act rather than to ratify the Convention on the Rights of Persons with Disabilities in the near future.

4. Since the R.O.C is not a member state of the UN, the instrument of ratification or accession cannot be deposited at the UN and therefore the elements for international treaties to become effective in the State are incomplete. To address this issue, the R.O.C has drafted the "Conclusion of Treaties Act"[1] and the "Provisional Act Governing the Incorporation of Multilateral Conventions into Domestic Laws"* to guide the practice before the R.O.C can reinstate its representation at the UN. It is expected that these Acts will provide a solution to the issue of not being able to deposit the instruments of ratification, accession, acceptance and approval after signing international treaties. Before the two drafts are officially passed into laws and in order to keep up with the international community during this time, the R.O.C has established a task force that takes charge in selecting the approaches of incorporating international conventions into domestic laws. The task force has the responsibility to promote local implementation of international conventions and is actively doing so with the following international treaties:Convention on International Trade in Endangered Species of Wild Fauna and Flora, Vienna Convention on Consular Relations, Optional Protocol to the Vienna Convention on Consular Relations concerning Acquisition of Nationality, Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes, Vienna Convention on the Law of Treaties, United Nations Framework Convention on Climate Change, International Convention for the Suppression of the Financing of Terrorism, UN Convention Against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons,

[1] This is translator's translation.

Especially Women and Children, UN Convention Against Corruption, and Chemical Weapons Convention. The Convention for the Protection of All Persons from Enforced Disappearance (CPED) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC) will be included in the review conducted by the task force in the future.

條文	編號	問題內容(原文)	中文參考翻譯
共同核心文件	3.	**Domestic Implementation of both Covenants (preface and para.99)** According to Article 8 of the Implementation Act all levels of governmental institutions and agencies should review laws, regulations, directives and administrative measures within their functions for any revision or amendments within a period of two years after the Implementation Act entered into effect (i.e. by 10 December 2011). Please provide information about progress made and difficulties encountered in this review process.	**兩公約的國內施行情形（前言及第 99 段）** 根據兩公約施行法第 8 條，各級政府機關必須在施行法施行後兩年內(亦即在 2011 年 12 月 10 日)，檢討所主管之法律、命令、指令與行政措施。請提供資訊，說明在檢討過程中，有哪些進展，遭遇何種困難。

中文回應

一、為落實兩公約施行法第 8 條規定，法務部自 98 年起，即統籌辦理該項法令及行政措施檢討業務，列冊 263 則檢討案例，包含各機關主動檢討之 219 則，及民間團體(兩公約施行監督聯盟)所提之 44 則意見；其中法律案 165 案；命令案 49 案；行政措施案 46 案；政策案 3 案。

二、自 98 年 12 月 10 日兩公約施行法施行以來，各主管機關皆積極辦理法令及行政措施之檢討工作，截至 102 年 1 月 28 日止，上開 263 案已辦理完成者計 198 案、占 75.29%；未能如期完成檢討之案例有 65 案，占 24.71%，其中法律案計

48 案(其中立法院審查中計 22 案、司法院研議中計 2 案、部會研議中計 24 案)；命令案計 16 案；行政措施案計 1 案。

三、雖然各機關已於 2 年內將法律修正草案送請立法院審議，但立法院未能完成審議。目前未能如期完成修法之法律案，多係因立法院屆期不續審，各相關機關已重新陳報行政院審查，並經行政院送請立法院審議。至尚在部會研議中之法律案因攸關相關團體之利益，尚未獲共識，相關部會刻正溝通協調中。命令案則因須配合母法修正，而未能如期完成檢討。

四、對於無法如期完成檢討之案件，法務部業責請各該主管機關提出具體因應措施，並於 100 年 11 月 14 日起至同年 11 月 30 日再邀請人權學者專家召開法規是否符合兩公約規定之複審會議，審查並確認各該機關對無法如期完成修正之法令案所提之具體因應措施是否妥適，以避免因未及修法而損及人民之權益。亦責請主管機關積極推動相關法令案之修正事宜，並請各機關依前揭施行法第 4 條，各級政府機關行使其職權應符合兩公約有關人權保障之規定，落實人權保障。

五、依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 3 條之規定，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，即已包括經濟社會文化權利委員會之解釋。

英文回應

1. In order to meet the requirement of Article 8 of the Implementation Act of both Covenants, the Ministry of Justice (MOJ) has been responsible for the review of relevant laws, regulations and administrative measures since 2009 and has collected 263 review cases, which include 219 cases submitted by various government agencies and 44 cases proposed by private organization Covenants Watch(兩公約施行監督聯盟). Among these cases, 165 are relevant to laws, 49 are relevant to directives, 46 are relevant to administrative measures and 3 are relevant to policies.
2. Since the Implementation Act of both Covenants has come into force on December 10th, 2009, government authorities concerned have been actively reviewing the laws, regulations, directives and administrative measures within their functions. By January 28th, 2013, out of the 263 cases mentioned above, 198 (75.29%) cases have been reviewed while the other 65 (24.71%) cases have not yet been reviewed as originally scheduled. Among the 65 cases, 48 are relevant to laws (22 are currently reviewed by the Legislative Yuan, 2 are studied by the Judicial Yuan, and 24 are studied by government agencies concerned), 16 are relevant to directives and 1 is relevant to administrative

measures.

3. Although the agencies have submitted the revision drafts to the Legislative Yuan within a two-year period, the Legislative Yuan has not been able to finish the review process. The reason for most cases of law revision that cannot be completed as scheduled is due to the expiry of tenure of the Legislators. The authorities concerned have already re-submitted the cases to the Executive Yuan for review before passing on to the Legislative Yuan. As to the cases that are still under discussion, consensus has not yet been made due to the concern for interest of relevant entities and the authorities concerned are currently communicating and negotiating with various entities. As to the cases relevant to directives, the review process has not been completed due to the pending of the parent laws.
4. As to the cases that cannot finish the review process as scheduled, MOJ has requested the authorities concerned to propose concrete responsive measures and invited scholars and experts in the field of human rights to host a review meeting during November 14th and 30th, 2011 to discuss whether these laws and regulations meet the requirement of the two Covenants and decide whether the responsive measures proposed by the authorities concerned are appropriate and to ensure that the delay of revision would not harm the right and benefits of the people. MOJ also requested the authorities concerned to actively promote the revision of relevant laws and regulations and fulfill the protection of human rights according to Article 4 of the Implementation Act mentioned above which stipulates that governments of all levels shall meet the requirement of human right protection of the two Covenants when exercising their rights and fulfilling their responsibilities.
5. According to Article 3 of the Implementation Act for the ICCPR and the ICESCR, laws and regulations that are applicable to the two Covenants should refer to the legislation intent and the interpretation of the Human Rights Committees of the two Covenants, which should include the interpretation of the Committee on Economic Social and Cultural Rights (CESCR).

條文	編號	問題內容(原文)	中文參考翻譯
共同核	4.	**Human Rights Protection Committee established by the**	**監察院設立的人權保障委員會（第 149 段）**

心文件		**Control Yuan (para.149)** Please provide more specific information on the activities carried out by this Committee. Does it conduct such activities only at the request of the Control Yuan or also on its own initiative? Would the Committee be entitled to investigate presumed corruption practices that adversely affect human rights?	請提供具體資訊，說明監察院下設置之人權保障委員會辦理之工作。該委員會是只依監察院之要求辦理，或是自行辦理?該委員會是否有權調查不利人權之可疑貪腐行為?

中文回應

一、「監察院各委員會組織法」第 2 條第 3 項規定：「監察院得應業務需要，於院內設置特種委員會。」為發揮人權保障之功能，監察院於 2000 年依據上開規定通過「監察院人權保障委員會設置辦法」，並成立監察院人權保障委員會，置委員 9 至 11 人，由監察院院長聘請監察委員兼任，召集人為監察院副院長。

二、人權保障委員會的職掌為：(一)妨害人權案件之發掘及提案調查；(二)監察院人權保障調查報告之研討及建議處理意見事項；(三)人權法案之建議事項；(四)與國內外人權團體之聯繫並蒐集有關資料；(五)研議人權教育之推廣工作；以及(六)其他人權保障事項。

三、對於可能違反人權之貪腐行為，人權保障委員會可推派/輪派監察委員調查，或由監察委員自動調查。而監察院 7 個常設委員會審議通過的調查案件，如涉及人權議題，也會印送人權保障委員會，由該會定期彙集重要人權調查案例，出版監察院人權工作實錄，以利各界瞭解政府部門在各類人權面向的表現。

英文回應

1. Under Section 3, Article 2 of the Organic Law for Control Yuan Committees, the Control Yuan shall establish special committees if necessary (in addition to standing committees). To safeguard human rights, the Control Yuan established the Human Rights Protection Committee in 2000, following the enactment of the “Regulations for Establishing Control Yuan’s Human Rights Protection Commission”. It

is chaired by the Vice President of the Control Yuan and consists of nine to eleven members directly appointed by the President of the Control Yuan from among incumbent Control Yuan Members.

2. Control Yuan's Human Rights Protection Commission serves to: 1) Identify and investigate cases involving violations of human rights; 2) Deliberate and advise on matters relating to human rights investigation reports; 3) Propose changes to existing human rights regulations; 4) Establish and maintain contact with human rights organizations in Taiwan and around the world; 5) Promote human rights awareness.
3. For cases of alleged corruptions that infringe upon human rights and require further examination, the Committee may form a task force by recommending or appointing on a rotational basis at least one of its sitting Members to investigate. The Members may also launch own-motion investigations of their own accord. The seven standing committees regularly inform the Committee of any human rights investigations having been reviewed and passed during their monthly committee meetings. Having selected significant cases from the above investigations, the Committee then puts together an annual report documenting important human rights investigations carried out by the Control Yuan, so as to raise public awareness of human rights protection works at different government levels.

條文	編號	問題內容(原文)	中文參考翻譯
共同核心文件	5.	**Corporate responsibility relating to human rights** While the corporate sector contributes in many instances to the realization of the rights enshrined in the Covenants, there may also be corporate activities that are detrimental to the enjoyment of these rights. Examples may occur in such matters as unsafe labour conditions, restrictions on trade union rights, discrimination against female workers and migrant workers, corruptive practices. Please provide	**企業的人權相關責任** 儘管許多事例指出企業部門對於公約權利的實踐有所助益，但是企業活動亦可能危害權利的享有。此等案例包括不安全的勞動條件、限制工會權利、歧視女性勞工與外籍勞工，以及貪腐行為。請提供資料說明，針對本公約所保障的權利之享有及實現，(政府)*採取何種做法，(以規範)企業部門的角色及其影響。

		information on measures taken with regard to the role and impact of the corporate sector on the enjoyment and the realization of the rights included in the Covenants.	* 括號內文字為譯者所加

中文回應

一、**discrimination against female workers(有關歧視女性勞工)**：

(一) 為加強母性健康保護及消除對婦女一切形式之歧視，並兼顧女性勞工母性保護與就業平權之原則，考量國內醫學、科技、性別平等及促進女性就業參與率之發展情況，及「消除對婦女一切形式歧視公約施行法」已於101年1月1日施行，本會已於勞工安全衛生法修正草案，刪除「一般女性勞工禁止從事危險性及有害性工作」之規定；另對妊娠中或分娩後未滿一年女性勞工，依保護之特殊性分別規定，修正禁止其從事部分危險性或有害性之工作範圍；而對於有母性健康危害之虞之工作，雇主應採取危害評估、控制及分級管理措施，對於妊娠中或分娩後未滿一年之女性勞工，並應依醫師適性評估建議，採取工作調整或更換等健康保護措施。

(二) 本修正法案業於101年11月22日送立法院審議。

二、**unsafe labour conditions(有關不安全的勞動條件)**：

(一) 勞動基準法：政府為規定勞動條件（working conditions）最低標準，保障勞工權益，加強勞雇關係，促進社會與經濟發展，特制定勞動基準法（Labor Standards Act）。該法定有工資、工時、休息、休假、退休、職業災害補償之最低標準，以及童工、女工等特別保護規定。凡適用該法之事業單位所僱用之勞工，不論國籍，均受該法之保障，雇主與勞工所訂勞動條件不得低於該法所定之最低標準。雇主違反該法強制禁止規定者，將依相關規定處罰。

(二) 性別工作平等法：

1. 查所有受僱者、求職者皆有性別工作平等法之適用。依性別工作平等法第7條至第11條規定略以，雇主對求職者或受僱者之招募、甄試、進用、分發、配置、考績、陞遷，及對受僱者舉辦或提供教育、訓練或其他類似活動、舉辦或提供各項福利措施、薪資給付、退休、資遣、離職及解僱等，不得因性別或性傾向而有差別待遇。但工作性質僅適合特定性別者，不在此限。受僱者如發現雇主有違反上開規定之情事，可向工作所在地之勞工行政主管機關提出申訴，經查證屬實，即依法處罰。
2. 為加強各界對性別工作平等法內容之認識與瞭解，勞委會自該法91年施行以來每年皆與地方勞工行政主管機關合作辦理性別工

作平等宣導會；為培養承辦性別工作平等業務人員之核心知能，自98年起每年度皆辦理性別工作平等及職場性騷擾防治種子師資培訓研習會，邀請專家學者講授性別工作平等法法令及實務相關課程，參加對象為縣市政府性平業務相關人員、性平委員、事業單位相關部門主管及工會幹部，提升相關人員之性別歧視事件發生時之調查處理能力。

三、**union rights(有關限制工會權利)：**

(一) 有關工會法第6條涉及教師勞動權行使範圍議題部分，本案經101年4月18日行政院人權保障推動小組第20次委員會議會前會討論，決議採漸進推動方式進行修法，預訂於105年5月20日前完成。

(二) 行政院勞工委員會於101年5月底簽准成立「勞動三法專家學者修法小組」，將先行蒐集相關資訊後召開會議，目前正彙整修法意見。

四、**discrimination against migrant workers(有關歧視外籍勞工)**

(一) 外籍勞工在臺工作期間所享有之基本權益，受我國勞工相關法令保障，不論本、外勞在法律上悉屬平等且應一體享受法律平等保障，受僱於適用勞動基準法之行業，享有基本工資、工時等勞動條件之保障；另有關勞工保險條例、職工福利金條例等法令，不因其為外國人而受歧視，積極保障外籍勞工基本人權與工作權益保障，例如：明定雇主應全額給付薪資，禁止代扣仲介服務費、不得代收國外借款，違者以超收費用論處。

(二) 聘僱外籍勞工之事業單位及雇主，應遵守我國相關勞動法令、就業服務法及其子法相關強制規定，一旦違反我國勞動相關法規，則政府將依法處以罰緩處分、廢止外籍勞工招募許可或聘僱許可，並管制其外籍勞工申請案件。

五、為強化公司治理及企業倫理，加強企業內、外部監督，保障投資人及員工權益，行政院業將「推動企業誠信」納入「國家廉政建設行動方案」，並於民國（下同）101 年 12 月 28 日修正通過，函頒各機關辦理。

(一)前開方案明示7項具體策略、11項執行措施、績效目標及辦理機關，具體策略如下：

1. 強化公司治理及企業倫理，推動相關配套措施，加強企業內、外部監督，保障投資人及員工權益。
2. 倡導企業社會責任，加強與企業及民間各界的溝通，凝聚企業與私部門反貪共識。
3. 輔導、獎勵企業建立倫理規範及內控機制。
4. 建立公司治理、企業誠信與倫理評鑑機制，以利社會大眾及員工監督企業經營。
5. 加強與跨國企業經理人及國際重要機構派駐人員溝通座談，改善妨礙競爭力的因素。

6. 加強企業貪瀆線索發掘、蒐證及調查偵辦。
7. 加強政府公股管理督導，促進公股事業誠信經營。

(二) 另金融監督管理委員會為引導企業逐步落實誠信經營理念，促進投資人及企業員工之權益保障，分別於民國91年10月4日及民國99年02月6日訂定「上市上櫃公司治理實務守則」及「上市上櫃公司企業社會責任實務守則」等規範，並分別於101年11月22日及100年8月22日修正在案。

英文回應

1. discrimination against female workers

(1) To reinforce maternity health protection and eliminate all forms of discrimination against women, as well as to maintain the balance between maternity protection for female workers and equality in employment, the Council of Labor Affairs, taking into consideration the development in medicine and technology, promotion of gender equality and women's labor force participation, and the Enforce Act of Convention on the Elimination of All Forms of Discrimination against Women that had already taken effect on Jan. 1, 2012, the Council of Labor Affairs has made the decision and removed the provision on prohibition of female workers to engage in dangerous and hazardous work from the draft revision of the Labor Safety and Health Act. Meanwhile, regulations on the protection of female workers who are pregnant or have given birth less than one year ago have been added respectively and the level of danger or hazard of work female workers are allowed to do has been redefined. Employers are required to make risk assessment and control and adopt classified management measures for work entailing potential maternity health risks. For female workers who are pregnant or have given birth less than one year ago, work adjustment or change or other health protection measures must be adopted according to suggestions from physicians who have conducted fitness evaluation.

(2) The draft was already presented on Nov. 22, 2012 to the Legislative Yuan for review.

2. unsafe labour conditions

(1) The Labor Standards Act：The Labor Standards Act has been enacted to provide minimum standards for working conditions, protect workers' rights and interests, strengthen employee-employer relationships, and promote social and economic development. In addition to regulations on minimum wages, work hours, breaks, various types of leave, retirement, minimum compensation for occupational accidents, there are also provisions particularly stipulated for the protection of child and female workers in the said act. All workers employed by business entities to which the Labor Standards Act applies, regardless of their nationality, are protected by the act. The terms and conditions

of any agreement between an employer and a worker shall not be below the minimum standards. Employers who violate any of the mandatory regulations and prohibitions shall be penalized according to related regulations.

(2) The Act of Gender Equality in Employment：

A. The Act of Gender Equality in Employment applies to people who are already employed and those applying for employment. According to Articles 7 to 11 of the Act of Gender Equality in Employment, employers shall not discriminate against applicants or employees because of their gender or sexual orientation in the course of recruitment, screening test, hiring, placement, assignment, evaluation and promotion, when organizing or providing education, training, other related activities and various welfare measures, or when making decisions regarding wages, retirement, severance and discharge from employment. However, when the work only suits a specific gender, the said regulation shall not apply. Employees who find their employers to be in violation of the aforesaid regulation may file complaints with the local labor authority. If the violation is confirmed, the corresponding penal sanction will be imposed according to law.

B. To reinforce the awareness and knowledge of the contents of the Act of Gender Equality in Employment in various sectors, the Council of Labor Affairs has worked with local labor authorities and given presentations on gender equality in employment on an annual basis since the act took effect in 2002. Meanwhile, starting in 2009, gender equality in employment and workplace sexual harassment prevention seed teacher training workshops have been conducted each year to improve the skills and knowledge of personnel responsible for work associated with gender equality in employment. Scholars and specialists are invited to lecture on regulations regarding gender equality in employment and related practices. Those attending the courses are the personnel in charge of work related to gender equality in employment and the members of the gender equality committee in county and city governments, and the supervisors of related departments and labor union staff members of business entities. The objective is to improve the ability of related personnel to investigate and handle cases of gender discrimination when they happen

3. union rights：

(1) Regarding the range in which teachers are allowed to exercise their labor rights as indicated in Article 6 of the Labor Union Act, the issue was discussed on Apr. 18, 2012 in the preliminary meeting of the 20th Conference of the Human Rights Protection Subcommittee of the Executive Yuan and the decision was that a gradual approach would be adopted to revise the act. It is expected to be completed by May 20,

2016.

(2) The Council of Labor Affairs approved at the end of May 2012 to put together a team composed of scholars and specialists to revise the three major labor laws. The members will first collect related information before the first meeting is convened. Currently, they are drawing up their opinions with regard to the revision to be conducted.

4. <u>discrimination against migrant workers</u>

(1) The basic rights and interests of foreign workers are protected by labor laws and regulations during their work periods in Taiwan. All workers, local or foreign, are equal before the law and equally protect by the law. The minimum wages, work hours and other labor conditions of those employed in businesses to which the Labor Standards Act applies are protected. The Labor Insurance Act and the Employee Welfare Fund Act also provide protection of the basic human rights and labor rights of foreign workers who will not be discriminated against because they are foreigners. For example, it is stipulated that employers are required to pay wages in full amount to foreign workers without subtracting any service fee on behalf of an employment agency or collecting loan payments for any creditor overseas; those who violated the regulation will be sanctioned on the grounds of overcharging.

(2) Business entities and private employers that hire foreign workers are required to abide by labor laws and regulations as well as the Employment Services Act and its related regulations. Business entities and private employers found to have violated any related law and regulation will be subject to fines and have their permit for recruitment or employment of foreign workers revoked, and their applications for employment of foreign workers in the future will be rejected.

5. To strengthen corporate governance and business ethics, enterprise internal and external oversight and to protect the interests of investors and employees, the Executive Yuan has amended and adopted the incorporation of “Enterprises Integrity Promotion “into " National Integrity Building Action Plan" as well issued letter to each competent agency to implement on December 28, 2012.

(1) The preceding Plan clearly expresses seven specific strategies, eleven implementation measures, performance targets and executing units. Specific strategies are as follows:

A. Enhance the corporate governance and ethics by promoting relevant measures, strengthening internal and external supervision, as well as protecting best interests of the investor and employees.

B. Promote Corporate Social Responsibility (CSR); enhance communication between enterprises and public; as well as consolidating mutual understanding of anti-corruption between enterprises and private sectors.

C. Guide and reward the enterprises to establish ethics regulation and mechanism of internal control.

D. Establish the mechanism for corporate governance, honesty and ethics assessment, so the general public and employees can supervise

the corporate operation easily.

E. Enhance communication and seminar with managers and employees from international corporate and institutes to improve the factors that obstructing the competitiveness.

F. Strengthen clues excavations, evidence collections and investigations of enterprise corruptions.

G. Strengthen management supervision of government owned enterprises to promote the integrity of management.

(2) Furthermore, with a view to guiding enterprises to gradually implement the business philosophy of integrity so as to protect interests of investors and employees, the Financial Supervisory Commission has enacted rules of “Corporate Governance Best-Practice Principles for TWSE/GTSM Listed Companies” and “Corporate Social Responsibility Best Practice Principles for TWSE/GTSM-Listed Companies” on October 4, 2002 and February 6, 2010, and amended them on November 22, 2012 and August 22, 2011, respectively.

貳、公政公約問題清單及政府機關回應

條文	編號	問題內容(原文)	中文參考翻譯
公政第 1 條及第 27 條	1.	Please explain the current situation concerning the final disposal site for low-level radioactive waste in an aboriginal region, the hotel and resort development project at the Dulan Bay and Shan-Yuan Coast of Taitung, and the "controversial" development of the Luming Hydropower Plant along Lakulaku River. In this connection, please explain why the Draft of Indigenous Land and Sea Territory Act has not been approved by the Executive Yuan. (Government Report paras. 7 & 8)	請說明關於位在原住民族地區內的低放射性廢棄物最終處置設施、台東都蘭灣、杉原海岸的觀光飯店開發案、位在拉庫拉庫溪的鹿鳴水力發電廠開發爭議案的目前處理狀況。與此相關的，請說明為何原住民族土地及海域法草案尚未經行政院通過的原因。(國家報告第 7 及 8 段)

中文回應

一、原能會：依據「原住民族基本法」第 31 條，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。未來經濟部在進行「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；除前述作法外，經濟部亦得採用部落會議或其它方式徵得原住民族同意。

二、經濟部：

(一)我國「低放射性廢棄物最終處置設施場址設置條例」於 2006 年 5 月公布施行，經濟部為主辦機關，台電公司被指定為選址作業者。經濟部於 2012 年 7 月 3 日公告「建議候選場址」(「台東縣達仁鄉」及「金門縣烏坵鄉」)，未來經地方公投同意後，將辦理環境影響評估。

(二)鹿鳴水力計畫為川流式水力，位於秀姑巒溪支流拉庫拉庫溪下游，擬設置 6 公尺高之攔河堰引水發電，該計畫約有 0.5 公頃位於卓溪鄉原住民保留地，且裝置容量 7,540 瓩，小於 20,000 瓩，依環評認定標準，可不需實施環評。惟因環保署 99 年 8 月 9 日公

告，水力發電之開發，於山坡地興建或擴建攔水壩(堰)，應實施環評。考量該計畫的推動耗時費力，故台電公司決定暫緩實施。

三、原民會：目前辦理情形如下：

(一)廢棄物最終處置場址：目前臺東縣達仁鄉為候選場址之一，現業經經濟部辦理公告並將辦理後續公民投票作業。本會於 101 年 7 月 20 日發函請經濟部依照 98 年協調會決議，辦理公民投票程序時，應優先採記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。

(二)臺東都蘭灣、杉原海岸觀光飯店開發案：有關杉原海岸觀光飯店開發案，前經臺東縣政府通過有條件環評，本會於 100 年 12 月 12 日發函臺東縣政府，有關美麗灣渡假村辦理後續建物興建及營運等開發行為，應參照原住民族基本法第 21 條之精神，徵詢當地部落族人意願。孫大川主委並於 101 年 12 月 25 日親赴臺東縣政府與縣長黃健庭進行溝通，希望臺東縣政府可以參考原基法精神辦理。至於都蘭灣相關開發案，本會在參與相關案件環評時，均明確表達請開發單位參照原住民族基本法之精神與當地原住民進行諮商溝通。

(三)鹿鳴水利發電廠開發爭議案：查本會並未辦理任何有關鹿鳴水力發電場之案件。

(四)原住民族土地及海域法（草案）：本草案條文，因衝擊各部會現行法令及機制，爭議性較大，需較長時間與各部會協商，立法時程並非本會可掌控，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 13 日報行政院審議，行政院又於 101 年 11 月 30 日請本會再行協商修正後報院，現正積極辦理其後續作業。

英文回應

1. 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. In the future, when the Ministry of Economic Affairs (MOEA) holds a local referendum based on the ‘Act on Sites for Establishment of Low-Level Radioactive Waste Final Disposal Facility’ (Article 11), that referendum will not be approved if less than 50 percent of the votes cast are ‘yes’ at the indigenous township of the recommended candidate site. In addition to the aforementioned, the MOEA may obtain indigenous peoples’ consent by holding a Tribe Meeting or other measures.
2. In May, 2006, the “Act on Sites for Establishment of Low Level Radioactive Waste Final Disposal Facility” became effective. In

accordance with the Act, the implementing authority of site selection is the Ministry of Economic Affairs (MOEA), and Taipower is designated as Site Selection Operator to assist the MOEA. On July 3, 2012, the MOEA publicized the "Recommended Candidate Sites" in which two candidate sites, Daren Township in Taitung County and Wuchiou Township in Kinmen County. As stipulated in the Act, referendum is part of the procedure for site selection. After a candidate site is accepted by the local public through referendum, environmental impact assessment shall be conducted..

3. Luming hydro project is a run-off-river hydraulic which is located at downstream of Lakulaku River in Hsiukuluan tributaries, and will set 6 meters high weir diversion to power. The project is about 0.5 hectares in Jhuosi Aboriginal reserves, with installed capacity of 7,540 kw, less than 20,000 kw. According to the previous EIA standard, this project didn't need the implementation of the EIA. However, due to the EPA August 9, 2010 announcement, the development of hydroelectric power, in hillside construction or expansion of dams (weir), should implement the EIA. Considering the time-consuming effort, Taipower(TPC) decided to suspend the implementation.

4. At present, the progress of work is as follows:

(1) low-level radioactive waste final disposal sites:Currently, Daren Township, Taitung County is one of the candidate sites, has been announced to the public by the Ministry of Economic Affairs,and will process the referendum work. Council of Indigenous Peoples has sent out governmentals to Ministry of Economic Affairs at July 20 2012, in accordance with the coordination meeting resolutions at 2009, the process of the referendum, priority should be given to Daren Township, if the Daren Township voting results is more than 50 percent agreed,the referendummay pass.

(2) the hotel and resort development project at Dulan Bay and Shan-Yuan Coast of Taitung:

A. About Shan-Yuan Coast case, Taitung County government through the EIA with conditions，Council of Indigenous Peoples has sent out governmentals to Taitung County government at December 12 2011,even Minister Sun Ta-chuan went to the Taitung County government and meet the county magistrate Huang Jian-ting at December 25 2012,hope this case should follow the The Indigenous Peoples Basic Law.

B. The Dulan Bay development case, the participation in EIA, Council of Indigenous Peoples always communicate cases should follow the The Indigenous Peoples Basic Law。

(3) Luming Hydropower Plant:Council of Indigenous Peoples do not handle any cases related the Luming Hydropower Plant.

(4) The Draft of Indigenous Land and Sea Territory Act:

A. Because of the impact of the current law of the government organs, the draft is highly controversial, consultation with the other government organs will take longer time,it's very difficult to control the schedule.

B. After many consultations,Council of Indigenous Peoples submitted the amended Draft again to the Executive Yuan at 13 November 2012, The the Executive Yuan send the Draft back again at November 30, 2012, Council of Indigenous Peoples is active handle follow-up jobs.

條文	編號	問題內容(原文)	中文參考翻譯
公政第 1 條及第 27 條	2.	With respect to reconstruction of the disaster-ridden areas, please explain in more detail why the Sanying Tribe in the water resource land along Duhan River rebuilt their houses after they were dismantled by the government. Also, please clarify the composition and competence of the "planned" Indigenous Peoples' Court. (Ibid., paras. 9 and 359)	關於受災區域之重建，請更詳細的說明為何位在大漢溪水利地的三鶯部落的房舍在被政府拆除後又重建。也請闡明「計畫中的」原住民族法院的組成及權限。(國家報告第 9 及 359 段)

中文回應

按原住民族基本法第 30 條第 2 項規定,政府為保障原住民族之司法權益,得設置原住民族法院或法庭,目前考量人民訴訟便利性、案件量等因素，雖未設置原住民族法院，惟鑑於原住民族事務之特殊性及尊重原住民族之傳統習俗、文化與價值，司法院於 101 年 10 月 8 日指定臺灣桃園、新竹、苗栗、南投、嘉義、高雄、屏東、臺東、花蓮等 9 所地方法院自 102 年 1 月 1 日起設立原住民族專業法庭或專股，審理原住民族涉訟之民、刑事案件。

英文回應

According to Article 30, Paragraph 2 of The Indigenous Peoples Basic Law, the government may establish an indigenous peoples' court or tribunals for the purpose of protecting indigenous peoples' judicial rights. Although the indigenous peoples' court is not yet established in the consideration of the convenience for litigation and caseload, the Judicial Yuan, in the light of specialty of indigenous peoples' affairs and respecting traditional customs, cultures and values of indigenous peoples, has designated 9 District Courts, including Taiwan Taoyuan, Hsinchu, Miaoli, Nantou, Chiayi, Kaohsiung, Pingtung, Taitung and Hualien District Courts, on October 8th, 2012 to establish the indigenous peoples' tribunals or sections to hear the civil and criminal cases concerning indigenous peoples from January 1, 2013.

條文	編號	問題內容(原文)	中文參考翻譯
公政第 1 條及第 27 條	3.	Considering the number and diversity of foreign immigrant workers in Taiwan, please explain how their human rights are protected and remedies guaranteed if their rights are violated. (paras. 352-354)	考量到臺灣的外籍勞工之人數與多元性，請說明若他們的權利受侵害時要如何對他們的人權給予保障及救濟。（第 352-354 段）

中文回應

一、為保障外籍勞工相關權益並當其權益受侵害可以救濟與申訴，勞委會建置外勞暢通之申訴管道「外籍勞工 24 小時諮詢保護專線(1955)」及各縣市設立外勞諮詢服務中心，提供各項諮詢申訴服務，外籍勞工有任何問題均可透過上開多元申訴管道獲得協助，包括與雇主發生勞資爭議、人身侵害事項或相關法規疑義等問題。

二、又為避免外籍勞工非出於自願遭受雇主強迫遣送出境，勞委會建立中途解約驗證機制，凡雇主與與外籍勞工提前解除契約，均需先至各地方勞工主管機關辦理解約驗證程序，探求外籍勞工之真意，另由勞委會補助地方政府辦理外籍勞工生活管理訪查及仲介收費情形，並於外籍勞工有安置聘僱保護需要時，提供臨時安置庇護及通譯、陪同偵訊、法律協助、醫療協助等服務。外籍勞工

如於我國境內工作時，有相關勞資爭議事件尚未處理或申訴，可於出境前，於勞委會設立之國際機場外勞服務站進行申訴，後續將由地方主管機關介入協助要求雇主或仲介返還積欠之工資及其他勞資爭議處理等。

英文回應

1. To protect the rights and interests of foreign workers and provide channels for filing of complaints and corresponding remedies, the Council of Labor Affairs has set up the '1955' 24-Hour Foreign Labor Consultation and Protection Hotline, while each county or city also has created a consultation service center for foreign workers to provide consultation service and accept complaints. Foreigners can go through these channels to acquire assistance to solve their problems, including labor-management disputes with their employers, physical abuse, questions about related laws and regulations, etc.
2. To protect foreign workers from forced and unjustified repatriation by their employers, the Council of Labor Affairs has instituted an early contract termination verification mechanism. All employers and foreign workers intending to terminate their contracts before the established expiration date are required to have their contract termination verified by the local labor authority in advance. The objective is to make sure that it is the true intention of the foreign worker to terminate the contract. Meanwhile, there are temporary shelters for foreign workers to protect them from their employers. Interpreters are provided to accompany them throughout investigation procedures, whereas legal assistance and medical aid are also available. The Council of Labor Affairs has also set up a foreign worker service station at international airports to allow foreign workers to file complaints with regard to unresolved labor-management disputes or other work related issues before leaving Taiwan. The local labor competent authority will look into the matter and take necessary action to, for instance, retrieve wages owed to them from the employers or employment agencies or settle other labor-management disputes.

條文	編號	問題內容(原文)	中文參考翻譯
公政	4.	Initial Report of ROC (Taiwan), Paragraph 10, states that	中華民國（臺灣）的初次報告第 10 段提到立法院通過具

第 2 條		the Legislative Yuan approved the “Enforcement Law for the Two Covenants” which carries the power of a domestic law. However, according to Paragraph 12, while most of the Covenants provisions are visible in the ROC domestic laws, complete protection of individual rights under the ICCPR has not been possible. So the questions are:	有國內法效力的「兩公約施行法」。然而依據第 12 段，儘管公約條文所保障之權利多可見於中華民國國內法律，但並未能完整保障各項公政公約所保障的權利。因而有以下問題:
	5.	What is the exact status of the ICCPR in the ROC domestic legal system? In this connection, please explain the following sentence in Paragraph 13: “The Ministry of Justice is in charge of…improving regulatory and administrative measures non-compliant with the Covenant, which shall survive the two-year deadline indicated in the Enforcement Law of the Two Covenant”. Please indicate if the ICCPR is below the Constitution but above the ordinary laws. If it has the same status as the ordinary laws, can subsequent law override ICCPR provisions?	公政公約在中華民國國內法律體系的確切位階為何？與此相關的是，請說明第 13 段的這句話：「法務部負責…針對與公約不符之法令及行政措施進行檢討與改進，不能因為兩公約施行法規定的兩年已過而停止」。請指出公政公約的位階是否低於憲法但高於一般法律。若它與一般法律位階相同，後法能否推翻公政公約的條文？

中文回應

一、司法院大法官第 329 號解釋，總統依憲法之規定，行使締結條約之權；行政院院長、各部會首長，須將應行提出於立法院之條約案提出於行政院會議議決之；立法院有議決條約案之權，依上述規定所締結之條約，其位階同於法律。我國立法院於 2009 年 3 月 31 日完成「公民與政治權利國際公約」及「經濟社會文化權利國際公約」(下稱兩公約)及「兩公約施行法」審議，總統於同年 4 月 22 日公布「兩公約施行法」並於 5 月 14 日完成批准程序，同年 12 月 10 日施行，且「兩公約施行法」第 2 條亦明文規定：「兩公約所揭示保障人權之規定，具有國內法律之效力」，故公政公約在我國具有國內法律之效力。

二、另依據「兩公約施行法」第 8 條規定：「各級政府機關應依兩公約之內容，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 2 年內，完成法令之制(訂)定、修正或廢止及行政制措施之改進。」故國內法令及行政措施牴觸公政公約時應予修正。此規定實已揭櫫法令與「兩公約」抵觸時，兩公約規定優先適用之意涵。是以在我國公政公約的位階係屬低於憲法但高於一般法律之國內法律。

英文回應

1. J.Y. Interpretation No. 329holds that the President may exercise the power to conclude treaty following the stipulation in the Constitution. The Premier and heads of ministries/agencies shall discuss and decide on, during Executive Yuan meetings, treaty proposals to be submitted to the Legislative Yuan. The legislative body then has the right to vote on the treaty. Any treaties concluded through this process shall have the same status as R.O.C laws. The Legislative Yuan finished the review on the ICCPR and the ICESCR (hereafter "the Two Covenants") on March 31, 2009. The President promulgated the "Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights" ("the Implementation Act") on April 22, 2009. The Act was ratified on May 14, 2009, and became effective on Dec 10, 2009. Article 2 of the Implementation Act stipulates: "Human rights protection provisions in the Two Covenants have domestic legal status." Therefore, the ICCPR has domestic legal status in the R.O.C.
2. As stipulated in Article 8 of the Implementation Act: "All levels of governmental institutions and agencies should review laws, regulations, directives and administrative measures within their functions according to the Two Covenants. All laws, regulations, directives and administrative measures non-compliant with the Two Covenants should be amended within two years after the Act enters into force by new laws, law amendments, law abolitions and improved administrative measures." So, in cases of incompliance of domestic legislation with the ICCPR, the legislation should be corrected. This Article indicates that when domestic laws are non-compliant with the Two Covenants, the Covenants enjoy prior application. Therefore, the ICCPR is below the Constitution but above ordinary domestic laws.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 2 條	6.	Please clarify the jurisdiction and competence of the Presidential Human Rights Advisory Committee, Grand	請闡明總統府人權諮詢委員會、司法院大法官、法院、監察院以及法務部的管轄範圍與職能。(並請參見共同核

		Justices, courts, the Control Yuan and the Ministry of Justice. (See also Core Document, Paragraph 50.)	心文件第 50 段）

中文回應

一、**總統府人權諮詢委員會：**依總統府人權諮詢委員會設置要點第 2 點規定：「本會任務如下：（一）人權政策之提倡與諮詢。（二）國家人權報告之提出。（三）國際人權制度與立法之研究。（四）國際人權交流事務之研議。（五）提供總統其他人權議題相關諮詢事項。」

二、**司法院大法官：**依照中華民國憲法及憲法增修條文規定，司法院大法官掌理下列四項職權：

（一）解釋憲法

（二）統一解釋法令

（三）審理總統、副總統彈劾案件

（四）審理政黨違憲解散案件

三、**法院管轄範圍與職能：**法院掌理審判事務，依法院組織法規定，法院分為地方法院、高等法院及最高法院，審判民事、刑事、行政訴訟簡易程序、其他法律規定訴訟案件及非訟事件；並設置高等行政法院及最高行政法院，審判行政訴訟事件；設置智慧財產法院，審判智慧財產事件；設置少年及家事法院，審判少年及家事案(事)件。原則採三級三審制，並以最高法院及最高行政法院為終審法院。(請參見共同核心文件第 43 段至第 46 段)

四、**監察院：**監察院為我國的國家監察機關(National Ombudsman)，依據五權憲法獨立行使職權，受理人民陳情並進行調查，以監督各級政府機關及其公務員有無違法失職情事，監察院調查的案件中有 50%以上涉及人權議題，在實務上已具有國家人權機關的部分功能。兩公約內國法化後，監察院更可依據國際人權標準檢視政府機關的作為，監督政府履行國際人權義務。

五、**法務部：**

(一)依法務部組織法第第 2 條規定：「本部掌理下列事項：一、法務政策之綜合研議、規劃、督導及考核。二、行政院及其所屬機關法規研議、法規適用之諮商。三、人權保障業務之推動、協調及聯繫。四、本部主管民事、刑事及行政法規之研擬、督導及執行。

五、刑事偵查、實行公訴及刑事執行等檢察行政之政策規劃、法規研擬、指導及監督。六、律師及法醫師之管理及監督。七、觀護、更生保護、犯罪被害人保護、犯罪預防、法治教育、法律扶助及服務、訴訟輔導等司法保護之政策規劃、法規研擬、指導及監督。八、國際及兩岸司法互助之政策規劃、法規研擬、對外諮商及執行。九、法醫鑑驗、人員培訓及法醫科技之研究發展。十、所屬機關（構）辦理犯罪調查、行政執行、廉政、矯正、刑事偵查、實行公訴與刑事執行之指導及監督。十一、司法人員養成教育業務之執行及考核。十二、其他有關法務行政事項。」

(二)另法務部身兼總統府人權諮詢委員會議事組及行政院人權保障推動小組之幕僚工作，總統府人權諮詢委員會之任務已如前述，行政院人權保障推動小組之任務如下：「(一)各國人權保障制度與國際規範之研究及組織合作交流推動事項。(二)國家人權保障機關組織設置之研議及推動事項。(三)人權保障政策及法規之研議事項。(四)人權保障措施之協商及推動事項。(五)人權教育政策之研議及人權保障觀念之宣導事項。(六)其他人權保障相關事項。」

(三) 法務部亦設有法務部人權工作小組，其任務如下：「（一）行政院人權保障推動小組之聯繫窗口。（二）本部人權保障議題之蒐集及擬議。（三）本部人權保障業務之協調及督導。（四）本部人權保障宣導之整合及分工。（五）其他人權保障相關事項。」

英文回應

1. **Presidential Advisory Committee on Human Rights**：As stipulated in Item 2 of Guidelines for Establishment of the Presidential Advisory Committee on Human Rights: “The responsibilities of the Committee are to 1) promote and provide advice to the formulation of human rights policies; 2) submit the State Report on Human Rights; 3) conduct research on international human rights systems and legislation; 4) research and consult on international human rights exchanges and 5) provide consultation to the President on human rights related issues.”
2. **Grand Justices**：According to the Constitution of the Republic of China and its Amendments,the Justices of the Constitutional Court（previously translated as Grand Justices）have the power to rule the following four categories of cases：

(1) Interpretation of the Constitution；

(2) Uniform Interpretation of Statutes and Regulations；

(3) Impeachment of the President and the Vice President of the Republic of China；

(4) Declaring the Dissolution of Political Parties Violation the Constitution.

3. Courts handle adjudication：According to the Court Organic Act, District Courts, High Courts and the Supreme Court hear civil cases, criminal cases, administrative summary proceeding cases, other litigation and non-contentious cases stipulated by laws; High Administrative Courts and the Supreme Administrative Court are established to hear administrative cases; The Intellectual Property Court is established to hear intellectual property cases; The Juvenile and Family Court is established to hear juvenile and family cases. In principle, three instances and three levels system is adopted, and the Supreme Court and the Supreme Administrative Court are the final instance court. (See also Core Document, Paragraph 43 to 46)

4. Control Yuan：The Control Yuan is the National Ombudsman of the Republic of China (Taiwan). Pursuant to the five-power Constitution of the Republic of China, the Control holds independent powers in receiving public complaints and conducting investigations. In doing so, it supervises government agencies and civil servants at all levels. In practice, the Control Yuan partly functions as a national human rights institution, as more than fifty-percent of its investigations involve human rights issues. The ratification of ICCPR and ICESCR has provided solid grounds for the Control Yuan in carrying out its supervisory functions and to audit government agencies' compliance with the international human rights obligations.

5. Ministry of Justice

(1) As stipulated in Article 2 of the Organic Law of Ministry of Justice: "The duties of the Ministry are to, A) comprehensively research, plan, supervise and evaluate judiciary policies; B) research legislation formulation and consult on legislation adequacy for the Executive Yuan and its affiliated agencies; C) promote, coordinate and act as communications channel for human rights protection related affairs; D) research, formulate, supervise, and implement civil, criminal and administrative legislation; E) map out policy and formulate, guide and supervise legislation on procuratorial administrations such as criminal investigation, performance of public prosecution, and criminal

execution; F) manage and supervise lawyers and forensic investigators; G) plan policy and formulate, guide and supervise legislation on justice protection measures such as protective custody, rehabilitation protection, crime victim protection, crime prevention, law-related education, legal aid and services, and litigation counseling; H) plan policy, formulate legislation, provide external consultation, and carry out international and cross-strait mutual legal assistance; I) research and development in forensic inspection, personnel training and forensic science; J) guide and supervise affiliated agencies in matters of crime investigation, administrative enforcement, anti-corruption, correction, criminal investigation, performance of public prosecution, and procuratorial administrations; K) evaluate and implement judicial personnel cultivation and training courses and; L) other legal and administrative affairs."

(2) Furthermore, the Ministry of Justice acts as the Conference Service Division for the Presidential Advisory Committee on Human Rights and consultant to Executive Yuan's Group for Promotion and Protection of Human Rights. Responsibilities of the Presidential Advisory Committee on Human Rights are as aforementioned, whereas responsibilities for the Executive Yuan's Group for Promotion and Protection of Human Rights are to "A) conduct research on international human rights protection practices and also systems of respective countries, and promote exchange and cooperation amongst different organizations; B) research and promote the establishment of a national human rights protection agency; C) conduct research on human rights protection policies and legislation; D) negotiate and promote human rights protection measures; E) conduct research on human rights education policies and advocate human rights protection values and; F) other human rights protection related affairs."

(3) A Human Rights Task Force[2] has also been established within the Ministry of Justice; responsibilities are as follows: "A) Act as contact window for the Executive Yuan's Group for Promotion and Protection of Human Rights; B) Collect and compile human rights protection issues related to the Ministry;C) Supervise and coordinate human rights protection affairs of the Ministry; D) Integrate and divide work amongst staff on the promotion of human rights protection and; E) other human rights protection related affairs."

[2] **This is translator's translation.**

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 2 條	7.	Please indicate if there has been any court's decision citing any provision of ICCPR. In this connection, please clarify the following description of Core Document, Paragraph 128: "The Judicial Yuan Interpretation No.392 by Grand Justices, prior to the enactment of the Act to Implement the Two Covenants, cited Paragraph 3, Article 9 of the ICCPR…. The reasoning of the Judicial Yuan Interpretation No.582 by Grand Justices involved citation of Subparagraph 5, Paragraph 3, Article 14 of the ICCPR…. In addition, judgments rendered by courts at all levels that have cited the Two Covenants include: The Supreme Court: Tai-Shang No.2364 (2011), Tai-Shang No.1045 (2011), Tai-Shang No.8223 (2010), Tai-Shang No.5079 (2010) And Tai-Shang No.5283 (2009); and Hualien Branch, Taiwan High Prosecutors Office: Appeal No.253 (2009)".	請指出是否有任何法院判決引用任何公政公約的任何條文。與此相關的是，請闡明下列共同核心文件第 128 段的描述：司法院大法官釋字第 392 號解釋於上開施行法制定前，即援引《公政公約》第 9 條第 3 項規定…。司法院大法官釋字第 582 號解釋理由書援引《公政公約》第 14 條第 3 項第 5 款規定…。此外，各級法院於判決書內援引《兩公約》者，例如：最高法院 2011 年台上字第 2364 號、2011 年台上字第 1045 號、2010 年度台上字第 8223 號、2010 年度台上字第 5079 號、2009 年度台上字第 5283 號及花蓮高分院 2009 年上訴字第 253 號等。

中文回應

一、

(一)司法院大法官釋字第 392 號：依據公政公約第 9 條第 3 項規定，司法院釋字第 392 號解釋認為檢察官無從行使刑事訴訟法上之羈押權。

(二)司法院大法官釋字第 582 號：依據公政公約第 14 條第 3 項第 5 款規定，司法院釋字第 582 號解釋認為刑事被告享有詰問證人之權利，乃具普世價值之基本人權。

二、我國司法實務引用公政公約之情形，概可分為三類。A 類情形，係單純引用公政公約條文，據以闡釋既有法規或法律原則之內容者。A 類最為常見，係援引公政公約第 14 條，據以闡釋無罪推定原則，強調檢察官之實質舉證責任，據以程序駁回檢察官之上訴。B 類則是援引公政公約條文，甚至是人權委員會之一般性意見，據以調整既有法規範之內容。例如，臺北地方法院一件判決，即援引公政公約第 19 條第 3 款以及第 34 號一般性意見之內容，認為犯刑法第 310 條之誹謗罪，不得再處以監禁刑。同屬此類，則係一系列最高法院判決援引公政公約第 6 條、第 14 條第 2 項，以原審未就死刑之量刑進行徹底之辯論程序，並據以撤銷原審之死刑判決。C 類則是已據當事人於訴訟上援引公政公約為依據，惟法院認為不符合公政公約之意旨，駁回其上訴。下表針對報告中提及的若干判決內容，作進一步的說明。

序號	案號	引用公政公約之條文	類型	判決結果
1	100 台上 2364 號	第 14 條第 2 項	A	上訴駁回
2	100 台上 1045 號	第 14 條第 5 項	C	上訴駁回
3	99 台上 8223 號	第 6 條第 1 項	B	原判決撤銷發回
4	99 台上 5079 號	第 14 條第 3 項第 4 款	B	原判決撤銷發回
5	98 台上 5283 號	第 14 條第 3 項第 7 款	B	原判決撤銷發回
6	臺灣高等法院花蓮	第 24 條第 1	B	上訴駁回

	分院 99 上訴字第 253 號	項		

三、經搜尋各級法院判決結果，計有臺灣臺北地方法院 100 年重勞訴字第 3 號民事判決 1 件曾於判決中引用公政公約相關條文，其判決全文詳如附件。

四、行政法院、公務員懲戒委員會、智慧財產法院及普通法院於判決、議決書引用公政公約條文者（按條次排列），如下附表：

編號	案號	引用公政公約條文
1	智慧財產法院 101 年度刑智上易字第 10 號刑事判決	第 14 條第 2 項
2	公務員懲戒委員會 98 年度鑑字第 11520 號議決書	第 14 條第 3 項第 7 款
3	智慧財產法院 100 年度刑智上訴字第 14 號刑事判決	第 15 條
4	臺灣臺北地方法院 97 年度易字第 500 號、99 年度訴字第 356 號刑事判決	第 15 條
5	臺北高等行政法院 101 年度訴字第 1200 號判決	第 23 條第 1 項

英文回應

1.

(1) The Judicial Yuan Interpretation No.392 indicated：According to Article 9 Paragraph 3 of the International Covenant on Civil and Political Rights(herein after as ICCPR),the Judicial Yuan Interpretation No.392 indicated that the prosecutor shall not have the detention power enumerated in the Code of Criminal Procedure.

(2) The Judicial Yuan Interpretation No.582 indicated：According to Article 14 Subparagraph 5 Paragraph 3 of the ICCPR. The Judicial Yuan Interpretation No.582 indicated that it is the universal and fundamental right of an accused to examine a witness.

2. Courts'decisions citing Articles of the ICCPR could be categorized into 3 different types. Type A is those citing the Articles and interpretations by the Human Rights Committee in the ICCPR for clarification of the meaning and fundamental principle in existing Taiwan legal system. This type is the most common one, which cites Article 14 of the ICCPR to interpret the principle of presumption of innocence, highlight prosecutor's responsibility of proof and persuation, and dismiss appeals from prosecutors wiyj procedures. Type B is those citing the Articles of the ICCPR or general opinions of Human Rights Committee to revise existing law. For example, a Taipei district court decision cited Article 19, Paragraph 3 of the ICCPR and the content of general opinion No. 34 of the Human Rights Committee and deemed that offense against reputation and credit in Article 310 of the Criminal Code shall not be sentenced to imprisonment. Another group of examples best illustrating this type is Supreme Court decisions citing Article 6 and 14 to remand capital punishment verdicts without thoroughly conducted sentencing argument. Type C is those court decisions in which the Parties citing ICCPR in their arguments, and the courts either wrongfully deems ICCPR irrelevant, or not evade to deal with the legal issues. The amount of this type of court decisions are sharply declining. The following chart further illustrates the courts decisions mentioned in the Report.

