



TAIWAN

SUBMISSION TO THE INTERNATIONAL REVIEW COMMITTEE ON THE DOMESTIC IMPLEMENTATION OF THE ICCPR AND THE ICESCR, 3RD REPORTS, LIST OF ISSUES

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1. INTRODUCTION

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

In this submission, Amnesty International emphasizes concerns with regard to human rights issues relating to the COVID-19 pandemic; the death penalty; the right to privacy, in particular the application of facial recognition technology and the use of digital identification; the use of less lethal weapons in the policing of assemblies, and the case of the Sunflower Movement; and the rights of Indigenous peoples.

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

2. MEASURES TO PREVENT THE SPREAD OF COVID-19 (ARTICLE 4 OF ICCPR)

2.1 THE RIGHT TO PRIVACY IN THE CONTEXT OF THE PANDEMIC

The government is reported to continue to apply surveillance technology as a mean to contain the pandemic, such as accessing mobile position data and credit card transaction logs of people who have themselves contracted the virus or been exposed to other infected people.¹ These measures pose a great threat to the right to privacy and other human rights and may not pass the tests of legality, necessity and proportionality in international law regarding restrictions on rights even during public health emergencies. The legal basis of these measures in national law appears insufficient. The government only cited Articles 48 and 58 of the Communicable Disease Control Act, which do not authorize the government to conduct mass personal data collection.

Civil society has been urging the government to revise the current system, making it more transparent and in line with the principles of legality, necessity and proportionality, such as by ensuring all surveillance measures are subject to effective judicial and parliamentary oversight. However, the authorities have made little effort to improve the compliance of its COVID-19 prevention measures with ICCPR Article 4.

¹ Chen, C.-M., H.-W. Jyan et al., “Containing COVID-19 among 627,386 Persons in Contact with the Diamond Princess Cruise Ship Passengers Who Disembarked in Taiwan: Big Data Analytics”, May 2020, www.jmir.org/2020/5/e19540/.

2.2 RIGHT TO LIBERTY IN THE CONTEXT OF THE PANDEMIC

The Miaoli county government introduced a controversial measure to control the pandemic. In June 2021, it claimed there were clusters of Covid-19 cases among migrant workers, most of them are from Philippines and Indonesia. In the name of preventing the pandemic, the Miaoli government confined approximately 22,000 workers in their dormitory buildings, depriving them of their right to liberty for three weeks. These migrant workers were only permitted to leave the buildings to go to work by transportation provided by their employers. Also, their daily necessities could only be purchased through the dorm supervisor.² This order is discriminatory as it was only applied to migrant workers, but not their Taiwanese colleagues.³ The measure was a violation of Article 9 of ICCPR under which any deprivation of the right to liberty should be conducted under procedures that are established by law.⁴

2.3 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- Ensure the use of technologies to track and monitor individuals and populations during the COVID-19 pandemic is carried out strictly in accordance with human rights principles, including that any system accessing and collecting personal data related to the pandemic should be set out in law and transparent in its operations;
- Ensure the use of mass surveillance technology follows the principles of legality, necessity and proportionality, in particular that its use is neither discriminatory nor indiscriminate and is not indefinite but, rather, time-bound and limited in scope, and that all surveillance measures are subject to effective judicial and parliamentary oversight and affected individuals have access to an effective remedy for violation of their human rights.

² Miaoli County Government, '即日起本縣移工除工作外停止外出, 勞青處與警察局全面稽查!' (Migrant workers in Miaoli county are confining to their dormitory building except for work, and the Labor and Youth Development Department and the police will conduct inspections!), June 2021, https://www.miaoli.gov.tw/News_Content2.aspx?n=285&s=418201.

³ Amnesty International Taiwan, '【台灣】國際特赦組織台灣分會：防疫政策應避免針對特定族群造成歧視' (Taiwan: The COVID-19 preventive measures should avoid discrimination against specific ethnic groups), June 2021, <https://www.amnesty.tw/news/3767>.

⁴ Human Rights Committee, General Comment No. 35, Freedom of movement (article 9) (2014), UN Doc. CCPR/C/GC/35, para. 14.

