

# **2018 NGO Report on Governments' Response to Conclusions and Recommendations of the Review Committee**

## **Joint submitting organizations:**

Awakening Foundation  
Intersex, Transgender and Transsexual People Care Association  
Marriage Equality Coalition Taiwan  
Mental Health Association Taiwan  
Modern Women's Foundation  
Tainan Gender Equality Association  
Taipei Women's Rescue Foundation  
Taiwan Alliance of Anti-Forced Eviction  
Taiwan Alliance to Promote Civil Partnership Rights  
Taiwan Association for Human Rights  
Taiwan Gender Equity Education Association  
Taiwan Tongzhi (LGBTQ+) Hotline Association  
The Garden of Hope Foundation  
The League for Persons with Disabilities, R.O.C.

## **Conclusions and recommendations on item 6: Comprehensive law on gender equality**

1. Response to item 3.1 of the National Report. The government has yet to establish a comprehensive law that covers all aspects of gender equality, such as the draft Gender Equality Basic Law which has been stalled for many years, and has not been released to civil society. We demand that the government swiftly releases a timetable for the process of drafting relevant laws.
2. Regarding intersectional discrimination suffered by women with disabilities, according to an estimate by United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), one-in-six people in the Asia Pacific have some form of disability, but the Taiwanese government classifies the disabled as a special group, tasked to specialist physical and mental disability departments. So when different departments carry out data collection on their work, set public policies and provide services, people with disabilities are frequently not included in their considerations. Women with disabilities are a particularly marginalized group. The Convention on the Rights of Persons with Disabilities (CRPD) regards denial of universal access<sup>1</sup> to the disabled and denial of reasonable accommodation<sup>2</sup> as discrimination. We request the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) committee, when assessing policy formation on gender equality related educational campaigns, public services and information dissemination, to consider whether the government is actively pursuing universal access and reasonable accommodation, to ensure women with disabilities can enjoy the same guarantees of basic equality as other women, especially in aspects of parental support, reproductive health, prevention of violence, access to education and employment rights.

## **Conclusions and recommendations on item 7: Repeal of discriminatory laws and provisions**

3. Response to sections 2.4-2.6 of the National Report. The government has yet to

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<sup>1</sup> CRPD General Comment No. 2

<sup>2</sup> CRPD Article 2

comprehensively identify current discriminatory laws and provisions, and either reform or repeal them. For example, in article 231-1 of the Criminal Code, “use of violence (and) threats” to have sexual intercourse is actually a form of human trafficking and sexual exploitation, but the article is in the Offenses against Morality chapter, intended to uphold “sexual morals and healthy practices in society”, which not only fails to protect the human rights of the victim, but is a secondary attack on the victim’s character. Again in article 239 of the Criminal Code on the crime of adultery, legally men and women appear to be equal, but in reality this creates a practical inequality against women, and should be speedily repealed<sup>3</sup>.

4. Article 1 of Taiwan’s Genetic Health Act<sup>4</sup> states that the law is enforced to “upgrade population quality”. Articles 9-11 allow a statutory agent to agree to abortion and sterilization on behalf of a deranged woman, and also require doctors in cases of incurable “genetic, infectious or psychiatric disease detrimental to reproductive health” to actively advise sterilization. At the same time, in the Guidelines on Grants for Fertility Regulation for Special Groups used by the Health Promotion Administration, Ministry of Health and Welfare, people who qualify for sterilization surgery, birth control and induced abortion funding, apart from low-income householders, also include people with (1) mental health conditions, (2) diseases detrimental to reproductive health, and (3) a physical or mental disability identification card. The above regulation fundamentally violates the human dignity of people with physical or mental disabilities, and clearly breaches Article 23(c) of CRPD. This law was sent to the Legislative Yuan for consideration as early as 2012. We demand: the government should explain the direction and progress of law reform.

## **Conclusions and recommendations on item 8: National human rights institutions**

5. Response to section 3.9 of the National Report. In past conclusions to national reviews of the implementation of international human rights instruments in Taiwan, including both reviews of the International Covenant on Civil and

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<sup>3</sup> For details see sections 115-118 of this report

<sup>4</sup> The Chinese word for “eugenics” is translated into the more neutral English word “genetic” in the official English translation of Taiwan’s Genetic Health Act.

Political Rights and the International Covenant on Economic, Social and Cultural Rights (hereafter shortened to the Two Covenants), the second review of CEDAW, the recently completed first review of the Convention on the Rights of the Child (CRC), and the first review of the CRPD, each international review committee has consistently recommended that the Taiwanese government set a specific timeframe to swiftly ratify and establish a national human rights institution in accordance with the Paris Principles.