No	Case No.	Articles in the ICCPR cited	Type	Outcome of the verdict
1	Tai-Shang No.2364 (2011)	Article 14, Paragraph 2	A	Appeal Dismissed
2	Tai-Shang No.1045 (2011)	Article 14, Paragraph 5	C	Appeal Dismissed
3	Tai-Shang No.8223 (2010)	Article 6, Paragraph 1	B	Case Remanded
4	Tai-Shang No.5079	Article 14, Paragraph 3,	B	Case Remanded

	(2010)	subparagraph 4		
5	Tai-Shang No.5283 (2009)	Article 14, Paragraph 3, subparagraph 7	B	Case Remanded
6	Taiwan High Court,Hualien Branch, Shang-Su No.253 (2010)	Article 24, Paragraph 1	B	Appeal Dismissed

3. After searching judgments from courts at all levels, one civil case judgment Chong-Lao-Su-Zi No. 3 from Taiwan Taipei District Court in 2010 cited the contents of ICCPR. See the text of judgment as attached.
4. Administrative court, Public Functionaries Disciplinary Snactions Commission, Intellectual Property Court, abbreviated as IPC and ordinary court cited the International Covenant on Civil and Political Rights in the following decisions：

Number	Case No.	Article
1	IPC 2012 Xing-Zhi-Shang-Yi-Zi No.10 criminal case decision	Article 14, Paragraph 2
2	Public Functionaries Disciplinary Snactions Commission 2009 Jiàn–Zi No.11520 case decision	Article 14, Paragraph 3, Subparagraph 7
3	IPC 2011 Xing-Zhi-Shang-Yi-Zi No.14 criminal case decision	Article 15
4	Taiwan Taipei District Court 2008 Yi-Zi No.500 and 2010 Su-Zi No.356 criminal case decision	Article 15
5	Taipei High Administrative Court 2012 Su-Zi No.1200 case decision	Article 23, Paragraph 1

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 3 條	8.	Initial Report, Paragraph 16 states that the Legislative Yuan approved the "Enforcement Act of CEDAW", but it also states that, while the Executive Yuan has had the gender equality complaint box set up since 2010 to accept related complaints, there are no administrative dispositions, substantial punishments, and court decisions available yet on violations on CEDAW. So, the following questions:	初次報告第 16 段提到立法院通過消除對婦女一切形式歧視公約施行法，但也提到行政院自 2010 年起設置性別平等申訴信箱受理相關申訴，惟目前尚無違反 CEDAW 的行政處置、具體罰則及法院判決。因此，有下列問題：
	9.	If there has been any subsequent development, please specify.	請指出是否有任何後續的發展。

中文回應

一、我國性別平等申訴信箱於 99 年設置，目前由行政院性別平等處主責受理處理各項申訴案件。截至 101 年 12 月底止業已受理 164 件申訴案件，案件內容包括職場性別歧視、懷孕歧視、性別平等教育、性騷擾及其他與性別平等議題相關之內容。申訴內容如為職場上性別歧視案件，則轉請勞政單位依「性別工作平等法」、「就業服務法」等相關規定辦理；如為與性別平等教育相關之案件，則轉請教育部依「性別平等教育法」等相關規定辦理；如為與性騷擾或人身安全相關之案件，則轉請內政部依「性騷擾防治法」、「家庭暴力防治法」及「性侵害犯罪防治法」等相關規定辦理。其他與性別平等相關之案件，亦就其內容會請主管機關依相關法規依限處理，行政院性別平等處除持續追蹤各主管機關對申訴案件之處理情形，亦就各機關回覆內容檢視是否妥當。未來將再就目前我國相關申訴機制是否足夠完善進行檢討，並再加強宣傳大眾週知有此申訴機制。

二、此外，我國性別平等教育法與性別工作平等法亦有相關申訴機制如下：

(一)性別平等教育法：學校違反該法規定時，被害人或其法定代理人得向學校所屬主管機關（教育部或縣市教育局）申請調查。學校或主管機關接獲申請或檢舉後，應於三日內交由所設之性別平等教育委員會調查處理，並得成立調查小組調查之。性別平等教育委員會調查完成後，應將調查報告及處理建議，以書面向其所屬學校或主管機關提出報告。學校或主管機關應於接獲前項調查報告後二個月內，自行或移送相關權責機關依本法或相關法律或法規規定議處，並將處理之結果，以書面載明事實及理由通知申請人、檢舉人及行為人。法院對於前項事實之認定，應審酌各級性別平等教育委員會之調查報告。

(二) 性別工作平等法：受僱者發現雇主違反第十四條至第二十條之規定時，得向地方主管機關（縣市勞工或社會處、局）申訴。其向中央主管機關提出者，中央主管機關應於收受申訴案件，或發現有上開違反情事之日起七日內，移送地方主管機關。地方主管機關應於接獲申訴後七日內展開調查，並得依職權對雙方當事人進行協調。受僱者或求職者發現雇主違反第七條至第十一條、第十三條、第二十一條或第三十六條規定時，向地方主管機關申訴後，雇主、受僱者或求職者對於地方主管機關所為之處分有異議時，得於十日內向中央主管機關性別工作平等會申請審議或逕行提起訴願。雇主、受僱者或求職者對於中央主管機關性別工作平等會所為之處分有異議時，得依訴願及行政訴訟程序，提起訴願及進行行政訴訟。法院及主管機關對差別待遇事實之認定，應審酌性別工作平等會所為之調查報告、評議或處分。

英文回應

1. Our country's gender equality complaint was set up in 2010. At present, the Executive Yuan's Department of Gender Equality is responsible for handling the complaint cases. A total of 164 complaint cases have been received as of the end of December 2012. The subjects of these cases include workplace discrimination, pregnancy discrimination, gender equality education, sexual harassment and other gender equality related topics. If a complaint is a workplace gender discrimination case, it is transferred to labor administration authorities to be handled in accordance with the Act of Gender Equality in Employment, Employment Services Act and other related regulations. If a case is related to gender equality education, then it is transferred to the Ministry of Education for handling in accordance with the Gender Equity Education Act and other related regulations. If a case is related to sexual harassment or personal safety, it is passed to the Ministry of the Interior to be handled in accordance with the Sexual Harassment Prevention Act, Domestic Violence Prevention Act, Sexual Assault Crime Prevention

Act and other related regulations. For other cases related to gender equality and this subject, the competant authorities handle the cases in accordance with relevant laws and regulations within a given period. The Executive Yuan's Department of Gender Equality continually follows up on the status of complaint cases handled by competent authorities and examines if the response from the authorities is appropriate. In the future, reviews will be held to determine whether our country's current complaint mechanism is comprehensive enough and pollicisation will be strengthened so that the public knows that this complaint mechanism exists.

2. In addition, Gender Equity Education Act and Act of Gender Equality in Employment also stipulate the gender equality complaint mechanism as the followings:

(1) Gender Equity Education Act: When the school violates regulations in this Act, the victim or his or her guardian may apply for an investigation to the competent authority supervising the school. After receiving an application or offense report, the school or competent authority shall turn over the case to its Gender Equity Education Committee within three days and may form an investigation team for investigation and handling. After the investigation is complete, the Gender Equity Education Committee shall submit a written report to its school or competent authority regarding the investigation and suggestions for handling. After receiving the aforesaid investigation report, the school or competent authority shall put forth a disposition or turn it over to the pertinent authority for a decision within two months according to this Act or pertinent laws or regulations. The school or competent authority shall notify in writing the applicant, offense-reporter and offender of its handling conclusion, facts established and grounds. The court shall consult the investigation reports provided by the Gender Equity Education Committee at different levels in establishing facts.

(2) Act of Gender Equality in Employment: When employees find out that employer contravene the stipulations of Articles 14 to 20 of the Act, they may file complaints to the local competent authorities. When they file complaints to the Central Competent Authority, the Authority shall refer the complaints to the local competent authorities after it receives the complaint or within seven days after the date it has found out the above-mentioned contraventions. Within seven days after the local competent authorities have received the complaints, they shall proceed to investigate and may mediate the matters for the both parties in accordance with their competences and authorities. The measures for handling the complaints referred to in the preceding paragraph shall be prescribed by the local competent authorities. After employees or applicants find out that employers contravene the stipulations of Articles 7 to 11, Article 13, Article 21, or Article 36 of the Act and file

complaints the matter to the local competent authorities, if the employers, employees or applicants are not satisfied with the decisions made by the local competent authorities, they may apply to the Committee on Gender Equality in Employment of the Central Competent Authority for review or file an administrative complaint directly within ten days. If the employers, employees or applicants are not satisfied with the decisions made by the Committee on Gender Equality in Employment of the Central Competent Authority, they may file administrative complaints and proceed administrative lawsuits pursuant to the procedures of the Administrative Appeals Act and the Administrative Lawsuits Act. When courts or competent authorities determines the facts of discriminatory treatments, they shall examine the investigation reports, rulings and decisions rendered by the committees on gender equality in employment.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 3 條	10.	How do you explain a very large percent of recent complaints about employment discrimination is based on “gender”? (See Table 9, Initial Report)	貴國如何解釋近年來有高比率的『性別』就業歧視之申訴？（參見初次報告表 9）

中文回應

一、工作「平等」，係為國際勞動組織所彰顯勞動者基本人權；不論在已開發國家或開發中國家，各態樣就業歧視之禁止，其重要性已逐漸凌駕一般傳統勞資爭議問題，尤其在全球化步伐益形加速後，所謂「公益勞動法」所規範之勞僱關係，亦多由國家公權力直接介入，而以制定法來規範雇主與受僱者在職場上之各類關係，其中尤以就業歧視法制之建構最受重視，例如本國之就業服務法第 5 條第 1 項就業歧視禁止規定（條文為：保障國民就業機會平等，雇主對求職人或所僱用員工，不得以種族、階級、語言、思想、宗教、黨派、籍貫、出生地、性別、性傾向、年齡、婚姻、容貌、五官、身心障礙或以往工會會員身分為由，予以歧視。）。

二、就業服務法第 5 條第 1 項 96 年 5 月 23 日修法施行後，各公務機關、公民營事業機構、民間團體社團等招募人才及僱用均須依本法條規定辦理，對民眾之就業權益保障大幅提昇，於法令及相關評議機制逐漸完備情形下，數年來本會(局)及地方政府皆加強辦

理業務宣導，民眾多已了解相關法令，故有關檢舉申訴案件量亦有逐年升高趨勢，其中又以性別歧視申訴案量較高。

英文回應

1. Equality in employment is a fundamental human right for workers as the International Labor Organization has emphasized. In both developed and developing countries, all forms of discrimination in employment are prohibited and the significance of this prohibition has gradually transcended that of conventional labor-management dispute issues. In particular, after the speed of globalization was accelerated, state power has begun to intervene in employee-employer relations that are regulated in so-called “public-interest labor laws” and laws are enacted to regulate various relations between employers and employees. Among them, the establishment of laws against discrimination in employment is the most valued, such as the regulation forbidding discrimination in employment set forth in Paragraph 1, Article 5 of the Employment Services Act in Taiwan (the article states: For the purpose of ensuring equal opportunity in employment for the people, employers are prohibited from discriminating against any job applicant or employee on the basis of race, class, language, thought, religion, political party, place of origin, place of birth, gender, gender orientation, age, marital status, appearance, facial features, disability, or past membership in any labor union.)
2. After the amendment to Paragraph 1 of Article 5 of the Employment Services Act went into effect on May 23, 2007, all recruitment and employment conducted by all government agencies, public and private enterprises and institutions, and private organizations and groups must comply with the regulation set forth in this paragraph and the protection of people’s rights and interests in employment has been greatly improved. As the laws and regulations and related assessment mechanisms have gradually become complete, the CLA and its subsidiaries and local governments have stepped up the promotion work in the past years and most people are now aware of and understand the related regulations. Therefore, the number of complaints filed has gone up year after year, especially those concerning gender discrimination.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 3 條	11.	In civil matters, gender equality in law seems to have been gradually promoted about such issues as the choice of domicile, children's surname and marital property. Is this true with transmission of parent's nationality to children? And, how about in fact as compared with "in law"?	在民事事件，在法律層面似乎已逐漸促成例如住所選擇，子女姓氏與婚姻財產等事項上的性別平等。在子女取得父母親的國籍方面是否也是如此？以及若與「法律」相比，事實情況又是如何？

中文回應

我國對於子女取得父母親的國籍事項上是性別平等的，依 2000 年 2 月 9 日修正之國籍法第 2 條規定，有下列各款情形之一者，屬中華民國國籍：(1)出生時父或母為中華民國國民。(2)出生於父或母死亡後，其父或母死亡時為中華民國國民。(3)出生於中華民國領域內，父母均無可考，或均無國籍者。因此，我國固有國籍之取得係採父母雙系血統主義為主，出生地主義為輔，即當事人之父或母一方具有我國國籍，子女即具有我國國籍。法令規定與真實情況是相符的。

英文回應

Regards the transmission of the parents' nationality to children, according to article 2 of Nationality Act that revised and promulgated on February 9, 2000, A person shall have the nationality of the Republic of China (R.O.C.)under any of the conditions provided by the following subparagraphs:(1)His/Her father or mother was a national of the R.O.C. when he/she was born.(2)He/She was born after the death of his/her father or mother, and his/her father or mother was a national of the R.O.C. at the time of death.(3)He/She was born in the territory of the R.O.C., and his/her parents can't be ascertained or both were stateless persons. Therefore, the acquisition of our inherent nationality mining the parents lineage 'main, supplemented by jus soli. That means the child can obtain our nationality, if one of his/ her father / mother is a national of Republic of China. The real situations are consistent with the law.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 3 條	12.	The report under article 3 uses both expressions gender equality and gender equity. The title of the act on education reads Gender Equity Education Act. Please explain why both expressions are used. Is there any difference between gender equality and gender equity or are these terms used interchangeably	報告第三條的部分同時使用性別平等(gender equality)與性別公平(gender equity)。教育方面的法案名稱定為性別公平教育法。請說明為何這兩個語詞都被使用。性別平等(gender equality)與性別公平(gender equity)是否有所不同或者這些語詞只是被交替使用。

中文回應

一、雖然報告第三條的部分同時使用性別平等（gender equality）與性別公平（gender equity），但這兩個用語僅是翻譯問題所致，所指意涵為性別平等（gender equality）。

二、我國為落實《消除對婦女一切形式歧視公約》(CEDAW)保障婦女各面向之權利，於 2012 年 1 月 1 日起施行〈消除對婦女一切形式歧視公約施行法〉。其中第 4 條規定「各級政府機關行使職權，應符合公約有關性別人權保障之規定，消除性別歧視，並積極促進性別平等之實現。」此處我國所欲實現之性別平等為「實質平等」（substantive equality），係正視不同性別的差異以解決結構上的不平等（structural inequality）問題，而非僅止於「形式平等/公平」(formal equality/ equity)。目前我國正持續檢視法規/行政措施是否符合 CEDAW 規定，其檢視流程中不僅要求各級行政機關須檢視法規本身是否符合 CEDAW 規定，更要求其須提供相關之性別統計，以瞭解法規實施結果是否符合性別實質平等，或有落差須改進之處。在這樣的檢視過程中，除使各級政府機關公務人員學習及理解性別實質平等之意義外，更可瞭解我國目前性別平等現況，以作為各級政府機關日後施政之參考。

英文回應

1. Though the report under article 3 uses both expressions gender equality and gender equity, there are no differences in meaning but are different translations. “Gender Equality” is proper translation.

2. In order to implement the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to guarantee the various rights of women, our country began implementation of the Enforcement Act of Convention on the Elimination of All Forms of Discrimination against Women on January 1, 2012. Article 4 of this Act states “Upon exercising its authority, all government units shall do so in accordance with all rules and regulations regarding protection to genders and human rights specified in the Convention, eliminate gender discrimination, and actively promote the realization of gender equality.” The gender equality that our country wishes to realize is substantive equality by addressing different gender’s differences to solve structural inequality problems so this work does not just stop at formal equality/ equity. Our country conducts examinations to determine if regulations / administrative measures conform to the provisions of CEDAW. The examination process not only requires that administrative agencies at all levels examine laws themselves to determine if they conform to CEDAW regulations, but also requires that they submit related gender statistics to learn if the implementation results of the laws and regulations meet gender substantive equality requirements or if there are non-conforming areas that require improvement. During this kind of examination process, it is not just meaningful in that public servants at government agencies are able to study and learn about substantive equality, but our country's current gender equality conditions may be referenced during future implementation by government agencies.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 2 條 第 1 款 及第 26	13.	**Persons with Disabilities;** A NGO report (The League of Welfare Organizations for the Disabled) indicates that disabled persons are often abused by discriminatory languages or frequently protested	**身心障礙者；** 一份非政府組織的報告（中華民國殘障聯盟）指出身心障礙者常常被歧視性的語言所欺凌或經常被當地社區所抗議。政府對此種情形有無採取特定措施加以處理？與

條		by local communities. What specific measures are the government taking against this? In this connection, please explain the cases mentioned in Paragraph 22. In addition, how are Hansen Disease patients dealt with in ROC?	此相關的是，請說明第 22 段所提到的案例。此外，漢生病患在中華民國是被如何處理對待？

中文回應

一、臺灣於 1930 年設立樂生療養院收置痲瘋病患，提供漢生病患急、慢性醫療照護。1962 年之前對於漢生病患之治療，長期採取不人道的集中強制隔離治療政策，使漢生病患飽受歧視及痛苦。行政院院長於 2009 年公開道歉，期望能給予關懷，並全力做好醫療照護工作。隨著臺灣公共衛生進步，投入對漢生病醫療訓練與疾病監測，有效提升臺灣在漢生病治療與疾病管制。2005 年樂生療養院新醫療大樓落成，提供漢生病患更好的醫療照護，現有漢生病患 141 位居住於院區，院方不僅負責漢生病患照護、醫療與復健，更進行全國受難者監視。

二、查現行身心障礙者權益保障法第 82 條已有明定，直轄市、縣市主管機關、相關身心障礙福利機構，於社區中提供身心障礙者居住安排服務，遭受居民以任何形式反對者，直轄市、縣市政府應協助其排除障礙。

英文回應

1. Lo-Sheng Sanatorium, built in 1930, is the only government-run leprosy institution which provides acute and long-term care exclusively for Hansen disease patients. Before 1962, the inhumane centralized compulsory quarantine treatment policies were adopted over a long term to treat people with Hansen's disease, resulting in extreme discrimination against and pain suffered by the patients. The Executive Yuan apologized publicly in 2009 and expressed its desire to offer better medical care.
2. Article 82 from “Law of Protection for the rights and interests of the people with disabilities” stipulated that if the municipal and county (city) competent authorities, related welfare care facilities／institutions for people with disabilities, encounter opposition from the dwellers in any pattern whatever when provide residence arrangement service for people with disabilities in a community, the competent municipal and county(city) governments shall provide assistance to expel the opposition.

條文	編號	問題內容(原文)	中文參考翻譯
公政第 2 條第 1 款及第 26 條	14.	**Foreign Workers and their Families;** ROC has been inviting many foreign workers to cope with the shortage of its labor force, and Paragraph 53 and Table 11 show that large numbers of them switch their employers rather often CCPR List of Issue 3 and the government has set up a fund to take care of marital immigrants and their families (Paragraphs 50 to 56). In this connection, while Paragraph 27 states that one discrimination case each in 2009, 2010 and 2011 was handled by a Review Panel of the National Immigration Agency, the number looks too small. Therefore, more information is required with regard to their actual situation and the related problems, including long working hours.	**外籍勞工及其家庭成員；** 中華民國已引進許多外籍勞工來處理短缺的勞力，第 53 段及表 11 顯示大量外籍勞工時常轉換僱主以及政府已設立基金來處理外籍配偶及其家庭（第 50 到 56 段）。與此相關的是，雖然第 27 段提到在 2009 年、2010 年、2011 年各有 1 個案件被入出國及移民署的審議小組加以審議，但這數據太少。因此，委員會需要貴國提供與實際情況和包括長時間工作在內的相關問題的更多資訊。

中文回應

一、我國採補充性原則引進外籍勞工，適度補充國內所缺勞動力，外籍勞工在臺累計工作期間不得超過 12 年，且為保障其工作權益及聘僱之安定性，規定外籍勞工倘有不可歸責之事由（含雇主或被看護者死亡或移民，船舶被扣押、沈沒或修繕而無法繼續作業，雇主關廠、歇業或不依勞動契約給付工作報酬經終止勞動契約，或其他不可歸責事由），經勞委會許可者，得轉換雇主，例如申請外籍家庭看護工之被看護者如因病況好轉已不需聘僱外籍看護工照顧、或被看護者死亡（每年約有 1 萬多人），與外籍家庭看護工終止聘僱關係，為保障外籍勞工在臺工作權益，依規定辦理轉換雇主，轉換成功率約達 90%以上。

二、依國家人權報告第 27 段論述，係關於內政部入出國及移民署係對臺灣地區之人民受歧視申訴案件之審議，與外籍勞工無涉。
三、我國政策目前並未開放大陸地區人民來臺工作，並無相關資訊或數據可資提供。

英文回應

1. In Taiwan, the supplementarity principle is adopted to bring in only enough foreign workers to meet the needs in areas where the domestic labor force is inadequate. The accumulated time of work in Taiwan for each foreign worker may not exceed twelve years. To protect the rights and interests and job security of foreign workers, it is regulated that foreign workers who become unemployed before the contract expires for causes not attributable to them (such as the employer or the care receiver has deceased or emigrated; the boat they work on was seized, sank or is being repaired, and they cannot continue to work; the factory where they work has shut down or suspended operation; the employer has not paid their wages as stipulated in the contract and the contract has been terminated, or other causes not attributed to the workers), with the approval of the Council of Labor Affairs, may change employers. For example, when a foreign worker hired as a domestic caregiver and the care receiver has recovered or deceased (more than 10,000 people each year) and the employment contract is terminated because the caregiver is no longer needed, the foreign worker may apply for change of employers according to related regulations so that the rights and interests of the worker can be protected. The success rate of change of workers has been over 90%.
2. The 27th paragraph in the National Report on Human Rights is about the review by the National Immigration Agency of complaints filed by Taiwanese citizens. It does not concern workers.
3. Current policies of the ROC do not allow people from the Mainland Area to work in Taiwan; therefore no relevant information or data can be provided.

條文	編號	問題內容(原文)	中文參考翻譯
公政	15.	Paragraph 73 states that Constitutional emergency	在第 73 段提到憲法緊急狀況機制包括戒嚴法與緊急命

第 4 條	(1)	mechanisms include the Martial Law and emergency decrees. Please explain how to guarantee the non-derogable rights.	令。請說明對於具有不可減免性質的公約權利有如何的保障。

中文回應

一、依據戒嚴法第11條：

(一)八、戒嚴地域內，對於建築物船舶及認為情形可疑之住宅，得施行檢查，但不得故意損害。

(二)一〇、因戒嚴上不得已時，得破壞人民之不動產。但應酌量補償之。

(三)一一、在戒嚴地域內，民間之食糧、物品及資源可供軍用者，得施行檢查 或調查登記，必要時並得禁止其運出，其必須徵收者，應給予相當價額。

二、按憲法增修條文第2條固有「總統為避免國家或人民遭遇緊急危難或應付財政經濟上重大變故，得經行政院會議之決議發布緊急命令，為必要之處置」之規定，惟我國既已簽署兩人權公約，兩人權公約依照其施行法第2條規定，具有國內法律之效力，則我國自應遵守公民與政治權利國際公約第4條規定，即減免履行依本公約所負之義務，不得牴觸其依國際法所負之其他義務，亦不得引起純粹以種族、膚色、性別、語言、宗教或社會階級為根據之歧視；而對於該公約第六條、第七條、第八條（第一項及第二項）、第十一條、第十五條、第十六條及第十八條之規定，不得依第四條規定減免履行。

英文回應

1. According to 《Martial Law》Article 11

(1) paragraph VIII, “In area of martial, force investigation is allowed in suspicious house, boat, building; But intentional damage is not allowed.”

(2) Paragraph X, “For imminent reason, damage building of people is allowed; but damages shall be returned opportunely.”

(3) Paragraph XI, “In area of martial, people’s food, source, goods are able to supply to military, investigation and enrollment are allowed, transportation is able to ban in necessary, when food, source, goods need to be levy, damages shall be returned opportunely.”

2. Article 2 of the Additional Articles of the Constitution of the Republic of China stipulates: “To avert imminent danger affecting the security of the State or of the people or to cope with any serious financial or economic crisis, the President may, upon resolution of the Executive Yuan Council, issue emergency decrees and take all necessary measures…” Since the R.O.C has signed and ratified the two Covenants and Article 2 of the Implementation Act stipulates: “Human rights protection provisions in the two Covenants have domestic legal status”, the R.O.C shall abide by Article 4 of the ICCPR: “…the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin” and “No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision”.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 6 條	15. (2)	In para 94, the State Report affirms that the „death penalty is brutal from the perspectives of humanity and the Covenant“. Nevertheless, policies on how to abolish the death penalty “are yet to take shape”. Which efforts have been undertaken by the current Government of Taiwan to abolish the death penalty and to reduce the number of death sentences and to at least introduce a moratorium in accordance with various UNGA resolutions? Why were the meetings of the Research and Implementation Group on Gradual Abolishment of Death Penalty unsuccessful?	在第 94 段，國家報告確認從人道及公約的角度來說，死刑就是一種酷刑。但如何廢除死刑的政策「仍待形成」。目前台灣政府已做了哪些努力以廢除死刑及減少死刑判決數量及至少依據諸多的聯合國大會決議而暫時停止執行死刑？為何逐步廢除死刑研究推動小組的會議多次流會？

中文回應

一、臺灣就廢除死刑及減少死刑判決已採取之作為如下：

(一)修正相關實體法，以減少死刑判決之產生。目前我國已經無絕對死刑，即所謂唯一死刑之罪。

(二)限縮受死刑判決之主體，對未滿 18 歲之人及滿 80 歲之人犯罪，均不得處死刑或無期徒刑。

(三)就目前實體法上相對死刑之罪進行檢討，如非情節重大之犯罪，即修正刪除死刑之規定。

(四)提高無期徒刑假釋門檻上限及數罪併罰有期徒刑上限，使法官於裁判時，能因應具體個案之情節考量是否宣告無期徒刑以替代死刑之宣告。

(五)研議修法以確保死刑判決程序之正確性。包含：死刑判決確定案件須經最高法院五名法官全部同意一致決、死刑判決全辯護、以法律規定停止執行死刑事由。

(六)檢察官慎重求處死刑。

(七)廣納各界意見、凝聚共識。

(八)強化被害人保護。

(九)推動修復式正義。

(一〇) 加強犯罪偵辦、提升破案率，以嚇阻犯罪、強化治安。

(一一) 加強人權理念宣導，使人權教育扎根。

二、建立判決死刑之嚴格標準，以及應遵守之正當法律程序

(一)最高法院近期判決亦依公政公約第 6 條保障生命權之意旨，審認宣告死刑判決之罪行，是否為「最嚴重之罪行」，並要求判決死刑之案件，程序上須經獨立之量刑辯論。最高法院本身針對原審量處死刑判決之審查，自 2012 年 12 月以來，已有 3 件死刑案件進行量刑辯論。

(二)依司法院統計處提供之統計資料，自 2006 年至 2012 年，經最高法院判決死刑確定之人數，占最高法定刑為死刑之犯罪有罪總人數（以下稱有罪總人數）之比率，除 2006 年 1.48%（有罪總人數 744 人，死刑確定人數 11 人）、2009 年 1.37%（有罪總人數 946 人，死刑確定人數 13 人）及 2011 年 1.33%（有罪總人數 1,203 人，死刑確定人數 16 人）外，自 2007

年起，均在0.68%以下，足徵近年來法院宣告死刑之態度，極其嚴謹，益趨審慎。

(三)司法院已完成修正刑事訴訟法第388條草案，於第三審程序亦適用強制辯護程序，並修正同法第29條，限定辯護人應選任律師充之。另修正刑事訴訟法第289條規定，明定審判期日於調查證據、事實及法律辯論完畢後，應就科刑範圍進行辯論。

(四)未來司法院擬朝向慎刑之角度，進一步從死刑判決之程序保障的方向努力，將死刑判決限於必要範圍，避免誤判，研議就死刑判決之事實認定，改採一致決之可行性。

三、死刑犯之救濟程序及法源如下：

(一) 再審：刑事訴訟法第420規定：「有罪之判決確定後，有左列情形之一者，為受判決人之利益，得聲請再審：一、原判決所憑之證物已證明其為偽造或變造者。二、原判決所憑之證言、鑑定或通譯已證明其為虛偽者。三、受有罪判決之人，已證明其係被誣告者。四、原判決所憑之通常法院或特別法院之裁判已經確定裁判變更者。五、參與原判決或前審判決或判決前所行調查之法官，或參與偵查或起訴之檢察官，因該案件犯職務上之罪已經證明者，或因該案件違法失職已受懲戒處分，足以影響原判決者。六、因發現確實之新證據，足認受有罪判決之人應受無罪、免訴、免刑或輕於原判決所認罪名之判決者（第1項）。前項第一款至第三款及第五款情形之證明，以經判決確定，或其刑事訴訟不能開始或續行非因證據不足者為限，得聲請再審（第2項）。」

(二) 非常上訴：刑事訴訟法第441條規定：「判決確定後，發見該案件之審判係違背法令者，最高法院檢察署檢察總長得向最高法院提起非常上訴。」

(三) 聲請釋憲：司法院大法官審理案件法第5條規定：「有左列情形之一者，得聲請解釋憲法：一、中央或地方機關，於其行使職權，適用憲法發生疑義，或因行使職權與其他機關之職權，發生適用憲法之爭議，或適用法律與命令發生有牴觸憲法之疑義者。二、人民、法人或政黨於其憲法上所保障之權利，遭受不法侵害，經依法定程序提起訴訟，對於確定終局裁判所適用之法律或命令發生有牴觸憲法之疑義者。三、依立法委員現有總額三分之一以上之聲請，就其行使職權，適用憲法發生疑義，或適用法律發生有牴觸憲法之疑義者（第1項）。最高法院或行政法院就其受理之案件，對所適用之法律或命令，確信有牴觸憲法之疑義時，得以裁定停止訴訟程序，聲請大法官解釋（第2項）。聲請解釋憲法不合前二項規定者，應不受理（第3項）。」

(四)請求赦免

四、死刑判決之審核與停止執行：

(一)依刑事訴訟法第465條規定，「受死刑之諭知者，如在心神喪失中，由司法行政最高機關命令停止執行（第1項）。受死刑諭知之

婦女懷胎者，於其生產前，由司法行政最高機關命令停止執行（第 2 項）。依前二項規定停止執行者，於其痊癒或生產後，非有司法行政最高機關命令，不得執行（第 3 項）。」

(二)法務部為妥慎審核死刑案件之執行，以保障人權，訂有「審核死刑案件執行實施要點」。依該要點第 2 點規定，最高法院檢察署於收受最高法院發送之死刑案件時，應確認檢察官、被告及其辯護人已收受判決書，並審核確認無再審、非常上訴之理由及赦免法、刑事訴訟法第 465 條之事由後，陳報法務部。若死刑案件遇有聲請再審、提起非常上訴、聲請司法院大法官解釋，其程序仍在進行中者，最高法院檢察署不得將死刑案陳報法務部。雖然已聲請再審、非常上訴或聲請司法院大法官解釋而遭受無理由或不受理而被駁回，只要非以同一理由或原因聲請再審、非常上訴或司法院大法官解釋，在程序終結前仍不得執行死刑。法務部於收受最高法院檢察署陳報之死刑案件時，依該要點第 3 點規定，仍應審核有無第 2 點之情形。綜上，法務部對於死刑案件之審核相當嚴謹務實，若受刑人有相關救濟程序仍在進行中，均依上開要點規定暫時停止執行。

五、就是否暫時停止死刑部分：

(一)死刑存廢政策與應否執行死刑係不同層面之議題，應分開討論。就死刑應否廢除，可以透過理性討論、召開研討會、公開辯論，使不同立場者透過持續對話而尋求最大之共識。惟就已經定讞之死刑判決，除有法律規定停止執行之事由外，依刑事訴訟法之規定，檢察官須依法執行。在未廢除死刑前，法務部沒有理由不依法執行死刑定讞之判決。

(二)我國係法治國家，依法行政為法治國家基本原則，也是法務部一貫之立場及基本施政原則。依刑事訴訟法之規定，法官依法審判刑事案件，而確定判決之執行則係檢察官之權責。依法執行死刑定讞判決，不僅是對於法官判決之尊重，亦是法務部的職責，更是維護司法公信力所必要。是以，就法院判決死刑定讞之案件，除有法律規定停止執行之事由外，仍須依法執行之。

六、逐步廢除死刑研究推動小組會議多次流會之原因：該小組採委員制，須有過半數委員（即 14 位）方能開會。小組成立之初，幕僚單位即就會議之時間進行調查，選定最多數委員能出席之時間，並預先將一年度開會之時間通知委員，即希望委員能撥冗出席會議。惟若出席委員無法達半數以上，會議即無法召開。

英文回應

1. Taiwan has taken the following measures to abrogate and reduce death penalty:

(1) Revise the related substantive laws to reduce death convictions. At present, Taiwan has no absolute death penalty for a crime, i.e., no crime is punished solely by death.
(2) Restrict the number of criminals subjected to death penaltys. No criminals under the age of 18 or over the age of 80 can be sentenced to death or life imprisonment.
(3) Currently death penalty in the substantive law is under review. Unless the crime committed is extremely heinous, the provision for death penalty is deleted.
(4) Raise the parole threshold for life imprisonment and the combined punishment for multiple offenses to allow the judge to consider a specific case and decide whether he or she can substitute life imprisonment for death penalty.
(5) Study to amend the law to ensure the procedural correctness of a death penalty. This includes provisions that a definitive death sentence must be approved unanimously by five judges of the Supreme Court, that a death sentence is subjected to full defense, and that the justification for stopping death execution is provided for in the law.
(6) Obligate the prosecutor to be extremely scrupulous before requesting a death sentence.
(7) Canvas as many opinions as possible to forge a consensus.
(8) Strengthen the protection for victims.
(9) Promote amended justice.
(10) Intensify crime investigation and increase the crime solution rate to deter the offenses and improve peace and order.
(11) Entrench the concept of human rights through energetic advocacy.

2. Set strict criteria and efforts to establish due procedure for sentencing death penalty.

(1) The Supreme Court now follows criteria set by Article 6 of the ICCPR, recognizing that sentence of death may be imposed only for the most serious crimes. The sentencing hearing for crimes punishable by death penalty shall be held separately from the hearing deciding the guilt of the defendant. For the Supreme Court to determine whether to uphold the verdict sentencing death penalty, it has heard oral argument in 3 cases as of December 2012.
(2) According to statistics provided by Statistics Division of Judicial Yuan, the percentage for the number of inmates with confirmed death

penalty verdicts in all inmates convicted of offenses punishable by death penalty is below 0.68％ since 2007, with a few exceptions: 1.37% in 2009(the number of inmates with confirmed death penalty verdicts is 13 , while the number for all inmates convicted of offenses punishable by death penalty is 946), 1.33％ in 2011(the number of inmates with confirmed death penalty verdicts is 16 , while the number for all inmates convicted of offenses punishable by death penalty is 1203).As of year 2006, the percentage is 1.48%(the number of inmates with confirmed death penalty verdicts is 11 , while the number for all inmates convicted of offenses punishable by death penalty is 744).The statistics data shows that the criteria for sentencing death penalty is strict and cautious.

(3) Judicial Yuan has completed the amendment draft of Article 388 and Article 29 of Code of Criminal Procedure. Under the proposed new scheme, mandatory defense is now applied to the third instance, and the Supreme Court is required to appoint a public defender or an attorney to defend for the defendant if no defense attorney has been retained. According to Article 289 of the same draft, oral argument for sentencing shall be conducted after the evidence check and trail of fact and law are completed in all trial cases.

(4) It is on the Judicial Yuan agenda to further enhance the due process for sentencing death penalty, and to ensure that only the most serious crimes may be sentenced death sentence.

3. The remedial procedures and legal rules of the death row inmates：

(1) Retrial：Article 420 of the Code of Criminal Procedure：

A. After a guilty judgment has become final, a motion for retrial may be filed for interests of the convicted under the following circumstances:

1. Where exhibits on which the original judgment is based have been proven fabricated, or altered;
2. Where material testimony, expert opinion, or interpretation on which the original judgment is based has been proven false;
3. Where the convicted has been proven maliciously accused.
4. Where judgment by a common court or special court on which the original judgment is based on has been changed in a final judgment;
5. If a judge participating in the original judgment, judgment before the trial or investigations before the judgment, or prosecutor participating in the investigation or the prosecution commits offenses in his/her post out of the case and the offenses have been proved;

or he/she neglect the duties out of the case and has been “administrative punished” but the behaviors are sufficient to affect the original judgment.

6. Where the discovery of new evidence is sufficient to show that the convicted shall be acquitted, exempt from prosecution, remitted the punishment, or sentenced an offense less serious than the one in the original judgement.

B. Under the manifestation of situations of the preceding Paragraph, sub- paragraph 1 to 3 and 5, after the judgement is final, a motion for retrial can be filed if insufficient evidence is not the reason for not able to begin the criminal procedure or continue the trial.

(2) Extraordinary appeal：Article 441 of the Code of Criminal Procedure：After a judgment is final, if the trial of a case is found to be in contravention of laws, Prosecutor General of the Supreme Prosecutors Office may file an extraordinary appeal to the Supreme Court.

(3) Petition for the Interpretation of Constitution：Article 5 of the Constitutional Interpretation Procedure Act：

A. The grounds on which the petitions for interpretation of the Constitution may be made are as follows :

1. When a government agency, in carrying out its function and duty, has doubt about the meanings of a constitutional provision; or, when a government agency disputes with other agencies in the application of a constitutional provision; or, when a government agency has questions on the constitutionality of a statute or regulation at issue.
2. When an individual, a legal entity, or a political party, whose constitutional right was infringed upon and remedies provided by law for such infringement had been exhausted, has questions on the constitutionality of the statute or regulation relied thereupon by the court of last resort in its final judgment; or
3. When one-third of the Legislators or more have doubt about the meanings of a constitutional provision governing their functions and duties, or question on the constitutionality of a statute at issue, and have therefor initiated a petition.

B. When the Supreme Court or the Supreme Administrative Court opines in good conscience that the statute or regulation at issue before court is in conflict with the Constitution, the court may adjourn the proceedings sua sponte and petition the Justices to interpret the Constitution.

C. Petitions that do not meet the aforementioned requirements shall be dismissed accordingly.

(4) According to the Amnesty Act, the death row inmates have the right to apply for pardon or commutation of sentence.

4. The reviewing and moratorium of the execution of death sentences

(1) Article 465 of the Code of Criminal Procedure：The highest judicial authority may order to suspend the execution if it is found the one whom death penalty is pronounced is insane. The highest judicial authority may order to suspend the execution of a sentence of capital punishment on a pregnant woman before she delivers. Unless ordered by the highest judicial authority, suspension on capital punishment pursuant to the preceding 2 paragraphs may not be resumed after the subject recovers or delivers.

(2) The MOJ created the Guidelines for Reviewing the Execution of Death Sentences, so that the strictest standards are followed in death penalty cases and human rights are protected. In accordance with Article 2 of the Guidelines, when the Supreme Prosecutor's Office receives a death penalty case from the Supreme Court, it shall confirm that prosecutors, defendants and criminal defense lawyers have received the court's verdict. It shall then submit the verdict to the MOJ after it has confirmed that there are no reasons for retrial or extraordinary appeal and that there are no relevant issues as stipulated in the Amnesty Act and Article 465 of the Code of Criminal Procedure. If defendants have applied for a retrial, have made an extraordinary appeal, or have applied for an interpretation by the Grand Justices of the Judicial Yuan, the Supreme Prosecutor's Office shall not submit the death penalty cases to the MOJ when these processes are still ongoing. Even if applications for retrial, extraordinary appeals or applications for an interpretation from the Grand Justices of the Judicial Yuan are rejected, the death sentence cannot be carried out if the defendant applies for retrial, makes an extraordinary appeal or applies for an interpretation from the Grand Justices of the Judicial Yuan based on a different reason.

(3) When the MOJ receives a death penalty case form the Supreme Prosecutor's Office, in accordance with Article 3 of the Guidelines it will still need to review whether or not there are any conditions stipulated in Article 2. The MOJ adopts a rigorous and pragmatic approach when reviewing death penalty cases. If legal procedures on behalf of the defendant are still ongoing, the MOJ shall suspend the implementation of the death penalty.

5. Whether Taiwan should suspend the execution of death penalty

(1) Abrogation of death penalty and suspension of death penalty execution are different subjects and, therefore, should be discussed separately. Abrogation of death penalty may be discussed rationally in forums and subject to public debates to reach maximum consensus through dialogs. As for a definitive death sentence, it has to be implemented by the prosecutor according to the Code of Criminal Procedure unless it

is otherwise provided for in the law. Before death penalty is abrogated, the Ministry of Justice (MOJ) has no reason to violate the law by not implementing definitive death sentences.

(2) Our country is ruled by law, and acting in accordance with the law is the basic principle of government in a country ruled by law. This is also the consistent principle of MOJ administration. According to the Code of Criminal Procedure, a judge shall mete out a sentence according to the law while the implementation of the sentence is the responsibility of the prosecutor. Consequently, to implement a definitive death sentence in accordance with the law is not only a respect to the judge but also the fulfillment of duty by a prosecutor. This is to say that unless the law gives the reasons for suspending the implementation of a definitive death sentences, death sentences should be implemented in accordance with the law.

6. The cause for the repeated abortion of the meeting of the death penalty abrogation group：The group takes the form of a committee and can meet on if more than half of the members (14 persons) are to be present. When the group came into being, the support unit surveyed is members on the time of a meeting and selected a time when the maximum number of member would be able to attend and notified in advance the members of the meeting dates in a year in the hope that they would be able to attend. If fewer than half of the members agreed to be present, the meeting could not be held.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 6 條	16.	According to para 83, the family is not informed before the convict on death row is executed. What are the reasons for this practice?	依據第 83 段，執行死刑前並未通知家屬。這個作法的理由何在？

中文回應

死刑犯在判決確定後，並非立即無預警地執行，而其等待執行前，不論管理、教化、衛生醫療之提供及通信接見等權利與其他受刑人相同，並考量死刑犯於等待執行期間之心理因素，規劃心理輔導課程；在此段期間內，家屬均得辦理接見死刑犯，並未使死刑犯在判

決確定後，執行死刑前，被剝奪與家屬見面之機會。至實際執行死刑程序前，依「審核死刑案件執行實施要點」需審核受刑人確無聲請大法官解釋、再審、非常上訴，或無赦免法、刑事訴訟法第 465 條所規定心神喪失、婦女懷胎之事由，待批示後應即依法執行死刑，由決定執行死刑至執行時程，時間甚短，僅能告知死刑犯，或有因家屬久未聯繫難以通知家屬，或因避免執行死刑而引起其他洩密抗爭等爭議，故於真正執行死刑前，不應先通知家屬。

英文回應

When the final verdict of a death penalty is handed down, it is not enforced immediately. Before it is enforced, the inmate on the death row is treated like all other inmates in term of guard, education, medical care as well as their rights to visits by family and friends. Besides, we offer him or her psychological lessons in consideration of his or her psychological conditions during the waiting period. In that period we have never deprived them of their opportunity for visits by their family. As for the enforcement procedure for death penalty, we have established the Key Points for Enforcing Death Penalty, which provides that we must make sure whether said inmate has applied for interpretation by Grand Justices, retrial, extraordinary appeal, and whether he or she has lunacy or pregnancy in case of a female inmate, but when the decision of execution is approved, it must be carried out immediately. As the time between approval and execution is very short, we can only inform the inmate about the decision. We should not inform their family either because of the disruption of contact for a long time or because of the need to avoid controversies a leak of information may cause.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 6 條	17.	In para 85, the State Report refers to the method of execution of organ donors. Are organ donations by death row prisoners legal in Taiwan? What are the incentives for death row prisoners to donate organs? Can you provide	在第 85 段，國家報告提到器官捐贈受刑人的執行死刑方式。在台灣死刑犯的器官捐贈是合法的嗎？死刑犯願意捐贈器官的誘因是什麼？貴國能否提供關於在執行死刑之前已捐贈器官的死刑犯的統計數據？

		statistics about the number of death row prisoners having donated organs before their execution?	

中文回應

一、器官捐贈是國民的權利，死刑犯捐贈器官，原則上比照一般人民，仍受有關如「人體器官移植條例」、「人體器官移植條例施行細則」、「活體肝臟捐贈移植許可辦法」及「捐贈屍體器官移植喪葬費補助標準」等法令所規範。

二、我國對於矯正機關收容人器官捐贈事宜，係採不鼓勵、不主動勸募或宣導之立場。此外，受刑人如出於完整之自由意志且符合該條例規定，機關無從剝奪受刑人捐贈器官的權利。對於自發性表達有意願捐贈器官之死刑犯，矯正機關僅協助其完成申請、比對等前置作業。死刑犯捐贈器官多為心靈上之解脫，以滿足其贖罪之心態，並無實質獎勵，更無所詢提供誘因之情形，完全均係出於收容人意願。

三、經查我國目前於執行死刑前即捐贈器官之情形僅有 1 件，係因該名死刑犯之親屬（姊姊）腎功能失調，亟需移植腎臟，經該名死刑犯自發性表達捐贈腎臟之意願，且符合相關法令規定及血緣鑑定後，在尊重生命以及人道考量前提下，比照一般收容人活體器官捐贈的流程辦理。

四、我國並未主動向受刑人勸募器官或宣導器官捐贈意願之情形，但基於尊重受刑人之意願及人權，只要在確定沒有買賣器官、強迫捐贈等情事下，對於自發性表達願意捐贈器官回饋社會且符合器官捐贈條件者，均在恪守人權與倫理規範之下，協助完成其心願。人體器官移植條例第 5 條明定死亡判定之醫師，不得參與摘取、移植手術。又受刑人如欲捐贈器官回饋社會，需先依人體器官移植條例第 6 條之規定填具書面同意書，後依執行死刑規則第 5 條之規定受刑；受刑後，由法醫、檢察官依其專業進行死亡判定作業，經其判定死亡確定後，再移至醫院摘取器官，非由器官受贈醫院之醫師進行死亡判定。因為不區分捐助者的身分，所以沒有死刑犯捐贈器官的統計人數。

英文回應

1. Organ donation is a right that any citizen may exercise; however, in principle, organ donations from inmates on death row are limited by the related provisions of the Human Organ Transplantation Act, the Implementation Regulations of the Human Organ Transplantation Act, the

Regulations Governing Permission from a Living Donor for Liver Donation for Transplantation, and the Funeral Subsidy Standards of Organ Donation Transplant Donors.

2. The government, as a rule, neither encourages, voluntarily solicits, nor promotes organ donations from inmates of correctional facilities in the country. However, where an organ donation decision is made from the free will of a prison inmate and the surrounding circumstances meet the governing legal or regulatory requirements, the correctional facility administration will not deprive the inmate's right to donate organs. As for inmates in death row voluntarily expressing the intent to donate organs for transplantation, the correctional facility merely assists the inmate in filing and completing the preliminary procedures, such as comparative tests, etc. Majority of death-row inmates applying for organ donation make them to achieve some peace of mind and to satisfy a desire for atonement. No concrete rewards are granted to the donations; moreover, no attempts are made to urge or lure them into making donations. A donation application is born from the free will of an inmate.
3. To date, there was only one case of organ donation from a death-row inmate before execution of the death sentence in Taiwan. The older sister of the inmate suffered from a dysfunctional kidney and urgently needed kidney transplantation; on the other hand, the inmate voluntarily conveyed the intent to donate his kidney to his sister. After determining consistency of inmate's request with established laws and regulations and confirming kinship through the kinship test, in light of a respect for life and humanitarian considerations, request was evaluated and approved in accordance with the laws governing organ donations from prison inmate donors.
4. Our country do not initiate the death row prisoners to donate organs. But to respect their wishes and human rights of the death row prisoners, when they are without trading organs and being forced. If they donate organs voluntarily to express to contribute to the community and in accordance with the conditions of organ donation in the meantime, we will help them according to the human rights and ethical norms. According to Article 5 of the Human Organ Transplantation Act, the physician who make the death determination, shall not participate in the removal of the organ and transplantation. Death row prisoners who want to donate their organs need to fill out a format of the letter of consent in accordance with the Article 6 of the Human Organ Transplantation Act. After execution in accordance with Article 5 of the Regulations of the execution, death is determinated by forensic medical experts and prosecutors. Then they are moved to the hospital. Because we do not distinguish the identity of the donors, we have no the statistics about the number of the death row prisoners who has donated organs.

條文	編號	問題內容(原文)	中文參考翻譯
公政	18.	What are the detention conditions of death row prisoners?	死刑犯的監禁環境為何？就拘束（使用戒具等）、單獨監

第 6 條		Are they kept under stricter conditions than other prisoners regarding constraints (shackles etc.), solitary confinement, rights of correspondence, visits etc.?	禁、通訊權、接見權等方面是否比其他受刑人受到更嚴格的限制？

中文回應

一、監禁環境方面，目前死刑犯所住舍房與其他收容人舍房無異，有裝設電風扇、抽風機等。

二、拘束方面，並無因受死刑宣判即施用戒具之情形，僅有渠等有脫逃、自殺、暴行或其他擾亂秩序行為時，為保護其安全而施用戒具，惟是類情形甚少。

三、接見通訊部分，對象原則以最近親屬及家屬為限，但有特殊理由時，亦得許其與其他人接見及發受書信；接見次數及時間，則以每星期一次，三十分鐘為限，但必要時，亦得增加或延長之。

四、爰此，並無比其他受刑人有更嚴格限制之情形。

英文回應

1. On the matter of the prison cell environment, death-row inmates are held in prison cells similar to those holding prison inmates. The sector is equipped with electric fans and exhaust fans.
2. No restraints are used on inmates on death row; however, if an inmate manifests a tendency to escape, commit suicide, resort to violence, or disrupt peace and order in the facility, restraints would be applied for his own safety and protection. Cases like these have been quite rare.
3. As a rule, visitations and communication are limited to next of kin and closest relatives; however, under special circumstances, we allow the inmates to receive letters or visits from other parties. Normal frequency of visits is once a week, and normal duration of each visit is thirty minutes; however, where circumstances require, visitation frequency and period may be increased and prolonged.
4. Generally, no stricter rules or limitations are imposed on inmates on death row.

條文	編號	問題內容(原文)	中文參考翻譯

公政 第 6 條	19.	Can persons with mental or intellectual disabilities be sentenced to death? Have there been such cases in the past?	精神或智能障礙者能否被判處死刑？過去是否有這類案例？

中文回應

我國刑法第 63 條，僅限制對老、幼不得處死刑、無期徒刑。惟依我國刑法第 19 條規定， 行為時因精神障礙或其他心智缺陷，致不能辨識其行為違法或欠缺依其辨識而行為之能力者，不罰。行為時因前項之原因，致其辨識行為違法或依其辨識而行為之能力，顯著減低者，得減輕其刑。前二項規定，於因故意或過失自行招致者，不適用之。準此，儘管刑法僅針對老幼設有不得處死刑之限制，並未針對心智障礙之被告明文設定不得處死刑之條文，但得依上開規定獲得減刑。除有刑法第 19 條規定外，另依公政公約第 6 條第 2 項所犯需為「情節最重大之罪」之規定，如經法院確定被告為精神障礙或其他心智缺陷者，確未有被判處死刑之案例。較具爭議性的，反而是在具體個案中，檢察官爭執被告行為時，是否合於刑法第 19 條之要件。此一爭點必須由法院在鑑定人之幫助下做出事實的判斷。

英文回應

1. According to Article 63 of Criminal Code of Republic of China, death penalty or life imprisonment shall not be imposed on an offender who is under the age of eighteen or over the age of eighty.
2. Article 19 of Criminal Code of Republic of China stipulates that “An offense is not punishable if it is committed by a person who is mentally disorder or defects and, as a result, is unable or less able to judge his act or lack the ability to act according to his judgment. The punishment may be reduced for an offense committed for the reasons mentioned in the preceding paragraph or as a result of obvious reduction in the ability of judgment. Provisions prescribed in the two preceding paragraphs shall not apply to a person who intentionally brings the handicaps or defects.” Sentence for defendants with mental or intellectual impairment may be commuted mutatis mutantis. Combined with Article 6 paragraph 2 of the ICCPR, only the most serious crime may be imposed death sentence. Once the court finds the defendant mentally disorder or defects, death penalty will not be imposed. There is no such case death penalty is sentenced.
3. The major issue might be that the parties argue whether the defendant is mentally disorder or defects. This fact is to be determined by the court with the help of expert witness.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 6 條	20.	Do death row prisoners in Taiwan enjoy the full right to seek pardon, amnesty or commutation of the sentence in accordance with Article 6(4) CCPR? Have the nine convicts executed in 2010 and 2011 as well as the six convicts executed in 2012 submitted petitions for amnesty, pardon or commutation to President Ma Ying-jeou? If so, had these petitions been answered before their executions?	台灣的死刑犯是否依據公政公約第 6 條第 4 項享有完整的聲請大赦、特赦、減刑的權利？2010 年及 2011 年執行的 9 位死刑犯及 2012 年執行的 6 位死刑犯是否已向馬英九總統提出大赦、特赦及減刑之聲請？如果是，在執行死刑之前是否已獲得回覆？

中文回應

一、我國赦免法並未對於請求赦免者設有資格限制，是以，死刑犯依法可以向總統聲請赦免，惟是否行使赦免權，端賴總統審時度勢，旰衡一切情況為斷。

二、已執行之死刑犯固有向總統聲請赦免，若總統決定赦免，會以公文轉交法務部，由法務部依赦免法第 7 條規定進行後續程序，惟截至執行死刑前，法務部均未接獲總統府同意赦免之公函，在此情形下依法院確定判決執行死刑，係「依法行政」。

英文回應

1. The Amnesty Act does not limit the applicant’s qualification for amnesty. All inmates on the death row have the legal right to beg the president for amnesty, but whether the president agrees to use his right depends on his judgment of the situation and factors as a whole.
2. If the president decides to remit an inmate, he would inform the MOJ in writing to let MOJ follow on the procedure in accordance with the provisions of Article 7 of the Amnesty Act. But MOJ has never been noted that the president has agreed to make an amnesty before the moment of execution. Under such circumstances, the MOJ has to go ahead to carry out the execution in accordance with the law.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 6 條	21.	In para 95, the State Report states that the actual conditions on abortion and the number of abortions “may require precise investigations and more proactive solutions”. What is meant by more proactive solutions? What is the policy of the present government in relation to abortion?	在第 95 段，國家報告提到實際墮胎情形與數目「可能需要確實調查」。更主動的解決之道是什麼？目前政府對於墮胎的政策為何？

中文回應

一、經查世界各國人工流產資料的收集，主要有下列 3 種，包括：主動通報、對服務提供者或婦女進行研究調查、透過保險申報或醫院資料統計等方法予以收集。然若以強制性主動通報者，均須透過法律作為依據，並用以通報合法之人工流產。經查相關網頁及文獻資料顯示，目前施行「強制性」主動通報的國家或地區，包括：英國、北歐、加拿大等；而該等國家或地區通報之目的，在於建立人工流產之基礎數據，以作為長期追蹤比較之用。但，常有低報、漏報、資料不完整、資料品質不一致、或資料可信度低等問題，故往往仍需要以其他管道所取得的資料，進行數據之校正，尤其是強制性的通報僅能得到合法人工流產之估計，仍無法由其中獲知非合法人工流產之數據或個案。

二、人工流產數估算：因我國並未建立懷孕及流產通報制度(涉及婦女隱私權)，難掌握確實數據，然以前述 3 種人工流產之通報或監控機制中，我國目前已經有對婦女之研究調查（97 年國民健康局第十次家庭生育調查），並有本署中央健康保險局之醫療保險申報資料與本署食品藥物管理局對於 RU486 管制藥品的使用量統計，經該調查結果與後兩者資料相比對，進行估算國內每年人工流產之人數均約在 7 萬之間。

三、至於目前政府對於墮胎的政策，懷孕婦女面臨終止懷孕之重大抉擇，可依據現行優生保健法「第九條懷孕婦女經診斷或證明有下列情事之一，得依其自願，施行人工流產：

(一) 本人或其配偶患有礙優生之遺傳性、傳染性疾病或精神疾病者。

(二) 本人或其配偶之四親等以內之血親患有礙優生之遺傳性疾病者。
(三) 有醫學上理由，足以認定懷孕或分娩有招致生命危險或危害身體或精神健康者。
(四) 有醫學上理由，足以認定胎兒有畸型發育之虞者。
(五) 因被強制性交、誘姦或與依法不得結婚者相姦而受孕者。
(六) 因懷孕或生產將影響其心理健康或家庭生活者。」之規定醫療機構為懷孕婦女實施人工流產。

四、於 101 年 4 月 5 日修正發布優生保健法施行細則第 13 條之 1 修正草案「本法第 9 條第 1 項第 6 款所定因懷孕或生產，將影響其心理健康或家庭生活者，不得以胎兒性別差異作為認定理由。」之規定，避免因胎兒性別之選擇性墮胎。

英文回應

1. There are three ways of collecting world abortion data: initiative reporting, researches conducted on the service providers or women, insurance or hospital statistic reporting, etc. Moreover, legal law and regulations are required to mandate initiative reporting, and the data collected should be used for reporting legal abortion. The relevant web pages and references showed that countries or regions including UK, Scandinavia, Canada, and etc are currently mandated initiative reporting, and the purposes are to establish the basic data of abortion for the long term follow-up trace and comparison. However, incomplete or miss reporting, incomplete data collected, inconsistent data quality or low credibility on data were often appeared. Therefore, other ways of obtaining information were required to readjust and rectify the data, especially the mandatory report. It could only provide the estimates of the legal abortion, but not data or cases of illegal abortion.