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

There has been a long term decrease in the authorities' use of death sentences and executions. However, in April 2020 Taiwan resumed executions after a hiatus lasting 20 months since September 2018. The government has the obligation to ensure positive changes in human rights, regardless of public opinion, especially in the area of the right to life and the abolition of capital punishment. In 2019, Chiu, Hei-yuan, the Professor Emeritus of Sociology of Academia Sinica, released research pointing out that one of the root causes of public disagreement on the abolition of capital punishment is the lack of sufficient information on the facts of death penalty and the possibility of innocent people getting sentenced to death.⁵

Despite the government's claim of reducing the death penalty, referencing Hsing-Tse Cheng and Chi-Hung Hsieh's case, but in fact there is still a death row inmate, Chiou Ho-shun, who has been on death row for 32 years. During detention, he was beaten, blindfolded, forced to sit on ice, subjected to electric shocks and had pepper-laced water poured into his mouth and nose. Confessions obtained through means of torture, which Chiou later retracted, were the sole evidence used to prove his guilt. In 1994, two prosecutors and 10 police officers were under investigation and then punished for using torture to obtain confessions in one of the cases, four of the police officers were later convicted in 1998. No other material evidence linking Chiou to the crimes has ever been presented in court.

Despite having been through grossly unfair trials and torture which is clearly in violation of articles 7 and 14 of the ICCPR, Chiou's sentence has remained the same for 32 years. Four applications for re-trial (2011, 2012, 2015, 2016) and one extraordinary appeal by the Prosecutor General Da-ho Yen (2016) were filed during the last decade, but all of them were rejected. In the latest rejection of the extraordinary appeal, the Supreme court found that the legal elements were not met for a re-trial.

The death penalty is the ultimate cruel, inhuman and degrading punishment. Amnesty International opposes the death penalty in all cases without exception - regardless of who is accused, the nature or circumstances of the crime or method of execution.

⁵ Chiu, Hei-yuan et al., For or against abolition of the death penalty: Evidence from Taiwan, 19 Jun 2019, <https://www.deathpenaltyproject.org/wp-content/uploads/2019/03/Taiwan-Public-Opinion-FINAL-ENG.pdf>.p35.

3.1 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- Speed up the process towards abolition of death penalty. As of 14 October 2021, 144 countries had abolished the death penalty in law or practice. As a country that values human rights and international law, we urge Taiwan to become a country that no longer practices the death penalty.
- The President of Taiwan should use the powers to address the violations of the right to fair trial that have tainted Chiou Ho-shun's conviction and accept his petition for pardon after 32 years of despair on death row.
- Amend the Pardon Act in line with international standards, in particular by laying out in detail all relevant procedures and minimum guarantees.

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

4.1 THE NEW EID (E-IDENTIFICATION) SYSTEM

The New eID programme proposed in 2018 received widespread criticism from civil society and scholars for its lack of privacy protection and transparency. The program involves centralized storage of personal information and biometric data that should be governed by transparent regulation and supervised via effective independent oversight, as suggested by the Office of the United Nations High Commissioner for Human Rights.⁶ The New eID would contain a headshot in a unified format and high image resolution.⁷ These pieces of information could be used by the public and private sectors as the basis for facial recognition and indiscriminate surveillance purposes, which would violate the right to privacy and other human rights.⁸

Taiwan has no existing regulations limiting the use of personal information associated with e-identification or establishing effective oversight. There is no agency that has the mandate to monitor the use of this sensitive information. The authorities are yet to develop a system that is able to protect personal data and privacy.

In January 2021, the government postponed the New eID programme due to information security and privacy concerns.⁹ The government also promised to revise current regulations or even legislate new regulations to cope with the New eID program. However, they made no commitment to establish an independent institution for supervising privacy-related issues.

4.2 FACIAL RECOGNITION TECHNOLOGY

Facial Recognition Technology (FRT) has been widely used by government agencies in Taiwan, including border control, law enforcement, transportation systems and roll call systems in schools. Most use of FRT is unregulated.

⁶ OHCHR, The right to privacy in the digital age (3 August 2018), UN doc. A/HRC/39/29, para. 23.

⁷ Ministry of Interior, '數位身分識別證 說明簡報' (The brief document of New eID), November 2020, <https://www.ris.gov.tw/documents/data/5/6/656c4007-98c6-4ace-b969-55dc1fbd08d1.pdf>.