6. As early as 2013, after the first review of the Two Covenants, some of the civil society representatives on the Human Rights Advisory Council of the Office of the President established a National Human Rights Institution Research and Planning Team<sup>5</sup>, which completed draft plans to establish a choice of three different kinds of national human rights commissions: (1) a national human rights institution established completely independently, (2) established under the Office of the President, (3) established under the Executive Yuan. But the Kuomintang government lacked the political will to set up a national human rights institution, and the proposal was continuously stalled by the interference of the former Vice President Wu Den-yih.
7. In the presidential and legislative elections of 2015 in the aftermath of the Sunflower Movement, Democratic Progressive Party (DPP) candidate Tsai Ing-wen both before and after Human Rights Day in 2015 announced that after her election she would establish a national human rights commission. But when the DPP took power on May 20, 2016, this policy was again put on the shelf, and the government shifted its focus to the eleven Control Yuan members additionally nominated by the Office of the President, stating this would serve the dual functions of “protecting human rights” and “monitoring the government”. The suspicion is this move broke the DPP’s political promise to comprehensively amend the constitution and abolish the Control Yuan. As of today the Legislative Yuan has yet to take any action on the issue.
8. It took until completion of the second review of the National Report on the Two Covenants for President Tsai Ing-wen, in her remarks at a luncheon to thank members of the international review committee, to clearly state there would be

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<sup>5</sup> For minutes and documents from the relevant meetings see:  
<http://www.humanrights.moj.gov.tw/np.asp?ctNode=34281&mp=200>

a “clear decision on the proposal to establish a national human rights commission by the end of this year”. But by Human Rights Day on December 10, 2017, President Tsai Ing-wen and the DPP government had yet to make any statements on the issue of this important human rights protection machinery. Yet another broken promise.

9. We reaffirm past conclusions and recommendations of international review committees for international human rights covenants, and strongly encourage the Tsai Ing-wen government not to forget its early political promises and swiftly complete the proposal to establish a national human rights institution. No matter what option the Tsai Ing-wen government chooses, it must not violate the minimum standards of the Paris Principles<sup>6</sup>. The proposal should be submitted to the Legislative Yuan as soon as possible, and democratically reviewed together with the version proposed by civil society.

### **Conclusions and recommendations on item 9: National machinery on women and gender mainstreaming**

10. Response to sections 3.4-3.6 of the National Report. The Executive Yuan’s Department of Gender Equality still lacks sufficient funding and personnel. Its annual budget is even being cut year by year. This will have a negative impact on the display of public authority needed to achieve genuine equality.
11. Response to section 3.12 of the National Report. Regarding the commitment of the central government and local governments in promotion of gender mainstreaming, we suggest: (1) there should be a comprehensive reassessment and reduction in unnecessary and repetitive examinations for administrative

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<sup>6</sup> The so-called Paris Principles are “a set of international standards which frame and guide the work of National Human Rights Institutions”. The principles were defined by the United Nations Human Rights Commission at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights held in Paris on October 7–9, 1991. They were adopted by the United Nations Human Rights Commission by Resolution 1992/54 in 1992, and by the UN General Assembly in its Resolution 48/134 in 1993. The principles: vest national institutions with the competence to promote and protect human rights, and give national institutions as a broad mandate as possible in other areas of accountability, which shall be clearly set forth in constitutional and legislative texts. Apart from specifying the composition and sphere of competence of national institutions in constitutional or legislative texts, and giving national institutions as broad a mandate as possible, the principles stipulate the key elements of independence, pluralist composition, specific duration of the mandate of members, and adequate funding.

officials, so that civil servants can devote more time and energy to learning and advancing in knowledge about gender equality; (2) reviewing and clarifying the application and subsequent results of the six main tools<sup>7</sup> of gender mainstreaming in Taiwan up to today (for example: Is gender impact assessment treated in a perfunctory manner? Are relevant gender equality regulations, policies and strategies of central government departments all properly discussed in consultation with the Gender Equality Committee of the Executive Yuan? Is there impact assessment of the establishment and operations of local governments' gender equality machinery, such as Committees of Women's Rights Promotion?), and produce strategies on how to improve in the future.