2. Estimates of abortions: there is no women pregnancy or abortion notification system in Taiwan due to privacy issue, therefore it is hard to know the actual data relating to abortions. However, there are researches or surveys on women, for example, 10th Family Fertility Survey by Bureau of Health Promotion (BHP) in 2008, health insurance notification data from the Bureau of National Health Insurance and the usage of restricted drugs, RU486 by Food and Drug Administration. Compared the result from BHP fertility survey in 2008 and the latter two data, it was estimated that about 70 thousand abortions in Taiwan every year.
3. Present government policy in relation to abortion: Induced abortion may be conducted for a pregnant woman, subject to her own accord, if she has been diagnosed or proven to meet any one of the following:

(1) She or her spouse acquires genetic, infectious or psychiatric disease detrimental to reproductive health.
(2) Anyone within the fourth degree of kin relative of herself or her spouse acquires a genetic disease detrimental to reproductive health.
(3) By medical consideration, pregnancy or delivery is may cause life threatening risk or detrimental to her physical and mental health.

(4) By medical consideration, risk of teratogenesis may present for the fetus.
(5) Pregnancy as a result of being raped, lured into sex intercourse or in sex intercourse with a man prohibited to lawfully marry her.
(6) Pregnancy or childbirth is likely to affect her mental health or family life.

4. 2012 April 5 corrected Genetic Health Law Enforcement Rules Article 13 of amendment draft "of this Law Article 9.1 6th paragraph are given due to pregnancy or childbirth, will affect their mental health or family life shall not fetal gender differences as identified reason. "of regulations. Avoid selective abortions due to the sex of the fetus.

條文	編號	問題內容(原文)	中文參考翻譯
公政第 7 條及第 10 條	22.	Is there a separate crime of torture under the Criminal Code of Taiwan? If not, is the Government planning to criminalize torture?	台灣刑法是否有處罰酷刑的個別罪名？如果沒有，政府是否計畫將酷刑行為予以刑罰化？

中文回應

一、刑法第 126 條規定：「有管收、解送或拘禁人犯職務之公務員，對於人犯施以凌虐者，處一年以上七年以下有期徒刑（第 1 項）。因而致人於死者，處無期徒刑或七年以上有期徒刑。致重傷者，處三年以上十年以下有期徒刑（第 2 項）。」

二、依「公民與政治權利國際公約」第 7 條規定，任何人不得施以酷刑，或予以殘忍、不人道或侮辱之處遇或懲罰。非經本人自願同意，尤不得對任何人作醫學或科學試驗。我國「陸海空軍刑法」有關「酷刑」的相關刑罰規定，如第 44 條「長官凌虐部屬者，處 3 年以上 10 年以下有期徒刑。致人於死者，處無期徒刑或 7 年以上有期徒刑；致重傷者，處 5 年以上 12 年以下有期徒刑。上官或資深士兵藉勢或藉端凌虐軍人者，處 5 年以下有期徒刑。致人於死者，處無期徒刑或 7 年以上有期徒刑；致重傷者，處 3 年以上 10 年以下有期徒刑。長官明知軍人犯前 2 項之罪，而包庇、縱容或不為舉發者，處 3 年以下有期徒刑、拘役或新臺幣 30 萬元以下罰金」。本罪所指凌虐是指「僅須抽象的足以使人有殘酷之感覺即足，不以達於違反人道之殘酷程度為必要」。

英文回應

1. Article 126 of the Criminal Code provides: A public official charged with the custody, or conveyance of prisoners who commits an act of violence or cruelty to a prisoner shall be sentenced to imprisonment for no less than one year but not more than seven years. (Paragraph 1)If death results from the commission of the offense, the offender shall be sentenced to life imprisonment or with imprisonment for not less than seven years; if aggravated injury results, the offender shall be sentenced to imprisonment for not less than three years but not more than ten years. (Paragraph 2)
2. According to 《International Covenant on Civil and Political Rights》article 7, "Prohibits torture and cruel, inhuman or degrading punishment." Torture" in 《Criminal Code of Armed Forces》, such as Article 44 "A Leader tortures followers shall be punished with imprisonment for not less than three years and not more than ten years. If death result from the commission of an offence specified in the preceding paragraph, the offender shall be punished with imprisonment for life or for not less than seven years. If serious bodily harm results, the offender shall be punished with imprisonment for not less than five years and not more than twelve years. A led official or a senior soldier who with intent torture armed services shall be punished with imprisonment not more than five years. If death results from the commission of an offence specified in the preceding paragraph, the offender shall be punished with imprisonment for life or for not less than seven years. If serious bodily harm results, the offender shall be punished with imprisonment for not less than three years and not more than ten years. A Led official who harbors an armed service who commits an offence specified in one of the paragraphs I or II of the preceding article shall be punished with imprisonment for not more than three years, detention, or a fine of not more than 300,000 Yuan may be imposed." "Torture" in this article denotes "It is not necessary of violation of cruel or inhuman, Only to be enough to make people feel cruel abstractly."

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 7 條	23.	In para 100, the State Report refers to "allegations and cases of extraction of confessions by means of torture, criminal	在第 100 段，國家報告提到「實際上仍出現刑求、凌遲人犯、體罰及虐待精障者之指控與案例」。貴國能否具體

及第 10 條		dismemberment, corporal punishment, and abuse against people with mental disorders". Can you specify such cases? Have the perpetrators been brought to justice? Have the victims received adequate reparation for the harm suffered?	指出這些案例？行為人是否受到法律制裁？被害人是否就其所受損害受到適當補償？

中文回應

一、近年來矯正機關並無出現刑求、凌遲人犯之情事，亦無體罰及虐待精障者之指控及案例。

二、精神疾病嚴重病人常因無病識感或缺乏適當就醫管道，而出現傷人或自傷行為，故透過法律規定的嚴密程序及行政機關的公權力，協助精神疾病嚴重病人就醫有其必要性。精神衛生法業於 2008 年 7 月 4 日修正施行，該次修法最大變革為精神疾病嚴重病人強制治療制度的改變，包含嚴格限縮強制住院個案標準、明定強制住院申請程序及許可機制、強制處置方式、強制住院期限、向法院申請救濟途徑及未遵循法律規定之罰則等，不僅對病人人權更進一步保障，並且符合聯合國保護精神病人原則。報告中對於虐待精障者之指控與案例，查該案例確實符合法律規定強制住院要件申請程序且經審查通過，並無虐待精障者之情事。鑑於「精神衛生法」之強制住院規定，涉及人民人身自由之拘束，爰行政機關將持續檢討現行之審查程序及作業，並研議於審查過程中如何讓當事人有充分陳述意見之機會，以及強化告知當事人之救濟權益；另並參考公約一般性意見書之詮釋，加強檢視相關拘束人身自由之程序是否符合公約之規範。

三、教育人員有體罰學生行為者，應依「公立高級中等以下學校教師成績考核辦法」第六條規定或「公立高級中等以下學校校長成績考核辦法」第七條規定，予以申誡、記過、記大過或其他適當之懲處；情節重大者，應依教師法第 14 條及相關規定，啟動不適任教師處理機制。2011 年計有 109 位教師，因體罰或不當管教學生而受到懲處；自 2006 年起至 2011 年間，人民申請國家賠償案件成案者則有 5 件。

四、我國軍法機關致力於軍中人權保障不遺餘力，近 10 年來僅於 2002 年間，曾受理公務員對於人犯施以凌虐案一件，該案係國防部北部地方軍事法院檢察署軍事看守所戒護士顏ＯＯ下士及施ＯＯ下士，於 2002 年 11 月間，強令受拘禁之被害人高ＯＯ同時吸用 3 根香菸，致被害人身體不適，被告等遭軍事法院以「共同有拘禁人犯職務之公務員，對於人犯施以凌虐」罪，各判處有期徒刑 1 年 2 月，緩刑 2 年確定。上開行為人均已受到法律制裁，至被害人是否就其所受損害向被告求償，因非屬軍法機關權責，國防部

無列管資料。

英文回應

1. No cases of confessions extorted through torture or Prisoner abuse complaints had been received, neither had there been complaints regarding corporal punishment or abuse on inmates with mental illnesses.
2. Patients with severe mental illness often occur hurting or self-injurious behavior due to without insight of diseases or lack of proper medical treatment access. Hence, it's necessary to assist patients with severe mental illness in obtaining medical services through the public power. Mental Health Act was revised and implemented on July 4, 1997., and the biggest change is the system of mandatory treatment of patients with severe mental illness, including extremely restriction on the standard of compulsory hospitalization, clearly regulating applying procedure and the mechanism of the permission of the compulsory hospitalization, the method of the compulsory treatment, the period of the compulsory hospitalization, the access of applying relief toward the court, and punishment rules when violating the Act etc. not only to further protect the patients' right, but also to comply with the United Nation's principle of protecting patients with mental disorders. As the issue dealing with the accusation of abusing a mental-handicapped person mentioned in this report, after scrutinizing the whole issue, abusing that mental-handicapped person was not the fact, for the procedure that person was arranged to accept the compulsory hospitalization was in compliance with the regulations, including applying procedure and being viewed and allowed. In view of Mental Health Act's regulations of compulsory hospitalization is related to the restriction of people's personal freedom, therefore, the competent administrative authority will continuously view and review of the current examination procedures and operations, allow the parties to fully present their views in the examination procedures and forte<http://tw.rd.yahoo.com/_ylt=A3eg.83Otv9QZ24AYZDhbB4J/SIG=12nmnl0gr/EXP=1358964558/**http%3a/tw.dictionary.yahoo.com/dictionary%3fp=forte%26docid=1039624> ly inform the parties of the right of applying relief. Besides, 039624> we4> will refer to the Convention's interpretation of the general opinions and view that the relevant binding personal freedom is whether to comply with the Convention's norms or not.

3. Under Article 6 of the Regulations for Evaluating Teacher Performance in Public Schools and Article 7 of the Performance Assessment Regulations for Principals of Public Schools for Grades K-12, educators who administer corporal punishment should receive a reprimand, record a minor or severe demerit, or receive other due punishment. An educator involved in a serious offence will be considered incompetent and disqualified from teaching under Article 14 of the Teachers' Act. In 2011, as many as 109 teachers nationwide received punishment for corporal punishment and undue discipline. Between 2006 and 2011, five state compensation claims were approved.
4. Our Military law agency has promoting and imposing right safeguard in military as possible. For past 10 years, there was only one case about a public official maltreats an offender. Following this case is from Northern Region Military Detention Center, November 2002, Corrections Sergeant Yen and Corrections Sergeant Shi force victim Goa smokes three cigarettes in same time, then injuring body of victim. Defendants are accused with Code of Criminal Article 126 "A public official charged with the custody, conveyance, or detention of prisoners who commits an act of violence or cruelty to a prisoner" and punished imprisonment for one year and two mouths, and punishes may be suspended for two years. These actors have been punished. And questions about victim recover the damages; this responsibility is not belonging to Military law agency, so Ministry of National Defense does not retain these dates.

條文	編號	問題內容(原文)	中文參考翻譯
公政第 7 條及第 10 條	24.	In para 103, the State Report states that neither corrective institutions nor police supervisory authorities had received any complaints of torture from 2006 to 2011. Are these complaints procedures effective and do prisoners and detainees in police custody enjoy effective access to such procedures without fear of reprisals? The CW Shadow Report (p 49) comments in this respect that there are doubts	在第 103 段，國家報告提到 2006 年至 2011 年，矯正機關或警政督察單位並無接獲任何酷刑的申訴案件。這些申訴程序是否有效以及受刑人及被警察限制人身自由者是否無需擔心受到報復而能有效地使用這些程序？兩公約施行監督聯盟的影子報告（第 49 頁）就這方面認為完全沒有非法對待的案例是令人質疑的。例如，它提到台北監獄在 2010 年對受刑人陳錦一的處遇方式導致監察院

		as to whether there have not been any cases of illegal treatment. By way of example, it refers to the treatment of the Taipei prisoner Chen Chin-yi in 2010, which has led to corrective action by the Control Yuan against the Taipei Prison. Did Chen Chin-yi receive adequate reparation for the harm suffered and have the responsible prison officers been brought to justice? When are shackles used in prison? When is the use of shackles mandatory? Are death row prisoners shackled? Have there been other similar cases of ill-treatment of prisoners which have not been included in the report because the victims had not filed an official complaint?	對台北監獄提出糾正案。陳錦一是否因其所受損害而受有賠償以及應負責的監獄管理人員是否受到制裁？監獄在何時可以使用戒具？何時可以強制使用戒具？死刑犯是否隨時都帶著戒具？有無其他受刑人遭受不當處遇的類似案例卻因被害人未曾提出正式申訴以致未被納入國家報告？

中文回應

一、關於申訴方面，法務部 98 年 12 月 16 日函頒之法務部所屬矯正機關「端正風紀．提昇績效」實施計畫，明訂矯正機關應暢通各項收容人申訴管道，如下：(一) 各管教小組應至少每 3 個月辦理一次收容人生活與工作檢討會，讓收容人有發言的機會，收容人於會中所提意見應追蹤管制處理情形，並公布處理結果；(二) 各機關應廣設意見箱，各場舍單位至少設置一個，以放置於收容人易於投遞而隱密之處所為原則。如收容人工場之浴廁。意見箱之設計，由外觀不得看到內部情形及應置有鎖頭並上鎖。意見箱應指定秘書以上人員會同政風室人員，每週至少開啟 1 次，處理情形應設簿登記，並追蹤管制處理情形；(三) 應依規定設立申訴處理小組，並向收容人宣導對於處遇或處分不服時，均可依規定於十日內提出申訴，申訴處理流程應包括申訴處理登記、會議紀錄、評議結果以書面通知收容人、收容人簽收紀錄、陳報監督機關情形；(四) 收容人購買狀紙，機關不得以任何理由加以限制；(五) 收容人按正常程序提出之報告或申請，管教人員應迅速確實予以妥適處理，不得無故積壓、任意駁回及任意改變其各項處遇措施。是以，矯正機關已提供多元申訴陳情管道。此外，2009 年起至 2011 年止，各矯正機關分別有 94 件、106 件及 80 件之申訴案件，

調查處理前後並無聽聞收容人表示會擔心或遭受報復之情事。

二、監察院為擁有充分調查權及行政資源的高度獨立機關，實務上調查許多涉及人權議題的案件，民眾或人權團體如認為政府部門涉有違反人權的作為或不作為，得向監察院提出陳情，由監察院加以處理或調查；對於政府部門的人權缺失及待改進事項，監察委員亦可主動進行調查。本題所提案例係監察院於 2010 年依據當事人陳錦一的陳情而進行調查，並糾正臺灣臺北監獄，另函請法務部及行政院衛生署確實檢討改善。

三、有關糾正案部分，陳錦一業依法提出國家賠償之請求，一審判決免賠，惟陳員不服判決提出上訴，目前尚在審理中。另臺北監獄相關人員懲處為戒護科長李金德書面警告，另值班科員詹昭農及郭永凱各申誡乙次。

四、按監獄行刑法第 22 條：「受刑人有脫逃、自殺、暴行或其他擾亂秩序行為之虞時，得施用戒具或收容於鎮靜室。」之規定，監獄得對受刑人施用戒具係以其有脫逃、自殺、暴行或其他擾亂秩序行為之虞時為限。另死刑犯並無隨時施用戒具之情形。

五、至於有無其他受刑人遭受不當處遇卻因未提出正式申訴致未納入國家報告部分，按法務部矯正署分區視察所屬各矯正機關實施要點第 8 點第 2 款：「視察人員於執行視察業務時，得進行下列作為：（二）接見或約談收容人，或訪問其他當事人、關係人。」規定，法務部矯正署視察人員前往矯正機關時，得依規定接見或約談收容人，提供收容人申訴及意見反映之管道。經瞭解並無收容人提及遭受不當處遇卻未提出正式申訴之情事。

英文回應

1. On December 16, 2009, the Ministry of Justice issued instructions to all correctional facilities for the implementation of a plan for the improvement of discipline and enhancement of administration performance” in the hope of establishing accessible complaints channels for prison inmates; such as: (1) The respective disciplinary teams were requested to conduct an evaluation of the living and work conditions of inmates at least once in every three months, thereby providing inmates a chance to voice their opinions. Moreover, correctional facilities should follow up the processing of the opinions presented by inmates during the meetings and announce the processing results. (2) Correctional facilities were requested to set up at least one opinion box in each sector; moreover, boxes were installed on places easily accessible to inmates where inmates may drop their opinion in secrecy; e.g., inside bathrooms, etc. Boxes were locked and designed such that it would be impossible to view box contents from the outside. Furthermore, an administration staff member holding the position of secretary or higher has been assigned to open and check the boxes at least once a week. Treatment of each opinion is recorded and the treatment and control measures are tracked. (3) A complaint processing team was organized as regulated. Moreover, inmates were informed

to file an appeal within the regulated ten-day appeal period if they would be dissatisfied with the treatment or complaint processing results. Complaints processing measures include the registration of complaints, recording of meeting sessions, issuance of notification letters advising inmates of evaluation results, inmate's signing record for acknowledgement of acceptance, and reporting of matter to the supervisory authority. (4) Correctional facilities are not entitled to deny or limit under any circumstances the inmates' rights to acquire petition forms. (5) Prison administration personnel are requested to see to the immediate and proper processing of reports or applications filed by inmates through the normal procedures without undue pressure, arbitrary rejection, or arbitrary amendment of the related treatment procedure. To date, correctional facilities have established diverse complaint processing channels. Furthermore, a total of 94 cases, 106 cases, and 80 cases of complaints had been processed by the various correctional facilities in the years 2009, 2010, and 2011, respectively. No voices or complaints expressing concern or receiving retaliatory action had been heard or received from inmates during and after the investigation of complaints.

2. The Control Yuan holds sufficient investigation powers and administrative resources. It has investigated many cases involving human rights violation. Human rights groups or the public may lodge a complaint with the Control Yuan should they discover any government malfeasance or nonfeasance conducive to human rights infringement. Once receiving the complaint, the Control Yuan will assess its jurisdiction for the case before launching an investigation or taking other necessary measures. Aside from receiving public complaints, Control Yuan Members can conduct own-motion investigations into alleged human rights violations and any deficiencies within the public sector. The case of Chen Jing-Yi specified in Question 24 is an example of an investigation following a complaint by the person concerned. Control Yuan's investigation has led to proposition of corrective measures towards Taipei Prison and letters issued to the Ministry of Justice and the Executive Yuan urging for review and rectification.
3. As regards the correction cases, Chen Chin-Yi has filed an application for the state compensation, and the first instance verdict ruled out compensation; however, contesting decision of the court, inmate Chen filed an appeal; case is currently under litigation. Furthermore, disciplinary actions taken by Taipei Prison authority included an official warning issued to the Security Section Chief, Mr. Lee Chin-Te and a reprimand each to the on-duty officers Chan Chao-Nung and Kuo Yung-Kai.
4. Article 22 of the Prison Act stipulates that "Where an inmate manifests a tendency to escape, commit suicide, become violent, or commits acts disturbing peace and order in the facility, instruments of restraint may be used, or the inmate may be incarcerated in a pacification ward." Hence, the correctional facility may only apply the instruments of restraint to inmates manifesting tendencies to escape, commit suicide, become violent, or committing acts disturbing peace and order in the facility. However, no case had been reported that instruments of restraint were regularly used on death-row inmates.
5. On the question regarding other inmates suffering improper treatment but cases are not included in the national report since inmates failed to file an official complaint, pursuant to Article 8 Paragraph 2 of the Guidelines for the Inspection of the Correctional Facilities of the Agency of Corrections (MOJ), "an inspection officer is required to institute the following acts during the implementation of his/her

inspection rounds: (2) Meet or interview inmates or other concerned parties and related parties." The inspection officer of the Agency of Corrections (MOJ) may meet and interview inmates while conducting his/her inspection around the correctional facilities pursuant to the regulations, thereby providing inmates a channel through which inmates may submit their complaints or opinions. From our understanding of the situation, no inmate had encountered any improper treatment but did not file an official complaint.

條文	編號	問題內容(原文)	中文參考翻譯
公政第 7 條及第 10 條	25.	Have there been any cases or complaints of excessive use of force by the police which may amount to cruel, inhuman or degrading treatment?	是否有遭受警察過度使用武力而可等同於殘忍、不人道或貶抑處遇的案件或申訴案例？

中文回應

一、查警政機關確實沒有遭受警察過度使用武力而等同於殘忍、不人道之案例。

二、另為防杜員警於偵查階段以不法手段刑求逼供，業已訂頒「警察詢問犯罪嫌疑人錄音錄影要點」，要求所屬員警於詢問犯罪嫌疑人時應全程連續錄音，必要時並應全程連續錄影，且如有下列情形時，應全程連續錄影：

(一)引起社會大眾關注之重大案件。

(二)具有爭議性之案件。

(三)其他認為有錄影之必要者。

英文回應

1. There are no records of excessive use of force by the police which may amount to cruel, inhuman or degrading treatment.
2. In order to prevent the officers use unlawful means torture to extracting confessions, the National Police Agency, Ministry of Interior promulgated "Directions governing recording and videotaping during Police Investigations". It required that all the process of questioning

have to be recorded, or videotaped if necessary. Video recording should be used throughout the questioning during any of the following circumstances:

(1) Serious case which attract the society's attention;

(2) Controversial case;

(3) Requested by officers involved in investigation who thinks it is necessary.

條文	編號	問題內容(原文)	中文參考翻譯
公政第 7 條及第 10 條	26.	In para. 102, the State Report explains that confessions extracted by improper means (including torture) shall not be admitted as evidence. In this respect, the CW Shadow Report refers to the cases of the Su Chien-ho trio (pp 47 and 48), whose torture had been clearly established and who were nevertheless convicted and to the well-known case of Chiou Ho-shun, who had spent already 23 years in detention before his death sentence was finally certified by the Judicial Juan in July 2011 despite the fact that his confession was extracted by torture (see also shadow report at pp 33 and 55 et seq.). Which actions does the Government intend to undertake to provide these persons with an adequate remedy and reparation for the harm suffered? Are there other cases of convictions based on evidence extracted	在第 102 段，國家報告提到以不正當方法（包括刑求）所取得的自白不得作為證據。就此方面，兩公約施行監督聯盟的影子報告提到蘇建和三人的案例（第 47 及 48 頁），他們已清楚證明受到刑求而仍然被判決有罪確定，也提到廣為人知的邱和順案，他在 2011 年 7 月被司法院判決有罪確定之前已被羈押 23 年，雖然他的自白是基於刑求所取得（參見影子報告第 33 及 55 頁以下）。政府對這些人要採取哪些行動以對其所受損害提供適當的救濟與補償？有無其他以刑求所取得的證據為有罪判決基礎的案例？

		by torture?	

中文回應

一、

(一)刑事補償法規範得請求刑事補償之法律要件及程序。以所舉蘇建和案為例，該三人均已獲判無罪確定，之前曾受之刑罰執行、羈押，均得按法律規定之標準（最高一日新台幣（下同）五千元），請求補償。該請求之管轄法院，依刑事補償法之規定，係指諭知其無罪之法院，亦即臺灣高等法院。蘇建和案的三名被告，已依法委請律師請求刑事補償。管轄法院為判決其等無罪之臺灣高等法院。每位請求人請求之金額各為新台幣 20,550,000 元，共計 61650000 元。

(二)刑求之事實，將影響補償金額之酌定，依刑事補償法第 8 條規定，審酌補償金額時，應考量公務員違法或不當之情節，及受害人所受損失及可歸責事由之程度。倘請求人就補償事件無可歸責之事由，且又有刑求之事實，承辦法官即可能按一日五千元的最高標準，酌定補償金額。

二、有無其他以刑求所取得的證據為有罪判決基礎的案例？

江國慶案。1996 年，江國慶當時在空軍服役，謝姓女童遭姦殺，經過一個月調查後，江國慶自白認罪，於 1996 年 9 月 12 日起訴，經軍法審判後，判處死刑確定後，即於 1997 年 8 月 13 日執行死刑。15 年後，經重啟調查發現，留在被害女童右膝部血掌印、陰毛，經比對 DNA 後，確認另名當時在同單位服士兵役之許榮洲才是真正的犯罪行為人。監察院調查發現，江國慶在偵訊過程中，受到長達 37 小時的疲勞偵訊，以及電擊之威脅、暴露在強光照射等刑求手段。江國慶之母請求刑事補償，獲得有史以來最高的上億元補償金。

英文回應

1.

(1) Criminal Compensation Act stipulates the procedure and elements for claiming criminal compensation. Take Su Chien-Ho’s case for example, he could file a suit to claim for everyday he has been incarcerated, including days detained and served before he was found innocent. The amount of compensation for every day his freedom deprived ranges from NT.3,000 to 5,000. The amount granted will be subject to Judge’s discretion. Taiwan High Court, which found him innocent, has the jurisdiction. The amount the three innocent claim

amounts to NT$61,650,000, and NT$20,550,000 for each one.

(2) The fact that confession was extracted by torture will certainly influence the outcome of judge's discretion on the compensation. According to Article 8 of Criminal Compensation Act, the illegality of the behavior of law enforcement is a one of the determinant factor judges have to take into account deciding the amount for compensation. Another factor is whether the defendant is culpable to the wrongful conviction.

2. Are there any cases the defendant is convicted on the basis of confession extracted from torture?

(1) Chiang Kuo-ching Case. Chiang Kuo-Ching (江國慶), who was serving in the air force in 1996, was found guilty after a month-long investigation and sentenced to death after a girl, surnamed Hsieh (謝), was found dead in an air force base in Taipei. Chiang was charged with raping and killing Hsieh on Sept. 12, 1996, trialed in military court, and executed on Aug. 13 the following year.

(2) 15 years later, Investigation was reopened and investigators reviewed material evidence in the case, including fingerprints, a bloody palm print and DNA from a pubic hair found on the girl's right thigh.

(3) They compared that evidence with the prints and DNA of soldiers serving in the air force at the time, which eventually led to the conclusion that Chiang was wrongfully convicted and found the real offender, another air force serviceman, Hsu Jung-chou (許榮洲), whose DNA and palm print matched those left at the scene of the crime.

(4) According to the report by Control Yuan, Chiang was imprisoned and asked leading questions in a 37-hour-long interrogation session. Chiang wrote in notes he kept while in prison that he was threatened with an electric baton, exposed to strong lights and forced to undergo physical activities all night during questioning. Chiang's mother claimed the compensation for NT 103,185,000, the highest amount ever.

條文	編號	問題內容(原文)	中文參考翻譯
公政第 7 條及第 10	27.	In para 108, the State Report admits that there are presently no adequate laws implementing the principle of non-refoulement. Have there been recent cases of	在第 108 段，國家報告承認台灣並無適當的法律規範不遣返原則。近期是否有將外國人驅逐出境到他們極有可能遭受酷刑的國家的案例？如果有，政府已採取哪些行

條		deportation of aliens to countries in which they faced a serious risk of torture? If so, which actions has the Government taken to provide reparation to the victims? Are legislative changes planned to bring the law of Taiwan in conformity with the principle of non-refoulement derived from Article 7 CCPR?	動以提供補償予被害人？是否計劃修法使台灣的法律能與公政公約第 7 條所衍生的不遣返原則相符？

中文回應

截至目前並無將外國人驅逐出國至其可能遭受酷刑國家之相關案例。

英文回應

There have not been any relevant cases about foreigners being deported out of the country to any other countries which might have cruel torture up to now.

條文	編號	問題內容(原文)	中文參考翻譯
公政第 7 條及第 10 條	28.	In para 110, the State Report states that an amendment of the Educational Fundamental Act of 2006 had been promulgated "to prevent students from any corporal punishment that results in physical and mental harm". Does this mean that corporal punishment which does not result in physical or mental harm is still permitted in Taiwanese	在第 110 段，國家報告提到 2006 年教育基本法修正公布，「使學生不受任何體罰，造成身心之侵害」。這是否表示不造成身心傷害的體罰在台灣的校園仍是被允許的？哪些形式的體罰在台灣的其他環境仍被允許及/或實施，例如在軍隊裡？

		schools? Which forms of corporal punishment are permitted and/or practiced in Taiwan in other environments, such as in the military?	

中文回應

一、為落實教育基本法禁止體罰之規定，教育部於 2007 年 6 月 22 日公布「學校訂定教師輔導與管教學生辦法注意事項」，第 4 點第 4 項明定「違法之處罰包括體罰、誹謗、公然侮辱、恐嚇及身心虐待等」；且於第 4 點第 5 項明定「體罰」係指教師於教育過程中，基於處罰之目的，親自、責令學生自己或第三者對學生身體施加強制力，或責令學生採取特定身體動作，使學生身體客觀上受到痛苦或身心受到侵害之行為，並列舉毆打、鞭打、打耳光、打手心、打臀部或責打身體其他部位、命學生自打耳光或互打耳光、交互蹲跳、半蹲、罰跪、蛙跳、兔跳、學鴨子走路、提水桶過肩、單腳支撐地面或其他類似之身體動作等，均屬違法處罰。故體罰的措施在我國是不被允許的，然教師在執行管教之法定職責時，可能因疏失而誤對學生實施不合法之處罰行為，上開注意事項第 42 點亦規定倘教師有不正當的教學行為，經調查屬實，輕則行政懲處，嚴重不當行為亦可依教師法或教育人員任用條例予以解聘，以充份維護學生身體權及受教權。

二、另「軍事教育條例」第 2 條略以，軍事教育為國家整體教育之一環，以國防部為主管機關，並依相關教育法律之規定，兼受教育部之指導。爰軍教條例訂有軍事學校學生研究生學籍規則，使各軍事學校得據以訂定各校學則，並將學生獎懲及申訴相關權責，明令執行，以保障軍事學校學生在校就學相關權益。

三、國防部亦於 2012 年 10 月 5 日公布施行「軍事學校預備學校校園性侵害性騷擾或性霸凌處理要點」將校園安全規劃，及校內外教學及人際互動部分，擬具相關規範，進而使軍校學生在學期間不受身心之侵害。

英文回應

1. To reinforce the prohibition of corporal punishment stipulated by the Educational Fundamental Act, the MOE promulgated Guidelines for School Establishment of Regulations for Teachers Counseling and Student Discipline. As defined in Point 4, Paragraph 4 of the Guidelines,

unlawful punishment includes corporal punishment, slandering, insulting in public, extortion, and physical or mental abuse. Corporal punishment, as defined in Point 4, Paragraph 5, refers to the physical punishment that involves inflicting physical or mental pain for the purpose of discipline by the teacher, the wrongdoing student, or a third person. The types include beating, whipping, slapping, striking the hand, buttocks, or other body part, forcing the student to slap himself/herself or slap another student, perform a split squat jump, half squat, frog jump, rabbit jump, or duck walk, or kneel down, lift heavy objects overhead, stand on one leg, or perform other sustained physical movements. Corporal punishment is banned and in Point 42, it is stipulated that when a teacher administers undue punishment to students, he or she will face corresponding administrative punishment based on the level of seriousness. A severe offence will lead to disqualification from teaching under the Teachers' Act or Act of Governing the Appointment of Educators. These regulations are enacted to ensure students' rights.

2. According to "Act of Military Education" Article 2, "Military Education" is a part of whole national education system. Ministry of National Defense as a competent authority follows concerning acts of education and receives instruction by Ministry of Education. "Act of Military Education" draws up the act of graduates of Military school and makes this act as a basic legal source of acts for every military school. These acts which about rewards, punishments and appeals are used to safeguard the rights of Military students.
3. Our ministry also published "Direction on Relieving Sexual-bullied Sexual Harassment and Sexual Assault for Military School" in 5 October 2012 to draw up rules about school security, education, social interaction for military students to avoid school violation.

條文	編號	問題內容(原文)	中文參考翻譯
公政第 7 條及第 10 條	29.	The CW Shadow Report (pp 51 et seq.) refers to grave infringement on the health rights of detainees and mentions several cases in this respect. Do the conditions in Taiwanese prisons and other detention facilities, and the medical	兩公約施行監督聯盟影子報告（第 51 頁以下）提到受拘禁者的健康權受到極大的侵害並提及在這方面的數個案例。台灣的監獄以及其他拘禁處所的環境，以及特別是受拘禁者的醫療待遇，是否與公政公約第 7 條禁止不人

		treatment of detainees in particular, conform to the prohibition of inhuman and degrading treatment and punishment in Article 7 CCPR and to the right of detainees under Article 10 CCPR to be treated with humanity and dignity? If there were violations of these human rights of detainees, did the victims receive adequate reparation and have the perpetrators been brought to justice?	道與貶抑的處遇及處罰以及受拘禁者所享有的公政公約第10條受人道與尊嚴處遇的權利相符合？若有違反受拘禁者的這些權利，被害人是否受到適當補償以及行為人是否受到司法制裁？

中文回應

一、我國目前在矯正機關之大部分收容人，原則上比照一般民眾，適用全民健康保險，由健保特約醫院醫師提供相關醫療服務，並無因其拘禁身分而致醫療權益受損，故無與公政公約第7條及第10條相悖之處。

二、我國對於矯正機關收容人施以酷刑、殘忍、不人道或侮辱性的待遇或刑罰，近年幾乎未曾發生，惟如有相關案件時，則依刑法論斷，如確定為有罪判決時，被害人可依「國家賠償法」請求行為人所屬機關賠償，行為人除須接受相關刑罰外，另其所屬機關亦對其有求償權。

三、依據監獄行刑法及羈押法規定，有關監獄及受拘禁者的健康及醫療待遇等為法務部權責，但為改善矯正機關內收容人之醫療狀況，衛生機關會應監獄需求，協助改進矯正機關內之醫療衛生事宜，衛生主管機關並定期督導矯正機關之衛生醫療事務，以確保收容人之醫療待遇及醫療人權。

英文回應

1. Majority of the inmates held in Taiwan's correctional facilities today enjoy the same National Health Insurance coverage as the ordinary citizen and thus, may avail of medical care and services of Bureau of National Health Insurance (BNHI) contracted hospitals. Prison incarceration is never a ground for depriving inmates of their rights to medical care and treatment; hence, prison administration measures are in compliance with the provisions of Article 7 and Article 10 of the *International Covenant on Civil and Political Rights*.
2. Torture, cruelty, inhumane or derogatory treatment or punishment of correctional facility inmates have stopped becoming a practice in

Taiwan for a good number of years, and in the event of such a case, matter is treated according to the provisions of Taiwan's *Criminal La*w. Where it is determined that a crime is committed, the victim may demand for compensation from the agency or department to which the perpetrator belongs under the provisions of the *State Compensation Act.* The perpetrator shall be subject to criminal penalty, and the perpetrator's agency is entitled to claim compensation against the perpetrator.

3. Based on the provisions of Prison Act and Detention Act, the Ministry of Justice have rights and responsibilities to prisons' and detainees' health and medical treatment. However, to improve the medical conditions of inmates in correctional institutions, health authorities will comply with prison's needs to assist and improve medical and health matters within the correctional institution. Competent health authority will supervise the health and medical affairs of correctional institutions regularly to ensure the medical treatment and medical human rights of inmates.

條文	編號	問題內容(原文)	中文參考翻譯
公政第 7 條及第 10 條	30.	According to the US State Department Report 2011, prisons in Taiwan operated at 122.2 percent of designed capacity. The CW Shadow Report speaks of chronic overcrowding and a "deleterious detention environment that violates the stipulations of Article 10(1)" CCPR (pp 93 et seq., 99 and 105). Para 146 of the State Report also admits that the "issue of crowdedness at jails is an urgent problem". Which measures have been taken or are envisaged by the Government of Taiwan to address the problem of overcrowded prisons?	依據美國國務院 2011 年報告，台灣的監獄所收容的人犯是容納量的 122.2%。兩公約施行監督聯盟影子報告提及長期的擁擠與有害的拘禁環境違反公政公約第 10 條第 1 項的規定（第 93 頁以下，99 及 105 頁）。國家報告的第 146 段也承認「監獄人口擁擠的問題亟待解決」。台灣政府已採取或設想哪些措施以解決監獄擁擠的問題？

中文回應

一、依法務部矯正署統計資料顯示，87 年底矯正機關核定容額為 48,326 人（超收 7,754 人，超收比率為 16%），截至本（102）年 1 月

24 日為止，總核定容額為 54,593 人（超收 10,653 人，超收比率為 19.51%），期間雖辦理 30 個監所新（遷、擴、整）建工程，增加核定容額 6,267 人（成長 12.97%），惟仍不及增加之收容人數。

二、為期解決超額收容問題，除加強實行檢察及司法系統「前門政策」之轉向處遇（如緩起訴、易服社會勞動、緩刑及易科罰金等措施）及矯正系統「後門政策」之假釋制度與機動調整移監外，法務部矯正署亦研提改善監所十年計畫，審酌區域收容需求、收容類別、土地取得難易程度、民意反應及財物計畫可行性等因素，分階段推動擴、遷、改、新建計畫。目前辦理及規劃中個案計畫有臺中女子監獄擴建房舍計畫、臺北監獄改擴建計畫及宜蘭監獄擴建計畫等，後續為持續推動彰化看守所、臺北看守所、新竹監所、桃園監獄遷建計畫及臺北第二監獄新建計畫等，總經費計約 153 億 9,179 萬 9 千元，如可順利推動，預計將增加 1 萬 427 名收容額，將有助於紓解目前超額收容情形。

英文回應

1. Based on the official statistics of the Agency of Corrections, as of yearend 1998, the total inmate population of correctional facilities amounted to 48,326 inmates; that is, population exceeded normal capacity by 7,754 inmates, or 16%. As of January 24, 2013, total inmate population of correctional facilities reached 54,593 inmates; that is, population exceeded normal capacity by 10,653 inmates, or 19.51%. Despite the construction of 30 new correctional facilities had been constructed for relocation, expansion, or restructuring purposes in the interim period, facility could not keep up with the growth of inmate population, which increased by 6,267 inmates (or a growth rate of 12.97%) in the interim.
2. In an effort to resolve this overcapacity holding problem, the AOC enhanced implementing the diversion treatment (such as, suspended prosecution, short-term penalty to social labor services, suspended sentence, and commutation of sentence to fines) of the Front-door Policies of the prosecution and judicial system and the parole system and flexible prison transfer of the Backdoor Policies of the correctional system. Moreover, the AOC studied and proposed a ten-year plan for the improvement of prison facilities, and through the plan, AOC reviewed the feasible factors, such as regional holding capacity requirement, prison cell classification, land acquisition difficulty, public reaction, and financial planning, and based on which implemented the facility expansion, relocation, renovation and construction plans in phases. To date, construction plans currently under way or under planning are the Taichung Women’s Prison Expansion Plan, the Taipei Prison expansion plan and the Ilan Prison expansion plan, etc. The AOC shall also promoted the relocation plans for the Changhua Detention Center, the Taipei Detention Center, the Hsinchu Prison, Taoyuan Prison facilities and the new construction plan of the 2nd Taipei Prison. The total budget is estimated at NT$15,391,799,000. The successful completion of these projects shall increase the holding capacity

of correctional facilities by 10,427 inmates and help alleviate the current overcrowding problems in many areas.

條文	編號	問題內容(原文)	中文參考翻譯
公政第 7 條及第 10 條	31.	Para 150 of the State Report states that "Article 38 of the Detention Act is unspecific about the treatment of detained defendants" …and " is against the Covenant and presumption of innocence". Can you please explain what this means and what measures are envisaged by the Government of Taiwan to address this problem?	國家報告第 150 段提到「羈押法第 38 條有關羈押被告之處遇籠統準用監獄行刑法...規定」及「有違反《公約》及無罪推定原則」。能否請台灣政府說明這是什麼意思以及已設想何種措施以解決這個問題？

中文回應

一、刑事被告受羈押後，為達成羈押目的及維持執行羈押處所秩序之必要，除人身自由及附隨必然受限之基本權利外，基於無罪推定原則，受羈押被告之權利保障與一般人民所享有者，原則上並無不同。復以受羈押之被告，與受刑人身分不同，仍應享有公民權、政治與經濟權利、使用文化資源的權利、自由發展人格權、資訊權、隱私權、名譽權、信仰權等基本人權；況羈押之性質既與監獄行刑之性質未盡相同，而現行羈押法第三十八條仍準用監獄行刑法相關規定，實與現代保障人權自由之原則大相違背。

二、羈押法係規範在押刑事被告處遇之基本大法，是國家確保被告權利及訴訟程序能順利進行的重要法典。惟本法自 35 年 1 月 19 日公布，36 年 6 月 10 日施行以來，迄今已逾 60 年，未通盤修正，其間歷經政治環境、社會民情以及世界潮流均已有大幅變動，且現今世界各民主國家之羈押政策以及國家刑罰權之行使，均須通過人權保障標準的嚴格檢驗，故現行羈押法已難因應當前我國羈押政策及業務需要暨當前人權要求，而予以全面通盤檢討並大幅修正。

三、有關法務部研擬之「羈押法修正草案」前於 99 年 7 月 15 日送請立法院審議，但無法如期在第七屆立法委員任期內完成修法，復於 101 年 5 月 29 日再次函送立法院，目前刻正由第 8 屆立法委員審議中。在羈押法未修正前，法務部已通函各矯正機關，就現行「羈押法」第 38 條對被告有利的部分，準用「監獄行刑法」；對被告不利者，不準用「監獄行刑法」，另如有利或不利被告不明確時，宜報由法務部矯正署核定。

英文回應

1. A defendant of a criminal case placed under detention shall receive a limitation of his/her freedom and the corresponding essential basic rights in the period of incarceration for the fulfillment of the required incarceration objectives and maintenance of peace and order in the facility; however, in light of the principle of presumption of innocence, the detained defendant is entitled to the rights of protection which is in principle the same as those enjoyed by an ordinary citizen. Moreover, the detained defendant has entitlements not available to incarcerated convicts, such as the civil rights, political and economic rights, right to use cultural resources, right for personality development, information rights, privacy rights, right to uphold reputation, freedom of religion, and other basic human right entitlements of an ordinary citizen. Despite the fact that "detention" and "execution in prison" are by nature two different types of incarceration, under Article 38 of the existing *Detention Act*, the provisions of the Prison Act still apply mutatis mutandis, quite a violation of the principles assuring the freedom and human rights of individuals.
2. The *Detention Act* is the basic law governing the treatment of criminal case defendants under detention and an important legal instrument safeguarding the rights of a criminal case defendant and maintaining the smooth facilitation of litigation proceedings. However, in the six decades following its enactment on January 19, 1946 and its implementation on June 10, 1947, no major amendment had been made on its provisions despite the huge changes in the nation's political environment, social sentiment, and world trends. Today, the detention policies and national criminal jurisdiction of democratic countries are exercised under the vigilant scrutiny of human rights protection watchdogs; hence the current *Detention Act* is undergoing an overall evaluation and examination and heading for a major amendment in face of changes in the nation's detention policies and practices and the current human right protection requirements.
3. Regarding the *Bill for the Amendment of the Detention Act* of the Ministry of Justice, the bill was forwarded to the reading of the Legislative Yuan on July 15, 2010; unfortunately, bill amendment failed to reach completion before the end of the term of the 7th Legislative Yuan Assembly. The bill was resubmitted to the Legislative Yuan on May 29, 2012 and is currently under the deliberation of the 8th Legislative Yuan Assembly. Before the Dentention Act has not been amended, the Ministry of Justice has notified correctional facilities that Article 38 of the Dentention Act, part favorable to the defendant, shall apply mutatis mutandis for the Prison Act, while part unfavorable to the defendant, shall not apply mutatis mutandis for the Prison Act. In addition, when whether the situation is favorable or not is not clear, the correctional facilities should report the Agency of Correction, MOJ for approval.

條文	編號	問題內容(原文)	中文參考翻譯

公政第 7 條及第 10 條	32.	The CW Shadow Report alleges that there is “no clear regulation to segregate juvenile offenders from adult inmates”, in particular in drug rehabilitation facilities (pp 96 et seq. and 104). Which measures are envisaged to comply with the respective provisions in Article 10(2) and (3) CCPR?	兩公約施行監督聯盟影子報告指稱「少年犯與成年犯的分界收容並無明確的規定」，特別是在毒品觀察勒戒處分之執行處所（第 96 頁以下及 104 頁）。貴國政府已設想哪些措施以符合公政公約第 10 條第 2 項及第 3 項？

中文回應

一、少年事件處理法（第 26 條、第 26 條之 2 第 5 項、第 71 條第 2 項）中，就少年應與成年被告分別收容設有規定，此與公政公約第 10 條第 2 項及第 3 項相符，另羈押法、監獄行刑法、觀察勒戒處分執行條例等亦有相關規定，分將條文臚列於下：

(一)少年事件處理法：

第 26 條	（責付、觀護之處置） 少年法院於必要時，對於少年得以裁定為左列之處置： 一、責付於少年之法定代理人、家長、最近親屬、現在保護少年之人或其他適當之機關、團體或個人，並得在事件終結前，交付少年調查官為適當之輔導。 **二、命收容於少年觀護所**。但以不能責付或以責付為顯不適當，而需收容者為限。
第 26- 2 條	（收容之期間） （第 5 項） **少年觀護所之組織，以法律定之。**
第 71 條	（羈押之限制） （第 2 項） **少年被告應羈押於少年觀護所。於年滿二十歲時，應移押於看守所。**

(二)羈押法：

第 3 條	未滿十八歲之被告，應與其他被告，分別羈押。

(三)監獄行刑法：

第 3 條	受刑人未滿十八歲者，應收容於少年矯正機構。 收容中滿十八歲而殘餘刑期不滿三個月者，得繼續收容於少年矯正機構。 受刑人在十八歲以上未滿二十三歲者，依其教育需要，得收容於少年矯正機構至完成該級教育階段為止。 少年矯正機構之設置及矯正教育之實施，另以法律定之。

(四)觀察勒戒處分執行條例：

第 5 條	受觀察、勒戒人應收容於勒戒處所，執行觀察、勒戒處分。但對於少年得由少年法院（庭）另行指定適當處所執行。 勒戒處所附設於看守所或少年觀護所者，應與其他被告或少年分別收容。 受觀察、勒戒人為女性者，應與男性嚴為分界。

三、依監獄行刑法第 3 條規定，受刑人未滿 18 歲者，應收容於少年矯正機構。同時設置如少年觀護所、少年矯正學校及少年輔育院等專責機構，分別收容不同類型之少年收容人，施以不同之處遇措施。另於觀察勒戒處分執行條例第五條亦明定，受觀察、勒戒人應收容於勒戒處所，執行觀察、勒戒處分。但對於少年得由少年法院（庭）另行指定適當處所執行。勒戒處所附設於看守所或少年觀護所者，應與其他被告或少年分別收容。顯見我國對於少年犯與成年犯之分界收容實有明確之規定。

四、同時基於少年利益最佳化考量，自 100 年 10 月 1 日起，規劃將西部地區少年受觀察勒戒人分區集中於各專責少年矯正機關，部分附設於看守所者，亦確實採取分區收容處遇，且為督導各矯正機關均能落實依據法令規定辦理，各級法院及檢察署均定期派員前往轄內矯正機關視察並做成書面報告備查，迄未發現有違反公政公約之情形。

英文回應

1. Regulations concerning the separate detention for juvenile and adult defendants are stipulated in Juvenile Delinquency Act (Article 26, Paragraph 6 of Article 26-2, Paragraph 2 of Article 71), and these regulations correspond with Article 10, Paragraph 2 and 3 of ICCPR.

Besides, relevant regulations are also stipulated in Detention Act, Prison Act, and Act of Execution of Rehabilitation Treatment. Relevant Articles are as follows:

(1) Juvenile Delinquency Act

Article 26	**(Order for Custody or Detention)** **The juvenile court may pronounce the following measures by ruling when necessary:** **1. Order the custody to the juvenile's statutory agent, parents, closest relatives, a person who currently protects the juvenile, or other proper institution, organization, or individual; and may hand the juvenile to a juvenile investigator for consulting before the case closes;** **2. Order to send a juvenile to a juvenile detention center; provided that it is limited to where the juvenile cannot be ordered for custody or an order for custody is obviously improper, and that the detention is necessary.**
Article 26- 2	(Period of Detention) **The organization of a juvenile detention center shall be stipulated by laws.**
Article 71	(Restrictions on Detention) **A juvenile defendant shall be detained in a juvenile detention center; once reaching 20 years of age, he/she shall be send to a detention center.**

(2) Detention Act

Article 3	A defendant who has not completed the eighteenth years of age shall be detained separately with others.

(3) Prison Act

Article 3	An inmate who is under eighteen years old shall be accommodated in juvenile correctional institutions. When an inmate has become over the eighteenth year of age; moreover, the remnant term of sentence is less than

	three months, the inmate may be accommodated in juvenile correctional institutions until his sentence is expired. For educational reason, an inmate who has completed the eighteenth but not yet reached his twenty-three years of his age may be accommodated in juvenile correctional institutions until the stage of education is over. The establishment of juvenile correctional institutions and enforcement of correctional education is to be drawn up by related laws.

(4) Act of Execution of Rehabilitation Treatment

Article 5	Delinquents under observation or rehabilitation shall be detained in a drug abstention and rehabilitation center for execution of rehabilitation treatment. For juvenile delinquents, the juvenile court shall decide other proper locations for execution of the rehabilitation treatment. Where the drug abstention and rehabilitation center is an affiliated facility of a detention center or juvenile detention house, the detention area of the juvenile delinquents receiving rehabilitation shall be separated from that of other defendants or juveniles. Strict gender segregation shall be implemented in the drug abstention and rehabilitation center.