⁸ Amnesty International Taiwan, '台灣數位身分證之人權風險' (Taiwan: The human rights risk of Taiwanese New eID), <https://bit.ly/2XseiBq>.

⁹ Executive Yuan, '暫緩數位身分證發行計畫 蘇揆:完善法制後再推動' (Postponement of the New eID program, Premier SU Tseng-chang: The New eID will be back if the regulations built), 21 January 2021, <https://www.ey.gov.tw/Page/9277F759E41CCD91/e80e55a2-0102-4031-b6d3-a7c4of4cac6a>.

The Agency of Corrections started using FRT in 2018, initially in Chiayi Detention Centre.¹⁰ To date, there are 12 prisons and detention centers equipped with FRT. The FRT system is used to monitor the behaviour and the location of inmates. Even convenience stores in prisons use FRT as a way to verify identification.

The public is also under watch. Between May 2018 and August 2020, the New Taipei City Police Department (NTPC) used FRT in public events arbitrarily.¹¹ FRT deployed by the NTPC was designed to compare real-time images with its database for identifying missing persons, wanted fugitives, and people who might affect national security. The system scanned faces indiscriminately and captured their facial characteristics. Unregulated use of FRT violates the right to privacy. The present use of FRT raises serious questions under Article 17 of the ICCPR.

4.3 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- Immediately stop the use, development, production, sale, import and export of facial recognition technology for identification purposes by state agencies and the private sector;
- Disclose details about current and past use of FRT in public areas;
- Ensure effective supervision on how the public and private sectors follow privacy-related regulations, and investigation of potential abuses of the right to privacy;
- Ensure relevant laws are developed to regulate the use of the New eID programme to prevent personal data from being misused by the public and private sectors. Such regulations should include the scope, use, access and storage of data as well as effective safeguarding measures.

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

5.1 THE USE OF LESS LETHAL WEAPONS

Evidence globally proves that less lethal weapons, such as pepper spray, water cannons and rubber bullets, can cause serious physical harm to people. For instance, in 2020 the Lebanese security forces shot a man with rubber bullets, causing him serious injury including the loss of one eye.¹²

The government of Taiwan does not recognize that the use of less lethal weapons should comply with the principle of legality, that is, regulated clearly and precisely in publicly accessible laws. In an official document, the National Police Agency mentioned that the use of water cannon is based on the “Notice of the Use of Water Canon by Police”, however, the notice does not describe the circumstances and the purposes for the use of

¹⁰ Chiayi Detention Centre, ‘嘉義看守所打造首座科技智慧監獄’ (The Chiayi Detention Centre became the first smart prison in Taiwan), November 2020, <https://bit.ly/3n3gbxo>.

¹¹ Office of New Taipei City Councilors Tai, Wei Shan, The response to councilor Tai on the issue of the use of FRT, May 2021, <https://drive.google.com/drive/folders/1No8uiwB6AUyXPYJws3cbGcy5GuxJabuJ?usp=sharing>.

¹² Amnesty International, Lebanon: Military and security forces attack unarmed protesters following explosions – new testimony, August 2020, <https://www.amnesty.org/en/latest/press-release/2020/08/lebanon-military-and-security-forces-attack-unarmed-protesters-following-explosions-new-testimony/>.

water cannon.¹³ The National Police Agency's approach to the use of tear gas is similar. In 2021, the National Police Agency response to Amnesty International Taiwan's enquire on less lethal weapons, claiming that the police in Taiwan will no longer fire tear gas in demonstrations. However, this announcement was not reflected in any official notice or guidelines.¹⁴

5.2 SUNFLOWER MOVEMENT

In April 2020, seven leaders of the Sunflower student movement, who had been sentenced to 2-4 months' imprisonment for violating Criminal Code Article 153 (inciting another to commit an offense) appealed to the Supreme Court.¹⁵ In January 2021, the Supreme Court ruled that due to the flaws in the investigation process, the case would be sent back to the High Court for a retrial.¹⁶ In October 2021, the Taiwan High Court announced that charges against the leaders were dropped as the prosecution decided to withdraw the case.¹⁷ This means the seven defendants are now free and will not be charged for their active roles in the Sunflower Movement.