### **Conclusions and recommendations on items 10 and 11: CEDAW training and impact assessment**

12. Response to section 2.7 of the state report. Although civil servants responsible for drafting relevant national laws have probably taken CEDAW training at some point, legislators are neither subject to assessment nor need to take CEDAW related courses and training. In addition, gender mainstreaming training courses in various government agencies are treated in a perfunctory manner, and course content is not transparent.
13. Item 10 of the conclusions and recommendations of the international review committee advises that the Taiwanese government assess the impact of CEDAW related training. But section 15.19 of the National Report only explains how assessment is conducted. We demand that the state releases the results of the impact assessment, and explains how it will be used to revise future training plans.
14. Response to section 15.22 of the National Report. As of today, verdicts from all levels of Taiwanese criminal, civil and administrative courts have only used CEDAW in 13 cases, which illustrates that legal institutions are not yet accustomed to using CEDAW as a basis for verdicts.

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<sup>7</sup> Gender awareness-raising, gender equality machinery, gender statistics, gender impact assessment, gender budgeting, gender analysis

## **Conclusions and recommendations on item 12: Access to justice**

15. Response to section 15.11 of the National Report. Apart from the number of times people are served at national service centers, we recommend the state should collect data and statistics on the gender ratio, case types and service content of the people receiving services.
16. Section 15.14 of the National Report only mentions offering the public various legal assistance and contracted translation services, but does not clarify whether courts or service centers offer universal access and universal information (such as the internet, promotional information and various application documents) to people with disabilities.
17. The Code of Criminal Procedure requires the prosecution, police, investigation system and law courts to contact the family or social worker of a plaintiff or witness for assistance to create an oral statement only when he or she is “unable to make a complete statement”. People with intellectual disabilities, who are more articulate but in reality still unable to understand their position in the legal process, find it difficult to get timely assistance. At the same time, legal workers have a very low understanding of people with disabilities. We recommend the government should assess relevant regulations to ensure people with disabilities are given timely assistance during the legal process, including the establishment of mental health law courts.
18. We are happy the government has established indigenous language contracted interpretation, but since Taiwan currently has 16 indigenous tribes, contracted interpreter training must be strengthened. In addition, indigenous languages in the same tribe may still vary in grammar, usage and meaning in different regions, for example, there are idiomatic differences between the Amis language in Pintung and Hualien, which often means the content of court statements is not accurately translated in court. We recommend: (1) strengthening the skills training of contracted interpreters in regional differences of indigenous languages, and including notes on the expertise of contracted interpreters in the name list of each court; (2) giving high and district courts a resource list of contracted interpreters, and making regular and timely updates to the information.
19. The National Report does not contain statistical data on human trafficking and

sexual exploitation, sexual assault or sexual harassment of female foreign spouses or migrant workers. The state is not able to provide effective interpreters for related cases, and sometimes even asks broker company staff to be interpreters, which creates a barrier for disadvantaged women to access law court resources, leading to discriminatory verdicts.

### **Conclusions and recommendations on item 13: Gender roles and stereotyping**

20. Response to sections 5.17-5.24 and 10.4 of the National Report. According to The Survey on the Labor Force Status of People with Disabilities issued by the Ministry of Labor, the employment rate of women with disabilities is lower than men with disabilities, and the rate of women with disabilities employed in household service is higher than men with disabilities. However, the National Report does not explain how to raise gender awareness of people with disabilities nor explain how to assist people with disabilities in acquiring parental skills. For example, the Report should state whether accessibility information, accessible environments and equipment, support measures, etc. are provided in related training programs.

### **Conclusions and recommendations on item 14: The roles of the media**

21. Response to section 5.25-5.28 of the National Report. News media continues to use discriminatory and objectifying language to report stories about women or cases of gender-violence. Prosecutors and judicial police frequently continue to allow the media to take images of photographs of female victims during investigations, which violates the personal rights of the plaintiff. In addition, in 2015 and 2016 respectively, only 7 and 4 cases violated the “Guidelines on Broadcast Media Reporting on Gender Related Content”, and only received warnings, administrative guidance or a fine of NT\$30,000-60,000, showing a lack of administrative effectiveness. We recommend the government follows the recommendation of the expert committee and speedily establishes a media ethics commission to oversee suchlike situations, otherwise relying on a self-regulation mechanism within the industry will be limited by the effectiveness

of self-regulation.