2. Under the provisions of Article 3 of the *Prison Act*, an inmate under the age of 18 years should be incarcerated in a juvenile correctional facility. The AOC had likewise established juvenile detention houses, juvenile correctional schools and juvenile reform schools for the incarceration of juvenile inmates serving different types of sentences for varying types of treatments. Under Article 5 of the Act of Execution of Rehabilitation Treatment, delinquents under observation or rehabilitation shall be detained in a drug abstention and rehabilitation center for execution of rehabilitation treatment. For juvenile delinquents, the juvenile court shall decide other proper locations for execution of the rehabilitation treatment. Where the drug abstention and rehabilitation center is an affiliated facility of a detention center or juvenile detention house, the detention area of the juvenile delinquents receiving rehabilitation shall be separated from that of other defendants or juveniles. It is therefore apparent that distinctive laws have been established to separate the governance of adult and juvenile delinquents.
3. Moreover, for the optimization of the welfare of juvenile delinquents, effective from October 1, 2011, the government started construction of a centralized correctional facility with segregated sectors for juvenile delinquents in the western region of the country. The facility will

be equipped with a detention center, and facility will be run through a sectional treatment system. Furthermore, to realize the proper supervision of the law observance practices of the respective correctional facilities, the respective jurisdictional courts and prosecutors offices regularly assign inspectors to inspect the correctional facilities within their areas of jurisdictions and prepare the pertaining inspection reports. To date, no violations of the *International Covenant on Civil and Political Rights* had been noted.

條文	編號	問題內容(原文)	中文參考翻譯
公政第 7 條及第 10 條	33.	According to the US State Department Report 2011, more than 100.000 cases of domestic violence were reported in 2011 in Taiwan, and 2.469 persons were convicted for this crime, usually to less than six months in prison. Which measures, in addition to criminal prosecution of perpetrators and protection orders to victims, does the Government of Taiwan take to reduce the widespread problem of domestic violence?	依據美國國務院 2011 年報告，在台灣 2011 年共通報超過 10 萬件的家庭暴力案件，有 2469 人被判有罪，通常是 6 個月以下有期徒刑。除了刑事追訴行為人及對被害人核發保護令之外，台灣政府採取哪些措施以減少普遍存在的家庭暴力問題？

中文回應

一、內政部積極推動三級預防工作：（一）初級預防：透過報紙、電視、廣播、網路等傳播平台加強宣導 113 保護專線，鼓勵民眾落實社區通報，2007 年至 2011 年估計播放相關宣導影音約 2 億 1,978 萬 9,263 檔次；（二）次級預防：強化責任通報機制，暢通民眾舉報管道，2011 年 113 保護專線共計接線 172 萬 344 通；（三）三級預防：健全危機處理機制，落實被害人安全計畫及加害人處遇工作，訂定各項被害人補助標準，輔導各防治中心依法提供被害人緊急救援、就醫診療、驗傷及取得證據、緊急安置、心理治療、法律諮詢等保護扶助措施。直轄市、縣（市）政府依家庭暴力防治法提供被害人各項保護扶助措施，2006 年至 2011 年總計扶助家庭暴力被害人 285 萬 2,541 人次，其中，男性計 62 萬 4,834 人次，女性計 222 萬 7,707 人次，扶助金額共計 15 億 6,389 萬元。

二、為提升員警對家庭暴力防治個案執行能力，本部警政署也強化相關教育訓練，對於疑似家庭暴力之案件亦依法通報當地家防中心評

估開案，透過社工專業輔助，以解決案家家庭問題。另對於各種家庭暴力刑案及違反保護令罪，警政署皆依法辦理。

英文回應

1. The Ministry of the Interior proactively promotes three levels of prevention. (1) Primary prevention: In order to encourage people to report within the local communities, promotion of the protection hotline 113 is reinforced through newspapers, TV, radio, and the Internet, among other communication platforms. From 2007 to 2011, promotional audio and video clips aired approximately 220 million times. (2) Secondary prevention: Reporting mechanisms have been improved, The 113 hotline received a total of 1,720,344 calls in 2011. (3) Tertiary prevention: Crisis management mechanisms have been put in place to strengthen personal safety of the victim and enhance processes used to deal with the perpetrator. Various subsidy standards for victims have been established. Individual protection centers are given assistance in providing victims with emergency rescue, medical care, medical examinations, and collection of evidence, emergency relocation, psychological therapy and legal consultation. Governments at the special municipality, city, and county levels provide various forms of protection and support to victims in accordance with the Domestic Violence Prevention Act. A total of 2,852,541 cases of domestic violence were processed from 2006 to 2011, among which 624,834 were men and 2,227,707 were women. The total value of support and assistance reached NT$1.56 billion.

2.

(1) The National Police Agency enhanced the police forces on the education and training of the domestic violence prevention .The cases of suspected domestic violence were reported legally to the local domestic violence and sexual assault prevention center by the police. The local domestic violence and sexual assault prevention center should assess whether to open a case or through the social worker's special assistance to solve the domestic problem.

(2) The National Police Agency would deal legally with the cases of domestic violence and violation of protection order.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 8 條	34.	Para 120 of the State Report explains that hard labour is the "alternative punishment when the criminal is unable to pay the fine". Which authorities decide to impose hard labour? For which type of criminal offences (e.g. crimes, misdemeanors, petty offences) may hard labour be applied? How is hard labour defined in Taiwanese law?	國家報告第 120 段說明易服勞役是指「無力全額繳納罰金之替代刑罰」。易服勞役是由哪些機關做決定？易服勞役可適用於哪類罪名（例如刑事犯罪（crimes）、最重本刑為一年以下之輕罪（misdemeanors）、最重本刑為 6 月以下有期徒刑之微罪（petty offences）？台灣的法律如何定義「勞役」（hard labor）？

中文回應

一、易服勞役係由執行檢察官決定，受刑人不服，可向法院聲明異議。

二、易服勞役並無罪名之限制，係針對經法院判處罰金刑而無力繳納之受刑人所為之易刑處分。

三、易服勞役在實務上即係發監執行。

英文回應

1. Commuting a sentence to labors shall be decided by the prosecutor. If the inmate refuses to accept the decision, he or she may declare his or her objection to the court.
2. Commuting a sentence to labors is not restricted by the nature of the crime committed. It is applied to those who are punished by the court to pay fines but they cannot afford to pay.
3. In practice, commuting a sentence to fines is right another form of imprisonment implementation.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 8 條	35.	Para 115 of the State Report refers to problems under the business-education cooperation projects, and the CW Shadow Report refers to student apprentices as “slave labor” (p 62) and recommends, inter alia, that the work day of the student apprentices should be limited to eight hours. Does the Government of Taiwan agree with this recommendation? Which other measures are envisaged to reduce the risk of exploiting student apprentices as “slave labor”?	國家報告第 115 段提到建教合作計劃的問題，兩公約施行監督聯盟影子報告認為建教生是「奴工」(第 62 頁)並特別建議建教生的每天工作時數應限制在 8 小時以內。台灣政府是否同意這樣的建議？是否設想其他措施以降低建教生被剝削為「奴工」的風險？

中文回應

一、教育部為強化建教合作制度及保障建教生之權益，研訂「高級中等學校建教合作實施及建教生權益保障法」(以下簡稱本法)，以提高法令位階，明確規範建教生、學校及建教合作機構三方當事人之權利義務關係，希望促進建教合作機制之發展。本法經立法院 2012 年 12 月 14 日院會討論通過，並奉總統 2013 年 1 月 2 日華總一義字第 10100290761 號總統令公布施行。本法施行後，將有助建立完備的建教合作制度，建教生不但能享有原先勞動基準法所規定之權利，亦將因專法的制定而享有更多的保障。

二、本法以第四章專章明定建教生權益保障事項，有關建教生訓練時數部分，本法第 24 條規定如下：

(一)建教生每日訓練時間不得超過 8 小時，每二星期受訓總時數不得超過 80 小時，且不得於午後 8 時至翌晨 6 時之時間內接受訓練。

(二)建教生繼續受訓 4 小時，至少應有 30 分鐘之休息。

(三)建教生受訓期間，每 7 日至少應有 1 日之休息，作為例假。

(四)建教生受訓期間，遇有勞動基準法規定應放假之日，均應休息。

(五)女性建教生因生理日致受訓有困難者，每月得申請生理假 1 日。

三、因建教合作機構經營型態、工作特性、季節、地域或行業類別需要，並符合下列各款條件者，建教合作機構得向主管機關申請核

准，於建教生訓練契約中與建教生另行約定訓練及休息時間之起迄點：

(一)建教生年滿 16 歲。

(二)建教合作機構提供必要之安全衛生設施。

(三)無大眾運輸工具可資運用時，建教合作機構提供交通工具或安排宿舍。

(四)建教合作機構與建教生依前項規定另行約定訓練時間者，仍不得於午後 10 時至翌晨 6 時之時間內接受訓練。

(五)建教生每日訓練時間之起訖，含訓練及中間休息時間，合計不得超過 12 小時。

英文回應

1. Cooperative Education in High Schools and Co-op Students Rights Protection Law is enacted in hopes of strengthening business-education cooperation and ensuring the rights of student apprentices. The Law, with an advanced standing in the authority hierarchy, aims to specify the obligations and rights of student apprentices, schools, and companies and to help optimize the development of the apprenticeship mechanism. The Law was adopted by the Legislative Yuan on December 24, 2012 and its enforcement became effective as of the date of promulgation by Presidential order, January 2, 2013, Ref. Hua Zong Yi Yi Zi No. 10100290761. The Law is expected to create a better apprenticeship system to ensure the rights of the student apprentices on top of what has been provided by the Labor Standards Act.
2. The fourth chapter of the Law provides regulations governing the rights of student apprentices. As for training hours, Article 24 provides the following:

(1) Student apprentices shall not work more than 8 hours every day and the working hours per two weeks shall not be greater than 80 hours. Working between 8 p.m. and 6 a.m. is prohibited

(2) Student apprentices shall have a 30-minute break every 4 training hours.

(3) Student apprentices shall have one day off at least every 7 days.

(4) Student apprentices shall have the entitlement to public holidays stipulated in the Labor Standards Act.

(5) Female apprentices may take a one day menstrual leave each month when having difficulty in training during the menstrual period.

3. As different industries and businesses have varying needs arising from operation modes, seasons, and localities, the apprenticeship companies may apply to competent authorities for special apprenticeship hours. The following requirements shall be met:

(1) Student apprentices shall be at least 16 years of age.

(2) The company shall provide the necessary safe and sanitary facilities.

(3) If there is no means of public transport available, the company shall provide means of transport or accommodation.

(4) Although special apprenticeship hours may be contracted, working between 10 p.m. and 6 a.m. is still prohibited.

(5) The total hours at work (including training and breaks) shall not be greater than 12 hours per day.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 8 條	36.	In para 116, the State Report admits that violations of rights of alien workers "have never stopped". In its 2011 Report, Amnesty International states: "Migrant workers in Taiwan faced multiple abuses of their rights, including the right to transfer between employers and to form unions. Harsh and discriminatory working conditions, and exorbitant brokers' fees contributed to large numbers leaving their original employer and becoming undocumented. The CW Shadow Report recommends (p 74) that the Council of Labour Affairs (CLA) should severely penalize those employers that confiscate the documents and valuables of their employees, putting into practice the regulation stated in the Employment	在第 116 段，國家報告承認侵害外籍勞工權利的事件「從未停止過」。國際特赦組織在 2011 年報告中提到：「外籍勞工在台灣面臨多重的權利侵害，包括轉換僱主權及組織工會權。惡劣及歧視的工作環境，以及高額的仲介費用促使大量外勞逃離原僱主而成為無證外勞。兩公約施行監督聯盟影子報告建議（第 74 頁）勞委會應對扣留受僱者的證明文件及財物的僱主嚴加處罰，落實就業服務法的規定。台灣政府是否同意此項建議？是否設想其他的措施以解決奴隸般的剝削外籍勞工？

		Services Act (ESA). Does the Government of Taiwan agree with this recommendation? Which other measures are envisaged to address the slavery-like exploitation of migrant workers?	

中文回應

一、為落實我國就業服務法第 42 條規定，運用外籍勞動力應兼顧保障國民就業權益及維護社會安定，及雇主聘僱外籍勞工之穩定性，爰於同法第 53 條及第 59 條規定，外籍勞工倘有不可歸責於外籍勞工之事由，經中央主管機關核准，得轉換雇主或工作。為強化轉換雇主機制，勞委會於 2008 年建置外勞轉換雇主媒合資訊平臺，以使轉換雇主之資訊透明化，雇主及外勞可透過該平臺進行媒合，另外勞轉換雇主亦可透過三方合意及雙方合意之方式，即原雇主、外勞及符合資格之新雇主得透過三方合意，由新雇主直接向勞委會申請接續聘僱；或原雇主因違法或有不可歸責於外國人之事由經勞委會廢止聘僱許可並核准外國人轉換後，外國人得與符合資格之新雇主以雙方合意之方式，由新雇主直接向勞委會申請接續聘僱，爰現行轉換雇主規定已有相關程度之轉換自由。考量依現行規定外籍勞工原則不得轉換雇主，發生勞雇糾紛時可能衍生外籍勞工行蹤不明情事，未來將在兼顧勞雇雙方權益及不增加外勞總數原則下，參酌勞基法第 14 條勞工得不經預告終止契約之事由，對於可歸責但未達廢止許可程度之雇主，研議其外勞轉換雇主之作法。

二、有關應對扣留受僱者的證明文件及財物的雇主嚴加處罰，落實就業服務法規定乙節，因考量外籍勞工與雇主之權利地位不對等，若雇主要求留置外籍勞工身分證明文件、工作憑證或其他證明文件等，勞工難以抗拒之情勢，有地方主管機關多難以主動發掘及查察，爰勞委會已研議修正就業服務法相關規定，禁止雇主留置勞工之身分證明文件或其他證明文件，以確保勞工對自有證件之保管權利，落實權益保障，違反者將依法論處。另考量有其他正當事由，雇主確有留置求職人或員工證件之必要，爰例外允許雇主得暫予留置，例如求職人或員工委託雇主代為辦理護照延期、換發新護照、換發居留證等證件相關程序。上開就業服務法部分條文修正草案，業經行政院於 2013 年 1 月 15 日邀集相關部會及地方政府，召開「就業服務法部分條文修正審查會議」審議。

英文回應

1. According to Article 42 of the Employment Services Act, use of foreign labor must be done with the protection of the right to employment of the ROC citizens, social stability, and the stability of hiring foreign workers taken into consideration. Therefore, in Articles 53 and 59 of the same act, it is stipulated that when foreign workers lose their employment due to causes not attributable to them, with the approval of the central competent authority, they may change employers or work. To improve the employer change mechanism, the Council of Labor Affairs set up in 2008 a foreign worker-employer matching information platform to increase transparency in change of employers for foreign workers. Employers and foreign workers are now able to find the right match through the platform. On the other hand, change of employers can also be carried out through trilateral or bilateral arrangements, meaning that the original employer, the foreign worker and a qualified new employer can consult with one another to reach agreement and the new employer applies to the Council of Labor Affairs for permission to hire the foreign worker, or when the Council of Labor Affairs has terminated the employment permit and approved the foreign worker to change employers due to unlawful conduct of the original employer or causes not attributable to the worker, the foreign worker and a qualified new employer have reached agreement and the new employer applies to the Council of Labor Affairs for permission to hire the worker. Therefore, as described above, foreign workers do have the freedom to change employers to a certain extent. Meanwhile, due to the current regulation that foreign workers are disallowed to change employers in principle, foreign workers encountering employee-employer disputes sometimes choose to escape and become difficult to track down. In the future, taking in to consideration the rights and interests of both the employee and the employer as well as the principle of not increasing the total number of foreign workers in the country, the Council of Labor Affairs will refer to the circumstances in which workers may terminate the contract without giving advance notice as set forth in Article 14 of the Labor Standards Act and approve applications for change of employers from foreign workers when there are problems attributable to the employer but not serious enough for the competent authority to revoke the employment permit.
2. Regarding enforcing the regulation in the Employment Services Act of imposing severe sanctions on employers who withhold the identification documents and belongings of their employees, as the rights and status of foreign workers and their employers are unequal, if an employer demands to take in custody the identification document, work permit and other proof documents of a foreign worker, the worker often finds it impossible to refuse while it is also difficult for local labor authorities to initiate an investigation with nothing to start with. Hence, the Council of Labor Affairs has been working on feasible approaches to revise the related regulations in the Employment

Services Act to forbid employers from keeping the identification documents and other proof papers of their employees to protect the right of workers to guard their own papers; those violating the regulation will be sanctioned according to law. However, when there are legitimate reasons for an employer to keep the identification papers of job applicants or employees, such as the employer being delegated by a job applicant or employee to apply for passport extension or renewal or resident certificate renewal, the regulation will not apply. The Executive Yuan already convened the "Meeting for the Review of the Partial Amendment to the Employment Services Act" with related ministries and councils and local governments to deliberate on the draft of partial amendment to the Employment Services Act.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 8 條	37.	In para 116(3), the State Report states that for "alien workers engaged in domestic work, there are no applicable requirements under the LSA at the moment". The CW Shadow Report adds that according to statistics from the CLA, "42.4% of all migrant workers working in the home do not get any holidays or rest days in a given year" (p 66). The Amnesty International Report 2011 states: "Domestic workers are not protected by the Labor Standards Law, and are particularly vulnerable to sexual harassment, inadequately paid overtime and poor living conditions" (p 316). The Amnesty International Report 2012 adds that domestic migrant workers and care-givers were often forced to work without adequate rest (p 329). Which measures of	在第 116（3）段，國家報告提及「從事家事勞動之外籍勞工，目前未適用勞基法相關規定」。兩公約施行監督聯盟影子報告附加說明依據勞委會的統計資料，「42.4%從事家事勞動的外籍勞工一整年都沒有休假或休息日」（第 66 頁）。國際特赦組織 2011 年的報告提及：「家事勞動者不受勞動基準法之保障，尤其容易受到性騷擾、不合理的加班費及不良的工作環境」（第 316 頁）。國際特赦組織 2012 年的報告附加說明外籍家事勞工及看護常常被迫工作而無適當休息（第 329 頁）。台灣政府已計畫採取哪些措施以防止在家事勞動者方面有如奴隸般的習慣？報告第 116（3）段提及的「家事勞工保障法」是否有任何進展？

		the Government of Taiwan are planned to prevent slavery-like practices relating to domestic migrant workers? Has there been any progress in adopting the "Labor Protection Act for Domestic Workers" mentioned in para 116(3) of the report?	

中文回應

一、目前家事勞動者，未適用勞動基準法相關規定，並無勞動基準法最低工資、工作時間及休假等規定適用，外籍家事勞工在臺工作之工資、工時等勞動條件由外籍家事勞工與雇主雙方於外籍家事勞工入國前合意協商訂定，依「雇主聘僱外國人許可及管理辦法」（以下簡稱本辦法）第 27 條之 2 規定，當地主管機關實施外國人入國工作費用或工資檢查時，應以外國人入國後 3 日內，所檢附經外國人本國主管部門驗證之工資切結書記載內容為準；且切結書之內容，不得為不利益於外國人之變更。故雇主與外國人兩造合意所簽訂之勞動契約，不論於國內或國外簽訂，其內容不得牴觸經外國人之本國主管部門驗證之切結書。倘雇主經申訴或檢查有違反「就業服務法」第 57 條第 3 款規定，外籍勞工經查獲為雇主指派從事許可以外之工作，依第 68 條規定可處雇主新臺幣 3 萬元以上至 15 萬元以下之罰鍰；如雇主經地方主管機關限期改善，屆期未改善，又為地方政府 2 次查獲違反上開規定，除雇主再受罰鍰處分外，勞委會將依「就業服務法」第 72 條第 3 款規定，廢止雇主招募許可及聘僱許可。

二、另勞委會為禁止雇主聘僱外國人時發生強迫勞動之情事，已於就業服務法第 57 條第 7 款規定：「雇主不得對所聘僱之外國人以強暴脅迫或其他非法之方法，強制其從事勞動。」，違反者，將依本法第 72 條第 2 款及「雇主聘僱第 2 類外國人違反就業服務法第 72 條規定廢止招募許可及聘僱許可裁量基準」項次 12 規定，按雇主所生違反外國人之人數與應廢止許可外國人人數，採 1 比 5 之比例，廢止有效許可外國人人數之招募許可及聘僱許可。

三、另為避免外籍勞工被迫從事許可以外之工作且無法申訴之情形，勞委會已於機場設立服務站，於外籍勞工入境發送法令資料、24 小時免付費之申訴管道資訊資料及遭致人口販運對待之求助管道等相關宣導資料。

四、為保障家事勞工之勞動條件權益，本會經多次邀集勞、雇團體、學者專家及相關單位研商後，研訂擬具「家事勞工保障法」草案（Draft of Labor Protection Act for Domestic Workers），並已報請行政院審議。本草案經行政院召開 2 次審查會議討論，且本會依據

會議結論續以研議後，已於101年9月21日再度將研議資料送請行政院續行審議，行政院於102年1月22日函請本會再行研議並尋求各界共識，本會將續行研議尋求共識，持續以務實的態度推動家事勞工保障法立法。

英文回應

1. At present, the regulations in the Labor Standards Act regarding minimum wages, work hours, leave, and etc. do not apply to domestic workers. The wages, work hours and other labor conditions of foreign domestic workers in Taiwan are established through negotiation between the foreign worker and the employer before the worker enters the country. According to Article 27-2 of the Regulations on the Permission and Administration of the Employment of Foreign Workers (hereinafter referred to as the RPAEFW), when checking the expenses accrued for a foreign national to enter the country to work and his or her wages, the local competent authority is required to inspect the information registered in the affidavit of wages turned in within three days after the worker's arrival in Taiwan to be verified by the authorities in order to make sure that no alterations disadvantageous to the foreign worker have been made. In other words, once the labor contract is signed, whether in Taiwan or overseas, the contents may not in contradiction with the clauses set forth in the affidavit that has been verified by the competent authority in Taiwan. Employers found to have appointed an employed foreign worker to engage in work that is not within the sphere of the permit in violation of Subparagraph 3, Article 57 of the Employment Services Act either through complaints filed by their foreign workers or inspections by the authorities, the competent authority may impose on such employers a fine no less than NT$30,000 and no more than NT$150,000 in accordance with Article 68 of the same act and at the same time order them to improve within a specified period. With employers failing to improve within the specified period and found by the local government to have violated the aforesaid regulation again, the Council of Labor Affairs, in addition to fine imposition again, will act according to Subparagraph 3, Article 72 of the Employment Services Act and revoke the recruitment and employment permits.
2. As for the prohibition of employers from forcing foreign workers to do work not specified in the contract, it is already set forth in Subparagraph 7, Article 57 of the Employment Services Act: "(Employers may not) exert coercion, threat, or any other illegal means upon the employed foreign worker(s) to force him/her/them to engage in work contrary to his/her/their free will." With those violating the

regulation, the competent authority will apply Subparagraph 2, Article 72 of the same act as well as Point 12 of the "Criteria for the Decision of Revocation of Recruitment and Employment Permits of Type-B Foreign Workers' Employers in Violation of Article 72 of the Employment Services Act and reduce the number of foreign workers such employers are permitted to recruit and employed by five persons for every worker to whom the violation has been made.

3. To prevent foreign workers from being forced to perform work outside the range specified in the permit and unable to file complaints, the Council of labor Affairs has set up service stations at airports and pamphlets carrying information on related laws and regulations, the 24-hour toll-free hotline, and approaches to seek assistance when falling prey to human traffickers are distributed to foreign workers when they arrive in the country.
4. To protect the rights of and ensure acceptable working conditions for domestic workers, the Council has invited organizations from laborers and employers, scholars and other government agencies for a good number of rounds of discussions before formulating the Draft of Labor Protection Act for Domestic Workers for further reviews by the Executive Yuan. The abovementioned draft had been put for discussions through two review meetings convened by the Executive Yuan and reasonably revised by the Council based on the conclusions of above review meetings. The revised draft has consequently been submitted to the Executive Yuan for new rounds of reviews on September 21, 2012, regarding which the Executive Yuan has delivered official documentation on January 22, 2013 to the Council, demanding opinions from the outside circles shall be sought and a consensus shall be achieved. Hence the Council will continue engaging discussions with outer fields so as to seek a consensus and working practically toward the legalization of Labor Protection Act for Domestic Workers.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 9 條	38.	Para 140 of the State Report explains that a "total of 7.655 illegal aliens were placed in major NIA temporary shelters in 2011…. Those who disagree with the placement decision	國家報告第 140 段提及：「移民署各大型收容所 2011 年收容非法外來人口計 7,655 人….。不服收容處分者，得向移民署提出收容異議，不服異議之決定者，得提起行政

		may file a petition with the NIA, and those who do not agree with the petition decision may file for administrative remedy." This regime of administrative detention of foreign nationals is strongly criticized by the CW Shadow Report as violating the right to a "speedy court hearing" in Article 9(3) CCPR (p 81) and the right to habeas corpus in Article 9(4) CCPR (p 82). Article 9(4) requires that anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that "court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful". How long does it until an illegal alien in Taiwan may challenge his or her detention by the National Immigration Agency (NIA) before an independent court? What measures are envisaged to bring this situation in line with the requirements of habeas corpus under Article 9(4) CCPR?	救濟。」此一外國人收容機制被兩公約施行監督聯盟的影子報告批評，認為不符本條第 3 項「迅速審理」（兩公約施行監督聯盟的影子報告，第 81 頁）及第 4 項「受司法救濟」（兩公約施行監督聯盟的影子報告，第 82 頁）之意旨。本條第 4 項規定任何人因逮捕或拘禁被剝奪自由的人，均有權利向法院提起訴訟，「以迅速決定其拘禁是否合法」。請問：在台灣，這些受到收容的外國人是否（又要多長時間）才能向法院對其收容提起訴訟？又是否有採取任何措施使目前的情況符合本條第 4 項「受司法救濟」之規定？

中文回應

一、依現行訴願法規定，「訴願之提起，應自行政處分達到或公告期滿之次日起三十日內為之」、「訴願之決定，自收受訴願書之次日起，應於三個月內為之」。

二、對收容處分不服，欲提起行政訴訟，應先向訴願機關提起訴願，依訴願法規定，訴願機關作成訴願決定應於三個月內為之，即訴願決定最長可達三個月，故在訴願決定作成後即最長三個月後才能向法院提起行政訴訟救濟。

三、行政訴訟係經由行政法院審理，依行政法院組織法規定，仍屬一般司法權之行使，與訴願之救濟為行政行為性質不同，其屬於司

法救濟之一環，符合本條第 4 項「受司法救濟」之規定。

四、目前我國針對受收容人不服收容處分之救濟程序，於「入出國及移民法」雖僅第 38 條第 3 項定有「受收容人或其配偶、直系親屬、法定代理人、兄弟姊妹，得於七日內向入出國及移民署提出收容異議。」使收容處分之處分機關就收容處分進行自我審查。另亦得透過訴願，提起行政訴訟之方式救濟。惟透過此種方式為救濟至少需時一個月。另亦得聲請停止執行，此一方式最為快速，然實務上准許之案例甚少。有關《提審法》第 1 條、第 9 條規定，實務上認僅適用於刑事犯罪之逮捕拘禁，未涵括同為限制人身自由之收容處分。

五、惟大法官於 102 年 2 月 6 日作成釋字第 708 號解釋，宣告入出國及移民法第 38 條第 1 項有違憲法第 8 條第 1 項保障人民身體自由之意旨，應於二年內失效。其要旨如下：(一)「收容」嚴重干預人民身體自由，自須踐行必要之司法程序或正當法律程序；惟因非對刑事被告之限制，是其程序可不必與刑事被告相同。(二)收容之目的在遣送出國，移民署須有合理作業期間以執行遣送事宜，於此期間內該署得暫時收容，惟應給予即時有效之司法救濟。(三)考證收容實務，移民署合理作業期間以 15 日為上限；倘受暫時收容人不服，應即於 24 小時內移送法院裁定。上開迅速受司法救濟之權利，應以受收容人熟悉之語言告知之。(四)暫時收容期間將屆，移民署認有繼續收容之必要者，因事關人身自由之長期剝奪，基於憲法保障人身自由之正當法律程序要求，應由法院依法審查決定，始能續予收容；有延長收容之必要者，亦同。我國將積極研議相關法令之修正及配套措施，以符合本條第 3 項、第 4 項迅速獲得司法救濟之意旨。

英文回應

1. According to the regulation of Administrative Appeal Act, an illegal alien in Taiwan may challenge his or her detention to the National Immigration Agency within 30 days after the following day of the expiration date of detention. The adjudication should be within 3 months after the appeal is received.
2. Anyone who wishes to challenge the detention can apply for appeal to the Administrative Court after the process of the adjudication by the National Immigration Agency is released.
3. Administrative appeal is heard by Administrative Court and is observe the right to habeas corpus in Article 9(4).

4. Article 38, Paragraph 3 of Immigration Act stipulates that ” Any detainee or his/her spouse, lineal relative, legal representative, or sibling may file a petition against a detention decision within seven (7) days from the start of the detention to the National Immigration Agency.” However, this is only for agency self-review. For filing for a administrative remedy, the plaintiff will have to file administrative appeal first. That will take at least 1 month. Another fast track to seek judicial intervention is to seek a court order to suspend the enforcement. Yet cases approved by the court are very few in practice.
5. As for the writs of Habeas Corpus, it is not applicable to foreigners or mainlanders placed in NIA shelters. According the dominating opinion, the writs of Habeas Corpus is only applicable in detention or arrest for criminal causes.
6. The constitutionality of Article 38 of Immigration law and existing practice is being deliberated by Grand Justices. Judicial Yuan just issued Interpretation No.708 on February 6th 2013, declaring that Article 38 of Immigration Act is in contradiction with the Due Process of Law and the Protection of personal freedom implicit in Article 8 of the Constitution and shall become invalid no later than two years since the issuance of this Interpretation. The holding of Grand Justices in Interpretation 708 could be summarized as follows: (1) The placement of aliens waiting to be deported is a serious interference with personal freedom. The procedure to make the placement decision shall satisfy Due Process of Law required by Article 8 of the Constitution. However, since the nature and its purpose are different from criminal procedure, the standard could be different from the way how criminal defendants are treated. (2) Since the purpose of placement of aliens is deportation, a reasonable length of placement allowing the NIA to complete the process is necessary. To this extent, it is constitutional for NIA to make the temporary placement decision. (3) Time limit for temporary placement is to be determined accordingly. Based on the statistics provided by NIA, the length of temporary placement shall not exceed 15 days. The temporarily placed aliens may file a petition against the placement decision to the court. When the placed alien does so , NIA shall submit the petition to the court for review within 24 hours , and the remedy provided by court shall be efficient and without delay. Aliens shall be informed the placement decision and the above mentioned rights to judicial review in the language his or she is familiar with. (4) When it is necessary to prolong the placement period beyond 15 days, this decision shall be made by the court so as to conforming to the Due Process of Law under Article 8 of the Constitution.
7. Following the issuance of Judicial Yuan Interpretation 708, Immigration Law and relevant regulations will be amended accordingly to meet the standard of Article 9, Paragraph 3 and 4 of the ICCPR.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 9 條	39.	The CW Shadow Report (p 83) states that aliens without valid travel documents (e.g. stateless persons) and PRC nationals can be held indefinitely in administrative detention. Is this true? If so, what measures are envisaged to address this situation and bring it in line with the requirements of Article 9 CCPR?	兩公約施行監督聯盟的影子報告第 83 頁提及：部分沒有合法旅遊證件的外國人（如無國籍人）或中華人民共和國國民在目前的行政收容機制下，可能被無限期拘禁？此是否為真？果真如此，是否有採行任何措施來回應此一問題，以使其符合本公約第 9 條之規定？

中文回應

一、依現行入出國及移民法第 38 條規定，收容期間原則上以 120 日為上限（100 年 12 月 9 日施行），縱使涉及刑事案件經司法機關責付，收容期滿仍應附加條件而廢止收容。

二、依目前的行政收容機制，不會再發生無限期拘禁情事，符合本公約第 9 條之規定。

英文回應

1. Based on the Article 38 of the Immigration Act, the length of detention is up to 120 days （Starting from December 9th 2011）under any legal circumstances.
2. According to the current Administrative detent mechanism, the infinite length of detention is no longer exists, which is observe with the requirements of Article 9 CCPR.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 9 條	40.	Article 9(3) CCPR stipulates that it shall “not be the general rule that persons awaiting trial shall be detained in custody”. The CW Shadow Report (pp 83 et seq.) provides evidence that for persons accused of a serious crime, remand detention seems to be the rule in Taiwan since prosecutors and courts consider that with regard to these persons risk of flight is very high. Is this observation correct? If so, which measures are envisaged by the Government of Taiwan to bring the system of pre-trial detention in line with the requirements of Article 9(3) CCPR?	本條第 3 項規定「後訊人通常不得加以羈押」。但兩公約施行監督聯盟的影子報告第 83 頁以下提到「重罪羈押」目前仍然實務上的通例，因為檢察官及法官偏重考慮被告逃亡的風險。兩公約施行監督聯盟的影子報告所提出的觀察是否正確？倘若正確，政府是否有採行任何措施來讓相關刑事程序符合本條第 3 項之規定？

中文回應

一、司法院釋字第 665 號明白揭示重罪不得作為羈押唯一原因，司法院已研修刑事訴訟法第 101 條第 1 項第 3 款草案，擬規定所犯為死刑、無期徒刑或最輕本刑為五年以上有期徒刑之罪，有相當理由認其有逃亡、湮滅、偽造、變造證據或勾串共犯或證人之虞者，非予羈押，顯難進行追訴、審判或執行，始得予以羈押。該修正草案現於立法院司法及法制委員會審議中。

二、據 101 年度統計資料顯示，地方法院辦理檢察官聲請羈押案件，准許聲請羈押人數為 8,017 人，而法院依刑事訴訟法第 101 條第 1 項第 3 款准許羈押聲請之人數為 3,373 人，約占准許聲請羈押人數 42.07%。兩公約施行監督聯盟影子報告提到「重罪羈押」目前仍為實務上的通例，係因為檢察官及法官偏重考慮被告逃亡的風險，似有誤解。

三、司法院釋字第 665 號解釋理由書認：「刑事訴訟法第 101 條第 1 項第 3 款規定之羈押，係因被告所犯為死刑、無期徒刑或最輕本刑為 5 年以上有期徒刑之罪者，其可預期判決之刑度既重，該被告為規避刑罰之執行而妨礙追訴、審判程序進行之可能性增加，國家刑罰權有難以實現之危險，該規定旨在確保訴訟程序順利進行，使國家刑罰權得以實現，以維持重大之社會秩序及增進重大之

公共利益，其目的洵屬正當。又基於憲法保障人民身體自由之意旨，被告犯上開條款之罪嫌疑重大者，仍應有相當理由認為其有逃亡、湮滅、偽造、變造證據或勾串共犯或證人等之虞，法院斟酌命該被告具保、責付或限制住居等侵害較小之手段，均不足以確保追訴、審判或執行程序之順利進行，始符合該條款規定，非予羈押，顯難進行追訴、審判或執行之要件」。

四、法務部於上開解釋公布後，已通函各檢察機關轉知所屬檢察官以被告所犯為死刑、無期徒刑或最輕本刑 5 年以上有期徒刑之罪，而向法官聲請羈押時，除提出被告涉犯重罪之證據外，更應依前開解釋意旨，提出被告確有「相當理由」認有逃亡，湮滅、偽造、變造證據或勾串共犯或證人等之虞之相關事證或理由，供法官作為裁定准許羈押之依據。

英文回應

1. According to Grand Justice Interpretation No.665, accused of serious crime shall not be the sole reason to detain the defendant. The fact that the defendant accused of serious crime can not presume risk of flee. To clarify this point, Judicial Yuan has proposed a draft of Article 101, Paragraph 1, Subparagraph 3, which is now pending in the legislative Yuan for deliberation.
2. According to statistics in year 2012, District Courts detained 8017 people in total, while the number of those detained solely under the reason of being accused of serious crime is 3373. The approval rate is 42.07％ among all detention order filed by the prosecutor. It is not 100 percent true for stating that “for persons accused of a serious crime, remand detention seems to be the rule in Taiwan.”
3. In an explanatory letter bearing Grand Justice Interpretation No.665, the Judicial Yuan said: “The detention provided for in Article 101, Paragraph 1, Subparagraph 3 of the Code of Criminal Procedure refers to a defendant whose crime is culpable for death penalty, life imprisonment or, in the lightest case, an imprisonment for no less than 5 years. As the expected punishment is severe, the defendant would interfere with the pursuit of crime in an effort to dodge the punishment. As a result, the trial procedure may lengthen, putting at risk the nation’s exercise of the power of rendering punishment. This provision is mainly for ensuring the smooth legal proceedings and the fulfillment of the nation’s power for rendering punishment. The intention is deemed proper because it is designed to maintain social order and to promote major public interest. Furthermore, in view of the spirit of the Constitution for safeguarding physical freedom of the people, when a defendant is seriously suspected of having violated the foregoing legal provisions, there is ample ground to believe that the

defendant is at risk of escape and obliterating, forging, or modifying evidence or colluding and coordinating with accomplices or witnesses. Therefore it is not sufficient to ensure the smooth pursuit, trial and implementation of sentence if the law court orders to put the defendant on bail, in trusted custody or restrict his or her place of residence. Unless the defendant is detained, it is hard to satisfy the primary conditions of the article for ensuring the smooth going-on of pursuit, trial and sentence execution."

4. After the foregoing explanatory letter was published, the Ministry of Justice sent a circular letter to various Prosecutors Offices to ask them bringing the letter to the knowledge of all prosecutors so that when they apply to the court for detaining a defendant suspected of having committed a crime that is culpable for a punishment of at least five years' imprisonment, they, in addition to presenting the evidence of felony, must also, based on Judicial Yuan explanation, provide related evidence and reasons that make them to believe the defendant is indeed at risk of escape, obliterating, counterfeiting, forging evidence or colluding and coordinating with accomplices and witnesses.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 9 條	41.	The CW Shadow Report also alleges that there are no clear time limits for court review proceedings required by Article 9(3) CCPR (p 85). Which measures are intended to address this problem?	兩公約施行監督聯盟影子報告（第 85 頁）也提及目前對於司法審理程序仍沒有具體的時間限制，不符本條第 3 項規定之意旨。是否有採行任何具體措施來回應此一問題？

中文回應

蓋案件之審理期間本須視具體個案之情形而為不同之處理，惟為維護當事人之權益，本院於99年5月19日公布「刑事妥速審判法」，請法院儘速妥適審理，以維護當事人之正當權益。該法第7條設定八年為審理時限，自第一審繫屬時起逾8年之案件，除依法應諭知無罪判決者外，經被告聲請，法院認侵害被告受迅速審判之權利，情節重大，有予適當救濟之必要者，得酌量減輕其刑。第八條則限制檢察官之上訴權，凡案件自第一審繫屬日起已逾六年且經最高法院第三次以上發回後，第二審法院更審維持第一審所為無罪判決，或其所為無罪之更審判決，如於更審前曾經同審級法院為二次以上無罪判決者，不得上訴於最高法院。

英文回應

Time needed for court review proceedings varies from case to case. Criminal Speedy Trial Act was promulgated on May 19, 2010 to address this issue. The Act is enacted to ensure fair, legitimate and speedy criminal trials so as to protect human rights and the public interest. Article 7 stipulates that the maximum length of a trial is 8 years. Where no final judgment is made after eight years from the date the case is pending in the first instance, except when a not guilty verdict shall be rendered, the court may, upon the request of the accused, reduce the sentence at discretion if the court concludes that the accused right to a speedy trial is gravely violated so that remedies shall be provided. Article 8 further limits the prosecutor's right to appeal. A case shall not be appealed to the Supreme Court if it had been handled for more than six years from the date the case is pending in the first instance and after being remanded by the Supreme Court for the third time, the court of second instance upholds the not-guilty judgment rendered by the first instance or its not guilty judgment has been upheld by courts of the same instance for more than twice before remanding.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 9 條	42.	The CW Shadow Report further alleges that the application of Article 5 of the Criminal Speedy Trial Act, which stipulates a maximum period of eight years of detention without a final judgment being reached, violates the "reasonable time limit" required by Article 9(3) CCPR? Which measures are envisaged by the Government of Taiwan to address this problem?	兩公約施行監督聯盟影子報告提及〈刑事妥速審判法〉第 5 條「審判中之羈押期間累計超過八年者，如判決尚未確定，羈押視為撤銷」之規定，仍不符合本條第 3 項之意旨。是否有採行任何措施來具體回應此一問題？

中文回應

刑事妥速審判法第 5 條第 1 項已明定法院就被告在押之案件，應優先且密集集中審理，並於第 2 項規定重罪之羈押期間限制及延長羈押次數限制之規定，亦即審判中之延長羈押，如所犯最重本刑為死刑、無期徒刑或逾有期徒刑十年者，第一審、第二審以六次為限，第三審以一次為限；刑事訴訟法第 108 條第 5 項則規定，如所犯最重本刑為 10 年以下有期徒刑以下之刑者，第一審、第二審以 3 次為限，第三審以 1 次為限。刑事訴訟法第 108 條第 1 項前段亦規定有羈押被告，偵查中不得逾 2 月，審判中不得逾 3 月；同條第 5 項則規定延長羈押期間，偵查中不得逾 2 月，以延長 1 次為限。審判中每次不得逾 2 月。上開規定，共同構成妥速審判之法律要求，據以落實妥速審判之目標，並維護刑事審判公正、合法、迅速，保障人權及公共利益。與本條例第 3 項在合理的時間內受審判或被釋放之意旨似無不符。

英文回應

1. Article 5, Paragraph 1 of the Criminal Speedy Trial Act stipulates that where the accused is in detention, the court shall give priority to the trial of the case and conduct continuous trials at the shortest time limit. As to the limit for the extension of detention, for ordinary cases, Article 108, Paragraph 5 of Code of Criminal Procedure stipulates that “Extension of the period of detention, during the investigation stage, may not exceed two months, and only one extension is allowed; during the trial stage, each extension may not exceed two months; if the maximum punishment for the offense charged does not exceed imprisonment of ten years, extension may be allowed three times during the first instance and the second instance, and one time only during the third instance ;for serious crimes, article 5 paragraph 2 of criminal speedy trial act stipulates that “Where the accused has committed an offense punishable with the death penalty, life imprisonment, or a minimum punishment of imprisonment for no less than ten years, the extension of detention may be allowed 6 times during the first instance and the second instance respectively, and one time only during the third instance.”
2. Article 108, Paragraph 1 of the same Act stipulates that detention of an accused may not exceed two months during the stage of investigation and three months during the stage of trial.
3. The above laws combined constitute commands requiring judges perform their duty to ensure fair, legitimate and speedy criminal trials so as to protect human rights and the public interest.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 9 條	43.	The CW Shadow Report also alleges that the administrative detention regimes under the Act of Punishment of the Armed Forces, the Communicable Disease Control Act, the Child and Youth Sexual Transaction Prevention Act and the Protection of Children and Youths Welfare and Rights Act violate the requirement the right to habeas corpus (court review procedures "without delay") in Article 9(4) CCPR (pp 87 to 91). How does the Government of Taiwan respond to this criticism?	兩公約施行監督聯盟影子報告（第 87-91 頁）亦提及〈陸海空軍懲罰法〉、〈傳染病防治法〉、〈兒童及少年性交易防制條例〉、及〈兒童及少年福利與權益保障法〉中的行政拘留機制（包括禁閉、隔離、安置）與本條第 4 項人身自由之限制應由司法決定之意旨。請問政府如何回應民間此一批評？

中文回應

一、「兒童及少年福利與權益保障法」第 56 條及「兒童及少年性交易防制條例」第 16 條所提之安置係為踐行「聯合國兒童權利公約」第 19 條。

(一)該公約是防止兒童及少年遭受父母、監護人或實際照顧者之身心脅迫、傷害或虐待、遺棄或疏忽之對待，以及包括性強暴不當待遇或剝削的保護措施，其主要目的係為保護個案，以避免其發生危險並進行必要之評估及處遇服務。

(二)當兒童及少年有前述之情形者，非立即給予保護、安置或為其他處置，其生命、身體或自由有立即之危險或有危險之虞者，及從事性交易或有從事性交易之虞者，直轄市、縣（市）主管機關應予緊急保護、安置或為其他必要之處置。

(三)緊急安置以 72 小時為原則，其中針對非 72 小時以上之安置不足以保護兒童及少年者，得聲請法院裁定繼續安置；另有關從事性交易或從事之虞之兒童少年，如移送緊急收容中心者，亦應於安置起 72 小時內提出報告，聲請法院裁定，以避免對人身自由產生過度限制。

二、傳染病病人之處置有即時性及專業判斷之需求，主管機關執行相關隔離治療作業，均依醫療專家等相關人員之評估及建議，並依據傳染病防治法及行政程序法為之，當事人如對處置決定不服，可循行政及司法程序尋求救濟。

三、「禁閉」懲罰，早年僅部隊軍事長官獨任裁定，程序未臻周延。為提昇軍人權益之保障，陸海空軍懲罰法於 2009 年 1 月 21 日修正公布。修正後之條文主要將原來「刑先懲後」之處理程序改為「刑懲併行」；以及明定懲罰權之追訴時效、同一過犯行為不得進行二次處罰、發現過犯行為時應實施調查，調查時對行為人有利及不利之情形應一律注意；調查結果認為有施以撤職、記大過、罰薪、管訓、悔過、降級或禁閉懲罰之必要時，應召集會議評議，並通知行為人給予其陳述意見之機會；以及完備不服懲罰之救濟管道。

英文回應

1. Referring to Article 56 of “The Protection of Children and Youths’ Welfare and Rights Act”, and Article 16 of “Child and Youth Sexual Transaction Prevention Act”, the term “placement” is a measure to protect children and youths in accordance with Article19 of the United Nation’s “Covenant of the Rights of the Child”.

(1) The covenant stipulated that a government is required to take measures to protect the child from all forms of physical or mental violence, injury or abuse, abandon or negligent treatment, maltreatment or exploitation, sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. The purpose is to protect the children from all forms of dangers, and provide assessment for their living condition.

(2) Municipal county (city) governments offer urgent protection, placement or any other necessary actions to protect child or youth if his/her life, body or freedom may suffer from immediate danger or if engaged in sexual transaction.

(3) Nevertheless, urgent placement should not exceed 72 hours. If the concerned competent authority thinks that 72 hours are not sufficient for the protection of the children and youths, they should petition the Court for continuing the placement.

(4) Furthermore, for the children and adolescents engaged in sexual transaction and sent to the emergent sheltering center, a formal report should sent to the court for judgment within 72 hours after settlement, that is used to prevent the violation of personal freedom.

2. For the treatment of patients with communicable diseases that require immediate and professional judgment, the competent authorities shall enforce patient isolation according to the Communicable Disease Control Act, the Administrative Procedure Act, and the medical experts' evaluation report. If, however, the patient is concerned with the duration of the isolation treatment issued, he or she can seek administrative and legal determination of the action.
3. "Confinement" is ruling by a single military officer in the past, and this procedure is defective. To promote the safeguards of military rights, after 《Act of Punishment of Armed Forces》amended in 21 January 2009, article amended from "Criminal punishment first, administer punishment later" to "Criminal punishment and administer punishment execute simultaneously". Amended code also stipulated "limitation of the right of prosecution", "The research of no double jeopardy clause", "Duty of positive investigation". After investigation, if offender shall be punished with dismiss, record demerits, fine, control, demote or confinement, court will convene the panel of judges and accord the parties an opportunity to be heard; as result of amending the method to seek remedies through.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第11條	44.	Para 159 of the State Report provides figures in relation to cases of court rulings of taking debtors into custody. It is doubtful whether this practice is in conformity with the requirements of Article 11 CCPR. Has the Government of Taiwan reviewed the relevant legal provisions and practice in relation to the requirements of Article 11 CCPR?	國家報告（第 159 段）提及「國家及債權人在一定條件下，可以使用拘禁人身自由之方式迫使債務人履行義務或提出財產」，並提供法院受理拘提、管收的相關數據；但此一實踐是否符合本條頗有疑問。政府是否曾檢討過相關法令及其實踐與本條之關連？

中文回應

一、為保障人權及實踐公民與政治權利國際公約第 11 條規定：「任何人不得僅因無力履行契約義務，即予監禁。」本院於 98 年 9 月間成立「強制執行法修正研究小組」研議拘提、管收之要件及程序等相關規定，並於 100 年 6 月 29 日經總統修正公布。又為因應修

正條文之公布施行，並完成修正「辦理強制執行事件應行注意事項」、「強制執行須知」等相關子規範及執行例稿等參考資料，期使各執行法院妥適適用修正規定，以維護當事人權利。

二、公政公約第 11 條「任何人不得僅無力履行契約義務，即予監禁」係對於人民因未能履行基於私法契約關係所生民事債務，不得任意剝奪其人身自由之要求，所為之規範。而公法上金錢給付義務之行政執行，係義務人因負有稅捐、罰鍰、費用等各類金錢給付義務，逾期不履行，經移送法務部行政執行署所屬各分署，透過法定程序強制義務人履行其義務。又管收義務人之前提必須義務人違反法律所定義務之行為始得為之，且須向法院聲請裁定准許。雖與公約第 11 條規範之事項無涉，惟法務部仍多次就行政執行法（下稱本法）第 17 條第 6 項「管收」之規定，是否與公約第 11 條規定抵觸予以檢討；並提請法務部行政執行法研修小組專家學者討論，以期慎重，嗣於 100 年間亦經行政院人權保障推動小組複審結果認不違反兩公約，無須修正。

三、查本法第 17 條第 6 項第 1 款、第 3 款及第 4 款之管收事由，均以義務人有履行義務之可能或有隱匿處分財產之情事為前提；至於第 2 款「顯有逃匿之虞」之管收事由，義務人非僅未履行公法上金錢給付義務，如其另有逃匿情形，將使執行程序無法繼續進行，故符合公約第 9 條之正當法律程序及第 11 條之法定事由規定。又義務人所負公法上金錢給付義務之執行與強化政府公權力、充裕國庫收入、實現社會公義、養成民眾守法觀念等公共利益，有密切關係，具有高度公益性；另司法院釋字第 588 號解釋亦認本法之管收手段尚非憲法所不許，是以本法第 17 條第 6 項之實踐與公政公約第 11 條規定尚無不符。

四、智慧財產法院部分，目前尚無拘提、管收案件。

英文回應

1. In order to protect human rights and practice Article 11 of ICCPR, which is “No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation,” the Judicial Yuan formed “Research Group for Revision on Compulsory Enforcement Act” in September 2009, and this group consulted regulations on the elements and procedures for apprehension and detention, and the revision is promulgated by the President of the Republic of China on June 29, 2011. Responding to the promulgation and implementation of revised Articles, relevant sub-regulations and enforcement samples like “Precautionary Matters on Handling Compulsory Enforcement” and “Directions for Compulsory Enforcement” are also revised to facilitate courts to properly adopt revised regulations and protect litigants’ rights.
2. Article 11 of the ICCPR stipulates that “[N]o one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation”, shall be interpreted as the way which applies to the situation that people shall not be stripped of his/her physical liberty arbitrarily only

because he/she could not perform his/her civil obligation(s) due to the debt(s) pursuant to the private contract(s). The administrative execution of the obligation(s) of monetary payment under public law is to apply to the situation that because the obligator who bears the obligation(s) of monetary payment under public law such as tax revenues, fines, or fees cannot fulfill the obligation(s) within the deadline and after the case has been transferred to each branch (within its own jurisdiction) of Administrative Enforcement Agency, Ministry of Justice, according to the legal procedures, the branch may compulsorily enforce the relevant laws to require the obligator to fulfill his/her obligation(s). The prerequisite for taking the obligator into custody is only when he/she violates the obligation(s) defined by the relevant laws and the application must be made to the court for an order of custody. Although taking the obligator into custody is not concerning the ICCPR, the Ministry of Justice has discussed and analyzed whether the Article 17, the sixth paragraph, the third and fourth subparagraphs (regarding the "custody" regulations) of the Administrative Execution Act (hereafter referred to as "this Act") contradict the Article 11 of the ICCPR. For serious consideration, the issues have been even referred to the experts and scholars in the research and amendment committee, in the Ministry of Justice, for amending the Administrative Execution Act. After reviewing by the Human Rights Protection and Promotion Committee ,Executive Yuan in 2011, it was concluded that the foregoing custody regulations do not contradict the ICCPR and the International Covenant on Economic Social and Cultural Rights and therefore there is no need for the regulations to be amended.

3. According to the Article 17, the sixth paragraph, the third and fourth subparagraphs of this Act, for taking the obligator into custody, the justified reasons as the prerequisite(s) shall be that the obligator is apparently able to perform but intentionally does not perform his/her obligation or has concealed or disposed of the assets that are subject to the compulsory execution. The second subparagraph of the same paragraph, "the obligor apparently is likely to abscond," as one of the reasons for taking into custody, shall apply to the situation that the obligator does not fulfill his/her obligation(s) of monetary payment under public law and has already hided or fled, which may cause that the enforcement procedures cannot be executed. Hence, the foregoing regulations shall certainly meet the Article 9, the due process provisions, and the Article 11 of the ICCPR. Also, the execution of the obligation(s) of monetary payment under public law the obligator bears has closed relationship with the public interests such as the enhancement of the public authority, the enrichment of the National Treasury, the fulfillment of the social justice, and the cultivation of compliance with laws for the public. Therefore, the administrative execution here is highly public welfare. In addition, the Judicial Yuan interpretation No. 588 has also recognized that the measures for

taking the obligator into custody in this Act are not disallowed by the Constitution. Hence, the enforcement of the Article 17, paragraph 6 of this Act does not contradict the requirements of the Article 11 of the ICCPR.