Amnesty International welcomed the outcome in this case. However, Article 153 of the Criminal Code can still be used to criminalize those who engage in future peaceful protests and demonstrations, which is not in line with the principles of necessity and proportionality and ICCPR Article 21.

5.3 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

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

¹³ The Ministry of Interior, '警察人員使用高壓噴水車應行注意事項'(Notice of the Use of Water Canon by Police), 8 April 2015, <https://glrs.moi.gov.tw/LawContent.aspx?id=GL001199>.

¹⁴ National Police Agency, Response to the enquire of the use of less lethal weapon by Amnesty International Taiwan, 22 October 2021, <https://drive.google.com/drive/folders/1SmgnHZ3agllmeAYtk5jzC3BPiYfKb8Qc?usp=sharing>.

¹⁵ Judicial Reform Foundation, '聲明 | 「323 佔領行政院」辯護案更一審宣判：煽惑部分不受理，毀損部分有罪！' (A statement, the inciting offenses in the retrial of the case about the Executive Yuan Occupation on 23 March 2014 was rejected), October 2021, <https://www.jrf.org.tw/articles/2144%E2%80%8B?fbclid=IwARozLN1MbwDuRETnempBJhklbt5jS3HOEtJm9EBt4TWgX8SAvQxVX6FJx6E>.

¹⁶ The Supreme Court, 最高法院 109 年度台上字第 3695 號刑事判決 (The 2020 Criminal Judgment No. 3695), January 2021, <https://bit.ly/3vlhYkE>.

¹⁷ The Taiwan High Court, '110 年度重囑上更一字第 8 號妨害公務等案件判決新聞稿' (The 2021 retrial case No 8, about Offenses of Obstructing an Officer In Discharge of Duties, and other offenses), October 2021, <https://tph.judicial.gov.tw/tw/cp-803-514069-bo263-051.html>.

6. RIGHTS OF INDIGENOUS PEOPLES (ARTICLES 12, 15 OF THE ICESCR)

6.1 PROTECTION OF RIGHT TO HEALTH OF INDIGENOUS PEOPLES

There is major room for improvement in achieving the right to the highest attainable standard of health among Taiwanese Indigenous peoples and tackling prevailing health inequities.¹⁸ The government did invest public health resources into Indigenous communities, such as providing primary care service in the Indigenous regions, increasing the number of guaranteed placement for state-funded Indigenous medical students; carrying out tobacco, alcohol, and betel nut prevention and control campaigns; implementing “3-High conditions” (high cholesterol, high blood pressure and high blood sugar) prevention and control campaigns, and many other measures. However, there is still a high rate of alcohol and tobacco addiction among the Indigenous community.¹⁹

6.2 PROLONGED REMOVAL OF NUCLEAR WASTE FROM ORCHID ISLAND

More than 100,000 barrels of nuclear waste have been stored at Orchid Island nuclear waste storage facility since 1982.²⁰ The government, however, has never consulted the local Tao indigenous community. This is in violation of Article 21 of the Indigenous Peoples Basic Law, which requires the government to consult and obtain consent from Indigenous peoples or tribes when the government or private parties engage in land development on Indigenous land. It also raises issues with regard to Article 15 of the Convention on Economic, Social, and Cultural Rights, which requires states to respect and protect the traditional rights, including territorial rights of Indigenous peoples, and prevent the communities from losing their cultural identity.²¹

The United Nations Declaration on the Rights of Indigenous Peoples requires governments to “take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent”. After years of calls for the removal of the nuclear waste facility from the Tao indigenous community, the government finally promised in October 2019 to propose a compensation plan during the future legislative session. The plan included the relocation of the facility

¹⁸ Ke Zheyu, Lin Junru, Looking forward to a Better Indigenous Peoples Health Policy: Indigenous Peoples Health Law Initiative in Detail, August 01, 2020, [opinion.cw.com.tw/blog/profile/52/article/9749?utm_source=media_udn&utm_medium=affiliate&utm_campaign=media_udn-affiliate-udn](https://www.opinion.cw.com.tw/blog/profile/52/article/9749?utm_source=media_udn&utm_medium=affiliate&utm_campaign=media_udn-affiliate-udn)