22. In addition, some of the primetime soap operas on television stations for many years have almost exclusively revolved around male-female conflicts, which continue to perpetuate and deepen gender stereotypes<sup>8</sup>. Since the content of commercial dramas usually reflects social norms or market demand, and broadcasts of this genre of programs have long gone against the spirit of “raising gender equality consciousness and eliminating stereotypical gender roles” in the above guidelines, we recommend the government should take appropriate measures to deal with this matter.
23. Response to section 5.29 of the National Report. Regarding online complaints about inappropriate content and gender discrimination, Taiwan does not have a unified competent authority for the internet. Currently the government commissions iWIN to deal mainly with complaints regarding online content related to child and adolescent regulations, but does not specifically carry out statistical analysis on cases of complaints about gender discrimination. We recommend future categorization of complaint cases should include an additional category of gender discrimination, and complementary statistical analysis should be carried out.

### **Conclusions and recommendations on items 15 and 16: Trafficking and exploitation of women**

24. Response to sections 6.2 and 6.22 of the National Report. The number of human trafficking cases is falling year by year, partly due to problems with the criminal investigators’ transfer system and their lack of sensitivity. In addition, in recent years cases of sexual exploitation and human trafficking using online and other technology have become more commonplace, but judicial police are frequently unable to effectively identify sexual exploitation cases, and instead fine victims for breaking the Social Order Maintenance Act, and send them to a detention center for repatriation, or punish them under the Criminal Code’s offenses against morality. Even when judicial police arrest offenders (or syndicates) for

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<sup>8</sup> This kind of show is broadcast every evening Monday to Friday from 8:00-10:30, and repeated [at the following afternoon](#). Each show may be as long as 300-400 episodes. Needless to say, the program content has a significant impact on audiences.

the crime of human trafficking, cases indicted or sentenced by prosecutors and courts for the crime of human trafficking are extremely rare, and accurate statistics on the frequency of indictments and guilty verdicts are unavailable, which fails to protect victims and prevent crime.

## **Conclusions and recommendations on items 17 and 18: Violence against women and girls**

### *Gender awareness of judges and prosecutors*

25. Response to sections 15.29 and 15.30 of the National Report. Myths about sexual assault continue to abound in courts and among prosecutors, even though prosecutors who discriminate against women while carrying out their duties are liable to be disciplined under Article 95 of the Judges Act, the state has never release statistics on cases that have actually resulted in punishment or discipline.
26. In response to the 2015 amendments to the Sexual Assault Crime Prevention Act, the Judicial Yuan, Ministry of Justice and Ministry of Health and Welfare recently held and taught specialist courses on questioning of child and intellectually impaired victims of sexual assault, to improve the expert knowledge of legal workers and legal interview specialists. But the National Police Agency has made little effort to include in appropriate courses the important topic of questioning disadvantaged witnesses in cases of sexual assault of children, adolescents and people with intellectual impairments. To improve the specialist knowledge of the police, we recommend the National Police Agency should plan and hold specialist trainings and retrospective supervision and training on questioning victims of sexual assault who are children or intellectually impaired.
27. In the process of domestic violence and family affairs hearings, it is not uncommon to see judges with stereotypical ideas about gender or who use discriminatory language. Judges frequently believe “restoring relationships” is more important than “protecting the safety and rights of women victims and their children”, citing “traditional family ethics” as the reason. Ignoring the personal safety of victims and their children, and heightening their fear of the

perpetrator, judges urge victims to “put aside ill feelings” and “forgive”, pressuring victims to withdraw protection orders, protection order extensions and so on. If victims are unwilling to comply, judges may exercise their power of authority to demand cooperation from victims, cast doubt on their moral faults, and even say, “If you’re not willing to cooperate, I don’t know what the verdict will be” and so on.

28. To give an example, a victim of domestic violence was asked by the judge to restore the relationship with her ex-husband, ordering the victim to settle in court. Under extreme pressure, fear and nerves the victim fell ill on the spot, forcing the hearing to stop. In addition, when judges preside over court cases, they may insinuate that problems with the victim’s employment or parenting skills caused the disruption to domestic harmony, repeat the gender stereotype that “women shouldn’t be too aggressive”, and share their personal experience of “serving tea to their partner”, all of which discriminates against women.
29. In addition, when presiding over protection order cases, some judges, no matter how violent, dangerous or urgent the situation, and even if the perpetrator has threatened or harmed the victim, will still refuse the victim’s request to apply for separated questioning, and at the same time will not facilitate protection of the victim and her family in court, ignoring the rights of the victim and her need for psychological security. Similar cases are too numerous to mention, where the victim is suppressed by the judge’s power to make a ruling or judgement over her, and in such an unequal power-relationship, can only bite her tongue, not daring and not knowing how to make a complaint.
30. According to Judges Act regulations, only qualified agencies or groups may request the Judicial Evaluation Committee to initiate an individual evaluation of a judge. The interested party is not qualified to make a request. Section 15.29 of the National Report states that the judges’ questioning system is internally and externally monitored, and there are currently no cases in the above mechanism, but the above lacks gender awareness and the concept of gender violence, and produces an endless list of cases clouded by doubts over the attitude of the authorities, which is enough to show that the current evaluation system is incapable of fulfilling its function to produce constructive evaluations.
31. To urge judges to follow the spirit of CEDAW when evaluating domestic