4. According to the statistic IPC's, there were no case concerning apprehension and custody.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第12條	45.	According to para 162 of the State Report, ROC citizens are entitled to enter their country without a permit only if they have a residence registered in the Taiwan area. How many ROC citizens applied for a permit to enter Taiwan during the last five years? In how many cases was the permit refused? What are the reasons to refuse such a permit?	根據國家報告（第162段），僅有在台灣設有戶籍之中華民國國民，有權自由出入國境、而無須任何許可。在過去五年間，有多少中華民國國民曾經申請進入台灣的許可？在這些案件中，有多少申請被拒絕？被拒絕的理由為何？

中文回應

一、

(一) 凡是具有中華國護照的國民，原則上都可以自由出入國境，依據入出國及移民法第7條規定，僅有少數臺灣地區無戶籍國民有下列情形之一者，入出國及移民署應不予許可或禁止入國：

1. 參加暴力或恐怖組織或其活動。
2. 涉及內亂罪、外患罪重大嫌疑。
3. 涉嫌重大犯罪或有犯罪習慣。
4. 護照或入國許可證件係不法取得、偽造、變造或冒用。

(二) 臺灣地區無戶籍國民兼具有外國國籍，有前項各款或第十八條第一項各款規定情形之一者，入出國及移民署得不予許可或禁止入國。

二、

(一)而入出國及移民法第 18 條規定，外國人有下列情形之一者，入出國及移民署得禁止其入國：

1. 未帶護照或拒不繳驗。
2. 持用不法取得、偽造、變造之護照或簽證。
3. 冒用護照或持用冒領之護照。
4. 護照失效、應經簽證而未簽證或簽證失效。
5. 申請來我國之目的作虛偽之陳述或隱瞞重要事實。
6. 攜帶違禁物。
7. 在我國或外國有犯罪紀錄。
8. 患有足以妨害公共衛生或社會安寧之傳染病、精神疾病或其他疾病。
9. 有事實足認其在我國境內無力維持生活。但依親及已有擔保之情形，不在此限。
10. 持停留簽證而無回程或次一目的地之機票、船票，或未辦妥次一目的地之入國簽證。
11. 曾經被拒絕入國、限令出國或驅逐出國。
12. 曾經逾期停留、居留或非法工作。
13. 有危害我國利益、公共安全或公共秩序之虞。
14. 有妨害善良風俗之行為。
15. 有從事恐怖活動之虞。

(二)外國政府以前項各款以外之理由，禁止我國國民進入該國者，入出國及移民署經報請主管機關會商外交部後，得以同一理由，禁止該國國民入國。

(三)第一項第十二款之禁止入國期間，自其出國之翌日起算至少為一年，並不得逾三年。

三、過去五年台灣地區無戶籍國民申請進入台灣地區之申請案件數，計有 133,214 人次，而移民署並未針對申請被拒絕之案件進行統計。

英文回應

1.

(1) For citizens who hold a valid passport of Republic of China, are free to enter and leave Taiwan by his or her own free will. According to the Article 7 of the Immigration Act, only a small minority of the citizens who without Household Registration falls within any of the following circumstances, the National Immigration Agency will deny or prohibit him or her from entering the State:

A. Has joined a violent or terrorist organization or has participated in its activities.

B. Has been strongly suspected to be involved in turmoil or foreign aggression.

C. Has been suspected to be involved in major crimes or to be a habitual criminal.

D. Has used a passport or entry permit that is illegally acquired, counterfeited, or tampered with, or that belongs to another person.

(2) The National Immigration Agency shall deny or prohibit from a national from entering the State if such a national has never registered his/her permanent residence at any household registry in the Taiwan Area, possesses a foreign nationality concurrently, and causes a circumstance which falls under one of the circumstances set forth in each Subparagraph of the preceding Paragraph or each Subparagraph of Paragraph 1, Article 18.

2.

(1) Article 18 National Immigration Agency shall prohibit an alien from entering the State if he/she meets one of the following circumstances:

A. Does not carry his/her passport or refuses to submit it for inspection.

B. Has used an illegally acquired, counterfeited, or altered passport or visa.

C. Has used another person's passport or a fraudulently claimed passport.

D. Has used a passport that is invalid, lacks a required visa, or a passport that bears an invalid visa.

E. Has made a false statement or hidden important facts about his/her purposes to apply for entry into the State.

F. Has carried contraband.

G. Has a criminal record in the State or foreign countries.
H. Has suffered from a contagious disease, a mental disease, or other diseases that may jeopardize public health or social peace.
I. Is believed, on the basis of sufficient factual proof, to be incapable of making a living in the State, save the circumstance that he/she seeks shelters from his/her dependent relative with registered permanent residence in the Taiwan Area and has been assured by the relative.
J. Has used a visitor visa but does not have an air ticket or a steamer ticket for a return trip or a trip to the next destination or has not secured an entry visa for the next destination.
K. Has been denied entry, ordered to leave within a certain time, or deported from the State.
L. Has overstayed his/her visit or the period of his/her residence or has worked illegally.
M. Is believed to endanger national interests, public security, public order, or the good customs of the State.
N. Hinders good social customs.
O. Is believed to engage in terrorist activities.

(2) If a foreign government bans nationals of the State from entry pursuant to reasons other than those reasons set forth in the each Subparagraph of the preceding Paragraph, National Immigration Agency can use the same reasons to ban that country's nationals from entering the State after negotiating with the Ministry of Foreign Affairs of such a ban.

(3) The period of entry as banned under Subparagraph 12, Paragraph 1 shall be one (1) year or up from the second day of the date of an alien's exit of his/her country and shall not be more than three (3) years.

3. There were 133,214 Taiwanese Nationals without household registration applied to enter Taiwan in the past five years. However, the National Immigration Agency does not have the count of the rejection cases.

條文	編號	問題內容(原文)	中文參考翻譯

公政 第 12 條	46.	According to Table 22 on p 70 of the State Report, more than 50.000 citizens of the ROC were prevented from leaving their own country in 2011. How many of these restrictions were issued by administrative authorities? Can these decisions be appealed to the courts? If so, does the appeal have suspended effect? What are the 21.826 "protection cases" mentioned in Table 22?	根據國家報告（表 22，第 162 段），2011 年有超過 50,000 中華民國國民不被准許出境。這些不允許出境的決定，其中有多少是由行政決定？而對這些行政決定是否允許提出司法救濟？倘若可以提出司法救濟，其司法救濟的提出是否可以暫時中止行政決定？表 22 中有 21,826 件「保護管束案」是何種案件？

中文回應

一、政府各權責機關分別依據相關法規（如稅捐稽徵法、行政執行法、保安處分執行法、傳染病防治法…等）禁止當事人出國，當事人對該限制出境處分倘有不服，應依訴願法及行政訴訟法規定，向行政院提起訴願撤銷原處分及向行政法院提起撤銷訴訟。

二、2011 年有超過 50,000 國民不被准許出國，其中屬行政決定管制之案件（財稅管制、行政執行、兵役管制）計 22,978 人。

三、依行政訴訟法第 116 條規定，我國行政救濟制度原則上不因提起救濟程序而停止原處分之執行。但於行政訴訟起訴前或行政訴訟繫屬中，行政法院認為原處分或決定之執行，將發生難於回復之損害，且有急迫情事者，得依職權或依聲請裁定停止原限制出境處分之效力、執行或程序之續行之全部或部分。

四、保護管束案係指緩刑及假釋付保護管束案件，多為因違反毒品危害防制條例、竊盜、侵占、妨害性自主…等刑事犯罪案件，經假釋中付保護管束。

英文回應

1. Base on each ministry's respective jurisdiction, the agency may make requests to deny, revoke, or limit citizens' rights to leave the country when charged with violations of administrative acts or regulations (e.g., Tax Collection Act, Communicable Disease Control Act, Administrative Procedure Act, and …etc); however, citizens may file an administrative appeal to the Executive Yuan against an administrative action according to the Administrative Appeal Act , or file an administrative action for revocation to an administrative court

according to the Administrative Litigation Act.

2. In 2011, more than 50,000 citizens were prohibited to leave Taiwan, and of which 22,978 are made at the requests of administrative agencies exercising their administrative mandates.
3. According to Article 116 of the same Act, the enforcement of the Act shall not be affected by the administrative remedies. Before the case is brought to the court or during the pending action, if the administrative court thinks that the original order will cause irreparable damage, or there is urgent situation, the administrative court may grant the verdict to suspend the restriction of leaving Taiwan, its enforcement, or its following procedures as a whole or a part.
4. A person who is on probation or released from a prison on parole shall be subjected to protective measures. Most parolees who serve their probations were originally found guilty in a criminal court for such criminal conviction as possession of illegal drug, robbery, adverse possession, or sexual harassment.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 12 條	47.	Para 164 refers to a highly restrictive policy relating to HIV positive aliens and states that this policy is being discussed in light of international human rights requirements. According to the CW Shadow Report (p 110), all foreign nationals who intend to stay for three months or more must undergo HIV testing. Those testing HIV positive are required to leave the country or forcibly deported. This would even apply to foreign spouses of ROC nationals. Is this information correct? Which measures does the	國家報告（第 164 段）提及對非本國籍愛滋病毒感染者採取全面限制入境之措施，並提及「未來配合愛滋病毒感染者之國際人權潮流」，將研議刪除此一限制。兩公約施行監督聯盟影子報告（第 110 頁）提到，要入境台灣三個月以上的外國人，必須檢查或檢附是否感染愛滋病毒的檢驗報告，檢查或檢驗結果呈現陽性反應者得令其出境。此一規定亦適用於本國人之外籍配偶。兩公約施行監督聯盟的影子報告所提出之資訊是否正確？政府是否有採行任何措施使愛滋病防制相關政策符合〈聯合國

		Government of Taiwan envisage to bring its HIV policy in line with UNAIDS standards and human rights requirements?	愛滋病防制總署〉(the Joint United Nations Programme on HIV/AIDS)的相關標準及人權規範？

中文回應

依據「入出國及移民法」第 18 條第 1 項第 8 款規定，外國人患有足以妨害公共衛生或社會安寧之傳染病、精神疾病或其他疾病，移民署經衛生主管機關通知始據以禁止其入國。為因應國際人權趨勢，已研議將取消非本國籍愛滋感染者之入境及停居留限制，回歸移民法規常態辦理，並已納入「人類免疫缺乏病毒傳染防治及感染者權益保障條例修正草案」，刻正辦理相關法制作業。

英文回應

In accordance to Article 18, Paragraph 1, Subparagraph 1 of the Immigration Act, National Immigration Agency shall prohibit an alien from entering the State if National Immigration Agency has been informed by the Departmental Health that this alien has contracted contagious disease or suffered from mental disease, or any other diseases that may jeopardize public health or social peace. In response to the trending international human rights, competent authorities will revoke the restriction of non-national HIV-infected patients and revert it to the Immigration Act. It has been included in the legislation procedure for the amended draft of the "HIV Infection Control and Patient Rights Protection Act".

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 13 條	48.	When does the Government of Taiwan intend to enact an asylum law?	請問政府擬於何時制定庇護之相關法律?

中文回應

一、大陸地區人民來臺尋求政治庇護

(一)現階段係依臺灣地區與大陸地區人民關係條例(下稱兩岸條例)第 17 條及內政部主管「大陸地區人民在臺灣地區依親居留長期居留或定居許可辦法」第 18 條規定，是類人士如符合前揭規定，得由主管機關內政部基於政治考量，專案許可大陸地區人民在臺灣地區長期居留。

(二)為進一步完備大陸地區人民尋求政治庇護之審查與處理機制，陸委會參照國際難民公約精神及內政部所擬「難民法」草案，擬具兩岸條例第 17 條修正草案，放寬未經許可入境之大陸地區人民得適用現行基於政治考量，申請在臺灣地區專案長期居留之相關規定，並明定渠等申請定居時，無須提出喪失原籍證明，同時免除其未經許可入境之刑事責任。

(三)前揭草案業於 98 年 12 月 31 日送請行政院核轉立法院審議。立法院採行屆期不連續原則，第 8 屆會期係 101 年 2 月開始，爰於 101 年 1 月 31 日將兩岸條例第 17 條修正草案重送行政院，並於 101 年 3 月 5 日核轉立法院審議。

二、我國難民法草案推動期程如下：

(一)92 年開始推動難民法。

(二)最近 1 次係於 101 年 2 月 23 日由行政院函送立法院重行審議。

英文回應

1. Political asylum in Taiwan for people of the Mainland Area

(1) According to Article 17 of the " Act Governing Relations between the People of the Taiwan Area and the Mainland Area (hereinafter the "Cross-Strait Act") " and Article 18 of "The Permit Guidelines for the Permanent Residency or Permanent Stay in the Taiwan Area of People of the Mainland Area", Persons from the Mainland Area who meet these regulations may be permitted by Ministry of the Interior, on a case by case basis to reside long-term in Taiwan due to political considerations.

(2) In order to strengthen mechanisms for handling Mainlanders seeking political asylum, the Mainland Affairs Council (MAC) formulated draft amendments to Article 17 of the Cross-Strait Act in reference to the spirit of international refugee conventions and the MOI-drafted Refugee Act. The amendments widen the provisions for applying residency in Taiwan due to the political considerations.

(3) The amendments also stipulate that proof of cancellation to original household registration is not required in long-term residency applications, and applicants are exempt from criminal responsibility for prior unapproved entry into Taiwan. The aforementioned draft was approved by the Executive Yuan and submitted to the Legislative Yuan for deliberation on December 31, 2009. Due to the operations time frame for the sessions of the Legislative Yuan, the Executive Yuan submitted amendment of Article 17 of Cross-Strait Act to Legislative Yuan again on March 5, 2012.

2. The process of pushing the draft of the Refugee Act in Taiwan:

(1) The draft of the Refugee Act was established and released in 2003.

(2) Executive Yuan delivered the latest draft of the Refugee Act to the Legislative Yuan on February 23rd 2013.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第13條	49.	Can you please explain the legal procedure regarding expulsion of aliens? At which point are the persons concerned detained? What are the legal rights of aliens to contest an expulsion or deportation order? Is the principle of non-refoulement taken into account?	請說明關於外國人驅逐出境的法律程序?又在甚麼原因之下，這些外國人會被收容?外國人不服驅逐或遞解出境之命令時，享有哪些法律權利?在這些相關法律或程序中，不遣返原則是否有被納入考慮?

中文回應

一、外國人違反入出國及移民法（以下稱簡本法）第 36 條第 1 項各款情形之一者，內政部入出國及移民署（以下稱簡本署）得強制驅逐出國。但其涉有案件已進入司法程序者，應先通知司法機關；另同條第 3 項規定，外國人有同條第 1 項第 2 款、第 4 款至第 11 款情形之一者，本署得於強制驅逐出國前，限令其於 7 日內出國。

二、經移民署行政調查認「非予收容顯難強制驅逐出國」者始有收容之必要。

三、受處分人如不服前揭強制驅逐出國或限令出國處分，得依訴願法規定，於處分書送達之次日起 30 日內，繕具訴願書經由移民署向

內政部提起訴願。

四、為符合兩公約意旨，移民署依該條第 1 項規定於強制驅逐已取得居留、永久居留許可外國人出國前，應組成審查會審查之，並給予當事人陳述意見之機會，充分保障當事人權益。

英文回應

1. Foreigners who have been violated any circumstances noted on the Paragraph 1 of Article 36 of the Immigration Act (thereafter referred to the Act). The National Immigration Agency (NIA) shall use force to deport him or her out of the country. NIA shall notify judicial authorities in the special circumstances that the violation is currently going through judicial procedure. In addition to Paragraph 3 of Article 36, if the foreigner violates Subparagraph 2, 4 to 11 of Paragraph 1 of Article 36 of the Immigration Act, NIA should make the foreigners to leave the country individually within 7 day(s), or NIA shall use force to deport the individual.
2. According to the investigation of the NIA, it is necessary to detent the individual. Otherwise the NIA will be unable to deport him or her out of the country within the regulated date.
3. The individuals who do not accept the punishment of deportation can challenge the decision by filing a petition to the Minister of the Interior through the NIA within 30 days following the decision is received in accordance with the Petition Act
4. In order to accompany to the CCPR, before NIA deports a foreigner who has permanent residency (APRC) or residency (ARC), NIA should first form hearing to examine the case and offer the individual an opportunity to speak in defense of him or herself to protect human rights.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 14 條	50.	**Judiciary (paras 199, 201)** Please provide further information on the procedures for	**司法（國家報告第 199 及 201 段）** 請提供更多關於選任及訓練司法官之程序的資訊。已採

至第 16 條		selecting judges and the training of judges. What measures are being taken to ensure the impartiality of the judiciary, especially in politically sensitive criminal cases? What measures are being taken to protect the judiciary against corruption? The newly-passed Judges Act has introduced evaluation of judges and new grounds for disciplinary actions. What is the impact of this new system in terms of increasing the competence of the judiciary and protecting judicial independence?	行何種措施以確保司法之中立性，特別是對於政治敏感之刑事案件？採行何種措施以防免司法貪污？甫通過之法官法已建立法官評鑑機制以及法官懲戒事項。就增進法官適任性及保障司法獨立而言，該新機制之引進造成何種影響？

中文回應

司法院歷經 20 多年努力推動法官法，終於在 100 年 7 月 6 日奉 總統公布，司法改革邁入新的里程，有健全的法官制度維護了司法審判獨立，才能確保人民接受公平審判的權利。法官法所定法官之退場機制分為前端及後端退場機制，其中後端退場機制即為法官法第 5 章及第 7 章所定之法官評鑑及職務法庭。法官法對於法官後端退場機制之改革，於法官評鑑委員會，重點有五，其一，強化不適任法官之淘汰機制，當事人及犯罪被害人得陳請律師公會或全國性律師公會、財團法人或社團法人、受評鑑法官所屬機關或上級機關或所屬法院對應設置之檢察署、受評鑑法官所屬機關法官 3 人以上請求權人，請求法官評鑑委員會進行個案評鑑，如發現法官有懲戒之必要者，可以移送監察院審查，再送職務法庭審理；其二，擴大應付個案評鑑之事由，使法官不適任之行為難以遁形；其三，法官評鑑委員會引進外部委員，提升了評鑑委員的代表性與公正性；其四，設計法官全面評核與法院團體績效評比制度，以績效導向考核法官表現，法官全面評核之結果並作為法官職務評定之參考，發現法官有應付個案評鑑之事由時，司法院應將其移付法官評鑑委員會進行個案評鑑；其五，建立職務法庭審理法官懲戒，並訂定法官受懲戒後轉任律師之限制。

法官評鑑委員會於 101 年 1 月 6 日正式成立運作，為常設、任期制之委員會，大幅增加外部委員之參與，評鑑決議亦兼有報請交付懲處及移送懲戒之權，可確實發揮評鑑功能。法官個案評鑑係藉由公平客觀的程序，就具體的個案事實，對法官進行評鑑，並依評鑑結果為適當之處理，且法官評鑑委員會職權之行使，兼顧評鑑功能之發揮及受評鑑法官程序上應有之保障，不影響審判獨立。法官

評鑑委員會 101 年度受理之個案評鑑案，請求人涵蓋經主管機關許可之財團法人、司法院及受評鑑法官所屬法院，足見司法機關基於自律精神亦積極移送法官進行個案評鑑，由具專業之請求機關嚴格篩選及把關，可防止評鑑之請求過於浮濫亦避免影響法官之獨立審判。法官評鑑委員會並於 101 年 10 月發函法官法第 35 條第 1 項各款規定得請求法官個案評鑑之機關、團體，對於法官有法官法第 30 條第 2 項所列應付個案評鑑情事者，請依同法第 35 條及法官評鑑委員會評鑑實施辦法第 2 條之規定，移送本會進行法官個案評鑑。希冀各請求權主體積極移送，使評鑑制度更加發揮功能。

法官評鑑委員會自 101 年 1 月 6 日成立起至 101 年 12 月 31 日止，共計受理符合法官法第 35 條規定之評鑑個案共 6 件，符合「法官評鑑委員會分案實施要點」規定之評鑑事件共計 5 件。其中 101 年度評字第 2 號由「台中司法革新會」遞狀（未載寄件地址）請求進行個案評鑑，因查無該會之設立登記資料及聯絡方式，無從命其補正，決議存參結案並於網頁公告，已決議之 3 件決議，分別就損害被告訴訟權益、違反公正法庭及公器私用等違規事由，視其情節輕重作出懲處及懲戒處分建議，建議懲戒案並已經監察院彈劾送職務法庭審理。經由法官評鑑委員會與職務法庭之相輔相成，強化司法課責性，澈底改革長期為外界所詬病之法官後端退場機制。

另法官評鑑委員會成立自 101 年 12 月 31 日止，共計接獲以個人名義請求評鑑 62 件，請求原因包括當事人敗訴不服、非當事人自行簡報遞狀、對非法官者請求評鑑、請機關代轉陳情書等，因非法官法第 35 條規定得聲請法官評鑑之人員、機關或團體，依據法官評鑑委員會評鑑實施辦法第 3 條第 3 項規定，於收文後移請司法院依處理人民陳情規定辦理，並以法官評鑑委員會名義函知陳情人上開情事。如此做法，除可貫徹法官法規定由專業請求機關嚴格篩選及把關，防止評鑑請求過於浮濫之立法目的，司法院亦可及時受理人民陳情，省去公文往來時間，而人民除原有之陳情途徑外，亦可了解正確請求法官評鑑程序，加重其權益保障。

法官評鑑於 101 年 1 月 6 日上路至今，尚待評鑑案件之累積以樹立標準，相信經由具體個案審議過程之經驗累積，定能漸入佳境，以使法官評鑑制度更為周全，達到人民制衡司法濫權之功能，並藉由非法官之外部委員參與，建立客觀標準，使之有所依循，及經由正當程序之有效懲處與懲戒，對於少部分不良法官生警惕之作用，重視當事人做為程序之主體，落實憲法對人民訴訟權之保障。

壹、有關法官、檢察官選任及訓練程序之資訊：

一、依法官法第 5 條及第 8 條規定，大法官、律師、教授、副教授、助理教授及中央研究院研究員、副研究員、助研究員均得依法官遴選辦法及遴選未具擬任職務任用資格人員轉任法官辦法(草案)相關規定申請轉任法官，以利法官多元進用原則的落實。目前轉任法官方式計有參加司法院舉辦之公開甄選、自行申請及司法院主動遴選等 3 種途徑。經司法院同意申請轉任法官者，須於司法

院所屬司法人員研習所完成規定期間之職前研習課程，包括於地方法院實習，並通過該所考試及格後，經司法院人事審議委員會同意派職者，始得擔任法官。

二、行政法院法官部分

（一）行政法院法官在職研修課程（每年舉辦 1 次，每次為期 5 天）

為協助各級行政法院法官解決實務上重大或有爭議之法律問題，並提供法官與學者交流之機會，除以專題研討會方式，邀請專家學者進行研究報告，提供法官辦案參考外，並延聘各該領域之專家、學者進行專題報告，以增進法官在行政法學上之素養，提升裁判品質，發揮司法效能。

（二）培訓高等法院行政法院暨地方法院行政訴訟庭法官理論課程（每年舉辦 1 次，每次為期 6 週，總時數 181 小時）

此種培訓係為儲備高等行政法院及各地方法院行政訴訟庭審判人力，並充實各級法院法官之行政法學專業素養而舉辦。

三、智慧財產專業法官部分

(一)智慧財產法院法官在職研修課程（每年舉辦 1 次，每次為期 3 天）：為充實智慧財產法院法官之法學及相關專業素養，提升裁判品質，除邀請接受委託研究之學者就研究成果提出報告外，並延聘智慧財產專業領域中之專家學者，就審理實務所需深入瞭解之議題，講授學術見解與國外實務發展狀況，以期增進法官辦理智慧財產案件之職能，俾達成妥速解決智慧財產權紛爭之最終目標。

(二)智慧財產專業法官培訓課程（兩年舉辦 1 次，每次為期 9 週，總時數 210 小時）：在本院推行特殊專業類型案件由專業法庭（或專股）審理的政策原則下，各地方法院在司法事務分配時，依規定應設立專庭（或專股）辦理智慧財產專業案件，並優先擇定已取得智慧財產專業法官證明書之法官，為因應智慧財產訴訟業務快速成長及法官專業化所需，本院亟思培訓更多具有辦理智慧財產案件專業職能之法官，以為未來遴選智慧財產法院或地方法院專業法庭（或專股）法官之儲備。

(三)智慧財產專業理論與實務課程巡迴講座：為培養智慧財產專庭（或專股）法官辦理智慧財產案件之專業能力，開設智慧財產專業理論與實務課程巡迴講座，依法院需求及實際處理智慧財產相關業務狀況，區分初級、進階及高階 3 種程度，規劃安排國內外學者或具有專業知識之政府機關官員、民間團體人士，赴各地法院舉行智慧財產相關之系列演講或座談。

四、法官法施行後，檢察官除經考試方式進用外，亦併採遴選進用之方式：法務部依照法官法第 88 條第 88 條第 8 項訂定之檢察官遴選委員會設置及審查辦法明定法務部設檢察官遴選委員會掌理檢察官之遴選。檢察官遴選委員會遴選檢察官時，應審酌其操守、能力、身心狀態、敬業精神、專長及志願，辦理資格條件之審查、品德調查結果之審查、書狀、辦案稿件、著作評閱成績之審查、

面試成績之審查，如有品德不佳、敬業精神不足或其他不適宜擔任檢察官之情形，應為不予遴選之決議。

貳、有關確保司法中立性之措施：

一、101 年 1 月 5 日訂定發布之法官倫理規範全文共計 28 條，就法官身分訂定行為規範，包括法官執行職務時，應保持公正、中立，不得偏見或歧視，並應保持品位（第 3 條至第 5 條）；對繫屬中或即將繫屬之案件，不得公開發表可能影響裁判或程序公正之言論（第 17 條）；就法官職務外活動，訂定從事該活動之一般原則，並限制不得從事與法官身分不相容之政治活動（第 18 條至第 21 條）。法官倫理規範與法官法第 5 章法官評鑑制度同步於 101 年 1 月 6 日施行。依法官法第 35 條規定，法官如有違反法官倫理規範，情節重大者，經由該法官所屬機關法官 3 人以上、所屬機關或上級機關、對應設置之檢察署、各地律師公會或全國聯合會，或取得評鑑許可之財團法人或公益社團法人提出個案評鑑之請求後，即由法官評鑑委員會就該法官之具體違失事實進行評鑑，以確保司法之中立性。

二、法官法第 86 條第 1 項規定：檢察官代表國家依法追訴處罰犯罪，為維護社會秩序之公益代表人。檢察官須超出黨派以外，維護憲法及法律保護之公共利益，公正超然、勤慎執行檢察職務。法官法第 89 條第 1 項準用第 15 條第 1 項規定：檢察官於任職期間不得參加政黨、政治團體及其活動，任職前已參加政黨、政治團體者，應退出之。檢察官倫理規範第 2 條規定：檢察官為法治國之守護人及公益代表人，應恪遵憲法、依據法律，本於良知，公正、客觀、超然、獨立、勤慎執行職務。第 3 條規定：檢察官應以保障人權、維護社會秩序、實現公平正義、增進公共利益、健全司法制度發展為使命。第 4 條規定：檢察總長、檢察長應依法指揮監督所屬檢察官，共同維護檢察職權之獨立行使，不受政治力或其他不當外力之介入；檢察官應於指揮監督長官之合法指揮監督下，妥速執行職務。檢察官執行職務時，應不受任何個人、團體、公眾或媒體壓力之影響。第 6 條規定：檢察官應本於法律之前人人平等之價值理念，不得因性別、種族、地域、宗教、國籍、年齡、性傾向、婚姻狀態、社會經濟地位、政治關係、文化背景、身心狀況或其他事項，而有偏見、歧視或不當之差別待遇。第 11 條規定：檢察官應不為亦不受任何可能損及其職務公正、超然、獨立、廉潔之請託或關說。第 12 條規定：檢察官執行職務，除應依刑事訴訟法之規定迴避外，並應注意避免執行職務之公正受懷疑。檢察官知有前項情形，應即陳報其所屬指揮監督長官為妥適之處理。

參、司法院對於司法風紀擬定具體解決方案，防免司法人員貪污問題，包含成立查處機動小組，主動追蹤列管有風紀疑慮人員；制訂請託關說規範，落實廉政倫理事件登錄作業；追查司法黃牛，嚴辦破壞司法信譽者；宣導多元檢舉管道，鼓勵民眾勇於揭發不法。

肆、法官法已建立法官懲戒事項。就增進法官適任性及保障司法獨立而言，該新機制之引進造成何種影響？

一、就增進法官適任性部分：以往，法官懲戒依公務員懲戒法，係由公務員懲戒委員會掌理。法官法則明定改由職務法庭掌理。茲分述法官法職務法庭新制之功能如下：

(一)懲戒手段的加強：相較公務員懲戒法，法官法之懲戒種類減少為 5 種，但趨向兩極，增加較撤職更嚴厲之手段，並刪除中間類型如休職、降級之懲戒種類。法官法並明定，法官受免除法官職務並喪失公務人員任用資格、撤職之懲戒處分者，不得充任律師，已充任律師者停止其執行職務；受撤職、免除法官職務轉任法官以外職務之懲戒後，不得回任法官。

(二)提升法官評鑑發動懲戒程序之功能：過去雖有法官評鑑制度，但評鑑結果並不直接連結懲戒程序。法官法則賦予法官評鑑委員會法律地位，並加入外部委員，且決議後報經司法院即可將違失個案移送監察院審查，提升評鑑委員會發動懲戒程序之積極功能。

(三)強化監察院於法官懲戒案件之原告地位：法官法明定監察院為法官懲戒案件之當事人，須於法官懲戒案件中到庭陳述及辯論，強化其原告地位，發揮對審制度之功能，促進調查懲戒事實及證據之效率。

(四)法官懲戒事由更加明確：法官法明定法官懲戒事由，包括：有事實足認因故意或重大過失致審判案件有明顯重大違誤而嚴重侵害人民權益、違反職務上之義務、怠於執行職務或言行不檢之情節重大等，懲戒事由更為明確。

二、就保障司法獨立部分：法官法特別考量法官不同於一般上命下從之公務員，乃受憲法上審判獨立之保障，惟在不影響審判獨立之範圍內，亦需受適當之職務監督，以避免其違法濫權、怠忽職務；另法官人事職務性質之行政處分往往牽動其身分獨立性，而與審判事務獨立有密切相關，故特設由各審級法官共同組成，負有維護法官審判獨立專業性之職務法庭，除職司前述法官懲戒案件之審理外，亦審理有關法官不服撤銷任用資格、免職、停止職務、解職、調動、轉任法官以外職務等人事職務處分之救濟案件，以及確認職務監督有無影響審判獨立之救濟案件，期使此維護司法獨立之專業法庭，不僅在職務處分救濟案件中，發揮司法審查之救濟功能，使法官身分獨立性獲得確保，另在職務監督影響審判獨立案件中，亦藉由審判獨立保障界限之妥適劃定與確認，讓法官不受外力不當干擾，安然妥適進行個案裁判，另方面也讓職務監督者在不侵犯審判獨立前提下，發揮其功能，促使司法權能健全運作，贏得應有之信賴。

三、法官法所定評鑑機制及懲戒事項對增進檢察官適任性及保障司法獨立之影響：法官法第 89 條第 4 項規定：檢察官有下列各款情事之一者，應付個案評鑑：…三、違反第 15 條第 1 項規定情節重大。…七、違反檢察官倫理規範，情節重大。檢察官有上開情事之一，有懲戒之必要者，應受懲戒。檢察官評鑑委員會如認檢察官有懲戒之必要者，得決議報由法務部移送監察院審查，並得建議懲戒之種類。法務部認檢察官有應受懲戒之情事時，亦得逕行移送監察院審查。檢察官之懲戒，應由監察院彈劾後移送司法院職

務法庭審理。依應受懲戒之具體情事足認已不適任檢察官者，應予撤職以上之處分。受免除檢察官職務，轉任檢察官以外之其他職務或撤職之懲戒處分者，不得回任檢察官職務。

四、法官代表國家獨立行使職權，責任重大，與國家間之關係為法官特別任用關係，和一般公務人員必須服從職務命令的關係者有別，法官法的完成立法，將有關法官的進用、保障、評鑑及退場等，明定於專法，健全法官制度，維護憲法保障法官獨立審判的精神、保障法官身分，同時確保人民接受公正審判的權利，並建立不適任法官的淘汰機制與優良法官的保障機制，是司法改革重要的里程碑，為司法改革建立堅實的基礎。法官法對於法官評鑑機制及法官懲戒事項定有明文，當事人及犯罪被害人得陳請特定機關、團體請求法官評鑑委員會進行個案評鑑，再透過監察院及職務法庭的審理機制，懲戒或淘汰不適任法官，同時擴大評鑑事由，建立外部監督，健全法官的退場機制，並符合民意。

英文回應

1. Judges, on behalf of the country, exercise powers independently with great responsibility. Judges Act, promulgated by the President of the Republic of China on July 6, 2011, indicates the milestone of judicial reform after 20 years of effort by the Judicial Yuan. People's rights to fair trials are assured with sound judge system that protects the judicial independence, Elimination mechanism for judges stipulated in Judges Act is divided into front-end and back-end elimination mechanism, and the back-end elimination mechanism refers to judge evaluation and the Court of the Judiciary stipulated in Chapter 5 and 7 of Judges Act. The judicial reform on the back-end elimination mechanism for judges in Judges Act focuses on the Judicial Evaluation Committee, and there are 5 key aspects:

(1) Reinforcing elimination mechanism for unqualified judges: A party or a victim of a crime may file a asking to agencies, including the local bar association to the jurisdiction of a court with which the judge to be evaluated is affiliated or the national bar association, a foundation or an incorporated charitable association, the affiliated agency, the superior agency or the counterpart prosecutorial office of the court where a judge is to be evaluated, three or more judges of the agency with which the judge to be evaluated is affiliated, to request the Judicial Evaluation Committee to initiate an individual evaluation. Where disciplinary measures are necessary for that judge, the Judicial Evaluation Committee may forward the discipline case to the Control Yuan, and the case may be referred to the Court of the Judiciary for a review if

the Control Yuan should deem it necessary to impeach after its review.

(2) Broadening the scope of the basis of the judicial evaluation and clarifying behaviors for unqualified judges.

(3) External members are introduced to the Judicial Evaluation Committee, and the introduction promotes the proportionality and impartiality.

(4) Designing comprehensive evaluation for judges and group performance rating for courts. Judge's evaluation is performance-oriented, and the result of comprehensive evaluation for a judge serves as the reference for judge's performance rating. Once a judge is found eligible for individual evaluation due to the rating results from the evaluation, the Judicial Yuan shall transmit the evaluation to the Judicial Evaluation Committee for individual evaluation.

(5) Installing the Court of the Judiciary to be in charge of disciplinary actions against judges and stipulating regulations governing judges transferring to attorneys after disciplined.

2. The Judicial Evaluation Committee, which is a permanent committee with a fix-tenure system, started to operate officially on January 6, 2012, and this committee grammatically increases the participation of external committee members. The resolution of the evaluation has the authority of submitting the case for punishment or forwarding the case for disciplinary actions, which may bring the functions of evaluation into full play. The individual evaluation for judges evaluates judge through impartial and objective procedures based on substantive fact, and the proper disposition will be carried out in accordance with the result of the evaluation. In discharging its duties, the Judicial Evaluation concurrently reconciles both the full play of evaluation functions and the procedural protection to the judge under evaluation while not impacting on judicial independence. For all individual evaluation cases received by the Judicial Evaluation Committee in 2012, applicants range from foundations that have received permission from the competent governmental authority, the Judicial Yuan, and the courts that the judge under evaluation affiliated. This result reveals that judiciary agency as a whole actively submits judges to evaluations based on the spirit of self-discipline. Through the rigid siftings and checks by highly professional agencies that request for evaluations, requests for evaluations will be prevented from being over-excessive and impacting on judicial independence of judges. In October 2012, the Judicial Evaluation Committee issued official letters to agencies and organizations, stipulated in Subparagraphs, Paragraph 1, Article 35 of Judges Act, and request such agencies and organizations to submit individual cases for judges in accordance with Article 35 of the same Act and Article 2 of Regulations Governing Evaluation Implemented By The Judicial Evaluation Committee if situations stipulated in

Paragraph 2, Article 30 of Judges Act occur. The Judicial Evaluation Committee hopes each agency with the right to request for evaluation may actively submit cases to the Committee and help bring the functions of the evaluation system into full play.

3. Since the foundation on January 6, 2012 until December 31, 2012, the Judicial Evaluation Committee has received 6 evaluation cases which comply with Article 35 of Judges Act, 5 of 6 evaluation cases thereof comply with regulations of "Guidelines Governing Case Distribution for The Judicial Evaluation Committee". Evaluation case Ping-Zi No. 2 in 2012, requested by "Taichung Judicial Reform Society" (without mailing address), is unable to be reached for correction due to no registration and contact information of that Society available, the Judicial Evaluation Committee decides to close the case and posts the case publicly on the website.
4. 3 resolutions of prescribed paragraph suggest for punishment and discipline actions in accordance with the severity of damaging the defendants' rights to litigate, contravening the impartiality of the court and abusing public resources for private purpose, and the case, which was suggested for discipline actions, has been impeached by the Control Yuan and forwarded to the Court of the Judiciary for a review. The combination of the Judicial Evaluation Committee and the Court of the Judiciary strengthens judicial accountability and reforms judge's back-end elimination mechanism that has been long criticized.
5. Since the foundation on January 6, 2012 until December 31, 2012, the Judicial Evaluation Committee has received 62 evaluation cases requested by individuals. The ground for evaluation application includes a party refusing to accept judgments against the party, non-litigants filing pleadings voluntarily, requesting for evaluations to non-judges, and requesting agencies to convey petitions. Since the foresaid applicants are not individuals, agencies or organizations, who are eligible to request for judge evaluation, stipulated in Article 35 of Judges Act, the Judicial Evaluation Committee shall notify such applicants with official letters, stating that the case will be forwarded to the Judicial Yuan and handled following petition regulations, in accordance with Article 3 of Regulations Governing Evaluation Implemented By The Judicial Evaluation Committee. By taking such actions, the legislative purpose of Judges Act, which stipulates that rigid siftings and checks performed by highly professional agencies requested for evaluations may prevent the requests for evaluations from being over-excessive, may be implemented, and the Judicial Yuan may also handle petitions promptly. People, on the other hand, may comprehend correct procedures for requesting judge evaluations, which strengthens rights protection, other than original petition channels.
6. Since the implementation on January 6, 2012, the judge evaluation still needs to establish standard by the accumulation of evaluation cases.

It is believed that the judge evaluation system will be improved by accumulating experiences of reviewing substantive individual cases in order to attain the function of people checking and balancing judicial power. The participation of non-judge external members of the Committee establishes objective standards for the Judicial Evaluation Committee to follow. Vigilance against some unworthy judges is brought about by effective punishment and discipline actions through legitimate procedures. The protection for people's rights to judiciary written in the Constitution is fully implemented by respecting a party as the subject of procedure.

7. Information about the selecting and training procedure for prosecutors and judges

(1) According to Article 5 and 8 of Judges Act, Justices, attorneys, professors, associate professors, assistant professors and Academia Sinica fellows, associate fellows or assistant fellows may transfer to judge position in accordance with "Regulations Judge Selection" and "Regulations for Selection of Persons Transferring to Judge Position without Possessing the Qualifications for the Designated Positions" in order to facilitate the principle of multi-employment for judges. Currently there are 3 ways to transfer to judge position, including participating public selection held by the Judicial Yuan, voluntary application, and the Judicial Yuan's voluntary selection. Persons, who apply for transferring to judge position and approved by the Judicial Yuan, may not be qualified as a judge unless pre-job trainings, including interning in District Courts and passing the examinations of the Judicial Personnel Study Institute of the Judicial Yuan and approved by the Personnel Review Committee of the Judicial Yuan, are completed within the period of time stipulated by the Judicial Personnel Study Institute of the Judicial Yuan.

(2) Judges of the Administrative Court

A. On-the-job training courses for judges of the Administrative Court (an annual event of 5 days)：This course is designed to assist the judges of Administrative Court at all levels to solve practical significant or controversial legal issues and to provide judge and scholar with the opportunity to interact. Apart from holding symposium, which invites experts and scholars to have a briefing that serves as the reference for judges when hearing cases, experts and scholars from each field are also invited to the course to conduct special report in order to improve the literacy of the judge in the administrative Law, promote the judgment quality, and to bring judicial efficiency into full play.

B. Training courses for judge theory of the administrative courts in High Court, Administrative Court and the District Courts (an annual event of six weeks and a total of 181 hours)：This training course is designed to help reserve judges for the High Administrative Court and administrative litigation courts in the District Courts and to improve literacy the Administrative Law professionalism for judges of the courts at all levels

(3) Judges of the intellectual iroperty professional

A. On-the-job training for judges of the Intellectual Property Court judge (an annual event of three days)：This course is designed to improve the literacy of judges of the Intellectual Property Court, promote judgment quality. Apart from inviting scholars commissioned to research to have a briefing on the results of research, experts and scholars in the field of intellectual property professionals are also invited to give a speech on the academic opinion and the development of foreign practice on intellectual property cases in the topic of in-depth issues that are necessary for practical case-hearing. These measures are taken to improve the functions of the judges handling intellectual property cases and to reach the ultimate goal of resolving intellectual property rights disputes in no time.

B. Training course for judges of intellectual property professional (once every two years, with a period of nine weeks and a total of 210 hours)：According to the policy that professional cases shall be tried by professional courts promoted by the Judicial Yuan, District Courts shall establish professional courts or sections to handle intellectual property cases in the allocation of judicial affairs, and judges with intellectual property certificate of professional judges shall be selected in priority, In response to rapid growth of the intellectual property litigations and the demand for judge professionalization, the Judicial Yuan aims to train more judges with professional intellectual property functions as the reserves of future judge selection for Intellectual Property Court and intellectual property courts or sections in the District Courts .

C. Intellectual property professional theory and practical courses lecture tour：The Intellectual property professional theory and practical courses lecture tour is designed to cultivate the professional competence for judges of intellectual property courts or sections handling intellectual property cases. The courses are divided into three different levels of beginner, advanced, and high-end levels in accordance with the demand and actual intellectual property business conditions of the courts. Domestic and foreign scholars or officials of the

government agencies, non-governmental organizations with professional knowledge are arranged to give speeches or hold symposiums relevant to intellectual property in courts.

(4) After the Judge Act came into effect, prosecutors and judges are recruited through examinations and also by selection：In compliance with Clause 8 of Article 88 of the Judge Act, the Ministry of Justice prescribed the"guidelines for setting up a prosecutor selection committee," which is tasked with the selections. When the committee goes to select a prosecutor, it must seriously consider his or her integrity, ability, physical and psychological conditions, devotion, specialty, aspiration and other qualifications. Also considered is their ability to prepare documents and the books they have authored. They are also subject to a face-to-face interview. If their integrity is in doubt or their devotion is unsufficient or there are other problems that make them improper to serve as prosecutors,they will be flunked.

8. About measures to ensure judicial independence

(1) There are 28 Articles in the Code of Conduct for Judges (hereinafter the Code), which was promulgated on January 5, 2012. The Code regulates judges' code of conducts, including that a judge shall conduct duties in accordance with impartiality, neutrality, no prejudice nor discrimination, and a judge shall maintain judiciary quality (Article 3-5); concerning pending or impending cases, a judge shall not make any public statement that might reasonably be expected to affect the outcome of such proceeding or impair the fairness of the process (Article 17); general principles are stipulated concerning judge's extrajudicial activities, and judges are restrained from participating political activities that conflict with their identity (Article 18-21).

Code of Conduct for Judges and Judges Act were simultaneously implemented on January 6, 2012. According to Article 35 of Judges Act, in case where a judge violates the Code in a severe way, the individual evaluation for that judge may be initiated by the three or more judges of the agency with which the judge to be evaluated is affiliated, the affiliated agency, the superior agency, the counterpart prosecutor's office, the local bar association, the National Bar Association, or by a foundation with evaluation permit or incorporated charitable association. The Judicial Evaluation Committee shall initiate evaluation on indiscretions of that judge to ensure the judicial neutrality.

(2) Paragraph 1 of the Judge Act provides: A prosecutor pursues and punishes crime in accordance with the law on behalf of the nation and is the representative for public interest in maintaining law and social order. A prosecutor must stay away from any political party, be devoted

to the Constitution and other laws in protecting public interests, be fair, and be independent and diligent in carrying out his or her duties. Paragraph 1 of Article 89 of the Judge Act, which follows, mutatis mutandis, the provisions of Paragraph 1 of Article 15 of the same law, says: During his or her service period, a prosecutor shall not join a politic party, a political body and participate in their activities. If he or she has joined the political party or body before taking office, he or she should withdraw from it. Item 2 of the Code of Ethics for Prosecutors also says: A prosecutor is the guardian and representative for public interest of a country ruled by law; hence, he or she shall abide by the Constitution, act in accordance with the law and conscience, and be fair, objective, independent and diligent in carrying out his or her duties. Item 3 of the same Code provides: A prosecutor shall make it his or her mission to protect human rights, maintain social order and peace, carry out justice, promote public interests, and perfect the development of the judicial system. Item 4 prescribes: The prosecutor general and a chief prosecutor shall direct the prosecutors under their command to jointly ensure the independent exercise of prosecutorial power by preventing the interference and intrusion from undue force and influence. Under the command and supervision of their higher-up, all prosecutors shall fulfill their duties properly and promptly. In the course, they shall not bow to the influence of any individual, organization, the public, or the media. Item 6 of the ethic code stipulates: A prosecutor must embrace the idea that everyone is equal before the law and not be biased against gender, race, geography, religion, nationality, age, sexual preference, marital status, social and economic standing, political relations, cultural background, and physical and psychological conditions to allow discriminations. Item 11 illustrates: When exercising his or her duties, a prosecutor shall not let intercession to compromise his or her justness, separateness, independence and integrity. Item 12 states: When fulfilling duties, prosecutors shall separate themselves from the case and prevent suspicions on their justness. If this happens, the said prosecutor shall immediately report it to their high-up for action.

9. The Judicial Yuan established specific solutions to prevent judicial personnel from corruptions, including establishing mobile investigation teams, tracking civil servants doubted of probity actively, enacting entreaties or lobbying regulations, implementing registrations guidelines for ethics events, tracing judicial scalpers and severely punishing those undermining the judicial credibility, promoting diverse impeachment channels and encourageing people to be willing to report the illegitimacy as well.
10. The Judges Act has established disciplinary matters of judges. What impact does the introduction of the new mechanism bring to improve judge suitability and protect the judicial independence?

(1) Improvement on the judge suitability：In the past, disciplinary actions against judges are handled by the Public Functionary Disciplinary Sanctions Commission in accordance with the Public Functionaries Discipline Act. Judges Act stipulates that such actions shall be handled by the Court of the Judiciary. Hereby introducing the functions of the new Court of the Judiciary established by Judges Act:

A. Strengthening discipline actions：Compared with the Public Functionaries Discipline Act, the types of disciplinary actions are reduced to five types, but more polarized. More actions that are stricter than dismissal are implemented while intermediate types, such as suspension from duty and demotion, are deleted. Judges Act stipulates that judges, who are disciplined for removal from judgeship duties and loss of civic servant appointment qualifications or dismissal, may not serve as attorneys; person who is subject to dismissal or removal and transferred to other positions may not be reinstated as a judge.

B. Enhencing judges evaluation launching disciplinary procedures：Although the judge evaluation system has existed in the past, but the evaluation results are not directly connected with the disciplinary procedures. Judges Act provides the Judicial Evaluation Committee with legal status and adds external members, and the resolution of the evaluation reported to the Judicial Yuan may be transferred to the Control Yuan for a review, which strengthens the active function of the evaluation committee launching the disciplinary procedure.

C. Strengthening the plaintiff status of the Control Yuan in judge disciplinary cases：Judges Act stipulates that the Control Yuan is a party in the judge discipline cases. The Control Yuan is required to state and debate in judge discipline cases in order to strengthen its plaintiff status, play the function of the trial system, help improve the efficiency of investigating the facts and evidences of discipline.

D. Specifying subjects of judge discipline：Judges Act stipulates subjects of judges disciplinary, including: having sufficient facts to conclude the existence of obvious and significant error(s), committed intentionally or with gross negligence, thereby causing serious damage to the right of the people, violating of the duties of a judge, carrying out dutie in tardiness or misconducting in a severe way. The subjects of discipline are more definite.

(2) Protection for judicial independence：Unlike general public functionaries who have to obey orders from superiors, the Judges Act stipulates that judges enjoy the protection of judicial independence by the Constitution. Within the scope that does not affect judicial independence, judges are required to be under the appropriate supervision of duties to avoid the illegal abuse of power, tardiness in carrying out duties; administrative dispositions of judicial personnel often interact with the independence of judge’s identity, which is closely related to judicial

independence. Therefore, the Court of the Judiciary, which is responsible for protecting judicial independence, is established ad hoc by judges at all levels and instances. Apart from hearing aforementioned judges discipline cases, the Court of the Judiciary also hears judge's complaint toward the revocation of appointment qualifications, removal from office, suspension of duty, discharge of duty, transfer or detail to positions other than judgeship and comfirms pperformance supervision that impacts on trail independence of the judge. The Court of the Judiciary, which is expected to protect the judicial independence, not only plays a role of remedy function of judicial review in duty disposition remedy cases that ensures the independence of judge identity, but also lays out and confirm the boundary of the protection for judicial independence in the cases of performance supervision affecting judicial independence. So that judges may properly hear cases without being interfered by external forces, and supervisors, on the other hand, may bring its function into full play without invading judicial independence, which allows the judicial function to operate properly and being trusted.

(3) About the performance evaluation system provided for in the Judge Act and its effect on the competency of prosecutors and the maintenance of judicial independence Paragraph 4 of Article 89 of the Judge Act provides: If any one of the following situations has happened to a prosecutor, he or she shall be subjected to evaluation: …(3) Having gravely violated the provisions of Paragraph 1 of Article 15 of the Act …(7) Having gravely violated the provisions of the Code of Ethics for Prosecutors：When any one of the foregoing offenses occurs, the offending prosecutor shall be disciplined if the discipline is warranted. If the performance evaluation committee for prosecutors considers discipline is necessary, it may decide to refer the case through the Ministry of Justice to the Control Yuan for review and in this case it may recommend the disciplinary measure that the Yuan shall take. If the Ministry of Justice finds a prosecutor has anything to be disciplined, it can also send the case to the Control Yuan for deliberation. To discipline a prosecutor, the Control Yuan must impeach him or her first and then refer the case to the functional court of the Judicial Yuan for trial. If there are facts that prove the incompetency of the said prosecutor, he or she may be dismissed. If he or she has been transferred to a non-prosecutorial post or if he or she is dismissed from the prosecutorial post, he or she shall not serve as a prosecutor again.

(4) Judges exercise powers independently on behalf of the country with great responsibility, and the relationship between judges and the country is a special appointment relationship, which is different from the relationship between general public functionaries and the country who have to obey post orders. The newly-passed Judge's Act stipulates the judges' appointment, protection, evaluation and elimination,

perfects judge system, safeguards the spirit of independent trail for judges protected by the Constitution, protects judges' status while ensuring people's rights to fair trials, and establishing elimination mechanisms for unqualified judges and protection mechanisms for quality judges.

11. The Judge's Act is a significant milestone for judicial reform, builds up a solid foundation thereof. Judge's Act expressly stipulates the evaluation mechanisms and disciplinary matters for judges. Parties and victims may file an asking to specific agency or organization to request the Judicial Evaluation Committee to initiate an individual evaluation. The review mechanisms of the Control Yuan and the Court of the Judiciary discipline or eliminate unqualified judges, broaden evaluation subjects, establish external supervision, perfect elimination mechanisms for judges, and to be tally with public opinions.

條文	編號	問題內容(原文)	中文參考翻譯
公政第14條至第16條	51.	**Delays in criminal proceedings (para 218)** The Legislature has passed the Criminal Speedy Trial Act to respond to the problem of prolonged trials and prolonged detention before the final judgment on appeal. Please explain the causes for delays in criminal proceedings and provide further information on the extent to which the Criminal Speedy Trial Act has addressed such problems in practice. What other measures are being taken? Are the current resources and judicial staff sufficient to handle trials without delay?	**刑事程序之遲延（國家報告第 218 段）** 立法院已通過刑事妥速審判法，以因應於上訴至終審前，審判遲延及延長羈押之問題。請解釋刑事程序中造成遲延之原因，並提供更多實際上刑事妥速審判法就此方面所能回應之問題的資訊。何種措施已被採取？目前的資源以及司法人員是否足以於不延遲之狀況下進行訴訟及審判程序？

中文回應

刑事妥速審判法採取的是「總量管制」的方式，限制案件羈押總期間。然針對具體審判階段，為防止辦案遲延，則採行以下措施：（一）加強列管重大刑案、選舉及貪污案件等特定案件。（二）定期催辦遲延案件，並定期舉行聯合視導及實施專案檢查。（三）適時增加辦案人力，提高審判效率，並以行政支援審判，促進案件妥速審結。（四）強化改進鑑定功能，避免因鑑定延滯審判。

英文回應

Criminal Speedy Trial Act takes the total mass control approach to regulate the time limit for criminal trials. To prevent trials delayed without causes, measures taken are as follows:

(1) Monitor the progress of high-profile cases, especially corruption, and violation of Civil Servants Election And Recall Act.
(2) Remind Judges that cases are already delayed and conduct examinations of delayed or prolonged pending cases periodically, to see whether any progress is made.
(3) Provide human resources to heavy case load courts to clean up delayed cases.
(4) In some cases, cases are delayed because of lack of expert witness in certain fields. As highest judicial Organ, Judicial Yuan will help to coordinate resources to facilitate the process.