¹⁹ Ministry of Health and Welfare, “Solving health inequities; Current Situation and Prospect of Medical Resources in Indigenous Community in Taiwan”, 30 May 2018, <https://www.mohw.gov.tw/dl-45845-85d149f8-05do-411f-96e7-fc9foebad7ca.html>

²⁰ The Atomic Energy Council, ‘蘭嶼貯存場安全管制’ (The Safety of Lanyu Storage Site), 30 November 2021, https://www.aec.gov.tw/fcma/%E7%AE%A1%E5%88%B6%E8%83%8C%E6%99%AF/%E8%98%AD%E5%B6%BC%E8%B2%AF%E5%AD%98%E5%A0%B4%E5%AE%89%E5%85%A8%E7%AE%A1%E5%88%B6--1_10.html

²¹ See also International Covenant on Civil and Political Rights, Article 27.

and NT \$2.5 billion (US \$85 million) in compensation, but the government has not yet set a precise timetable for the relocation.²²

The Atomic Energy Council of the Executive Yuan stated in a report on August 11, 2021, that the removal of the 100,000 barrels of nuclear waste from the Lanyu Storage Site would be completed no later than the end of 2030 but did not provide an exact schedule, citing the need for communication with the affected communities first.²³ It has repeatedly mentioned that the issue is still under discussion through semi-annual meetings with relevant government departments.

6.3 PRACTICAL PLANS OF PRESERVATION OF INDIGENOUS CULTURE NEEDS FURTHER IMPROVEMENT

According to the Statistics Department of the Ministry of Education, the dropout rate of indigenous students in primary and secondary school within the 2018 academic year was 0.8%, 4 times higher than the 0.2% average rate in the general population.²⁴

According to Ministry of Education's statistics for the 2018 school year (from September 2018 - June 2019), only 3.9% of principals and 1.1% of teachers at schools of all levels (excluding kindergartens) had claimed Indigenous identity. Among the 360 key Indigenous schools, only 80 reached the Indigenous staff ratio of 22.22% stipulated by article 34 of the Education Act for Indigenous Peoples. The shortage of teachers from Indigenous communities has become an issue that the Ministry of Education must address. The data gives a warning sign that Taiwan has not achieved equality in education.

6.4 RECOMMENDATIONS

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- Develop evidence-based Indigenous peoples' health policies with regular reporting. The research should be policy-specific and clarify resources needed, make recommendations, conduct post-implementation surveys, and provide practical advice on policy revision;
- Introduce and adopt the Health of Indigenous Peoples Act and ensure equal access to healthcare and medical resources for Indigenous peoples;
- In accordance with Article 15 of the ICESCR, ensure that new legislation and projects do not negatively impact the human rights of Indigenous Peoples;
- Genuinely consult Indigenous people and their members on policy design, resources, and health needs;
- Consider to ensure the preservation of Indigenous cultural diversity as one of the core issues in Taiwan's education.

²² The Ministry of Economic Affairs, the Executive Yuan approved the "compensation for the Loss of the Use of Nuclear Waste Storage Site at the Indigenous Reserved Area in Orchid Island" on October 18, 108, and the Ministry of Economic Affairs said it will realise the promise to the Tao People as soon as possible, 18 October 2019, www.moea.gov.tw/Mns/populace/news/News.aspx?kind=1&menu_id=40&news_id=87863.

²³ Response from the Atomic Energy Council to "Why Can't Lanyu Nuclear Waste be moved out" posted on Facebook on 11 August 2021, <https://www.aec.gov.tw/trmc/newsdetail/publicopinion/5690.html>.

²⁴ Department of Statistics, Ministry of Education. (2018). "An Overview of Indigenous Peoples Education.", <https://bit.ly/3wj4art>.

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TAIWAN

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

3RD REPORTS, 22-26 MAY 2022

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

In this submission, Amnesty International emphasizes concerns with regard to human rights issues relating to the COVID-19 pandemic; the death penalty; the right to privacy, in particular the application of facial recognition technology and the use of digital identification; the use of less lethal weapons in the policing of assemblies, and the case of the Sunflower Movement; migrant workers' rights; and the rights of Indigenous peoples.