條文	編號	問題內容(原文)	中文參考翻譯
公政第14條至第16條	52.	**Checks on prosecution** What procedures exist to protect against prosecutors' abuse of the power to indict? Please elaborate on the conditions under which the prosecutor can file an appeal and what procedures exist to protect against prosecutors' abuse of appeals? The Supreme Court recently passed a resolution	**檢察權之監督** 何種程序得避免檢方濫用其起訴之權力？請說明於何種情形下檢方得提起上訴，以及何種程序得避免檢方濫用其上訴權力？最高法院最近通過一項決議，揚棄法院依職權調查對被告不利之證據之實務作法。需要更多資訊以說明本項決議對於檢方舉證責任與現行實務作法之影

		abandoning the practice of ex officio court investigation of evidence against the defendant. Further information is needed on the impact of this resolution on the prosecution's burden of proof and the current practice.	響。

中文回應

一、刑事妥速審判法第 8 條設有對於檢察官上訴權之限制，已如前述。另同法第 9 條第 1 項規定：除第 8 條情形外，第二審法院維持第一審所為無罪判決，提起上訴之理由，以下列事項為限：一、判決所適用之法令牴觸憲法。二、判決違背司法院解釋。三、判決違背判例。同亦限制檢察官上訴之權利。

二、另有關制衡檢察官濫行起訴之規定，則見於刑事訴訟法第 161 條第 2 項、第 3 項。當法院於第一次審判期日前，認為檢察官指出之證明方法顯不足認定被告有成立犯罪之可能時，應以裁定定期通知檢察官補正；逾期未補正者，得以裁定駁回起訴。刑事訴訟法第 163 條第 2 項規定：「法院為發見真實，得依職權調查證據。但於公平正義之維護或對被告之利益有重大關係事項，法院應依職權調查之。」法院於「公平正義之維護」應依職權調查證據之規定。最高法院 101 年度第 2 次刑事庭會議決議，即在闡明所謂「公平正義之維護」，藉以澄清法院依職權調查證據之界限。該決議援引無罪推定原則，認該原則具有普世價值，為憲法所保障之基本人權，並進一步依據刑事訴訟法、刑事妥速審判法相關條文體系所共同揭示之價值，推論刑事訴訟法第 163 條第 2 項但書所指法院應依職權調查之「公平正義之維護」事項之內容，應以利益被告之事項為限，否則即與檢察官應負實質舉證責任之規定及無罪推定原則相牴觸，無異回復糾問制度，而悖離整體法律秩序理念。依據此決議，法院依職權調查不利被告證據，或不依職權調查有利被告之證據，均有程序違法之瑕疵。目前實務已有部分判決引用上開決議，據以界定法院依職權調查證據之界限，如臺灣高等法院 101 年度上訴字第 3054 號。

三、刑事訴訟法第251條第1項雖規定，檢察官依偵查所得之證據，足認被告「有犯罪嫌疑」者，即應提起公訴；惟法務部為提高定罪率，建立司法威信，於98年7月1日以法檢字第0980802583號函要求檢察官偵辦案件時，應加強蒐集犯罪事證，審慎綜合研判偵查所得之全般證據，確信有可使法院為有罪判決之高度可能性者，始予提起公訴。99年5月28日訂頒之「檢察機關妥速辦理刑事案件實施要點」第6點並將上開函示內容予以明文，期藉要求檢察官審慎起訴，降低無罪率，避免無辜之人遭受訟累，以保障人權。100

年度檢察官起訴全般案件之定罪率已達96.1%，並無濫訴之情形。

四、依刑事訴訟法第344條規定，檢察官對於下級法院之判決不服者，得上訴於上級法院。告訴人或被害人對於判決不服者，亦得具備理由，請求檢察官上訴。檢察官為被告之利益，亦得上訴。另「檢察機關妥速辦理刑事案件實施要點」第19點規定，檢察官應即時收受裁判正本，並立即就原裁判訴訟程序有無瑕疵、認定事實、適用法則、量刑及緩刑宣告是否合法適當，詳予審查，以決定是否提起上訴或抗告，不得任意擱置，致遲誤上訴或抗告期間。如未能於上訴時一併敘述上訴理由者，應分別依刑事訴訟法第361條第3項、第382條之規定，於20日及10日內補提理由書於原審法院。第20點規定，檢察官於審查第一、二審之無罪判決，如認其認事用法確無違誤，並無上訴必要，經載明理由或意見送請檢察長核定後，應即不提起上訴。對於告訴人或被害人請求上訴案件，檢察官應確實審核，如其請求為無理由者，應予駁回。

五、刑事訴訟法第361條第2項規定，上訴書應敘述具體理由；刑事妥速審判法第8條：「案件自第一審繫屬日起已逾六年且經最高法院第三次以上發回後，第二審法院更審維持第一審所為無罪判決，或其所為無罪之更審判決，如於更審前曾經同審級法院為二次以上無罪判決者，不得上訴於最高法院。」第9條：「第二審法院維持第一審所為無罪判決，提起上訴之理由，以下列事項為限：一、判決所適用之法令牴觸憲法。二、判決違背司法院解釋。三、判決違背判例。」之規定，均屬限制檢察官上訴權之規定。

六、有關最高法院101年第2次刑庭決議，限縮法院應依職權調查證據之範圍，其對實務運作之影響，尚有待進一步評估。

英文回應

1. As mentioned above, Article 8 of Criminal Speedy Trial Act limit prosecutor’s right to appeal. In addition, Article 9 of the same act prescribe that “Except for the ircumstances provided for in the preceding Article, if the court of second instance reaffirms the not guilty judgement rendered by the first instance, the reasons for appeal are limited to the following conditions: (1) The law or order applied in the judgement is inconsistent with the Constitution; (2) The judgement is in contradiction to the Interpretation of the Judicial Yuan; (3) The judgement is in contradiction to the precedent. This also limit prosecutor’s right to appeal.
2. As to the procedure to protect defendant against prosecutor’s abuse of appeals, Article 161 paragraph 2 of Code of Criminal Procedure prescribe that prior to the first trial date, if it appears to the court that the method of proof indicated by the public prosecutor is obviously

insufficient to establish the possibility that the accused is guilty, the court shall, by a ruling, notify the public prosecutor to make it up within a specified time period; if additional evidence is not presented within the specified time period, the court may dismiss the prosecution by a ruling. Article 163,paragraph 2 of Code of Criminal Procedure stipulates that the court may, for the purpose of discovering the truth, ex officio investigating evidence; in case for the purpose of maintaining justice or discovering facts that are critical to the interest of the accused, the court shall ex officio investigate evidence. Before the Supreme Court's resolution, the definition of "maintaining justice" is still not clear. The Supreme Court resolution further clarifies that courts' ex officio investigation power shall be limited to evidences for the defendants. The resolution cited the ICCPR, based its argument on the principle of presumption of Innocence and the values manifested by the Criminal speedy trial act and Article 163 of Code of Criminal procedure, emphasizing that prosecutors shall bear the material burden of proof in criminal cases, lest the criminal procedure will go back to the inquisitorial system rather than the modified adversarial system. According to this resolution, if the court ex officio investigates evidence against the defendants, or dies not intervene to investigate evidence for the defendants, the litigation process will be in contravention of the laws or regulations. The resolution is now cited by court's decisions, to define the borderline for courts exercise its ex officio investigation power. Taiwan High Court Shan-Su No.3054 (2012) is an example.

3. Although Paragraph 1 of Article 251 of the Code of Criminal Procedure says that a prosecutor may make a prosecution if the evidence he or she has gathered is enough to determine a person is suspect of committing a crime, the Ministry of Justice, in a letter dated July f, 2009 and bearing the file number of *fa jian* 0980802583, requested prosecutors to strengthen the gathering of evidence and take a comprehensive judgment of all the evidence gathered. The MOJ advised that a suspect can be prosecuted only if the prosecutor firmly believes that a conviction of the defendant by the court is highly possible. This MOJ advice was intended to raise the conviction rate, and establish the judicial prestige. On May 28, 2010, the MOJ announced the "Implementation Key Points for Prosecutorial Organizations to Promptly and Properly Handle Criminal Cases." Item 6 of the guidelines explicitly says that it requests prosecutors to be scrupulous in making prosecutions in order to cut down on the rate of innocence convictions in order to protect the innocent people and human rights. In 2011, the rate of conviction topped 96.1%, indicating there were no wanton, wrong prosecutions.

4. Article 344 of the Code of Criminal Procedure provides that if a prosecutor objects the rulings of a district court, he or she may appeal the case to the higher court and that if the victim is unhappy with the rulings he or she may present the reasons to the prosecutor and request him or her to make an appeal. To protect the interest of a defendant, the prosecutor may also make an appeal on his or her own right. Item 19 of the "Implementation Points for Prosecutorial Organizations to Promptly and Properly Handle Criminal Cases" prescribes a prosecutor should immediately accept the original copy of judgment and examine whether there is any fault in proceedings, in judging the facts, in the application of law and in the decision on penalty in order to decide whether an appeal or a counter appeal is required. No delay is allowed. If the new reasons are not included in the appeal, a supplementary appeal should be presented within 20 days and 10 days as provided for in Paragraph 3 of Article 361 and Article 382 of the Code of Criminal Procedure respectively. Item 20 provides that if an innocence ruling is made by the courts of first instance and second instance and it is considered nothing wrong in the recognition of fact and the application of law, there is no need to make an appeal. In this case, the prosecutor shall submit his or her reasons and views to the chief general for approval before deciding on not making an appeal. When an accuser or victim requests the prosecutor to make an appeal, the said prosecutor shall scrutinize the petition and if there is no reason for an appeal, the petition shall be rejected.
5. Paragraph 2 of Article 361 of the Code of Criminal Procedure says: An appeal must give the reasons. Article 8 of the Criminal Speedy Trial Act provides: If a case has lasted for six years since the first instance trial and has been remanded by the Supreme Court three times and if the second instance court upholds the innocence ruling of the first instance court or if a court has made innocence ruling twice, it shall not make an appeal to the supreme court. Article 9 of the Criminal Speedy Trial Act provides that if the court of second instance upholds the innocence judgment made by the court of first instance, the reasons for an appeal are limited to the following: (1) the law used for the judgment contradicts the Constitution, (2) the ruling violates the interpretations made by the Judicial Yuan, and (3) the ruling has violated legal precedents. All this restricts prosecutors making an appeal.
6. As for the decisions made by the second criminal trial by the Supreme Court in 2012 for narrowing down the law court's scope of evidence investigation, its practical impact is pending to be further evaluated.

條文	編號	問題內容(原文)	中文參考翻譯
公政第14條至第16條	53.	**Media influence and leaks of investigation information (para 209)** There is grave concern about media influence over ongoing criminal investigation and trials and especially leaks to the media of investigation information. Under what conditions and to what extent can investigating agencies reveal information about ongoing investigation? What measures are taken in practice to prevent leaks and media reporting that undermine the principle of presumption of innocence? Are individual leaks of investigation information investigated and punished in practice? Is new legislation necessary to improve the situation?	**媒體影響以及洩漏偵查資訊（國家報告第209段）** 媒體對於偵查與審判進行中刑事案件之影響，以及向媒體洩漏偵查資訊二事，已引起高度關注。於何種情形以及至何種程度下，偵查機關得洩漏進行中偵查之資訊？目前提供了何種現行措施以避免洩漏資訊或危及無罪推定原則之媒體報導？洩漏偵查資訊之個人是否會被調查並受罰？新的立法是否足以改善此種現象？

中文回應

一、刑事訴訟法第245條第1項規定，「偵查，不公開之。」同法條第5項並授權司法院訂定偵查不公開作業辦法，據以規定作業細節。依據偵查不公開作業辦法第8條規定，除法令另有規定外，不得公開之敏感資訊。例如：一、被告、少年或犯罪嫌疑人之供述及是否自首或自白。二、有關尚未實施或應繼續實施等偵查方法或計畫。三、實施偵查之方向、進度、技巧、具體內容及所得心證。四、足使被告或犯罪嫌疑人逃亡，或有湮滅、偽造、變造證據或勾串共犯或證人之虞。五、被害人被挾持中尚未脫險，安全堪虞者。六、偵查中之卷宗、筆錄、錄音帶、錄影帶、照片、電磁紀錄或其他重要文件或物品。七、犯罪情節攸關被告、犯罪嫌疑人或其親屬、配偶之隱私與名譽。八、有關被害人之隱私、名譽或性侵害案件被害人之照片、姓名或其他足以識別其身分之資訊。九、有關少年之照片、姓名、居住處所、就讀學校、家長、家屬姓名及其案件之內容，或其他足以識別其身分之資訊。十、

檢舉人或證人之姓名、身分資料、居住處所、電話及其陳述之內容或所提出之證據。十一、蒐證之錄影、錄音。十二、其他足以影響偵查不公開之事項。

二、案件在偵查中，不得帶同媒體辦案，或任被告、犯罪嫌疑人或少年供媒體拍攝、直接採訪或藉由監視器畫面拍攝。

三、第 10 條規定，違反偵查不公開，依法應負行政、懲戒或刑事責任者，由權責機關依法定程序調查、處理之。

四、另最高法院檢察署亦訂有「檢察、警察、調查暨廉政機關偵查刑事案件新聞處理注意要點」，就檢警機關得就偵查案件發布新聞之情形與不得公開或揭露之情形詳予規定。

五、違法洩漏偵查資訊之人員，可能構成刑法第 132 條之洩漏國防以外秘密罪嫌，如其為法院或偵查機關人員，亦應負行政、懲戒責任，而應由權責機關進行調查。

英文回應

1. Article 245, Paragraph 1 of Code of Criminal Procedure prescribes that an investigation shall not be public; Paragraph 5 authorizes Judicial Yuan and Executive Yuan to enact an implementation regulation concerning this matter. Article 8 of the Regulations for Non-Public Investigation stipulates that sensitive information shall not be disclosed to the public unless laws prescribing otherwise. The sensitive information includes the confession of the accused, and whether the accused has confessed, investigation methods employed, the progress and conclusion of investigation, information which might induce the risk of destroying, forging, or altering evidences, or make defendant conspire with a co-offender or witness, information which might endanger the welfare of taken hostage if disclosed , documentation, photograph or other evidence in the possession of prosecutor, information that identifies the victim or defendants, the identity of the whistle blower, recordings etc.
2. It also strictly forbids the media accompany any investigation actions or allowing the media taking pictures of the defendants or interviewing them.
3. Violation of the implementation regulation shall be sanctioned by relevant laws.

4. Besides, the Supreme Prosecutors Office proclaimed the "Key Points for Handling News about Criminal Cases under Investigation by the Prosecutors Office, Police, Bureau of Investigation and Agency of Anti-corruption," prescribing the dos and don'ts for news release on cases under investigation.
5. Those who unlawfully leak investigation information may fall foul of the provisions of Article 132 of the Criminal Code governing the exposing of national secret unrelated to national defense. If the person who makes the leak is a staff member of the court or an investigation organization, he or she will be held in administrative account and subjected to investigation by competent authorities.

條文	編號	問題內容(原文)	中文參考翻譯
公政第14條至第16條	54.	**Pre-trial detention's impact on a fair trial (paras 125, 211)** Please elaborate on the procedures of detention hearings and the standards for detention. How much information, time and legal assistance are available to suspects before detention hearings? Are they adequate for the defence to argue in favour of bail and other opportunities for pre-trial release? What measures are being taken to ensure that detained defendants receive legal assistance sufficient to enable them to obtain a fair trial?	**審前羈押對公平審判之影響（國家報告第125及211段）** 請說明羈押訊問及決定之程序以及決定羈押之標準。犯罪嫌疑人於羈押訊問前獲有多少資訊、時間與法律協助？是否足以使犯罪嫌疑人或被告主張具保或其他審前獲釋之機會？目前採行何種措施以確保受羈押之犯罪嫌疑人或被告享有獲得公平審判之法律協助？

中文回應

一、自釋字第392號以後，羈押僅得由法院為之。

二、被告人身自由受拘束起24小時之內，必須送至法院決定是否羈押被告。逾時則須釋放被告。依刑事訴訟法第93條規定，被告或犯

罪嫌疑人因拘提或逮捕到場者，應即時訊問。偵查中經檢察官訊問後，認有羈押之必要者，應自拘提或逮捕之時起二十四小時內，敘明羈押之理由，聲請該管法院羈押之。前項情形，未經聲請者，檢察官應即將被告釋放。但如認有第一百零一條第一項或第一百零一條之一第一項各款所定情形之一而無聲請羈押之必要者，得逕命具保、責付或限制住居。

三、有關決定羈押之標準，檢察官有舉證之責任，但無須證明至毫無合理可疑之程度。只要有具體事由，足以令人相信被告很可能涉嫌其被指控犯罪，即足當之，並僅需自由證明即可。

四、至有關決定羈押之程序，訊問被告之人，依法負有告知被告得選任辯護人到庭辯護之權利之義務。依現行規定，被告及其辯護人均無閱卷之權利。惟檢察官應陳述聲請羈押之證據及理由，被告及辯護人亦應受告知據以羈押被告之理由及證據，並記明於筆錄。

五、有關受羈押之犯罪嫌疑人或被告之法律協助方面，近日修正公布之刑事訴訟法第31條第5項規定，被告或犯罪嫌疑人因智能障礙無法為完全之陳述或具原住民身分者，於偵查中未經選任辯護人，檢察官、司法警察官或司法警察應通知依法設立之法律扶助機構指派律師到場為其辯護。但經被告或犯罪嫌疑人主動請求立即訊問或詢問，或等候律師逾四小時未到場者，得逕行訊問或詢問。

六、另立法院審議中之刑事訴訟法第101條修正草案，擬規定第三十一條第一項所定案件，偵查中檢察官聲請羈押，未經選任辯護人者，法官應指定公設辯護人或律師為被告辯護。但被告主動請求逕行訊問者，不在此限。被告、辯護人得於第一項訊問前，請求法官給予適當時間為答辯之準備。第一項訊問，檢察官得到場陳述聲請羈押之理由及所依據之事實，並提出必要之證據。但第三十一條第一項第一款所定案件，檢察官應到場。第一項各款所依據之事實及理由，應告知被告及其辯護人，並記載於筆錄。前項被告筆錄，被告之辯護人得向法院檢閱之。但不得抄錄、影印或攝影。

英文回應

1. Since Judicial Yuan Interpretation No.392, an accused may be detained only by detention order issued by the court.
2. An accused or a suspect who is arrested with or without a warrant shall be examined immediately. At the stage of investigation, the public prosecutor shall, if he deems a detention is necessary after examining the arrestee, apply for a detention order from the court, having jurisdiction over the case, within twenty-four hours from the time of making the arrest with or without a warrant. Unless a detention order has been applied for under the provision of the preceding section, the public prosecutor shall release the accused immediately. If it is

considered that application for detention is not necessary notwithstanding the existence of one of the circumstances listed in section I of Article 101 or section I of Article 101-1, the arrestee may be released on bail, to the custody of another, or with a limitation on his residence.

3. The Interrogator is obliged to inform the defendants his right to a defense lawyer. A defense attorney may not examine the case file and exhibits or make copies or photographs thereof. The prosecutor bears the burden of proof to convince the judge that the evidence is enough to satisfy the standard of issuing detention order.
4. The Standard is not the same as convicting the defendant. It does not require the fact to be proved beyond reasonable doubt. It only has to be convincing that the defendant committed the offences.
5. However, the prosecutor may be present at the hearing and state the reason for applying detention order and present necessary evidence. The accused and his defense attorney shall be informed of the facts based to support the detention of an accused as specified in section I of this Article. The same shall be stated in the record.
6. When the defendant is intellectually challenged or is aboriginal, the prosecutor or law enforcement is obliged to notify the legal aid Institution to appoint a defense lawyer to the defendant if he is unable to afford one.
7. The interrogation shall stop immediately because of waiting for the presence of the appointed defense lawyer, provided that the waiting time shall not exceed four hours.
8. The Judicial Yuan proposed draft of Article 101 of Code of Criminal Procedure further confirms that Judges are also obliged to appoint a defense lawyer to the defendant in the detention hearing in cases where the minimum punishment is no less than three years imprisonment, where a high court has jurisdiction over the first instance, or where the accused is unable to make a complete statement due to unsound mind, or the defendant is aboriginal, or the defendant is unable to afford a defense lawyer and applied for one, or in other cases the judge deems necessary. The proposed draft also prescribes that the defendant or defense lawyer may request the judge allow them to have reasonable time for preparing the detention hearing.

條文	編號	問題內容(原文)	中文參考翻譯
公政第14條至第16條	55.	**Special problems of legal assistance (paras 212-216)** Mandatory defence is available in the investigation stage only for people with intellectual impairments. Please indicate whether the government plans to expand mandatory defence for the investigation phase. Please provide information on access to legal aid of people who have mental health conditions, in addition to people with intellectual impairment. In capital cases, mandatory defence is provided in the courts of first and second instances. While the government plans to revise the Criminal Procedure Code to expand free legal representation to capital defendants in the Supreme Court, what measures are being taken now to ensure free legal aid in capital cases in the Supreme Court (see General Comment 32, paras 10 and 51)? What measures are taken to ensure the quality of the legal aid?	**法律協助之特別問題（國家報告第 212 至 216 段）** 於偵查階段之強制辯護僅適用於智能障礙者。請指出政府是否計畫放寬偵查階段強制辯護之要件。除智能障礙者外，請提供心理健康問題者取得法律扶助之資訊。死刑案件於一審及二審之法院審判程序中，須強制辯護。雖然政府計畫修正刑事訴訟法以放寬死刑被告於最高法院享有免費辯護人之要件，目前已有何種措施確保於最高法院之死刑案件獲有免費之法律扶助？（請參照第 32 號一般性意見第 10 段及第 51 段）採行何種措施以確保法律扶助之品質？

中文回應

一、政府捐助設立之財團法人法律扶助基金會(下稱基金會)針對偵查中強制辯護案件設有檢警第一次偵訊律師陪同到場專案:基金會自 2007 年 9 月 17 日起，開始試辦「檢警第一次偵訊律師陪同到場專案」，針對申請人涉犯最輕本刑為三年以上有期徒刑之罪，被犯罪偵查機關拘提、逮捕或未收受傳票、通知書，而臨時被要求到場接受訊問或詢問者，提供民眾第一次偵訊時律師陪同偵訊之扶助。

二、刑事訴訟法修正後，偵查中強制辯護案件擴大至被告或犯罪嫌疑人為原住民者，基金會亦擴大得不審查資力之範圍:修正後刑事訴訟法第 31 條第 5 項規定，被告或犯罪嫌疑人因智能障礙無法為完全之陳述或具原住民身分者，於偵查中未經選任辯護人，檢察官、司法警察官或司法警察應通知依法設立之法律扶助機構指派律師到場為其辯護。

三、最高法院之死刑案件獲有免費之法律扶助: 基金會針對最高法院轉介之死刑案件，依法律扶助法第 14 條以及基金會審查委員會審查注意要點第 4 點規定應准予扶助。最高法院決定從 2012 年 12 月起，對於二審宣告死刑的案件，一律行言詞辯論。最高法院於 2012 年 12 月轉介被告吳敏誠案件至基金會台北分會，欲針對此一案件進行量刑辯論；基金會台北分會指派尤伯祥律師、周漢威律師及李艾倫律師為被告進行辯護。

四、基金會確保法律扶助品質之措施:基金會對於扶助業務進行品質控管之方式，除於扶助案件進行前之派案管理控管品質外；扶助案件進行中，透過申訴制度進行控管；扶助案件終結後，透過藉律師評鑑制度，控管扶助業務之品質。目前扶助律師接受派案之資格設有最低執業年資 2 年之限制。未來基金會將加強派案控管、定期稽催扶助案件辦理進度、健全結案制度、強化律師評鑑制度以及加強發展專職律師制度，以提昇扶助品質。

五、102 年 1 月 23 日修正公布之刑事訴訟法第 31 條規定，有下列情形之一，於審判中未經選任辯護人者，審判長應指定公設辯護人或律師為被告辯護：1、最輕本刑為三年以上有期徒刑案件。2、高等法院管轄第一審案件。3、被告因智能障礙無法為完全之陳述。4、被告具原住民身分，經依通常程序起訴或審判者。5、被告為低收入戶或中低收入戶而聲請指定者 6、其他審判案件，審判長認有必要者。前項案件選任辯護人於審判期日無正當理由而不到庭者，審判長得指定公設辯護人或律師。又第 95 條第 1 項第 3 款增訂「如為低收入戶、中低收入戶、原住民或其他依法令得請求法律扶助者，得請求之。」之規定，以維護弱勢者權益。

英文回應

1. The Legal Aid Foundation (hereinafter the LAF), funded by the government, launched the project of “Lawyer Accompanying Criminal Defendants to the First Investigation by Prosecutors and Police” for mandatory defense cases in investigation period: The LAF has tried out the project of “Lawyer Accompanying Criminal Defendants to the First Investigation by Prosecutors and Police” since September 17, 2007. In case that applicants, who are suspected to commit crimes that are punishable for more than 3 years, are apprehended or arrested by crime

investigation authority, requested to be interrogated or inquired all of a sudden without receiving summons or a letter of notice, the LAF provides people with legal aid of counsels for the first investigation.

2. After the amendment of The Code of Criminal Procedure, the mandatory defense in the investigation period is now applied to indigenous defendants and suspects, the LAF also broaden the scope of not considering financial capacity: According to Article 31, Paragraph 5 of amended "The Code of Criminal Procedure," if defendants or suspects, who are unable to express clearly due to mental retardation or who are indigenous, do not retain attorneys in the investigation, prosecutors, judicial police officers or judicial police shall notify legal aid institutions founded in accordance with laws, to assign attorneys for such defendants or suspects.
3. Death penalty cases in the Supreme Court granted for free legal aids: For referral of defense in death penalty cases being heard by the Supreme Courts, the LAF shall grant legal aids in accordance with Article 14 of Legal Aids Act and Article 4 of Review Directions for Foundation Review Committee. With the Supreme Court's decision that all death penalty cases decided by second instance courts and appealed to the Supreme Court shall proceed oral argument from December 2012, the LAF's Taipei Branch Office assigned lawyer Yu, Bo-Xiang, Chou, Han-Wei and Li, Ai-Lun to defend for the defendant in the Wu, Min-Chen case where the defendant is under death penalty sentence by the high court and the referral of mandatory defense was made by the Supreme Court to the LAF's Taipei Branch Office aimed to proceed arguments for sentencing.
4. Measures implemented by the LAF to ensure the quality of legal aids: The LAF controls the quality of legal aids by doing case management before legal aid cases proceed, collecting complaints during proceedings, and evaluating lawyers after the legal aid cases are closed. Legal aid lawyers in LAF must have minimum 2 years of practice. In the future, the LAF will promote the quality of legal aids by improving case management, monitoring progress of legal aids cases, perfecting case closure system, strengthening lawyer evaluation system, and enhancing the development of professional lawyer system.
5.

(1) Article 31, Paragraph 2 and 3 of the Code of Criminal Procedure promulgated on January 23, 2013 stipulates that under the following circumstances, the presiding judge is obliged to appointed a public defender or a lawyer to defend the accused if no defense attorney has been retained:

A. The minimum punishment is no less than three years imprisonment
B. The offense the defendant is accused of is one that a high court has jurisdiction over the first instance
C. The accused is unable to make a complete statement due to unsound mind
D. The defendant is aboriginal, and the case is indicted or for on regular procedure.
E. The defendant is low income household or mid-income household applying for a defense attorney.
F. Other cases that the presiding judge deems it necessary to appoint a defense attorney to the defendant.

(2) In case that defense attorney fails to appear without good reason on the trial date, the presiding judge may appoint a public defender.

(3) Article 95, Paragraph 1, Subparagraph 3 of the Code of Criminal Procedure stipulates that the interrogator is obliged to inform the accused that he or she is entitled to public defender or lawyer if he or she is low or mid-income household, aboriginal, or other cases prescribed by law entitling the defendant to legal aid.

(4) The above amendments to the Code of Criminal Procedure combined enhance the protection of the social vulnerable groups when accused.

條文	編號	問題內容(原文)	中文參考翻譯
公政第14條至第16條	56.	**Foreign populations (paras 216-217)** Please elaborate on whether court interpretation is available and sufficient for the increasing populations of foreign migrant workers and foreign spouses. Please provide statistics on the legal aid provided to foreigners. What is the meaning of the State Report's statement that "legal aid will be discussed" in the case of certain victims of human trafficking? Should not legal aid be made available to all	**外國人（國家報告第 216 至 217 段）** 請說明是否有法院通譯、並足供外國移工與外籍配偶使用？請提供予外國人法律扶助之統計資料。國家報告中曾提及，於人口販賣案件中部分受害者之「法律扶助將予討論」，是為何意？針對政府所指控並非合法居留於台灣之所有外國人，難道不應對之提供法律扶助？

		aliens who wish to contest the government claim that they are illegally residing in Taiwan?	

中文回應

一、為保障在臺新移民權益，提供適時語言翻譯，善用新移民語言專長，鼓勵其參與公共事務，移民署於 98 年起建置通譯人才資料庫，提供社政、衛生醫療、警政及勞政等 10 大領域類別，計 18 種語言所需之通譯服務，各單位如有需求，均可申請使用其資料庫。

二、為落實保障不通國語之本國人及外籍人士之訴訟權益，並提升法庭之傳譯水準。本院定有「高等法院及其分院建置特約通譯名冊及日費旅費報酬支給要點」、「智慧財產法院特約通譯約聘辦法」之規定，由臺灣高等法院及所屬分院依語言分類建置名冊，供各法院選擇聘用特約通譯，並公布於網站，提供法官、民間團體選用參考，以滿足人民對法庭傳譯之需求。本院目前已建置特約通譯語言類別包含手語、客語、原住民語、廣東話、英語、日語、越南語、印尼語、泰語、菲律賓語、柬埔寨語、馬來西亞語、西班牙語、葡萄牙語、法語、德語等 16 種語言共 177 人，讓不通國語人士及新移民能順利參與訴訟程序，訴訟當事人及關係人如有需要，除可事先聲請特約通譯外，各法院於審理案件遇有當事人、證人、鑑定人或其他訴訟關係人為外籍人士、原住民或瘖啞人之情形，亦均會主動徵詢有無特約通譯需求，並告知得向法院聲請特約通譯。

三、法務部所屬檢察機關受限於機關員額編制，且法定編制內之通譯員額有限，難以因應各種外國語言、各族原住民及聾啞人士所需，為保障不通國語之國人、外國人、各族原住民等之權益，乃責由臺灣高等法院及其分院檢察署延攬各種語文人才，就各種語言建置特約通譯人才名冊，以供各級檢察署選用。

四、為落實保障不通國語人士、聾啞人士之權益，並提升檢察工作之傳譯水準，本部訂有「高等法院及各級分院檢察署建置特約通譯名冊及日費旅費報酬支給要點」，明訂特約通譯應具備語言檢測機構核發語文能力達「中級」以上程度，或其他具有該項語文能力等證明文件，檢察署應對特約通譯辦理講習 4 小時以上後始發給聘書，聘書有效期限為 2 年，聘任期間內得視需要辦理講習，特約通譯之日費、交通費、住宿費等，由各級法院檢察署編列預算支應等事項。

五、目前臺灣高等法院檢察署及所屬分署特約通譯人數如下：臺灣高等法院檢察署 79 人、臺灣高等法院臺中分院檢察署 40 人、臺灣高等法院臺南分院檢察署 29 人、臺灣高等法院高雄分院檢察署 37 人、臺灣高等法院花蓮分院檢察署 24 人、臺灣高等法院臺南分院檢察署 29 人，尚足以因應各級檢察署所需，惟仍持續辦理擴充建置中。

六、法律扶助基金會 2012 年提供外國人法律扶助之統計資料

受扶助人為外籍人士之案件依扶助類型分類						
案件類別	一般案件	消債案件	勞委會案件	擴大法諮案件	檢警案件	原住民檢警案件
受扶助人為外籍人士案件量	1,445	0	17	691	5	-
准予扶助量	26,005	4,983	1,991	54,427	533	-
佔准予扶助案件量之比例	5.56%	0.00%	0.85%	1.27%	0.94%	-
備註：法律扶助基金會於 101 年 7 月 15 日起試辦原住民檢警專案，僅具有原住民身分之申請人皆歸屬原住民檢警案件，故原住民檢警案件無外籍人士。						

七、依據法律扶助法第 15 條規定，外國人不分國籍，若合法居住於台灣地區，並通過資力與案情審查，通常即可獲准扶助。為協助人口販運被害人順利申請法律扶助，基金會針對申請人必須具備合法在臺身份之規定，放寬審查標準。凡經檢警鑑別為人口販運被害人並安置於境內之申請人，基金會即視其符合法律扶助法第 15 條合法居住之規定。基金會於 2012 年共受理 312 件人口販運被害人之申請案件，經准予全部扶助者有 294 件、提供法律諮詢者有 5 件，駁回 13 件，扶助率高達 96%。

英文回應

1. The NIA established the Interpreters Talent Database in 2009 to safeguard the interests of new immigrants, provide timely language interpretation, tap into the language skills of new immigrants, and encourage their public participation. Providing translation services in 18 languages for ten main spheres in public affairs, health, law enforcement, labor affairs, etc., the database are open to all sectors that require these services, and submit applications to use the aforementioned database.
2. In order to protect the rights to judiciary for nationals and foreigners who do not speak Mandarin and to promote the standard of court

interpretation service, the Judicial Yuan stipulated “Guidelines for High Court and its Branch Courts Establishing Lists of Contracted Interpreters and the Payment for Remuneration of Day Fee and Travel Expenses” and “Regulations for Intellectual Property Court Employing Contracted Interpreters”. Taiwan High Court and its branch courts have established lists of court interpreters in language basis to facilitate the selection and employment of contracted court interpreters. The lists are published on the website for judges and civil groups to consult and select from and satisfy people’s demand for interpreters. For now, the Judicial Yuan has classified 177 interpreters of 16 languages, including sign language, Hakka, indigenous languages, Cantonese, English, Japanese, Vietnamese, Indonesian, Thai, Filipino, Cambodian, Malay, Spanish, Portuguese, French, and German, so people who do not speak Mandarin or immigrants are able to participate in proceedings. If interpreters are required by litigants and relative parties, besides the advanced application for interpreters, each court will voluntarily ask litigants or relative parties for the demand of interpreters when foreigners, indigenous people or mute people are litigant, witness, expert witness or other litigation party in proceedings, and each court will acknowledge litigants their rights to interpreters.

3. The prosecutorial organizations under the Ministry of Justice are restrained by the size of their staff and the shortage of interpreters to cope with the multi-language requirement, the indigenous peoples and the dumb and deaf people. To protect the rights and interests of foreigners and indigenous people who do not understand the national language, the Taiwan Supreme Court and its branches are recommended to recruit different language speakers and make a name list for reference by various Prosecutors Offices.
4. To thoroughly protect the rights of the people, including the dumb and deaf people, who are not versed in Mandarin and to raise the level of interpretation in prosecutorial affairs, the Ministry of Justice has drawn up the “Key Points for Compiling the Contract Interpreters into a List as Well as Solving Their Travelling Expenses and Payment.” This document clearly prescribes the interpreter must acquire a certificate issued by a language-testing organization to show their language proficiency is above the middle level. It will also do for them to have other related certificates. The Prosecutors Office will issue a letter to them as contract after they have attained a seminar for at least four hours. The letter contract is valid for two years. During the period they may be asked to attend additional seminars. The per diem, travel expense, and lodging and board fees are to be budged by various Prosecutors Offices.
5. At present, the numbers of interpreters under the Taiwan High Prosecutors Office and its branches are as follows: The Taiwan High Prosecutors Office, 79; the Taichung Branch, 40; the Tainan Branch, 29; the Kaohsiung Branch 37; the Hualien Branch 24. These

organizations can still cope with their needs, and an increase of the numbers is underway.

6. Statistics of Legal Aid Foundation providing legal aids to foreigners:

Aids to Foreigners, Classified Based on Aids Types						
Types	General Cases	Cases of Debt Elimination	Cases of Council of Labor Affairs	Cases of Broadening Legal Advice	Cases of Prosecutors and Police	Cases of Indigenous Prosecutors and Police
Cases of Aids to Foreigners	1,445	0	17	691	5	-
Aids Approved	26,005	4,983	1,991	54,427	533	-
Ratio of Aids to Foreigner Account For Total Aids Approved	5.56%	0.00%	0.85%	1.27%	0.94%	-
Note：The Legal Aid Foundation tried out the Indigenous Prosecutors and Police Project on July 15, 2012. Only applicants with indigenous identity are classified to case of indigenous prosecutors and police. No foreigners are counted in the case of indigenous prosecutors and police.						

7. According to Article 15 of Legal Aids Act, foreigners, who legally reside in Taiwan and pass the financial capacity and case review regardless of their nationalities, are usually granted for legal aids. In order to assist victims of human trafficking applying for legal aids, the LAF loosens the review standard that applicants must possess legal identities in Taiwan. For applicants who are identified as victims of human trafficking and sheltered in the country, the LAF regards the applicants conform to the regulation of legal residence in Article 15 of Legal Aids Act. The LAF received 312 cases applied by victims of human trafficking, 294 cases thereof were granted for total aids, 5 cases

for providing legal advices, and only 13 cases were denied. The ratio for granting legal aids is 96%.

條文	編號	問題內容(原文)	中文參考翻譯
公政第14條至第16條	57.	**Confessions (paras 102-104)** To what extent are convictions based on confessions? To what extent are allegedly coerced confessions challenged and excluded from evidence? What measures, such as training, evaluation and punishment of law enforcement officers, are currently taken to implement legislative prohibitions against coerced confessions? In practice, how do courts investigate defendants' allegations of coerced confessions?	**自白（國家報告第 102 至 104 段）** 自白在何種程度內可作為有罪判決的證據？非法或不當取得之自白於何種程度內可以排除其證據能力？目前採行何種措施（例如訓練、評鑑及處罰執法官員）以落實法律對於非法取得自白之禁止？實務上，法院如何審理被告對於非法取得自白之指控？

中文回應

一、為防杜員警於偵查階段以不法手段刑求逼供，業已訂頒「警察詢問犯罪嫌疑人錄音錄影要點」，要求所屬員警於詢問犯罪嫌疑人時應全程連續錄音，必要時並應全程連續錄影，且如有下列情形時，應全程連續錄影：（一）引起社會大眾關注之重大案件。（二）具有爭議性之案件。（三）其他認為有錄影之必要者。

二、依刑事訴訟法第 98 條規定，訊問被告應出以懇切之態度，不得用強暴、脅迫、利誘、詐欺、疲勞訊問或其他不正之方法；同法第 100 條規定，被告對於犯罪之自白及其他不利之陳述，並其所陳述有利之事實與指出證明之方法，應於筆錄內記載明確；同法第 100 條之 1 規定，法官與檢察官訊問或警察詢問被告時，應全程連續錄音、錄影。錄音、錄影資料係由機關另行保管，避免有遺失或竄改之虞；

三、依刑事訴訟法第 156 條第 1 項規定，被告之自白，非出於強暴、脅迫、利誘、詐欺、疲勞訊問、違法羈押或其他不正之方法，且

與事實相符者，得為證據。依刑事訴訟法第 158 條之 2 第 1 項規定，違背法定障礙時間不得訊問、夜間禁止詢問之規定所取得之自白及其他不利之陳述，不得作為證據。但經證明其違背非出於惡意，且該自白或陳述係出於自由意志者，不在此限。依刑事訴訟法第 100 條之 1 規定，訊問被告，應全程錄音；必要時，並得全程連續錄影。依 100 條之 2 條規定，司法警察官或司法警察詢問犯罪嫌疑人時，準用之。上開規定如經落實，應可杜絕非法取得被告自白之情形。

四、

(一) 軍事法院審理之被告於偵審程序中所為自白，迄案件言詞辯論終結前，若其對於自白之任意性無爭執，亦查無非法取供之情事，並經軍事法院調查認與事實相符者，方得採為有罪判決之證據。

(二) 依軍事審判法第 125 條準用刑事訴訟法第 156 條第 1 項規定，被告之自白，非出於強暴、脅迫、利誘、詐欺、疲勞訊問、違法羈押或其他不正之方法，且與事實相符者，得為證據。被告之自白經爭執其受到非法或不當取得者，經調查屬實，該自白即無證據能力，應予以排除。

(三) 有關軍事審判程序中，被告自白證據是否採為證據或予以排除，均已納入軍法官養成、實務訓練及在職教育之重要必備課程，以強化軍事審判程序證據法則運用之正確性。

(四) 在軍法審判實務上，如被告以遭刑求為抗辯，依軍事審判法第 125 條準用刑事訴訟法第 156 條第 3 項之規定：被告陳述其自白係出於不正之方法者，應先就此部分調查（如針對被告所指遭到何種非法或不當取得自白之情況，立即對於被告之身體進行勘驗、拍照或錄影，以調查其所指是否屬實）。自白係經軍事檢察官提出者，軍事法院應先命軍事檢察官就自白是否出於被告自由意志陳述，指出證明方法以供調查（例如提出錄音、錄影或被告選任辯護人、親友等人陪同在場之證明）

英文回應

1. In order to prevent the officers use unlawful means torture to extracting confessions, the National Police Agency, Ministry of Interior promulgated “Directions governing recording and videotaping during Police Investigations“. It required that all the process of questioning have to be recorded, or videotaped if necessary. Video recording should be used throughout the questioning during any of the following circumstances: (1)Serious case which attract the society’s attention; (2)Controversial case; (3)Requested by officers involved in

investigation who thinks it is necessary.

2. Article 98 of the Code of Criminal Procedure stipulates that an accused shall be examined in an honest manner; violence, threat, inducement, fraud, exhausting examination or other improper means shall not be used; Article 100 of the same Act stipulates that the confession of an accused and other statements unfavorable to him as well as facts stated in his favor and the method of proof indicated shall be clearly noted in the record; Article 100-1, Paragraph 1 and 2 of the same Act stipulate that the whole proceeding of examining the accused shall be recorded without interruption in audio, and also, if necessary, in video, provided that in case of an emergency, after clearly stated in the record, the said rule may not be followed. Except for the circumstances prescribed in the Proviso of the preceding section of this article, if there is an inconsistency between the content of the record and that of the audio or video record regarding the statements made by the accused, the said portion of the statement shall not be used as evidence. The recording shall be stored separately to prevent it being tempered or falsified with.
3. According to Paragraph 1 of Article 156 of the Code of Criminal Procedure, if a defendant's confession is not extracted through the use of violence, coercion, inducement, deception, exhausting interrogation, unlawful detention, or other unlawful means, it may be taken as evidence so long as it is consistent with facts. Paragraph 1 of Article 158-2 of the Code of Criminal Procedure provides that interrogation beyond barrier time is not permitted and that the onfession and other unfavorable statement obtained by interrogation at night cannot be used as evidence. This provision, however, does not apply, if the confession is made on the defendant's own accord and not obtained through malevolence. Paragraph 1 of Article 100 of the Code of Criminal Procedure provides an interrogation of a defendant must be audio-recorded from beginning to end and, if necessary, it has to be video-recorded consecutively. Paragraph 2 of the same Article stipulates that this provision applies mutatis mutandis to police and judicial police interrogations. If this provision is thoroughly observed, the practice of unlawful obtaining confessions can be terminated.
4.

(1) In procedure of Military count trial, if no parties argue with effective of confession evidence before the conclusion of the oral-argument sessions, gaining confession evidence legally, and being true after Military count investigated, These confessions could be evidence of guilty sentence.

(2) According to 《Code of Count Martial Procedure》 Article 125 mutatis mutandis 《Code of Criminal》Article 156 paragraph I, confessions from defendants could be effective evidence unless gaining with forcing, duress, fraud, extort, illegal detaining, or other illegal ways and being true with fact. Confession of defendant shall be ineffective, if these confessions gained illegally after count investigating.

(3) In procedure of Military count trial, confession is true to be a fact or not is a necessary and important class in Judge Advocate training for strengthening correctness of evidence rule.

(4) In procedure of Military count trial, when defender defenses been extort, according to 《Code of Count Martial Procedure》 Article 125 mutatis mutandis 《Code of Criminal》 Article 156 paragraph III. If confession mention by Military Prosecutor, Military court should order Military Prosecutor to prove for investigation. (such as mention voice, video, or witness).

條文	編號	問題內容(原文)	中文參考翻譯
公政第14條至第16條	58.	**Review by a higher tribunal (para 224)** The report indicates that there are cases where the defendant may not be able to appeal a guilty verdict for a substantive review, including cases where the court of second instance reverses the acquittal of the lower court. Please elaborate on aspects of the domestic legal system that prevent the defendant from seeking a substantive review in ordinary courts and military courts (see General Comment 32, paras 47-48). What steps are being taken to amend existing legislation so as to be in conformity with Article 14 paragraph 5?	**上級法院之審理（國家報告第 224 段）** 國家報告指出某些案件之被告無法針對有罪判決請求實質上訴審理，包含二審法院廢除一審法院無罪判決之案件。請說明國內法律系統限制被告於普通及軍事法院請求實質審查之層面（請參照第 32 號一般性意見第 47 段至第 48 段）。目前已採行何種步驟以修改現行立法，使之符合公約第 14 條第 5 項？

中文回應

一、依「公民與政治權利國際公約」第 14 條第 5 項規定，經判定犯罪者，有權聲請上級法院依法覆判其有罪判決及所科刑罰。第 32 號一般性意見第 47 段則指出，違反第十四條第五項的情況，不僅包括第一審法院判決即是終審的情形，而且還包括下級法院為無罪判決後，沒有上級法院得根據國內法，就上訴法院或終審法院的有罪判決再進行審查的情形。除非有關締約國就此作出保留，這一制度不符合《公約》。依我國刑事訴訟法第 376 條規定，該條所列各款之案件，經第二審判決者，不論是否判決被告有罪，均不得上訴於第三審法院。這些案件，包括：（1）最重本刑為三年以下有期徒刑、拘役或專科罰金之罪；（2）刑法第三百二十條、第三百二十一條之竊盜罪；（3）刑法第三百三十五條、第三百三十六條第二項之侵占罪；（4）刑法第三百三十九條、第三百四十一條之詐欺罪；（5）刑法第三百四十二條之背信罪；（6）刑法第三百四十六條之恐嚇罪；（7）刑法第三百四十九條第二項之贓物罪。惟上開案件經判決有罪確定後，並非毫無聲請法院依法覆判其有罪判決及所科刑罰之途徑。如有刑事訴訟法第 420 條、第 421 條所定情形之一，仍得為受判決人之利益聲請再審。又依同法第 441 條規定，判決確定後，發現該案件之審判係違背法令者，最高法院檢察署檢察總長得向最高法院提起非常上訴。又依司法院第 591 號解釋，憲法第 16 條所規定之訴訟權，係以人民於其權利遭受侵害時，得依正當法律程序請求法院救濟為其核心內容。而訴訟救濟應循之審級、程序及相關要件，則由立法機關衡量訴訟案件之種類、性質、訴訟政策目的，以及訴訟制度之功能等因素，以法律為正當合理之規定。是訴訟救濟之途徑、具體內容，有待立法具體形成。在未有周延制度設計之前，本質上屬應予保留之事項。惟因兩公約施行法採將公約及一般性意見全盤內國法化之方式，致未予保留。目前而言，為配合兩公約施行法之刑事訴訟法修正案，均仍在立法院審議中，尚未有修正刑事訴法相關規定之具體進展。

二、依「公民與政治權利國際公約」第 14 條第 5 項規定，經判定犯罪者，有權聲請上級法院依法覆判其有罪判決及所科刑罰。軍事審判程序對於被告權利之保障，例如：無罪推定、辯護權、交互詰問等，除軍事審判法或其特別法別有規定外，均與普通法院審理人民之刑事訴訟程序並無差異，且依我國大法官釋字第 436 號解釋意旨，軍事審判法於 1999 年 10 月 3 日修正施行，該法第 181 條第 3、4 項規定，除經宣告拘役、罰金等輕微刑罰種類之軍法判決外，均得以判決違背法令為理由上訴第三審普通法院，故軍事審判法在第三審之救濟規定，並無違反上開公約規定。

英文回應

1. According to Article 7 paragraph of the ICCPR, “Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.”Article 14, paragraph 5 is violated not only if the decision by the court of first instance is final, but also where a conviction imposed by an appeal court97 or a court of final instance, following acquittal by a lower court, according to domestic law**,** cannot be reviewed by a higher court. Where the highest court of a country acts as first and only instance, the absence of any right to review by a higher tribunal is not offset by the fact of being tried by the supreme tribunal of the State party concerned; rather, such a system is incompatible with the Covenant, unless the State party concerned has made a reservation to this effect .For offenses stipulated in Article 376 of Code of criminal procedure, the decision by the appellate court is final. These offenses include :(1). offenses with a maximum punishment of no more than three years imprisonment, detention, or a fine only;(2) Offense of theft specified in Articles 320 and 321 of the Criminal Code;(3). Offense of embezzlement specified in Article 335 and Paragraph 2 of Article 336 of the Criminal Code;(4). Offense of False Pretense specified in Articles 339 and 341 of the Criminal Code;(5). Offense of breach trust specified in Article 342 of the Criminal Code;(6). Offense of extortion specified in Article 346 of the Criminal Code;(7). Offense of swag specified in Paragraph 2 of Article 349 of the Criminal Code.These offenses are relatively minor offenses. However, motion for retrial may still be filed for interests of the convicted under the circumstances stipulated in Article 420 and 421 of the Code of Criminal procedure. In addition, pursuant to Article 441 of code of criminal procedure, after a judgment is final, if the trial of a case is found to in contravention of laws, the chief-procurator of the Supreme Prosecutors Office may file an extraordinary appeal to the Supreme Court.
2. Article 14 paragraph 5 of the ICCPR collides with the criminal procedure system. According to Grand Justice Interpretation concerning the right of instituting legal proceedings as guaranteed under Article 16 of the Constitution is aimed to ensure that when the people's rights are infringed, they may institute legal proceedings pursuant to procedures set by the law, and shall be entitled to fair trials. In respect of the procedures to be followed and the relevant requirements, however, the legislature may set forth reasonable and equitable rules after weighing such various factors as the type and nature of cases, the functions of a litigation system, as well as the statutory means to resolve a dispute out of court. As long as the relevant provisions tally with the aforesaid intentions and are necessary, they are not contrary to the

constitutional intent to guarantee the right of instituting legal proceedings. The scheme formulated by Article 14 paragraph 5 of the ICCPR shall be subject to the legislator's discretion. In its nature, it could be said that this part of the ICCPR should have been reserved when incorporating the ICCPR and all general comments into our domestic legal system before the new scheme of Code of criminal procedure in this respect is reorganized.As for now, almost all amendment aiming to make the Code of Criminal Procedure conforming to the standard of ICCPR is still under deliberation in Legislative Yuan, there are no further progress made concerning amendment to the existing legislation in this regard, so as to be in conformity with Article 14 paragraph 5 of the ICCPR.

3. According to《International Covenant on Civil and Political Rights》Article 7 paragraph V, "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law." Right safeguard of defender in martial procedure, for example the Presumption of innocence, right of defense, cross-examination, that is no different between criminal court and military court unless existing special rule of Code of Court Martial Procedure and special law. And according to《Council of Grand Justices》number 436, Code of Court Martial Procedure amended and becoming effective in 3th October 1999, according to Article 181 paragraph III, IV, any reason which contravened laws and regulations may appeal Supreme court unless detention, fine, or imprisonment. As result《Code od Court Martial Procedure》about supreme court rule does not contrary Covenant.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第17條	59.	The report states that regulations on the protection of and non-interference with people's privacy are available in the Criminal Code and in several other laws. (para 238) Please provide information on the conditions under which this right may be legally restricted and how any abuse of power under such legal provisions is monitored and what action has been	國家報告敘明針對人民隱私權保障與不干預之規範可見於刑法及其他數部法律之中（國家報告第238段）。請提供資訊，敘明於何種情形下此種權利得合法受限，以及於該法律規範下，如何監督任何權力之濫用與對此相應之措施。請提供隱私權遭侵害之個人所可能提出之申訴及其申訴結果。

		taken in case of abuse. Please provide information on the complaints that may have been filed by individuals whose right to privacy under the various laws has been violated and the results.	

中文回應

一、按刑法(第 28 章妨害秘密罪)第 315 條妨害書信秘密罪、第 315 條之 1 無故窺視窺聽竊錄罪、第 315 條之 2 便利窺視窺聽竊錄及散布竊錄內容罪、第 316 條洩漏業務上知悉他人秘密罪、第 317 條洩漏業務上知悉工商秘密罪、第 318 條洩漏職務上工商秘密罪、第 318 條之 1 洩漏因利用電腦設備等知悉或持有他人秘密罪、第 318 條之 2 利用電腦等妨害秘密罪，隱私權遭侵害之個人可依法提出告訴，相關罰責包括，有期徒刑、拘役、罰金或沒收。

二、又刑事訴訟法第 245 條第 1 項、第 3 項規定：「偵查，不公開之。檢察官、檢察事務官、司法警察官、司法警察、辯護人、告訴代理人或其他於偵查程序依法執行職務之人員，除依法令或為維護公共利益或保護合法權益有必要者外，偵查中因執行職務知悉之事項，不得公開或揭露執行法定職務必要範圍以外之人員。」

三、依據個人資料保護法第 5 條規定：「個人資料之蒐集、處理或利用，應尊重當事人之權益，依誠實及信用方法為之，並不得逾越特定目的之必要範圍，並應與蒐集之目的具有正當合理之關聯。」

(一)公務機關違反本法規定，致個人資料遭不法蒐集、處理、利用或其他侵害當事人權利者，負損害賠償責任。但損害因天災、事變或其他不可抗力所致者，不在此限。被害人得請求賠償相當之金額(最高新臺幣 2 億元)；其名譽被侵害者，並得請求為回復名譽之適當處分。

(二)非公務機關違反本法規定，致個人資料遭不法蒐集、處理、利用或其他侵害當事人權利者，負損害賠償責任。但能證明其無故意或過失者，不在此限。被害人得請求賠償相當之金額(最高新臺幣 2 億元)；其名譽被侵害者，並得請求為回復名譽之適當處分。

(三)損害賠償，除依該法規定外，公務機關適用國家賠償法之規定，非公務機關適用民法之規定。

(四)相關罰責：有期徒刑、罰金、罰鍰。

四、依通訊保障及監察法（以下簡稱本法）第 5 條第 1 項之規定，實施通訊監察須「不能或難以其他方法蒐集或調查證據者」為要件，

此即最後手段性原則，須先行考慮或嘗試其他蒐證方法，若不能或難以蒐證時，方得以通訊監察方式進行蒐證。就罪名方面，必須符合本法第 5 條所列舉之罪名，方得實行通訊監察（此稱為重罪原則，通訊監察與保障法第 5 條第 1 項）。又實行通訊監察前，必須先有事實認為監聽對象可能涉嫌犯罪（必要性原則），且除緊急情況外須聲請由法院核發通訊監察書方可為之（令狀原則）。又為保護人民隱私權，在本法第 19 條至第 26 條規定有違反本法而侵害人民隱私時，所必須負擔之民、刑事責任。

五、通訊保障及監察法規定，違反規定進行監聽行為情節重大者，所取得之內容或所衍生之證據，於司法偵查、審判或其他程序中，均不得採為證據。對於刑事違法監察他人通訊等行為，致個人隱私權遭侵害時，受侵害者得依通訊保障及監察法第 19 條至第 23 條請求賠償；相關違法人員亦有刑事責任。

六、法務部對通訊監察之監督機制：

(一)請各檢察機關切實督導執行機關依通保法第 5 條第 4 項規定，於通訊監察期間，至少做成一次「期中報告」。請切實依通保法第 15 條第 1 項及通保法施行細則第 27 條第 1 項規定，要求執行機關於通訊監察結束後 7 日內為期末報告，檢察官於收文後 5 日內陳報法院審查。

(二)稽查所屬檢察機關是否有非法監聽，除派檢察官每半個月辦理 1 次通訊監察查核作業外，更使用最高法院檢察署通訊監察線上查核系統之功能，以系統逐案自動查核之方式，提升覈實查核效率，目前亦無違法實施通訊監察之情形。（依「檢察機關實施通訊監察應行注意要點」第 5 點規定辦理）

(三)依「通訊保障及監察法」第 16 條第 2 項及「檢察機關實施通訊監察應行注意要點」第 6 點規定，檢察機關應指派檢察官或檢察事務官持機關公函，至轄區建置機關或執行處所監督通訊監察執行情形，每季至少 1 次；檢察官於執行監督後，應將監督結果陳報檢察長。各級檢察機關均依規定切實辦理。

七、內政部警政署對通訊監察之監督機制：

(一)為嚴格要求各警察機關依通訊保障及監察法第 15 條規定確實於執行通訊監察完畢後，報由檢察官陳報法院通知受監察人，訂有「警察機關辦理陳報通知受監察人注意事項」，用以規範及管制各偵查單位應於通訊監察結束後報由檢察官陳報通知受監察人，俾落實踐行陳報通知受監察人之法定義務。警察機關執行完畢後即依法於 7 日內報由檢察官陳報法院進行通知事宜。目前各警察機關依法報由檢察官陳報通知受監察人之比率約為 97%，其他 3%為通訊監察聲請後因重案或受監察人死亡等原因及案件仍有相關他案持續監察中。(陳報通知比率隨案件新增或結束而有變動)。

(二) 為偵查犯罪，發現真實，並合理考量被害者法益與人民秘密通訊自由權利之維護，訂有「警察機關執行通訊監察管制作業要點」等多項行政規則，明確規範並嚴格要求各警察機關必須依法嚴密審核、管制及執行通訊監察作業。並於通訊監察結束後，落實辦理報請檢察官陳報法院通知受監察人義務，及填報通訊監察案件績效統計月報表；同時各級檢察機關得隨時督導通訊監察執行情形，司法院與最高法院檢察署亦得直接透過網路傳輸專線，隨時查核執行中之通訊監察案件有無依法核發通訊監察書或逾期監察之情形，以杜絕違法通訊監察。

英文回應

1. Violations of the Criminal Code Article 315 (governing offense against mail privacy), Article 315-1 (governing offense against peeping and eavesdropping), Article 315-2(governing offense against facilitating peeping and eavesdropping), Article 316 (governing offense against revealing an individual's secrets obtained during the carrying out of a profession), Article 317 (governing offense against revealing commercial secrets), Article 318-1 (governing offense against revealing an individual's secrets obtained by the use of computers) and Article 318-2 (governing offense against revealing secrets of an individual by the use of computers) are punishable by imprisonment, detention, fine or confiscation. The individual whose privacy is infringed is entitled to file a criminal complaint.
2. In addition, Article 245-1 and 245-3 stipulates" Investigation should not be publicized. Prosecutors, assistant prosecutors, police officers, defense attorneys, legal representatives who filing criminal complainants on the victims' behalf or other officials carrying out their duties during investigation, unless otherwise permitted by law or considered necessary measures to safeguard public interests, shall not publicize or disclose whatever information obtained during investigation to officials with no clearance to it.
3. According to Article 5 of the Personal Information Protection Act" Personal information should be collected, handled and utilized in the manner of respecting each individual's rights and interests, consistent with the principle of bona fide, not exceeding the scope of its original purpose and reasonably related to the purpose of collection. "

(1) A government agency should be held liable if it fails to abide by the provisions stipulated in the Law and leads to illegal collection, processing and utilization of personal information or other infringement of the rights of an individual. However, damages caused by natural

disaster, incident or other force majeure should be excluded. Victims are entitled to request a maximum monetary compensation of two hundred million NT dollars and proper restorative measures to restore reputation if their reputations are infringed.

(2) A non-government agency, unless proven to be unintentional or negligent, should be held liable if it fails to abide by the provisions stipulated in the Law and leads to illegal collection, processing and utilization of personal information or other infringement of the rights of an individual. Victims are entitled to request a maximum monetary compensation of two hundred million NT dollars and proper restorative measures to restore reputation if their reputations are infringed.

(3) Compensation should be claimed in accordance with the provisions of the Law. Compensation for damages caused by a government agency should be claimed in accordance with the State Compensation Law while compensation for damages caused by a non-government agency should be claimed in accordance with the Civil Code.

(4) Violations of the abovementioned provisions are punishable by imprisonment and fine.

4. According to Paragraph 1 of Article 5 of the Communications：Monitoring Act, the primary condition on monitoring communications is that there is no other means or it is impossible to gather evidence. This is to say, Communications monitoring is the last resort. Before the method is employed, all other means for gathering evidence must be considered and tried. Only when evidence cannot by gathered by other means, can communications monitoring be used. As to the crime involved, it must be one listed in Article 5 of the Act. Besides, before using communications monitoring, it must be proved by facts that the targeted person is suspected of involvement in a crime. Unless in an emergency, a warrant must be applied with the court before monitoring can be conducted. To protect people's privacy, Articles 19-26 provide that if people's privacy is infringed by the monitoring and if the provisions of the Act are violated as a result of monitoring, the monitoring organization must bear the civil and criminal responsibilities.

5. According to Communication Protection and Surveillance Act, the content or evidences derived from the outcome of surveillance obtained in violation of the procedure prescribed by the Act is not admissible in criminal procedure. When the illegal surveillances intrude individual's right of privacy, the individual is entitled to file claims for damages pursuant to Article 19 to 23 of the Communication Protection and Surveillance Act. Person who violates the regulation shall bear criminal responsibility arising therefrom.

6. MOJ's supervisory measures taken for monitoring communications

(1) Ordering the prosecutorial organizations to abide by the provisions of Paragraph 4 of Article 5 of the Communications Protection Act and Paragraph 1 of its Rules of Enforcement by filing at least one “mid-term report” during the communications monitoring period and file a “final report” within 7 days after the end of the operation for deliberation by the court.

(2) Inspecting prosecutorial organizations to see whether there is illegal communications monitoring. MOJ dispatches prosecutors to audit the operation every half month and uses the Supreme Prosecutors Office’s online systems to make automatic checks. So far, no illegal practice has been found.

(3) According to Paragraph 2 of Article 16 of the Communications Protection and Monitor Act and Item 6 of the “Implementation Key Points for Communications Monitoring by Prosecutorial Organizations,” a prosecutorial organization shall assign a prosecutor or a prosecutorial assistant to check, at least once every season, the operations of the organizations where communications monitoring is conducted. The prosecutor in charge shall file a report to the chief prosecutor on his or her findings. All prosecutorial organizations shall do the same accordingly and conscientiously.

7. MOI’s supervisory measures taken for monitoring communications

(1) According to Article 15 of the Communications Monitoring Protection , Police enforcement must file a “final report” within 7 days after the end of the operation for deliberation by the court. National Police Agency makes restrict ask for belonged police agencies to follow directions involved. According to statistics, the latest percentage of which the police report to the prosecutor to give court notice of objected person is 97%, the rest of 3% results from the death of objected person, or some related to other acting cases. (the number of statistic is floating at any time)

(2) According to Enforcement Rules of the Communications Monitoring Act, National Police Agency sets various directions to monitor someone’s communications with strict audit and control, prohibit any illegal monitoring. So far, no illegal practice has been found. After mission clearing, policeman should report to the prosecutor to give court notice of objected person, completing statistics and monthly report. MOJ dispatches prosecutors to audit the operation every half month and uses the Supreme Prosecutors Office’s online systems to make automatic checks.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第17條	60.	Please provide details of various types of personal data collected, the purposes and the agencies, governmental or non- governmental authorised by law to do this. Is there a monitoring of abuse or CCPR List of Issue 10 misuse of such authority and practices and is there a dedicated agency to ensure protection of personal information and compliance with the law.	請提供各種個人資訊蒐集之詳細細節、其目的及主管機關、依法授權進行此事之政府或非政府機構。是否設有監督機制以防免該等機關及實際操作上有濫用或誤用之情形？是否設有專職機關確保個人資訊之保障及相關法律之遵行？

中文回應

一、我國個人資料保護法並未設置專責機關。各政府機關係由其上級機關監督個人資料保護事項。此外，目的事業主管機關得對其所管之行業進行監管、調查，以確保個人資料之保障。

二、衛生署：基於保障及促進全體國人之健康，必要時將依法進行國人健康資訊之蒐集、調查及研究。且基於保障個人隱私，皆有相當之措施以免個人資料外洩。至於電子資料庫部分，衛生署也進行多元化之加密措施，以防止資料遭駭或外流，並也成立個人資料保護小組，進行個人資料之保護工作。

三、內政部：戶役政資訊系統資訊安全管理系統於 97 年 5 月 30 日取得 ISO-27001 國際認證，嗣每半年通過續審驗證，確認資訊安全管理系統的適切性及有效性。建置內政部戶役政資訊安全監控中心(Security Operation Center, SOC)，依據標準作業流程辦理日誌蒐集、網路監控、資安事件偵測及系統服務狀態監測等工作，並建立自動以簡訊及電子郵件傳送警訊機制。辦理全國戶役政資訊系統作業單位及連結機關資訊安全稽核作業，掌握各項可能缺失，適時執行矯正行動及追蹤確認，確保資訊資產之機密性、完整性及可用性，落實資訊安全管理。

四、金融監督管理委員會：金融服務業對於個人資料之蒐集、處理或利用，均依個人資料保護法規定辦理。101 年 10 月 1 日個人資料保護法修正施行前，金融監督管理委員會已依照電腦處理個人資料保護法之規定，針對銀行業、證券期貨業、保險業訂定個人資

料檔案安全維護規定，以建立金融客戶個人資料之安全維護制度，防止金融客戶個人資料被竊取、竄改、毀損、滅失或洩露。配合個人資料保護法之修正施行，本會刻正研訂新規定落實並強化金融客戶個人資料檔案安全維護制度。本會已針對保險業修正人身保險要保書示範內容及注意事項。另本會所屬保險局已邀集所轄公會及其所屬會員公司等，參加其所舉辦之個人資料保護法相關法規說明會之講習訓練，加強保險業從業人員對於個人資料之認知及隱私權保護意識外，並請產、壽險業及保險經紀人、代理人、公證人等相關同業公會強化所屬從業人員之法治教育，及研議對當事人告知事項之參考範本以供從業人員遵守及保護當事人權益。

五、檔案管理局：各機關如有蒐集個人資料者，應依個人資料保護法及其業管法規辦理個人資料保護事宜；至有關機關檔案之應用，應由各機關本於權責審核，倘有涉及個人資料部分，經審核如有檔案法第 18 條、政府資訊公開法第 18 條或個人資料保護法等相關法令規定不得提供者，將不予提供應用。

英文回應

1. Taiwan’s Personal Data Protection Act does not set up a dedicated agency. Each government angency is monitored by its superior administration.Besides, to ensure the protection of personal data, government authorities in charge of subject industry are responsible for monitoring and investigating relevant industry sectors.
2. The Ministry of Health: In order to secure and promote the individual health of nationals, personal data will be collected by the Department of Health for investigation and research according to law when necessary. Measures will be taken to prevent leakage of personal data to secure the privacy of the nationals. As to electronic database, the Department of Health will proceed on a variety of encryption measures to avoid hacking and leakage. Additionally, a team of specialists are assigned to secure personal information of nationals.
3. The Ministry of the Interior :The Information Security Management System of Household Registration and Conscription Information System obtains the international certification ISO-27001 on May 30, 2008. The system is re-examined and certified every six month so that it can be confirmed the appropriateness and effectiveness. The Ministry of the Interior builds up the Security Operation Center (SOC) of Household Registration and Conscription Information System according to the standard operating procedures for log collection, network

monitoring, information security event detection and system services status monitoring. In addition, it automatically establishes the alert mechanisms by sending SMS and the email. The security auditing affairs were applied for the operating units of National Household Registration and Conscription Information Systems and the linked government organizations. The possible imperfection will be controlled and timely corrected by actions and track confirmations. It ensures the confidentiality, integrity and availability of the information assets and guarantees the information security management.

4. Financial Supervisory Commission: The financial service enterprises are in compliance with the "Personal Information Protection Act" when conducting the collection of personal information. The Financial Supervisory Commission (FSC) had issued regulations governing the security of personal data files for the banking, securities and futures, and insurance industries to follow according to the Protection of Computer Processed Personal Data Act which was replaced by the "Personal Information Protection Act" on October 1, 2012. These regulations establish financial clients' personal information files security protection scheme and prevent financial clients' personal data from theft, alteration, damage, loss, or disclosure. As the "Personal Information Protection Act" became effective, the FSC is currently drafting new regulations to implement the Act and to enforce the security protection scheme of the financial clients' personal information files.For the insurance industry, the FSC has amended the "Directions and a Standard Model for the Proposal of Life Insurance Products". We also enforce the insurance employees' recognition of personal information and their awareness to protect privacy by inviting insurance-related associations and their corporate members to attend "Personal Information Protection Act promotional seminars" hosted by our Insurance Bureau. The associations of life insurance, non-life insurance, agency, broker and surveyors are required to enforce the compliance education of their own staff, and to study the making of a reference model for notification for the persons involved in a insurance contract, with an aim to implement the compliance by the insurance employees and to protect persons involved in a insurance contract as well.
5. National Archives Administration: Government agents must follow related codes of Personal Data Protection Act to collect and protect personal data. When an application for viewing, copying or duplicating records in government agents is filed, every individual agency should review all required records based on its authority. Records with personal information should be restricted from making available to the public or provided under Article 18 of Archives Act, Article 18 of Freedom of Government Information Law, and other laws such as

Personal Information Protection Act.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第17條	61.	In particular, the report states that the communication surveillance petition filed by judicial police to facilitate criminal investigation goes through two levels of judicial control (para 238). Please provide data on petitions filed by judicial police for communication surveillance and percentage approved. Please provide information on complaints that may have been filed by individuals on the misuse of the communication surveillance procedures and the results.	特別是，國家報告提及：為促進犯罪偵查，由司法警察聲請之通訊監察將經由兩階段司法監控(國家報告第238段)。請提供由司法警察聲請通訊監察之資料，以及核發之比例。請提供可能由個人所提出之關於通訊監察程序誤用之申訴及其申訴結果。

中文回應

一、依通訊保障及監察法第5條第2項規定，檢察官為適格聲請人，司法警察僅能透過檢察官聲請，故法院未特別區分係由檢察官聲請，或係司法警察轉請檢察官聲請之統計資料。此外，亦無個人提出關於通訊監察誤用之申訴相關資料。

二、近3年由司法警察聲請之通訊監察案件分別為99年度33,382件、100年度35,540件、101年度37,475件，經檢察機關（第1階段司法監控）駁回件數分別為99年度387件、100年度405件、101年度434件，再經法院（第2階段司法監控）駁回件數為4,103件、4,016件、4,075件。

三、101年度警政署刑事警察局通訊監察中心受理警察機關執行通訊監察件數17,458件，較100年增加1,034件；受理警察機關執行通訊監察線數41,599線，較100年增加629線。

英文回應)

1. According to Article 5, Paragraph 2 of the Communication Surveillance Act, only prosecutor has the standing to file communication surveillance petition. There is no statistics concerning the petition initiated by the judicial police. No information concerning the complaints filed by individuals.
2. The statistics of applications for communications monitoring in the last three years is as follows: 33,382 in 2010, 35,540 in 2011, and 37,475 in 2012. Of these applications, 387 were rejected in 2010, 405 were rejected in 2011 and 387 were rejected in 2012 by prosecutorial organizations as a preliminary measure. In the end, 4,103 were turned down in 2010. 4,016 in 2011, and 4,075 in 2012 by the law courts.
3. The number of cases received by Telecommunication Surveillance Center of National Police Agency was 17458 in 2012, 1034 more comparing to 2011. The number of telephone lines monitored was 41,599 in 2012, 629 more comparing to 2011.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第19條	62.	Please provide information on the ownership of various media institutions- print as well as electronic inclusive of ownership by conglomerates. Is there a law that prevents anti -monopoly of the media?	請提供資訊以說明媒體(報刊雜誌及廣電媒體)所有權、是否有集中於特定集團之情形？是否有防止媒體壟斷之法令？

中文回應

一、依目前有線廣播電視系統市場結構，**尚未有**任何多系統經營者 MSO 所控制之有線廣播電視系統家數或收視戶數達全國三分之一以上，所代理的有線電視頻道節目達系統經營者可利用頻道總數四分之一以上等，具有顯著限制市場競爭疑慮情事。

二、我國有線電視市場結構集中度，依據國家通訊傳播委員會網站定期公告之統計資料計算，100 年度有線電視系統市場 HHI 指數為 1,977，101 年上半年度有線電視系統市場 HHI 指數為 1,953。經參考美國司法部與聯邦交易委員會共同頒布 99 年 8 月 19 日修正之水平結合處理原則，我國有線電視市場屬中度集中市場。

三、有關集團收購國內報刊雜誌或廣電媒體等產業之相關案件，公平會係依公平交易法事業結合之規範進行審理，依據公平交易法結合管制「原則自由，達到門檻規定須事前申報」之立法意旨，並訂有「事業結合申報須知」、「事業結合申報案件作業程序」及「公平交易委員會對於結合申報案件之處理原則」等明確的作業規範及審查作業流程。另公平會對於有線電視復訂有「行政院公平交易委員會對於有線電視相關事業之規範說明」以資審查，並於審理時均函請國家通訊傳播委員會提供評估意見。又公平會依據公平交易法第 12 條規定，係審查與市場競爭有關事項，對於不影響市場競爭之虞或整體經濟利益大於限制競爭不利益之結合案件，依法尚不得禁止其結合。至於其他產業政策及金融政策等與市場競爭無關之考量因素，宜由各目的事業主管機關就其相關法令予以規範，公平會當予以尊重。

四、我國法律目前尚無反媒體壟斷專法，但現行廣播電視法規中對於(跨)媒體所有權已有部分規範，如持有新聞紙、無線廣播或電視事業一定以上股份之自然人或法人，禁止其再受讓無線廣播電視事業之股份；有線電視系統經營者或關係企業供應之頻道節目，不得超過可利用頻道的四分之一的垂直整合限制，以及廣播電視事業負責人或營運計畫變更時需經通傳會申請許可等。

五、由於現行法仍無法完全規範集團併購新聞頻道或新聞報紙等，亦無法消除社會對於媒體被少數人持有可能威脅言論自由的憂慮，因此現正研擬反媒體壟斷之專法，將納入水平及垂直之（跨）媒體所有權併購議題，並考量各媒體事業之企業集團化現象及其跨越不同媒體種類的整合情形，並參照外國經驗推估單一媒體或媒體企業集團對意見自由多元的潛在影響力等，藉以確保媒體提供多元資訊，滿足人民知的權利，有所助益於公眾意見形成及公共事務監督，以維持民主社會正常發展，將媒體所有權過度集中所可能造成之弊害降至最低。

英文回應

1. According to the current structure of cable TV industry market, there are no multi-system operators (MSO) having a controlling number of cable TV system operator and whose subscribers is greater than one-third of the total number of subscribers nationwide, and the number of channel programs exceeds one-quarter of available channels that obviously restrict competition.
2. According to the website statistical information of the National Communication Commission (hereinafter referred to as the “NCC”), the market concentration of the cable TV industry in Taiwan whose Herfindahl-Hirschman Index (hereinafter referred to as the “HHI”) is 1977

in Year 2011 and 1953 in the first half of Year 2012. In referring to Horizontal Merger Guidelines issued and amended on August 19, 2010 by U.S. Department of Justice and the Federal Trade Commission, the market concentration of the cable TV industry in Taiwan belongs to moderately concentrated markets.

3. Regarding to the newspaper and the media enterprises merger cases, the Fair Trade Commission (hereinafter referred to as the "FTC") has established the Guidelines to provide precise standards in review of merger filings as well as for businesses to observe. According to Fair Trade Act and related regulations, the merger enterprises must notify the FTC when reaching the threshold. To review the merger cases, the FTC also has established the "Directions for Enterprises Filing for Merger", "FTC Guidelines on Handling Merger Filings" and "Procedure for Enterprises Filing of Merger" etc. To review cable TV industry merger case, the FTC has established "FTC disposal directions (Policy Statements) on cable television and related industry". When reviewing the media merger cases, the FTC also invite the NCC to provide their examining opinions. Besides, according to article 12 of Fair Trade Act, the FTC may approve an application for merger filed pursuant to the preceding article if the overall economic benefit of the merger outweighs the disadvantages resulted from competition restraint. When taking account of the other conditions about industry policy and financial policy, the industry competent authorities will handle it by related law or regulation and the FTC will be no opinion.
4. Although as of yet there is no specific anti-monopoly law governing the media in Taiwan, there are certain stipulations in the existing radio and television regulations towards media (cross-media) ownership. For example, there are limits that ensure persons do not hold more than a certain percentage of shares of newsprint, radio, or television enterprises. Furthermore, the vertical integration limit states that the number of channels or programs provided by cable TV system operators and their affiliated enterprises shall not exceed one fourth of the available channels, and whenever the person in charge of the broadcasting business or the operational plan changes, approval must be gained from the commission (NCC).
5. However, it has become apparent that existing laws are challenged as they still cannot effectively regulate mergers and acquisitions of news channels or newspapers by conglomerates. Consequently, the public has expressed its concern about the possible threat to freedom of speech due to heavy concentration of media ownership. In response to this issue, we are in the process of drafting an anti-monopoly law of the media. The new law will include regulating the recent phenomenon of horizontal and vertical mergers and acquisitions (cross-media

ownership) and will take into account the consolidation issue. The process of drafting this regulation involves referring to the experience of other advanced countries with regard to determining the potential influence a single media enterprise group may have on freedom of speech in order to ensure diversity and plurality of the media. The process of drafting and the promulgation of the an anti-monopoly law will ascertain public opinion and supervise public affairs with the ultimate target of maintaining normal development of a democratic society and minimizing the harm of excessive concentration of media ownership.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第19條	63.	Please provide an explanation of the reasons for the disputes over the operation of the Public Television Board of Directors (para 258).	請提供說明公共電視董事會運作發生爭議的原因（第258段）。

中文回應

一、依現行公視法規定，公視基金會選任董事時，應顧及性別及族群之代表性，並考量教育、藝文、學術、傳播及其他專業代表之均衡，歷屆均依此原則提名公視董監事人選。至有公共電視審查委員指陳提名人選不夠多元、太多主流與權貴色彩等意見，都將尊重參考並廣徵各界意見後再作審酌。

二、另有關公視董事會人事難產問題：

(一)公視第4屆董、監事於2010年12月3日任期屆滿，為了第5屆董、監事能順利如期選任，前行政院新聞局於2010年11月22日及2011年1月24日辦理選任會議；2012年5月20日組改後，續由文化部於2012年6月29日、7月11日及8月20日、2013年1月18日辦理選任會議，惟僅審查通過董事13名(距現行法定員額數尚差至少4名)、監事3名(已達法定員額)。

(二)公視基金會董事會掌理營運方針之決定，監事負責經費使用之稽察，二者之選任為促進公共電視正常運作的重要關鍵要素之一，角色至為重要。惟依現行公共電視法對於董、監事候選人應經4分之3以上審查委員多數同意後，始能當選之規定，公共電視董、監事審查委員會須對候選人資格具極高度共識性，始能選出董、監事人選，致公視基金會第5屆董事至今無法選出足額。為解決

公視董事選任困境，文化部將積極推動公視法修正案，由制度結構面深入檢討，修整完備董、監事會選任規範，並將董、監事評選審查回歸合理化門檻，使公視董監事的選任更能回應社會期待。

(三)文化部將持續積極依法辦理所有相關程序，並將公視法列為立法院下會期重要優先法案之一，期修正董監事選任門檻，回歸合理審查制度，促使公視得以健全發展。

英文回應

1. As stated in the Public Television Act, the Public Television Service (PTS) Foundation is to consider "gender and ethnic representation" as well as "balanced representation from education, the arts, literature, academia, broadcasting, and other professional fields" in selecting its board of directors. Candidates for all directors and supervisors thus far have been nominated in line with these principles. Concerns voiced by the Review Committee that candidates are insufficiently different to one another, and that nominees are too mainstream or are insiders will be incorporated into the broad range of opinions being collected for further consideration.
2. Other difficulties with board selection:

(1) The term of office for the fourth set of PTS directors and supervisors ended on December 3, 2010. So as to allow a smooth and timely selection of a fifth set of officials, the Government Information Office (GIO) held meetings on the selection of said officials on November 22, 2010 and January 24, 2011. Following the central government's May 20, 2012, restructuring [as the result of which the Ministry of Culture took over responsibility for the PTS from the now-defunct GIO], the Ministry of Culture held meetings on the board's selection on June 29, July 11, and August 20, 2012, and January 18, 2013. Only 13 directors have been selected thus far (four fewer than the legally required minimum), while three supervisors have been selected (meeting the legally required number).

(2) The PTS Foundation's board of directors is empowered to determine the organization's operational direction, while the supervisors are empowered to audit the Foundation's use of funds. The selection of both directors and supervisors is a key element ensuring the normal operation of the PTS, as these figures play a critical role. However, as the Public Television Act requires that three-quarters of the Review Committee consent to the nomination of a candidate for director or supervisor, a very high degree of consensus must exist among Review

Committee members on candidates' qualifications for the positions of director and supervisor. This has resulted in a failure to provide, to date, a quorum for the fifth set of directors and supervisors. To ameliorate this situation, the Ministry of Culture will press for revisions to the Public Television Act and engage in a systemic and structural review so as to create a more complete set of rules governing the selection of directors and supervisors. This will create a reasonable threshold for selecting these officials, one that is in line with the public's wishes.

(3) The MOC will continue to implement related procedures in accordance with the law, and strive to make the Public Television Act a priority in the next session of the Legislative Yuan so that the threshold for selecting PTS Foundation directors and supervisors may be revised and a reasonable review mechanism implemented, thus allowing the PTS to develop in a more robust fashion.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第19條	64.	The report under article 19 provides information on regulations restricting freedom of speech and its rationale (table 34). Please provide information on prosecutions for violations of these regulations. Who has been prosecuted, for what violations and what are the findings.	國家報告在公約第十九條項下提及限制言論自由之相關法律規定及理由（表 34）。請提供違反這些相關法律規定之案件的起訴事由，包括起訴的對象、所違反的相關法律規定、以及起訴的結果。

中文回應

一、我國憲法第 11 條明白宣示，人民有言論、講學、著作及出版之自由，是以言論自由為人民之基本權利，國家應給予最大限度之維護，俾其實現自我、溝通意見、追求真理及監督各種政治或社會活動之功能得以發揮。惟言論自由並非漫無限制，在為防止妨礙他人自由、避免緊急危難、維持社會秩序，或增進公共利益所必要情形下，仍得以法律限制之。

二、我國刑法、公職人員選舉罷免法就與限制言論自由有關規定及規範理由如下：

編號	法條名稱	條次	罪名	規範理由
一	刑法	第 140 條第 1	侮辱公務員公	維護國家主權運作、政府

		項、第 2 項	署罪	機關公權力運作及政府威信
二	刑法	第 153 條	煽惑他人犯罪或違背法令罪	維持社會秩序
三	刑法	第 155 條	煽惑軍人背叛罪	維持國家安全及社會秩序
四	刑法	第 157 條	挑唆包攬訴訟罪	避免妨害公共秩序
五	刑法	第 246 條第 1 項	侮辱宗教建築物或紀念場所罪	維護宗教信仰自由及善良風俗
六	刑法	第 309 條	公然侮辱罪	使個人名譽不受他人無端之破壞
七	刑法	第 310 條	誹謗罪	使個人名譽及隱私不受他人無端之破壞
八	刑法	第 312 條	侮辱誹謗死者罪	保護家庭、遺族、死者名譽及遺族或社會對於死者之孝敬與虔敬情感
九	刑法	第 313 條	妨害信用罪	維護被害人信用
十	公職人員選舉罷免法	第 104 條	散布謠言傳播不實之事罪	維護選舉公平性

三、95 年至 100 年地方法院就刑法第 309 條、310 條、312 條及公職人員選舉罷免法第 104 條案件起訴件數、人數及具體求刑情形如附表。

地方法院檢察署偵辦妨害名譽案件起訴及具體求刑情形

單位：件、人

項目別	起訴件數					起訴人數				
	總計	通常程序提起公訴			聲請簡易判決處刑	總計	通常程序提起公訴			聲請簡易判決處刑
		計	具體求刑	未具體求刑			計	具體求刑	未具體求刑	
95年	627	176	8	168	451	737	224	8	216	513
96年	876	310	7	303	566	1,008	373	10	363	635
97年	941	305	11	294	636	1,111	371	11	360	740
98年	1,044	364	3	361	680	1,206	442	3	439	764
99年	1,331	488	7	481	843	1,501	571	8	563	930
100年	1,657	716	7	709	941	1,888	858	10	848	1,030
101年	1,689	786	2	784	903	1,896	928	3	925	968

資料來源：法務部統計處　　102.2.1

地方法院檢察署偵辦違反公職人員選舉罷免法第104條案件起訴及具體求刑情形

單位：件、人

項目別	起訴件數					起訴人數				
	總計	通常程序提起公訴			聲請簡易判決處刑	總計	通常程序提起公訴			聲請簡易判決處刑
		計	具體求刑	未具體求刑			計	具體求刑	未具體求刑	
95年	-	-	-	-	-	-	-	-	-	-
96年	1	1	-	1	-	1	1	-	1	-
97年	20	19	-	19	1	23	21	-	21	2
98年	6	5	1	4	1	6	5	1	4	1
99年	18	13	-	13	5	21	16	-	16	5
100年	38	35	1	34	3	50	46	1	45	4
101年	12	12	1	11	-	12	12	1	11	-

資料來源：法務部統計處　　102.2.1

英文回應

1. Article 11 of our Constitution clearly says that “The people shall have the freedom of speech, teaching, writing and publication.” This is to say freedom of speech is a fundamental right of our people and, therefore, the government gives it the maximum protection. We hope by so doing we can realize ourselves, communicate among us, pursue our truths, and supervise, to the maximum extent, the social and political functions. Nevertheless, freedom of speech is not without restrictions. It must be regulated by the law in order to prevent the intrusion on the freedom of other, ward off crises and disasters, maintain social order and peace and promote public well-being.
2. The table below shows how and why freedom of speech is restricted by the Criminal Code and the Public Office Election Act:

Number	Name of law	Article	Crime name	Reason for restriction
1.	Criminal Code	Paragraphs 1 & 2	侮辱公務員公署罪	To protect national sovereignty, government power and prestige
2	Criminal Code	153	煽惑他人犯罪或違背法令罪	To maintain social order and peace
3	Criminal Code	155	煽惑軍人背叛罪	維持國家安全及社會秩序 For national security and social order and peace
4	Criminal Code	157	挑唆包攬訴訟罪	To avoid impairment on social order
5	Criminal Code	Paragraph 1 246	侮辱宗教建築物或紀念場所	To maintain religious freedom and good customs

			罪	
6	Criminal Code	309	公然侮辱罪	To safeguard personal reputation
7	Criminal Code	310	誹謗罪	To ensure personal integrity and privacy
8	Criminal Code	312	侮辱誹謗死者罪	To protect the reputation of family, deceased, bereaved and social respects to the deceased
9	Criminal Code	313	妨害信用罪	To maintain victim's credibility
10	Public Office Electoral Act	104	散布謠言傳播不實之事罪	To ensure electoral fairness

3. The number of prosecutions from 2006 to 2011 based on Articles 309, 310, 312 of the Criminal Code and Article 104 of the Public Office Electoral Act.

Defamation Cases Disposed in District Public Prosecutors

（case、person）

Year	Prosecution(cases)					Prosecution(persons)				
	Total	Prosecution			Summary Decisions Requested	Total	Prosecution			Summary Decisions Requested
		subtotal	Sentencing proposed by prosecutor	No sentencing proposed by prosecutor			subtotal	Sentencing proposed by prosecutor	No sentencing proposed by prosecutor	
2006	627	176	8	168	451	737	224	8	216	513
2007	876	310	7	303	566	1,008	373	10	363	635
2008	941	305	11	294	636	1,111	371	11	360	740
2009	1,044	364	3	361	680	1,206	442	3	439	764
2010	1,331	488	7	481	843	1,501	571	8	563	930
2011	1,657	716	7	709	941	1,888	858	10	848	1,030
2012	1,689	786	2	784	903	1,896	928	3	925	968

Cases of Article 104 of Civil Servants Election Disposed in District Public Prosecutors

（case、person）

Year	Prosecution(cases)					Prosecution(persons)				
	Total	Prosecution			Summary Decisions Requested	Total	Prosecution			Summary Decisions Requested
		subtotal	Sentencing proposed by prosecutor	No sentencing proposed by prosecutor			subtotal	Sentencing proposed by prosecutor	No sentencing proposed by prosecutor	
2006	-	-	-	-	-	-	-	-	-	-
2007	1	1	-	1	-	1	1	-	1	-
2008	20	19	-	19	1	23	21	-	21	2
2009	6	5	1	4	1	6	5	1	4	1
2010	18	13	-	13	5	21	16	-	16	5
2011	38	35	1	34	3	50	46	1	45	4
2012	12	12	1	11	-	12	12	1	11	-

條文	編號	問題內容(原文)	中文參考翻譯
公政 第21條	65.	Para 268 of the report acknowledges the shortcomings of the Assembly and Parade Act which are in violation of the Covenant. Since the Covenant takes legal precedence over domestic laws please indicate reasons for the continued use of the Assembly and Parade Act by the authorities. Please indicate what plans are in place for reform of this Act and related administrative rules and procedures including the time frame.	國家報告（第 268 段）肯認集會遊行法違反《公約》對於和平集會與表達意見權利之保障；《公約》效力既已優先於國內法，請說明各政府機關繼續適用集會遊行法的理由。請說明關於集會遊行法、行政命令的修法方案以及修法時程。

中文回應

一、繼續適用現行集會遊行法理由：

(一)現行集會遊行法仍有效：

1. 現行集會遊行法依「行政院人權保障推動小組」審認違反「公民與政治權利國際公約」第 21 條「和平集會應被確認。」惟未能於 100 年 12 月 10 日前完成修正。
2. 有關法律之適用與修正，應依「中央法規標準法」規定辦理，依該法規定，法律未修正前，仍應適用原有法律規範，「集會遊行法修正案」現已送立法院審議中，目前尚未完成修正，現行「集會遊行法」，仍屬有效。

(二)未修正前，已函頒應行注意事項：內政部(警政署)因應兩公約施行法之施行，已於 100 年 11 月 22 日訂定警察機關辦理集會遊行案件應行注意事項，通函各警察局依「公民與政治權利國際公約」意旨，辦理集會遊行案件，有效落實人權保障。

二、集會遊行法修正時程：

(一)集會遊行法由許可制改為報備制修正草案，前於 97 年 12 月 4 日經行政院院會審查通過，同年 12 月 5 日送請立法院審議，再經立

法院內政委員會於98年3月10日完成逐條審查，送立法院院會二、三讀，惟因朝野立委及各界人士仍有不同意見，致無法取得共識，未能於立法院第7屆立法委員任期完成審議。

(二)基於「屆期不連續原則」，本案相關修正經再審慎研議，行政院已於101年5月28日函送立法院審議，行政部門將加強立法溝通，以期儘速完成本法修正工作。

英文回應

1. Reasons for the continued use of the Assembly and Parade Act

(1) The current Assembly and Parade Act is still in effect.

A. The Assembly and Parade Act is reviewed by Human Rights Protection and Promotion Committee, Executive Yuan. According to Article 21 of the International Covenant on Civil and Political Rights (ICCPR), the right to peaceful assembly, the Act is in violation of the Covenant. The amendment of the Assembly and Parade Act failed to be ratified at the last session of the 7th-term legislature (December 10, 2011).

B. The Central Regulation Standard Act shall be accorded for application and amendment of a central regulation. The amendment has been submitted to the Legislative Yuan. The current Assembly and Parade Act are still in effect until the amendment is ratified.

(2) The NPA has launched the directions governing assembly and parade activities on November 22, 2011 and demanded that all police departments practice the ICCPR and take concrete action to protect human rights.

2. The time frame for ratifying the Assembly and Parade Act.

(1) The amendment of the Assembly and Parade Act, changing the permit system to a notification system, was approved by the Executive Yuan on December 4, 2008, and the next day was submitted to the Legislative Yuan. On March 10, 2009, the amendment passed its initial review at the legislature's Internal Administration Committee. However, the amendment failed to be ratified at the last session of the 7th-term legislature due to no consensus to be reached.

(2) The amendment has been reviewed again and submitted to the Legislative Yuan on May 28, 2012. The Executive Yuan will strengthen

communication with the Legislative Yuan to pass the amendment as soon as possible.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第23條	66.	Please inform the Committee whether the national census captures the diversity of sexual identities and orientations prevalent in the country, or partnerships or families formed other than through heterosexual relationships or through cohabitation. If so, provide demographic data on such populations. Please provide information on the problems or difficulties faced by such people in exercising the rights contained in the Covenant if such an assessment has been done by any agency governmental, non-governmental or academic.	請告知委員會國民普查的內容是否包含國民的多元性別身分及性傾向、或包含異性戀以外的多元家庭、非婚同居伴侶。如果是的話，請提供多元性別族群的地域分布資訊。如果曾有政府機關、非政府機關或學術單位曾就多元性別族群在行使《公約》權利時所面臨的難處而為評估，亦請提供審查委員會相關資訊。

中文回應

一、我國行政院性別平等處於2012年甫成立後，同年8月即邀集行政院各部會就多元性別族群各方面權益進行研商會議，除瞭解我國法律與行政體系目前對多元性別族群之保障現況，亦研討未來可進一步推動之方向，包括決議請相關單位（衛生署、內政部、法務部等）就是否放寬跨性別者（transgender）之身分登記規定，以及同性婚姻與伴侶權益合法化之可行性與作法積極研處，其中放寬跨性別者之身分登記亦提送我國總統府人權諮詢委員會，於該委員會例行會議中持續進行報告與列管，目前已有之成果包括跨性別者之身分證照片與本人日常外貌相符即可，避免跨性別者因證件照片與外貌不符遭受歧視，我國「性別平等教育法」與「性別工作平等法」保障多元性別族群之受教與就業權利等。另我國民法並無同性婚姻或同性伴侶之規範，為蒐集目前有規範同性伴侶制度之國家所涉及民法親屬及繼承相關資料，已委託進行「德國、法國及加拿大同性伴侶制度之研究」研究計畫，探討同性伴

侶制度之基本理念，並介紹德國、法國及加拿大同性伴侶制度之立法例。惟此項議題涉及我國民法家庭制度之重大變革，目前除持續蒐集相關國外立法資料外，並規劃辦理我國同性伴侶法制化之意見調查研究計畫，以瞭解國民對於同性伴侶法制化之接受度及相關制度應如何設計等問題，俾作為政策研議之參考。

二、由於我國行政院性別平等處成立時間尚短，結合非政府機關或學術單位就多元性別族群行使相關權利之困境之研究成果仍不足，日後將持續就保障及促進多元性別族群之權益作出更多努力。

英文回應

1. After our country's Executive Yuan Department of Gender Equality was established in 2012, cabinet officials of the Executive Yuan met together in August of the same year to study and discuss the various rights of LGBT groups. In addition to learning about the current protection that our country's legal and administrative system provides to LGBT groups, the direction of further efforts were actively studied such as whether identification card regulations of related government agencies (Department of Health, Ministry of the Interior and Ministry of Justice) could be relaxed for transgender persons and the feasibility and methods of legalization of homosexual marriage and partner rights. Of these, the relaxation of regulations to allow transgender identification registration has been submitted to the Presidential Office Human Rights Consultative Committee in our country for follow-up reporting and management at regular meetings of this committee. Current results include acceptance of identification card photos for transgenders that match their appearance in everyday life to prevent transgenders from suffering from discrimination due to the difference between identification photos and their real appearance. Our country's Gender Equity Education Act and Act of Gender Equality in Employment guarantees the education and employment rights of LGBT groups. In addition, there is no rule in same-sex couples or same-sex marriage in Civil Code. In order to survey more information about this issue, we have a study of the same-sex couple legislation of German, French and Canada. In addition, we are planning to have a survey of public opinion about legal system of the same-sex couples.
2. Due to the short establishment period of the Executive Yuan Department of Gender Equality, research findings from collaboration with non-government organizations and academic institutions on the difficulty of LGBT in exercising related rights is still lacking. In the future,

more effort will be made to further guarantee and promote the rights of LGBT groups.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 23 條	67.	Has the proposed gender equality and sexual diversity education programme in schools been implemented? If not please provide reasons for the delay	國家報告所提及的性別平等及多元性傾向教育課程是否曾在各級學校實施？如果未曾實施請提供未及實施的理由。

中文回應

一、為促進性別地位之實質平等，消除性別歧視，維護人格尊嚴，並協助性別認同不同於性別者享有經濟文化權利，以 2004 年 6 月 23 日制定發布之「性別平等教育法」做為我國性別平等教育之法源依據，明確定義性別平等教育係以教育方式教導尊重多元性別差異，消除性別歧視，促進性別地位之實質平等。法中並明定針對學習環境與資源、課程、教材與教學方面，皆應尊重考量不同性別、性別特質、性別認同或性傾向者。

二、復性別平等教育法第 17 條規定，國民中小學應將性別平等教育融入課程並於每學期應實施性別平等教育相關課程或活動至少 4 小時；高級中等學校及專科學校五年至前三年應將性別平等教育融入課程；大專校育應廣開性別研究相關課程。又該法施行細則第 13 條規定，性別平等教育相關課程，應涵蓋情感教育、性教育、同志教育等課程，以提昇學生之性別平等意識。

三、我國透過課程融入性別平等議題，以提升國人性別平權意識，相關內容摘述如次：

(一) 國中小部分：在「國民中小學九年一貫課程綱要」中明列「性別平等教育」為重大議題之一，訂有課程綱要之內容，以「性別的自我了解」、「性別的人我關係」、「性別的自我突破」作為三項核心能力，訂定分段能力指標。在認知面，藉由瞭解性別意涵、性別角色的成長與發展，來探究性別與社會文化的關係；在情意面，發展正確的性別觀念與價值評斷；在行動面，培養批判、省思與具體實踐的行動力。

(二) 高中職部分：自 95 學年度高一起實施之高中課程，於總綱中即規範各校應將性別平等教育等重要議題納入相關的課程中，並要求將性別平等教育等材料宜適度融入相關科目教材之編選。

(三) 大專校院部分：目前公私立大學校院之課程規劃，係屬大學自治事項，本部尊重各大學本其專業自主之課程設計及規劃；然為使學校持續重視及關心性別平等教育，本部持續鼓勵公私立大學校院開設性別平等相關課程，以提升學生性平相關之知能。以 98 學年度至 100 學年度為例，大專校院開設之性別平等教育相關課程每年均超過 1,400 門。

(四) 性別平等教育議題採融入式教學部份，為協助教師進行教學活動，本部委託專家學者編撰各類教學示例或資源手冊供教師參考，透過不同的教學模式，活化性別平等教育，讓尊重與多元觀念能真正的深植於校園。

英文回應

1. To promote substantive gender equity, eliminate gender discrimination, uphold human dignity, and to ensure the ESC-rights of those who have a different gender identity from their biological sex, Gender Equity Education Act was enacted and promulgated on June 23, 2004 as the legal base for Taiwan's gender equity education. As defined by the Act, gender equity education refers to the development of respect for gender diversity, the elimination of gender discrimination, and promotion of substantive gender equality by means of education. The Act prescribes that the learning environment and resources, curriculum, teaching materials and instruction should consider and respect gender differences, characteristics, identification, and orientation.
2. Article 17 of the Gender Equity Education Act prescribes that elementary and junior high schools, in addition to integrating gender equity education into their curriculum, shall provide at least 4 hours of courses or activities on the topic of gender equity each semester; that senior high schools shall integrate gender equity education in the curriculum, that five-year junior colleges shall do so in the first three years of their curriculum; and that universities and colleges shall provide a wide range of courses on gender studies. Article 13 of the Enforcement Rules for the Gender Equity Education Act provides that curriculum on the topic of gender equity shall include courses on affective education, sex education, and homosexuality education to enhance students' consciousness about gender equity.
3. The integration of gender equity topics into school curriculum aims to enhance the public's consciousness about gender equity. The following are the details.

(1) Junior high and elementary schools: Grade 1 to 9 Curriculum Guidelines prescribes that gender equity education shall be one major topic,

and three core capacities shall include “self concept and understanding of gender”, “gender and self-other relationship”, and “self-breakthroughs and gender”. Indicators for different levels are also prescribed. In the cognitive dimension, by understanding the meanings, roles, and development of different genders, students can better understand the relation between gender and society. In the affective dimension, the purpose is to help form accurate concepts about gender and values. In the operational dimension, the aim is to develop critical thinking, introspection, and practice.

(2) Senior high and vocational schools: The curriculum outline of the 2006 school year has required schools to incorporate gender equity topics into relevant courses in the first year and adopt materials on gender equity in relevant materials.

(3) Universities and colleges: The design of curriculum is part of the school’s autonomy and the MOE respects the school’s expertise and independence in this regard. However, to promote the schools’ continuing attention to gender equity, the MOE encourages the schools, public or private, to provide relevant courses so that students can form better concepts about gender equity. For example, during the school years between 2009 and 2011, more than 1,400 courses on gender equity and similar topics were offered by universities and colleges nationwide.

(4) Gender equity is taught using the infusion approach. To support teachers, the MOE has commissioned academics to prepare instruction demos and resource handbooks. Many teaching methods are used to activate gender equity education and bolster respect for diversity on campus.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第23條	68.	The report states that for division of matrimonial property, there are three regimes: statutory regime, and the contractual regime whereby the latter is further divided into the community of property regime and the separation of	國家報告（第 292 段）提到三種夫妻財產制：法定財產制、及以契約約定選用共同財產制或分別財產制。請提供資料說明各種夫妻財產制的選擇比率、以及相應的夫妻政經地位。如果可行，請提供資訊說明是由夫或妻何

		property regime (para 292). Please provide data showing percentages regarding the regime chosen by couples and correlated by the socio-economic status of the couples. Please provide information on how or which party makes the decision as to which regime is to be decided on –if such information is available.	者進行財產制的選定？又是如何進行財產制選定？

中文回應

1. 我國民法規定之夫妻財產制，有法定財產制(民法第 1005 條)及約定財產制(民法第 1004 條)之分。是以，夫妻得於婚前或婚後以契約約定民法所規定之兩種約定財產制之一種，作為夫妻間財產關係之依據，並向法院辦理登記。夫妻如未約定，則以法定財產制來規範夫妻間之財產關係。又民法規定之約定夫妻財產制有 2 種：(1)共同財產制；(2)分別財產制。
2. 為杜絕債權人利用向法院聲請宣告夫妻改用分別財產制，再代位請求剩餘財產分配之不合理現象，並且對於民法所規定的夫妻剩餘財產分配請求權，也只限於夫或妻本人才可以行使，落實法定財產制以夫妻財產各自獨立之精神。2012 年 12 月 26 日總統公布修正民法及民法親屬編施行法之相關條文如下：

(1) 刪除民法第 1009 條及第 1011 條規定，將夫妻之一方受破產宣告，或其財產已為扣押而未能清償時改用分別財產制之規定刪除，貫徹現行夫妻財產制明定夫妻財產各保有其所有權之立法意旨。

(2) 修正民法第 1030 條之 1，將夫妻之剩餘財產分配請求權修正為一身專屬權，除已依契約承諾，或已起訴者外，不得讓與或繼承。

(3) 增訂民法親屬編施行法第 3 條之 1，對於在本次修正前，已繫屬於法院尚未確定之事件，為兼顧夫妻剩餘財產分配請求權之立法與法安定性之要求，明定適用修正後規定。

3. 夫妻財產制契約之訂定，變更或廢止，有向法院登記處提出者，依各地方法院辦理該事件終結情形，2001 年至 2011 年，向法院聲請登記為分別財產制或共同財產制者之件數統計如下：

地方法院夫妻財產制契約登記事件終結件數

		單位：件
年別	共同財產	分別財產
2001 年		1,339
2002 年		1,144
2003 年		1,060
2004 年		984
2005 年		1,176
2006 年		1,178
2007 年		1,103
2008 年	1	1,361
2009 年		1,901
2010 年	1	1,894
2011 年	7	4,369
2012 年	33	7,449

英文回應

1. The husband and the wife may, before or after getting married, adopt by contract one of the contractual regimes provided by this Code as their matrimonial property regime. If the husband and the wife have not contracted the holding of matrimonial property, unless otherwise provided by this Code, the statutory regime shall be applied.
2. We have amended the Civil Code to prohibit the creditors to request the remainder of the property acquired by the husband or wife in marriage in 26 Dec. 2012,the summary of amendment as follow：

(1) Before the amendment, when a creditor could not be satisfied in the attachment of the property of either the husband or the wife, the court may, at the instance of the creditor, order the application of the separation of property regime,. This provision is repealed now.

(2) The remainder of the property acquired by the husband or wife in marriage is an exclusive right in Article 1030-1, and it could not be requested by a creditor.

(3) The cases of requested to the court by the creditors before 26 Dec. 2012 also apply to the new provisions, so that, there will be nearly 6,000 cases shall be applicable totally.

3. The statistical view from 2001 to 2011 for the applications district courts received for the separation or community of property regime, whether the conclusion, modification or termination of a contract for the holding of matrimonial property registered at court process is as follows.

Number of the Holdings of Matrimonial Property Registered at District Courts

Year	Community of Property Regime	Separation of Property Regime
2001		1,339
2002		1,144
2003		1,060
2004		984
2005		1,176
2006		1,178
2007		1,103
2008	1	1,361
2009		1,901

2010	1	1,894
2011	7	4,369
2012	33	7,449

條文	編號	問題內容(原文)	中文參考翻譯
公政 第23條	69.	The report states that the government provides various child and teenager benefits and subsidies to ease burden of single parent families (see para 303). Please provide information on the percentage of single parents needing such assistance disaggregated by sex. Please also provide the quantum of such assistance provided and the categories of assistance.	國家報告（第 303 段）提到政府提供給單親家庭多種兒童及少年生活補助，請提供資訊說明單親父親與單親母親個別需要補助的比率、並請提供相關補助的金額及補助的類型。

中文回應

有關單親家庭兒童及少年協助措施如下列(擇優領取)：

一、弱勢兒童及少年生活扶助

(一)補助對象：因父母雙亡、一方死亡、重病、失蹤、服刑無力扶養、未婚懷孕致生活陷於困境的兒童及少年。

(二)資格條件：家庭總收入平均分配全家人口，每人每月未超過當年度最低生活費 1.5 倍者且家庭財產未超過一定金額。

(三)補助金額：每名兒童少年每月補助約 1,900 元至 2,300 元的生活扶助費。(各直轄市、縣市政府規定略有不同)。

二、弱勢家庭兒童及少年緊急生活扶助

(一)補助對象：父母一方失業、經判刑確定入獄、罹患重大傷病、精神疾病或藥酒癮戒治、父母離婚或一方死亡、失蹤等情形，經評估有經濟困難的兒童及少年。

(二)資格條件：家庭總收入平均分配全家人口，每人每月未超過當年度最低生活費 1.5 倍者且家庭不動產未超過 650 萬元，動產每人未超過 15 萬元。

(三)補助金額：每名兒童少年每月補助 3,000 元的緊急生活扶助費，補助 6 個月至 1 年。

三、特殊境遇家庭扶助條例

(一)資格條件：未達一定收入存款之單親、隔代教養、未婚懷孕、遭受家庭暴力受害人及配偶服刑 1 年以上及 3 個月內發生其他重大生活變故等家庭。

(二)扶助項目：緊急生活扶助（按當年度每月最低生活費用標準核發，每人補助 3 個月）、子女生活津貼（補助 15 歲以下子女每人每月補助最低工資之 1/10）、兒童托育津貼（補助 6 歲以下子女就讀於私立托教機構每人每月 1,500 元）、子女教育補助（補助就讀公私立高中職及大專之子女/孫子女學雜費 60%）、傷病醫療補助（補助申請人及 6-18 歲子女/孫子女自行負擔醫療費超過新臺幣 3 萬元，最高補助 70%；補助申請人 6 歲以下子女/孫子女自行負擔醫療費，每人每年最高補助 12 萬元）、法律訴訟補助（最高補助 5 萬元）及創業貸款補助（創業貸款利息補貼最長 7 年，利息補貼額度最高 100 萬元）等扶助項目。

英文回應

Measures to assist children and youths of single-parent families are described as follows(the applicant can only choose one of the three options below whichever is more appropriate for him or her):

1. Compensations for disadvantaged children and youths

(1) Candidates for subsidy: A child or youth whose parent(s) are/is dead, or seriously ill missing, or imprisoned, or unmarried pregnant teenager caught in life's difficulties.

(2) Qualifications: after averaging the total income in the family, if the revenue per person per month does not exceed 1.5 times of the minimum living standard, and the values of the family's real estate do not exceed the amount set by the government.

(3) Amount of compensation: amount of NT$1,900 to NT$ 2,300 is granted to every child or every juvenile every month. (The amount may

vary slightly among municipalities, counties and cities).

2. Urgent compensation for children and youths of disadvantaged families:

(1) Candidates for compensation: A child or youth, whose parent meets any of the following criterions AND assessed to have encountered economic difficulties:

A. Loses his or her job;

B. Is imprisoned;

C. Suffers from major illness, injuries or mental illness;

D. Being treated for drug and/or alcohol addiction;

E. Divorce, death, or disappearance and other hardship circumstances.

(2) Qualifications: after averaging the total income in the family, if the revenue per person per month does not exceed 1.5 times of the minimum living standard; the values of the family's real estate do not exceed the NT$6.5 millions; and every family members' asset value do not exceed NT$150,000

(3) Amount of compensation: amount of NT$3,000 is granted to every child or juvenile every month for 6 to 12 months.

3. Act of Assistance for Family in Hardship

(1) Candidates for compensation: A child or youth whose family's income does not meet the minimum standard set by the government, and meets any of the following criterions:

A. Single-parent family ;

B. Skip-generation families;

C. Unmarried pregnant women;

D. Victims of domestic violence;

E. The spouse sentenced with at least one year of imprisonment; or

F. Family in hardship in the past three months.

(2) List for Services or compensations:

A. provide emergency compensations (according to the minimum living standard of that year, and three months only per person),
B. child living allowance(10% of minimum monthly wages for every child under 15),
C. Subsidy for child care (for applicant's children or grandchildren under 6, and study in private nursery institution, up to NT$1500 per person per month),
D. children's education subsidy（subsidies 60% of tuition fees for children or grandchildren who study in senior high school or college）,
E. medical assistance(for applicants and their children or grandchildren from 6 to 18, at most 70% reduction of grant for over NT$ 30,000 medical expenses about persons from the co-payment; for every applicant's children or grandchildren under 6, up to NT$ 120,000 can be subsidized for medical expanse per person per year),
F. litigation subsidy(up to NT$ 50,000), and
G. subsidy for business start-up loan（business loan subsidy for 7 years maximum and up to NT$ 1 million for interest subsidy）

條文	編號	問題內容(原文)	中文參考翻譯
公政 第23條	70.	Is legal aid available to women seeking divorce or custody of child or under the domestic violence act? If so, please provide information on quantum of legal aid so provided to women as against the total legal aid dispersed.	是否提供婦女關於聲請離婚、請求判予子女監護權、或遭受家暴的法律協助？如果是的話，請提供資訊說明提供給婦女的法律協助總量（對照法律協助總量）。

中文回應

一、內政部積極健全危機處理機制，落實被害人安全計畫及加害人處遇工作，訂定各項被害人補助標準，輔導各防治中心依法提供被害人緊急救援、就醫診療、驗傷及取得證據、緊急安置、心理治療、法律諮詢等保護扶助措施。直轄市、縣（市）政府依家庭暴力防治法提供被害人各項保護扶助措 施，2008 年至 2011 年法律諮詢扶助措施總計扶助家庭暴力被害人 15 萬 105 人次，其中，

男性計 1 萬 7,277 人次，女性計 13 萬 2,828 人次，扶助金額共計 3 千 837 萬元。

二、法律扶助基金會 2012 年准予扶助案件統計表

案件類型	婦女請求離婚、子女監護或因家庭暴力案件由本會准予扶助之案件量	准予扶助案件量	比例
一般案件	2304	26005	8.86%
擴大法諮案件	4047	54427	7.44%
總計	6351	80432	7.90%

英文回應

1. The Ministry of the Interior proactively promotes three levels of prevention. Tertiary prevention: Crisis management mechanisms have been put in place to strengthen personal safety of the victim and enhance processes to deal with the perpetrator. Various subsidy standards for victims have been established. Individual protection centers are given assistance in providing victims with emergency rescue, medical care, medical examinations, and collection of evidence, emergency relocation, psychological therapy and legal consultation. Governments at the special municipality, city, and county levels provide various forms of protection and support to victims in accordance with the Domestic Violence Prevention Act. A total of 150,105 victims of domestic violence were supported legal consultation from 2008 to 2011, among which 17,277 were men and 132,828 were women. The total value of support and assistance reached NT$38.37 million.
2. Quantum of legal aids provided to women by the Legal Aid Foundation:

Case Types	Cases Granted for Legal Aids by the LAF to Women Seeking Divorce or Custody of the Children or Due to Domestic Violence	Cases Granted For Legal Aids	Ratio
General Cases	2304	26005	8.86%
Cases of Broadening Legal Advice	4047	54427	7.44%
Total	6351	80432	7.90%

條文	編號	問題內容(原文)	中文參考翻譯
公政 第24條	71.	Please provide data on the number of abandoned, orphaned or destitute children in the country and the types of institutional programmes and services including coverage, implemented for their protection and developmental needs.	請提供資訊說明被遺棄兒童、孤兒、或是窮困兒童的數量，以及關於兒童保護及其發展需求的服務措施及協助方案

中文回應

一、被遺棄及孤兒人數。

年度	2006	2007	2008	2009	2010	2011	2012

棄嬰或無依兒童人數	35	60	40	37	26	13	18

二、兒童保護及其發展需求的服務措施及協助方案

(一)依兒童及少年福利與權益保障法第 49、53、56、57 條等保護性相關條文建立兒少保護個案標準處理流程：規定直轄市、縣(市)主管機關於知悉或接獲通報兒保或家暴案件時，應立即處理，至遲不得超過 24 小時；「兒童及少年保護通報處理辦法」明確規範社工人員進行調查處理時，應當面訪視到兒童，並於受理案件 4 日內提出調查報告。

(二)對於已進入政府保護系統之兒少保護個案及目睹家庭暴力之兒少，依兒童及少年福利與權益保障法第 64 條提供家庭處遇服務計畫，推動以家庭為核心之處遇服務模式，引進國外家庭維繫及家庭重整服務模式，提供家庭功能評估、兒童及少年安全與安置評估、強制性親職教育、心理輔導治療、精神治療、戒癮治療或其他與維繫家庭正常功能有關之扶助及福利服務方案。

(三)對需要緊急安置之受虐兒童及少年，並辦理寄養及機構安置工作，協助受虐兒童及少年獲得適當庇護與生活照顧。為提供充足的安置資源，設有 1,237 個寄養家庭及 279 個儲備寄養家庭，支援政府安置受虐兒童；並設有 120 家兒童及少年安置教養機構，備有 3,760 人的收容量供安置個案。另為提升家外安置品質，擴大招募寄養家庭，研議分級寄養費用補助、強化新進寄養家庭篩選流程、建立訓練課程規範及落實寄養家庭督導制及支持系統；機構安置部分則定期辦理兒少保護專業訓練及機構評鑑，以提升工作人員照顧及教養能力。

(四)對有虐待兒童行為或有暴力傾向父母，依兒童及少年福利與權益保障法第 102 條規定得命其接受強制性親職教育；依家庭暴力防治法第 14 條規定亦得經法院裁定民事保護令，命施虐者完成加害人處遇計畫，以改善及強化親職能力，增進親子關係，保障兒童少年免於再遭受虐待與疏忽。

三、校園內兒童及少年保護之服務措施及協助方案如下：

(一)補助各縣市政府辦理兒童少年保護相關宣導及「推動高風險家庭關懷輔導處遇實施計畫」之各項活動，以全面提升教育人員之兒童及少年保護知能。

(二)為加強宣導兒童及少年保護通報及處理等相關規定，明定各級學校通報處理流程及相關注意事項，本部訂定「各級學校及幼稚園通報兒童少年保護與家庭暴力及性侵害事件注意事項及處理流程」，俾供各級學校遵循辦理。

(三)歷年各地方政府執行兒童及少年保護通報成效，均列為教育部統合視導評鑑項目，以積極督導地方政府落實所屬學校兒童少年保護機制，確實落實督導考核制度。

(四)建置「推動學校兒童及少年保護機制線上學習課程」,辦理教育人員線上學習課程。根據「全國教師在職進修資訊網」統計資料顯示自 2011 年 7 月 1 日至 2012 年 12 月 28 日止，全國各縣市實際參與「兒童及少年保護教育」相關主題進修活動之中等學校以下教師人數共計 12 萬 0,112 人，實際進修百分比為 75.78%，實際研習時數計 34 萬 1,617 小時，平均研習時數為 2.16 小時。

(五)編製責任通報工作相關手冊，如「家庭暴力防治專業人員工作手冊－校園處理兒童少年遭受虐待、目睹父母婚姻暴力實務工作手冊」、「家庭暴力暨性侵害防治全國教師專業工作手冊（含兒少保通報處理流程）」以及「教育人員兒童少年保護工作手冊」等，以提升實務教育工作人員處理兒童及少年保護事件之輔導知能及針對此類事件之辨識能力、法律知識、資源連結及危機處理等相關技巧及輔導知能。

(六)為維護兒童及少年身心安全,提供教育人員相關輔導資源,執行輔導計畫叢書電子書彙編計 9 本(掛置於教育部學生輔導資訊網)，以充實及提升教師輔導與管教知能及班級經營、親師溝通技巧。

(七)復依據國民教育第 10 條規定，充實專任專業輔導人力及成立學生輔導諮商中心，落實校園三級預防輔導工作，並協助各地方政府建置校園學生二級及三級輔導工作之專業協助機制，成立學生輔導諮商中心，統籌規劃縣市專任專業輔導人員調派、訓練、督導考評等工作，並作為輔導資源整合與溝通之平台，協助所在縣市之國民中小學學生輔導工作。倘兒童及少年保護個案經學校評估有輔導、專業諮商或資源轉介之需求，學校得依三級輔導體制流程提供相關輔導及協助資源，或得轉請學生輔導諮商中心提供協助。

英文回應

1. Statistics of abandoned children and orphans

Year	2006	2007	2008	2009	2010	2011	2012
Number of abandoned children and orphans	35	60	40	37	26	13	18

2. Child protection and the service measures and assistance programs we have developed

(1) The Standard Operation Procedures for child protection are in accordance with Articles 49, 53, 56, and 57 of The Protection of Children and Youths Welfare and Rights Act: Authorized municipal agencies and county (city) governments are required to take immediate actions to look after the children in danger or involved in domestic violence in no longer than 24 hours after acknowledging or receiving such a

report. It is also stipulated by Regulations for Reporting and Processing Protection of Children and Youths that the social workers must conduct face-to-face interviews with the children and submit the investigation report within four days after accepting the cases.

(2) For those children and youths whose cases have entered a government protection system and for those who have witnessed domestic violence, the authorized municipal agencies and county (city) governments must provide them with family treatment programs in accordance with Article 64 of The Protection of Children and Youths Welfare and Rights Act. With reference to the family preservation and restructuring models from other countries, the treatment program will include an assessment of family functionality, children and youths' safety and placement, parental education, psychological guidance, mental health, drug addiction treatment or assistance and welfare services relating to the protection of children and youths.

(3) In order to provide proper sheltering and care to the abused children and youths in need of urgent placement, 1,237 foster families and 279 reserved foster homes were set up. In addition, there are 120 placement and correctional institutions, which can accommodate 3,760 children and youths. Moreover, to enhance the quality of outside placement, we intend to expand the recruitment of foster families by taking following measures: deliberate a subsidy-grading system, strengthen the screening process for recruitment, establish training courses and specifications, implement the supervisory and supporting system for foster families. For institutional placement, we hold regular training programs for the professionals and make regular evaluation on the institutions to enhance their capabilities to protect and educate the children and youths in their care.

(4) Those parents prone to abuse or beat their children may be ordered to accept mandatory parenting education according to Article 102 of The Protection of Children and Youths Welfare and Rights Act. Moreover, pursuant to Article 14 of the Domestic Violence Prevention Act, the Court may issue a civil protection order to command the abuser to complete a treatment program so as to improve and strengthen his/her parenting capacity; enhance the parent-child relationship, and protect children and adolescents from further abuse and negligence.

3. Measures for child and youth protection in schools：

(1) The Ministry of Education (MOE) subsidized local governments to promote the protection of children's and youth's welfare and rights ; hold events on caring for high-risk families and corresponding management in an effort to enhance educators' knowledge about child and

youth protection.

(2) In order to promote the regulations for child and youth protection. All schools are required to conduct the regulations based on the "Guidelines and Procedures for Reporting Abuse, Domestic Violence, and Sexual Assault on Children or Youth Attending Kindergartens or Schools" which was established by MOE.

(3) The local governments' performance in reporting child and youth protection cases are included in the MOE's general evaluation; it is intended to push local governments to reinforce the protection mechanism and evaluation system.

(4) The MOE established and provided "online courses on the mechanism of school child and youth protection" for educators. According to the statistics , between July 1 2011 and December 28, 2012, as many as 75.78% (120,112) of teachers from high schools and schools at lower levels enrolled in programs on child and youth protection, accumulated 341,617 training hours in total. The average training hours was 2.16.

(5) The MOE has prepared guidelines for the reporting child abuse, such as the "Handbook for Professionals in Domestic Violence Prevention--Response to Child/Youth Abuse" and "Exposed to Parental Violence; Domestic Violence and Sexual Assault Prevention and Resolution: Handbook for Teachers Nationwide" (Inclusive of Reporting procedure); and "Child and Youth Protection: a Handbook for Educators". The guidelines serve to help for educators to improve their identifying skills, legal knowledge, and access to resources, risk management, and relevant expertise.

(6) In order to assure the mental and physical well being of children and youth, MOE provides various resources to educators such as counseling support and 9 e-books for counseling programs which are available on the website. Those resources are meant to improve the educator's skills in counseling, discipline, class management, and teacher-parent communication.

(7) Under Article 10 of the Civil Education Act, professional full-time counseling staff should be employed and student counseling centers should be established to reinforce the three-tiered protection system on campus. The MOE supported local governments to establish a multi-tiered assistance mechanism and counseling centers, devised plans for dispatching, training, and the evaluation of counseling professionals. The MOE also serves as the platform for resource integration and communication to assist junior and elementary schools nationwide with counseling. For any case that has been confirmed by the school as in need of professional referral and counseling, the

school should seek support from the three-tiered protection system or the student counseling center.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 24 條	72.	Please provide information on the implementation of the Human Trafficking Act with regard to children below 18 years such as the number of children who are benefiting, whether male or female, types of services provided and the success of this programme.	請提供資訊說明人口販運防制法實施於十八歲以下兒童的情形，尤其是受益於該法的兒童人口數量、性別分布、相關的服務措施類型以及實施成果。

中文回應

一、鑒於我國目前對於兒少保護之相關法制及機制等保護措施周延完備，故對於遭受人口販運性剝削之兒童或少年，依人口販運防制法第 20 條規定，應優先適用兒童及少年性交易防制條例予以安置保護。

二、經統計 2011 年及 2012 年司法警察查獲並移送之人口販運案件中，被害人為未滿 18 歲少女從事性交易者計 177 人(其中 6 位移送時已成年)，依兒童及性交易防制條例相關規定，其中 158 人交由查獲地社政單位安置、13 人責付家屬、6 位已成年者交由家屬領回。

三、關於人口販運防制法對於 18 歲以下之兒童及少年被害人，由各直轄市、縣（市）政府視個案需要，依據相關法令提供必要之經濟補助，包括緊急生活扶助、安置補助、法律訴訟補助、醫療補助、心理治療補助等費用。

英文回應

1. As the protection measures of children and youth protective legal system and mechanism is completed, when a child or youth suffers in human trafficking sex exploitation, the Child and Youth Sexual Transaction Prevention Act will taken precedence over the article 20 of the Human Trafficking Prevention Act to provide the placement for the victim.
2. According to the statistics from human trafficking cases in 2011 and 2012, there are 177 female victims under the age of 18, and involved in

sexual transaction. By children and sexual transaction prevention act, the placement of 158 people are arranged by local government, 13 are released to the custody of family members and 6 grow ups are handed over to their families.

3. Pursuant to Human Trafficking Prevention Act, each municipal or county (city) government is required to provide necessary financial aid to the abused children and youths under the age of 18. Aids include emergent living assistance, placement subsidies, grants for legal proceedings, medical aids, and psychotherapy subsidies.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 24 條	73.	Paras 313 to 316 detail incidents of bullying and sexual assault in schools. Please provide information on what action has been taken against the perpetrators and what concrete measures are being implemented such as penalties for perpetrators, remedies for victims or to protect victims who complain.	國家報告（第 313 到 316 段）提及校園性侵害、性騷擾或性霸凌事件，請提供資訊說明對加害者的處置、懲處加害者的具體措施、對受害者的補償、以及對於提出申訴的受害者之保護措施。

中文回應

一、對加害者之懲處及處置措施部分

(一)對校園性侵害、性騷擾或性霸凌事件加害者的處置及懲處，係依據性別平等教育法（以下簡稱性平法）第 25 條之規定，於事件經學校所設性別平等教育委員會（以下簡稱性平會）調查屬實後，由性平會依據事件之事實認定，對學校提出處理建議後，由學校相關權責單位（例如教師評議委員會、學生獎懲委員會、考績委員會等）依相關法律或法規規定執行懲處。

(二)其懲處，如為教師涉及性侵害事件經調查屬實者，依據教師法第 14 條第 4 項規定，係以解聘處分；如屬教師涉及性騷擾或性霸凌事件，則視情節輕重，予以解聘、停聘或不續聘之處分。學生涉及校園性侵害、性騷擾或性霸凌事件之懲處，則依各學校學生獎懲規定，核予申誡、小過、大過或退學等處分。本項懲處涉及加害人身分之改變時，應給予其書面陳述意見之機會。

(三)另學校、主管機關或其他權責機關為性騷擾或性霸凌事件之懲處時,依上列同一法律規定,除應命加害人接受心理輔導之處置外,並得命其為下列一款或數款之處置,包括:經被害人或其法定代理人之同意,向被害人道歉;接受八小時之性別平等教育相關課程;其他符合教育目的之措施。如校園性騷擾或性霸凌事件情節輕微者,學校、主管機關或其他權責機關得僅依前項規定為必要之處置。

二、對於提出申訴的受害者之保護措施部分:依據性平法第 23 條、第 24 條及校園性侵害性騷擾或性霸凌防治準則第 25 條、第 26 條及第 27 條規定,於校園性侵害、性騷擾或性霸凌事件處理過程中,應經性平會討論議決後,對當事人提供之協助或保護措施(如:彈性處理當事人之出缺勤紀錄或成績考核、預防與減低行為人再度加害之可能等),以保障校園性侵害、性騷擾或性霸凌事件當事人之受教權或工作權。

三、對受害者的補償部分:依據性平法之規定,學校於調查處理校園性侵害、性騷擾或性霸凌事件時,係依行政權責進行調查處理,並整合行政資源對當事人提供必要之協助。至於補償部分,倘受害者認學校於調查處理校園性侵害、性騷擾或性霸凌事件時有故意或過失,其符合國家賠償法第 2 條或第 3 條所定侵害該受害者之自由或權利時,自得依據國家賠償法規定,對學校請求損害賠償。

四、南部某特教學校發生性侵害案之處置

(一)教育部啟動危機處理機制,組成「專業輔導諮詢小組」、「專責行政督導小組」進行協助:

1. 專業輔導諮詢小組:(1) 由學者專家組成,並以 4 個分組(諮商輔導分組、教學輔導分組、性別培力及事件處理分組、環境空間及措施建構分組)之運作方式協助學校提供性平事件相關人員之輔導諮商與資源引介,相關會議召開並邀請社政(臺南市家庭暴力暨性侵害防治中心)人員參與。(2) 100 學年度本部補助經費委由國立大學建置專業輔導人力資源整合平台,引進人力計 27 名,提供學校性平事件相關人員之輔導與心理諮商,俾提供學生後續完善之輔導與心理諮商,早日輔導學生走出傷痛回復正常生活。
2. 「專責行政督導小組」:由資深校長、本署相關人員、專家學者組成,並分校園環境安全、校園性平案件處理、性平教育融入教學、校務運作、宿舍管理、校車管理、學生輔導與管教、家長會運作及相關責任歸屬釐清 9 組,自 100 年 9 月至 101 年 12 月止已召開 20 次會議。

(二)另有關本案國家賠償辦理情形說明如下:本案截至目前已有 5 件國家賠償申請案進行協議完畢。另該校召開 4 次國家賠償事件處

理委員會議，教育部督促該校應以高度同理心展現最大誠意，並參考適當案例及個案情況（如年紀、人數、歷程、被害人身心受創情形等）積極進行協議，並盡最大合理可能促成協議，讓救濟程序圓滿，早日使學生拋開傷痛回到正常生活。

英文回應

1. Penalties for and actions taken against perpetrators

(1) The disposal and penalties for an incident of sexual assault, harassment, or bullying on campus is described in Article 25 of the Gender Equity Education Act. Once the incident has been investigated and recognized by the school gender equity education committee, the committee shall advise the school on the disposal, then the competent unit of the school (such as the faculty evaluation committee, student disciplinary committee, or the performance appraisal committee) shall impose penalties on the perpetrator under pertinent laws and regulations.

(2) If an incident where a teacher is involved in sexual assault has been investigated and recognized, the teacher shall be disqualified under Article 14, Paragraph 4 of Teachers' Act. If an incident where a teacher is involved in sexual harassment or bullying has been investigated and recognized, the teacher's employment shall be dismissed, suspended or declined of renewal, depending on the severity of the offense. The penalty for students involved in sexual assault, harassment, or bullying on campus should follow the school's rules. The punishment may include reprimand, minor or severe demerit, or expulsion. When the offender's status is changed, he/she shall be entitled to make a written statement.

(3) Also, under the Gender Equity Education Law, the school, competent authority or other authority with jurisdiction, in addition to directing the perpetrator to receive psychological counseling, may impose one or more of the following punitive measures: (1) apologizing to the victim upon the consent of the victim or his/her guardian; (2) attending 8 hours of courses on gender equity education; and (3) other measures that serve an educational purpose. In cases where the incident of sexual harassment or bulling on campus is not severe in nature, the school, competent authority, and other authority of jurisdiction may only impose penalties prescribed above.

2. Measures taken for the protection of the complainant: Under Articles 23 and 24 of the Gender Equity Education Act and Articles 25 to 27 of

the Regulations on the Prevention of Sexual Assault, Sexual Harassment, and Sexual Bullying on Campus, during the response process of claims of sexual assault, harassment, or bullying, the gender equity education committee shall discuss and decide to provide protection for the victim (such as flexibly handling the attendance record or achievement assessment of the victim, or preventing or reducing the possibility of further assault or harassment by the offender) to protect the victim's rights to education or work.

3. Compensation for victims: As prescribed in the Gender Equity Education Act, the school's investigation and disposal of incidents of sexual assault, harassment, or bullying is based on its administrative authority and the school shall provide necessary assistance to the victim by integrating administrative resources. In the case a victim feels his/her rights are damaged due to any intention or negligence during the school's disposal process and the conditions meet the provisions in Article 2 or 3 of the State Compensation Law, the victim may file for compensation under the State Compensation Law.
4. Disposal of the sexual abuse scandal in at a special school in southern Taiwan

(1) The MOE activated a risk management mechanism, setting up a professional counseling team and a designed administrative supervising team to offer help:

A. Professional counseling team: ⅰ.The team was made up of academics and experts in four groups (counseling and guidance, teaching and guidance, gender empowerment and incident management, environment and space) to support gender equity education staff at the school with counseling and resources. Meetings have been held in the presence of social workers (from the Tainan City Domestic Violence and Sexual Assault Prevention Center); ⅱ.In the 2011 school year, the MOE subsidized and commissioned a national university to establish a counseling manpower integration platform and recruit 27 members to help support and provide counseling to people involved in the incident, hoping to help victims heal and resume normal lives.

B. Designated administrative supervising team: The team was composed of senior principals, relevant MOE officials, and academics, and was divided into nine groups on the topics of campus safety, gender equity case disposal, gender equity education in instruction, school operation, dorm management, school bus management, student guidance and discipline, parents' association operation, and clarification of responsibilities. Twenty meetings were held between September 2011 and December 2012.

(2) State compensation: (1) As of the present, five claims for state compensation have been negotiated; (2) Four meetings for state

compensation claims have been held. The MOE prompted the school to try its best to provide due remedy after counseling proper cases and considering the situations of the victims (age, number of victims, and the difficulty and harms they were forced to experience) in order to help them heal and resume normal lives.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 24 條	74.	What education awareness raising on child abuse/assault or child labour is provided and for whom as well as the scale and scope of such programmes.	曾採取哪些提升虐童或童工問題意識的教育方案？教育對象、教育層級及範圍為何？

中文回應

一、為維護兒童少年身心健全發展，內政部每年以補助全國性民間團體，輔導地方政府結合民間團體方式，結合社區發展協會，辦理兒童福利與權益保障等相關法治教育宣導活動，教導兒童少年及其家長，不可讓 15 歲以下兒童少年打工，及如何選擇適合 15 歲以上少年工作場所等相關知識，避免少年工作時遭受不法對待或觸法。

二、另內政部對於虐童意識教育部分採行下列措施：

(一) 虐童教育宣導：運用媒體宣導通路及結合各民間團體，加強宣導「兒童保護」、「家庭暴力防治」及「113 保護專線」，呼籲社會大眾重視兒童受虐及家庭暴力問題；強化民眾正確兒少保護及家庭暴力防治觀念。

(二) 深化全民通報意識：針對村里幹事辦理兒虐及高風險家庭關懷研習訓練，辦理兒少保護宣導活動及培訓社區兒保志工，深入村里社區教育民眾，使其敏於察覺兒童受虐跡象及有兒童照顧不周之高風險家庭，及時通報轉介主管機關介入協助。

(三) 推動親職教育，轉化家長教養觀念：結合社區、學校及媒體多管齊下宣導零體罰及正面教養方法，轉化家長傳統教養觀念，避免不當管教傷害子女。

三、再者，為增進勞雇雙方對於勞動基準法童工章規定之瞭解，勞委會每年與各縣市政府辦理「勞動基準法令宣導會」加強宣導，並督責縣市政府及勞動檢查機構進行勞動基準法檢查，以落實法令規定。另勞委會及地方勞工行政主管機關一旦接獲申訴事業單位

僱用童工有違反勞動基準法規定者，即予以依法查處，以保護童工之權益。

四、教育部除積極配合兒少保護業務主管機關內政部執行各項政策及計畫外，亦透過落實兒少保護事件通報機制、研發教育訓練系統、補助及辦理各項研習活動、提供輔導資源及執行督考制度等各項工作，積極維護學生權益及身心安全。如為強化教育人員落實兒童及少年保護通報規定，訂頒「各級學校及幼稚園通報兒童及少年保護與家庭暴力及性侵害事件注意事項及處理流程」，俾供各級學校遵循辦理；亦陸續研發及編製責任通報工作手冊如「家庭暴力防治專業人員工作手冊」、「家庭暴力暨性侵害防治全國教師專業工作手冊」及「教育人員兒童少年保護工作手冊」等提供教育人員參考及使用；運用 e 化學習的概念，建置「學校兒童及少年保護機制線上學習課程」，以鼓勵教育人員在職進修，充實兒少保護知能；規劃補助縣市政府辦理兒童及少年保護相關宣導及研習活動，以全面提升教育人員之兒童及少年保護知能。

五、同時教育部部迄今積極推動正向親職教育、倡導「正向管教」之教育理念，以維護及促進兒童少年身體自主權與人格發展權。

英文回應

1. In order to ensure children and adolescents grow up in a healthy environment, The government co-operated with various organizations and formulated polices which are listed below: (1) Providing funds for non-government organization to co-operate with local governments and local community to conduct events that educate children and their parent about the Child Welfare law and Children’s Right Protection Law; (2) Emphasizing that children under 15 are not eligible to work; (3) For the children who are 15 and above, if they wish to work, organizations will provide information regarding the working environment; (4)Prevent the child abuse or illegal treatment at work.
2. The government also takes the following measures to raise the public awareness of child abuse: (1) Educational advocacy to prevent child abuse: Using the media and various non-governmental organizations, the government strengthens the propaganda of "child protection", "domestic violence prevention" and"113 Protection Hotline”, calling upon the public to pay attention to the problem of child abuse and domestic violence. It is hoped to reinforce the concepts of the general public to protect children and prevent domestic violence; (2) Deepening public awareness to report child abuse cases: Education and training programs on how to handle child abuse cases and watch out for high-risk families are offered to the borough chiefs, village officials, volunteers, and the general public. It is hoped that everyone in a

community is sensitive enough to perceive any signs of child abuse and inadequate care of children at the high-risk families; and report to competent authorities for referral, intervention, and assistance; (3) Promotion of parenting education to transform parental rearing concepts: To advocate zero corporal punishment and positive parenting methods, the government co-operates with the local communities, schools and the media to transform the traditional upbringing concept to many parents, so that their children are not harmed by improper parenting.

3. To improve employers' and laborers' understanding of the Section regarding child workers in Labor Standards Act, the Council joins the efforts of all cities and municipalities in conducting sessions to help citizens better understand Labor Standards Act, and supervises the city/ municipal governments along with agencies in charge of labor inspections to undertake inspections throughout workplaces, so as to implement the rules. Meanwhile, the Council and local administrative labor-related agencies will take active actions and ensure child workers' rights once receiving complaints about employment of underage workers.
4. In addition to supporting the Ministry of Interior, the competent authority for child and youth rights protection, the MOE has reinforced the child/youth abuse reporting mechanism, devised training systems, subsidized and held training programs, provided counseling resources, implemented supervision and assessments to protect the rights of students and safeguard their mental and physical health. To promote educational personnel's observance of the obligation to report suspected child abuse, the MOE has adopted Guidelines and Procedures for Reporting Abuse, Domestic Violence, and Sexual Assault on Children or Youth Attending Kindergartens or Schools at All Levels for the schools to follow. To help individuals responsible for dealing with child and youth protection to develop better identification abilities, legal knowledge, access to resources, risk management, and other relevant skills and counseling, the MOE has prepared several guidebooks, such as "Handbook for Professionals in Domestic Violence Prevention", "Domestic Violence and Sexual Assault Prevention and Resolution: Handbook for Teachers Nationwide", and "Child and Youth Protection: Handbook for Educators" for the reference of teachers and educational professionals. The idea of e-learning is also incorporated. One example is the establishment of "online courses on the mechanism of school child and youth protection," which is part of the effort to encourage on-the-job training and improvement of professional knowledge among educators. The Ministry has supported and subsidized local governments in holding relevant promotions and training sessions on the topic of child and youth protection to enhance educators' knowledge of child and youth protection.
5. The Ministry has been actively pushing parent education and the idea of positive discipline in hopes of promoting children's and youth's

rights to bodily integrity and personality development.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 24 條	75.	Please provide information on the state policy and support services in place to assist working parents to combine work and child upbringing /family responsibilities.	請提供資訊說明國家對於雙薪家庭的育兒負擔、家庭責任負擔之扶助方案及措施。

中文回應

依「性別工作平等法」第 23 條規定，僱用受僱者二百五十人以上之雇主應設置托兒設施（Child-care facilities）或提供適當托兒措施（Child-care measures）；另對於雇主設置托兒設施或提供托兒措施，主管機關應給予經費補助。本會爰依據「性別工作平等法」規定，訂定「托兒設施措施設置標準及經費補助辦法」，對於企業提供托兒服務者，不限事業單位僱用員工規模人數多寡，均給予經費補助，以鼓勵雇主辦理托兒設施或提供適當托兒措施，協助員工解決子女托育需求，建構工作與家庭平衡友善職場，落實性別工作平權。

英文回應

According to Article 23 of the Act of Gender Equality in Employment, employers hiring more than two hundred and fifty employees are required to set up child-care facilities or provide suitable child-care measures, and competent authorities will provide certain subsidies. Acting in accordance with the Act of Gender Equality in Employment, the Council of Labor Affairs has enacted the Rules for the Standards of Establishing Child-Care Facilities and Measures and Providing Subsidies and subsidies are given accordingly to enterprises that provide child-care service, regardless of the number of their employees. The policy is to encourage employers to set up child-care facilities or provide suitable child-care measures to help their employees who are in need of child care, in order to develop friendly environments where work and family can be balanced and gender equality in employment can be ensured.

條文	編號	問題內容(原文)	中文參考翻譯
公政 第 25 條	76.	Please provide comprehensive information on any factors that may impede citizens from exercising the right to vote including in referenda and the positive measures which have been adopted to overcome these factors.	請提供詳盡的資訊說明阻礙公民行使投票權、公投投票權的任何可能因素，以及任何排除投票障礙的積極措施。

中文回應

在臺灣，投票所係以村（里）為單位普遍設置，多數選舉人步行約在 10 分鐘內均可抵達投票所，選舉人行使投票權已相當方便。由於選舉人及公民投票權人應於投票日至戶籍地投票所投票，惟部份選舉人，如：投票日須執行勤務之公私部門人員、住院病人、受拘禁者、因學習或在職訓練需要之學員生、海外公民等，無法返回戶籍地投票，將無法行使投票權、公投投票權，形成投票之障礙。為排除選民投票障礙，我國業將推動實施不在籍投票（包含電子投票）列為施政重點，將積極研議採行。

英文回應

In Taiwan, polling stations are set up based on boroughs. Most polling stations are within 10 minutes of walking distance from voters' residency and convenient for voting. Electors should cast their ballots at the polling station of the area of household registration on the polling day. However, due to the lack of absentee voting system, for electors such as staff working in public and private sectors who are on duty ; hospitalized patients; people under detention; students pursuing their studies or attending in-service training and citizens overseas and etc., will not be able to exercise their voting right. The government will promote the absentee voting (includes electronic voting) actively in the future.

條文	編號	問題內容(原文)	中文參考翻譯

公政 第25條	77.	Please describe the legal provisions which establish the conditions for holding elective public office, and any limitations and qualifications which apply to particular offices including conditions relating to nomination dates, fees or deposits.	請說明服公職的法律資格限制，以及各公職的具體資格限制，包含提名時間、參選費用或選舉保證金在內。

中文回應

各種選舉候選人之積極與消極條件，總統副總統選舉罷免法及公職人員選舉罷免法定有明文。依上開兩項法律規定，任何具備投票資格且符合下列規定之公民，得參與公職人員選舉：

一、 年齡：總統、副總統候選人須年滿 40 歲；直轄市長及縣（市）長候選人須年滿 30 歲；鄉（鎮、市）長候選人須年滿 26 歲；其他公職候選人須年滿 23 歲。

二、 居住期間：總統、副總統候選人須在中華民國自由地區繼續居住 6 個月以上且曾設籍 15 年以上；其他公職候選人則必須在其行使選舉權之選舉區繼續居住 4 個月以上。

三、 國籍：公職參選人須具中華民國國籍。但回復中華民國國籍滿 3 年或因歸化取得中華民國國籍滿 10 年，始得參選。又回復中華民國國籍、因歸化取得中華民國國籍、大陸地區人民或香港、澳門居民經許可進入臺灣地區者，不得登記為總統、副總統候選人。

四、 登記參選方式：總統、副總統選舉之候選人應由政黨推薦或連署人連署。最近任何一次總統、副總統或立法委員選舉，其所推薦候選人得票數之和，達該次選舉有效票總和 5%以上之政黨，得推薦候選人。依連署方式申請登記為總統、副總統候選人者，應於選舉公告發布後 5 日內向中央選舉委員會申請為被連署人、申領連署人名冊格式及繳交連署保證金新臺幣 100 萬元，且其連署人數須達最近一次立法委員選舉人總數 1.5%。至其他公職選舉，候選人可經由政黨推薦或自行參選。

五、 保證金：登記為候選人時，應繳納保證金，總統、副總統選舉候選人，依總統副總統選舉罷免法規定，各組應繳納保證金新臺幣 1,500 萬元；至其他公職人員選舉，依公職人員選舉罷免法規定，其數額由選舉委員會先期公告。以最近選舉為例，第 8 屆立法委員選舉候選人登記保證金為新臺幣 20 萬元，2010 年直轄市長候選人登記保證金為新臺幣 200 萬元，2009 年縣（市）長候選人登記保證金為新臺幣 20 萬元。

六、 登記時間：應於規定時間內，備具選舉委員會規定之表件及保證金，向受理登記之選舉委員會規定時間申請登記。縣（市）以上公職人員候選人登記期間不得少於5日，鄉（鎮、市）以下公職人員候選人登記期間不得少於3日。

英文回應

Both Presidential and Vice Presidential Election and Recall Act and Civil Servants Election and Recall Act regulate the positive and negative requirements for candidacy. According to the law, citizens who are eligible to vote and meet the qualifications listed in the following may run for the elective public offices:

1. Age: A candidate for President and Vice President shall be 40 years of age or older; 30 or older for the governor of a municipality or a county (city) chief candidate; 26 or older for the chief of a township (city) and at least 23 for any other elective public offices.
2. Period of residency: A candidate for President and Vice president shall have lived in ROC for no less than 6 consecutive months, and set his/her domicile in the ROC for no less than 15 years. Candidates for other public offices shall have been living for no less than 4 consecutive months in the electoral district where he/she is eligible to vote.
3. Nationality: The ROC nationality is required to be a candidate. Anyone who has restored the ROC nationality for 3 years or has acquired the ROC nationality by naturalization for 10 years may be registered as a candidate. Anyone who restores the ROC nationality or acquires the ROC nationality by naturalization or residents from the People's Republic of China, Hong Kong and Macao who are permitted to enter Taiwan may not be registered as the candidate for President or Vice President.
4. Ways of registering as candidates: Candidates for President or Vice President shall be recommended by their political party or by the means of joint signature of the signers. Those parties, of which the sum of the candidates recommended reaches not less than 5% in the total effective ballots of the latest election of President, Vice President or election for members of the Legislative Yuan, may recommend the candidates for President and Vice President. For those who apply for candidacy for President and Vice President by the way of joint signature shall, within 5 days after the public notice for election is issued, apply to the Central Election Commission for candidacy. Applicant must present a list of endorsing electors, and pay the deposit of NT$1,000,000. The number of endorsing signers must reach 1.5% of the total

electors in the latest election of the members of the Legislative Yuan. Candidates for other public offices may be recommended by political parties or freely register by themselves.

5. Deposit: A person shall pay the deposit while registering as candidate. Required in accordance with the Presidential and Vice Presidential Election and Recall Act, when applying for candidacy for President and Vice President, each pair of candidates shall pay the security pond of NT$15,000,000. Amounts of deposit for other public office elections shall be calculated and publicized by the election commission in advance. For example, when being registered as the candidate for member of the 8th Legislative Yuan, each one of candidates shall pay the security pond of NT$200,000. When being registered as the candidate for municipality mayor in 2010, each one of candidates shall pay the security pond of NT$2,000,000. In another case a candidate for county and city mayor in 2009, each one of candidates shall pay the security pond of NT$200,000.
6. Period of registration: The candidates shall prepare the forms as well as the deposit set forth by the election commissions to apply for registration within a specified time limit. The period of registration of the election of the representatives of a township (city) council, the chief of a county (city) and the chief of villages (boroughs) shall be not less than 3 days. However, for the election of the others, the period of registration shall be no less than 5 days.

條文	編號	問題內容(原文)	中文參考翻譯
公政第25條	78.	Please provide data disaggregated by sex as well as rural /urban on voter turn out at the latest general election.	請提供資訊說明最近一次全國範圍選舉的選民性別分布及城鄉分布。

中文回應

101年1月14日舉行第13任總統副總統選舉，選舉人投票統計相關資料依直轄市、縣（市）別彙整如下表：

直轄市/縣(市)	選舉人數			選舉人數性別比例		投票人數			投票人數性別比例		性別投票率	
	男性 (A)	女性 (B)	合計 (C)	男性選舉人數佔總選舉人數比率 (D=A/C)	女性選舉人數佔總選舉人數比率 (E=B/C)	男性 (F)	女性 (G)	合計 (H)	男性投票人數佔總投票人數比率 (I=F/H)	女性投票人數佔總投票人數比率 (J=G/H)	男性投票人數佔男性選舉人數比率 (K=F/A)	女性投票人數佔女性選舉人數比率 (L=G/B)
總計	8,971,504	9,114,951	18,086,455	49.60%	50.40%	6,591,407	6,860,234	13,451,641	49.00%	51.00%	73.47%	75.26%
臺北市	991,711	1,110,953	2,102,664	47.16%	52.84%	754,137	860,262	1,614,399	46.71%	53.29%	76.04%	77.43%
新北市	1,502,460	1,572,389	3,074,849	48.86%	51.14%	1,124,510	1,209,256	2,333,766	48.18%	51.82%	74.84%	76.91%
臺中市	989,148	1,029,010	2,018,158	49.01%	50.99%	736,808	792,268	1,529,076	48.19%	51.81%	74.49%	76.99%
臺南市	740,040	745,007	1,485,047	49.83%	50.17%	548,044	553,637	1,101,681	49.75%	50.25%	74.06%	74.31%
高雄市	1,086,220	1,105,785	2,192,005	49.55%	50.45%	816,857	847,194	1,664,051	49.09%	50.91%	75.20%	76.61%
桃園縣	748,861	757,450	1,506,311	49.71%	50.29%	556,945	568,051	1,124,996	49.51%	50.49%	74.37%	75.00%
新竹縣	196,192	188,069	384,261	51.06%	48.94%	146,831	145,482	292,313	50.23%	49.77%	74.84%	77.36%
苗栗縣	225,344	210,875	436,219	51.66%	48.34%	166,022	159,539	325,561	51.00%	49.00%	73.67%	75.66%
彰化縣	512,366	493,348	1,005,714	50.95%	49.05%	372,086	366,721	738,807	50.36%	49.64%	72.62%	74.33%
南投縣	211,347	200,135	411,482	51.36%	48.64%	149,220	144,372	293,592	50.83%	49.17%	70.60%	72.14%
雲林縣	293,323	269,711	563,034	52.10%	47.90%	199,176	188,879	388,055	51.33%	48.67%	67.90%	70.03%
嘉義縣	225,035	206,553	431,588	52.14%	47.86%	162,474	150,351	312,825	51.94%	48.06%	72.20%	72.79%
屏東縣	350,300	334,217	684,517	51.17%	48.83%	251,763	245,663	497,426	50.61%	49.39%	71.87%	73.50%
宜蘭縣	181,149	176,910	358,059	50.59%	49.41%	129,080	130,661	259,741	49.70%	50.30%	71.26%	73.86%
花蓮縣	135,207	128,681	263,888	51.24%	48.76%	81,867	88,723	170,590	47.99%	52.01%	60.55%	68.95%
臺東縣	93,539	85,399	178,938	52.27%	47.73%	54,637	55,941	110,578	49.41%	50.59%	58.41%	65.51%
澎湖縣	39,804	38,013	77,817	51.15%	48.85%	23,255	22,666	45,921	50.64%	49.36%	58.42%	59.63%
基隆市	150,973	151,166	302,139	49.97%	50.03%	106,310	111,493	217,803	48.81%	51.19%	70.42%	73.76%
新竹市	152,299	159,819	312,118	48.80%	51.20%	115,018	121,186	236,204	48.69%	51.31%	75.52%	75.83%
嘉義市	99,098	106,613	205,711	48.17%	51.83%	73,394	76,432	149,826	48.99%	51.01%	74.06%	71.69%
金門縣	42,391	41,558	83,949	50.50%	49.50%	19,929	19,246	39,175	50.87%	49.13%	47.01%	46.31%
連江縣	4,697	3,290	7,987	58.81%	41.19%	3,044	2,211	5,255	57.93%	42.07%	64.81%	67.20%

英文回應

The 13th Presidential and Vice Presidential Election was held on January 14st, 2012. The voter turnout data based on special municipalities and county (city) is shown as following:

special municipality/ county(city)	electors			gender proportion of electors		voters			gender proportion of voters		proportion of vote turnout by gender	
	male (A)	female (B)	total (C)	male (D=A/C)	female (E=B/C)	male (F)	female (G)	total (H)	male (I=F/H)	female (J=G/H)	male (K=F/A)	female (L=G/B)
Total	8,971,504	9,114,951	18,086,455	49.60%	50.40%	6,591,407	6,860,234	13,451,641	49.00%	51.00%	73.47%	75.26%
Taipei City	991,711	1,110,953	2,102,664	47.16%	52.84%	754,137	860,262	1,614,399	46.71%	53.29%	76.04%	77.43%
New Taipei City	1,502,460	1,572,389	3,074,849	48.86%	51.14%	1,124,510	1,209,256	2,333,766	48.18%	51.82%	74.84%	76.91%
Taichung City	989,148	1,029,010	2,018,158	49.01%	50.99%	736,808	792,268	1,529,076	48.19%	51.81%	74.49%	76.99%
Tainan City	740,040	745,007	1,485,047	49.83%	50.17%	548,044	553,637	1,101,681	49.75%	50.25%	74.06%	74.31%
Kaohsiung City	1,086,220	1,105,785	2,192,005	49.55%	50.45%	816,857	847,194	1,664,051	49.09%	50.91%	75.20%	76.61%
Taoyuan County	748,861	757,450	1,506,311	49.71%	50.29%	556,945	568,051	1,124,996	49.51%	50.49%	74.37%	75.00%
Hsinchu County	196,192	188,069	384,261	51.06%	48.94%	146,831	145,482	292,313	50.23%	49.77%	74.84%	77.36%
Miaoli County	225,344	210,875	436,219	51.66%	48.34%	166,022	159,539	325,561	51.00%	49.00%	73.67%	75.66%
Changhua County	512,366	493,348	1,005,714	50.95%	49.05%	372,086	366,721	738,807	50.36%	49.64%	72.62%	74.33%
Nantou County	211,347	200,135	411,482	51.36%	48.64%	149,220	144,372	293,592	50.83%	49.17%	70.60%	72.14%
Yunlin County	293,323	269,711	563,034	52.10%	47.90%	199,176	188,879	388,055	51.33%	48.67%	67.90%	70.03%
Chiayi County	225,035	206,553	431,588	52.14%	47.86%	162,474	150,351	312,825	51.94%	48.06%	72.20%	72.79%
Pingtung County	350,300	334,217	684,517	51.17%	48.83%	251,763	245,663	497,426	50.61%	49.39%	71.87%	73.50%
Ilan County	181,149	176,910	358,059	50.59%	49.41%	129,080	130,661	259,741	49.70%	50.30%	71.26%	73.86%
Hualien County	135,207	128,681	263,888	51.24%	48.76%	81,867	88,723	170,590	47.99%	52.01%	60.55%	68.95%
Taitung County	93,539	85,399	178,938	52.27%	47.73%	54,637	55,941	110,578	49.41%	50.59%	58.41%	65.51%
Penghu County	39,804	38,013	77,817	51.15%	48.85%	23,255	22,666	45,921	50.64%	49.36%	58.42%	59.63%
Keelung City	150,973	151,166	302,139	49.97%	50.03%	106,310	111,493	217,803	48.81%	51.19%	70.42%	73.76%
Hsinchu City	152,299	159,819	312,118	48.80%	51.20%	115,018	121,186	236,204	48.69%	51.31%	75.52%	75.83%
Chiayi City	99,098	106,613	205,711	48.17%	51.83%	73,394	76,432	149,826	48.99%	51.01%	74.06%	71.69%
Kinmen County	42,391	41,558	83,949	50.50%	49.50%	19,929	19,246	39,175	50.87%	49.13%	47.01%	46.31%
Liang-Jiang County	4,697	3,290	7,987	58.81%	41.19%	3,044	2,211	5,255	57.93%	42.07%	64.81%	67.20%

附件 1

總統府人權諮詢委員會成立「國家人權機構研究規劃小組」案

（一）規劃依據：

依「總統府人權諮詢委員會」第六次會議臨時提案決議：「成立國家人權機構研究規劃小組」，及第七次會議報告案決定：「成立國家人權委員會之必要性，可於下次委員會討論」。

（二）小組成員：

1、參照以往總統府任務編組運作模式，委員會為因應特定議題需要，得以另設分組方式，由召集人指定或請委員推派代表組成。

2、原則上建議小組成員 5 人，並置小組召集人、副召集人各 1 人，進行相關研究規劃事項。

（三）任務與期程：

擬分三階段逐步研究規劃可行方案

1、小組成立半年期間「研提成立國家人權機構之必要性」，包括討論法律定位、性質、權限職掌及與各院分際等問題。

2、小組成立 7 至 12 個月期間「研提成立國家人權機構可行方案」，包括討論組織型態、架構、運作方式及修憲修法涉及層面等相關問題。

3、小組成立 13 至 18 個月期間「研提是否成立國家人權機構籌備處」，討論員額編制、預算編列、辦公處所等問題。

（四）工作幕僚：

鑒於成立國家人權機構涉及政府整體機關組織結構及功能調整與規劃，按行政院組織改造及調整之主政機關即為研考會，惟有關人權業務已統歸法務部負責，爰小組之幕僚單位究應由法務部或研考會擔任，建議委請行政院指派之。另本會秘書組（總統府）及議事組（法務部）仍依原幕僚分工項目協同辦理。

（五）運作方式：

1、幕僚會議：由幕僚單位視需要召開，並依情況邀集相關機關代表與會；相關會議紀錄或進度宜適時陳報本會召集人。

2、小組會議：

（1）由小組召集人（或副召集人代理）1 至 2 個月召開 1 次小組會議，或由幕僚單位提請小組召集人召開會議，會議紀錄簽報本會召集人。

（2）倘議題涉及其他各院或部會權責，得請該等機關代表與會，亦得邀民間團體代表、學者專家出席提供意見。

3、幕僚單位陳報本會召集人之公文流程宜經由本會執行秘書。

4、國家人權機構之籌備成立事涉政府機關建制及修憲、修法等程序，本會負有提供　總統政策諮詢之任務。小組研究規劃階段性成果，皆須提案由本會議事組（法務部）彙整列入全體委員會議討論通過後，呈報　總統作為政策諮詢參考，並依　總統指示，據以進行下階段之研究規劃工作；如經政策指示成立國家人權機構，即由行政院著手進行相關籌備工作，過程中本小組及本會依然扮演諮詢角色，提出規劃建言供決策參考。