violence and family affairs cases, we recommend to the Judicial Yuan that: (1) article 31 of the Judges Act on comprehensive evaluation of judges should include knowledge of gender equality and gender violence related issues as measures for growth and improvement in professional ability; (2) gender equality rights, gender violence concepts and gender equality indices must be included in internal and external evaluation mechanisms to genuinely achieve effective evaluation and improvements in professional abilities; (3) course materials for relevant trainings should include transcripts of conversations with civil society groups or interested parties, and collections of positive and negative examples of domestic violence and family affairs cases and judgement. These case studies can help trainees examine case studies of domestic violence myths, gender discrimination and inappropriate questioning, reflect on their own gender awareness, and learn about the appropriate attitude to and manner of questioning.

### *Implementing the Domestic Violence Prevention Act*

32. Response to section 2.19 of the National Report. In recent years a string of headline news stories about deaths and injuries due to stalking has turned public attention to stalking and harassment law and prevention. According to the 2013 “Survey of high school/vocational college and university female students’ experiences of stalking and harassment”<sup>9</sup> by the Modern Women’s Foundation, one in eight young women have been stalked. Also, according statistical analysis by the Modern Women’s Foundation of stalking consultation services over the last two years, 90% of victims are women, the period of being stalked is as long as 2.3 years, and 75% of victims had clearly refused the perpetrator who continued to stalk and harass them.
33. Taiwan’s laws currently lack clear regulations on stalking and harassment. Only within the Domestic Violence Prevention Act and the Social Order Maintenance Act are there related regulations, but the Social Order Maintenance Act sets the highest fine for stalking at NT\$3,000, while the Domestic Violence Prevention

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<sup>9</sup> For the results of this survey see:

[https://www.38.org.tw/news\\_detail.asp?mem\\_auto=216&p\\_kind=%E7%8F%BE%E4%BB%A3%E6%B6%88%E6%81%AF&p\\_kind2=%E5%AA%92%E9%AB%94%E5%A0%B1%E5%B0%8E&p\\_kind3=%E7%84%A1](https://www.38.org.tw/news_detail.asp?mem_auto=216&p_kind=%E7%8F%BE%E4%BB%A3%E6%B6%88%E6%81%AF&p_kind2=%E5%AA%92%E9%AB%94%E5%A0%B1%E5%B0%8E&p_kind3=%E7%84%A1)

Act only applies to family members or intimate partners. If the circumstances of the stalking involve sexual harassment, although relevant sexual harassment laws can be used to make a complaint, in most cases the offender cannot be directly punished. In addition, although currently under the Criminal Code a single act of stalking or harassment can be punished, most are minor offenses that are only sentenced with a commuted fine or short imprisonment. Much stalking and harassment is not covered by modern laws, victims of stalking who call the police are not protected by the law, and the authorities cannot exercise their powers. Obviously the present law cannot deal with the “repeated, continuous” and “varied” nature of stalking, which is difficult to stop in an effective and timely way, let alone prevent and follow-up with protection and punishment.

34. Although civil society has already submitted a Draft Stalking and Harassment Prevention Act to the Legislative Yuan, which was sent to the committee stage after one reading more than a year ago. After many delays a draft from the Ministry of the Interior has yet to see the light of day. We hope an official version can quickly be sent to the Legislative Yuan, put on the agenda, debated, passed, and implemented on a fast-track to practically regulate and prevent the social problem of stalking and harassment, effectively curb stalking crimes, and give the public security and freedom from stalking or harassment.
35. Response to section 2.23 of the National Report. Although the government amended the Domestic Violence Offender Treatment Program Regulations in 2016, according to the Judicial Yuan’s gender statistics, from January-April 2017, only 995 offender treatment plans were issued. Out of the total number of 12,674 protection order cases, this is an adjudication rate of only 7.85%. Such a low percentage makes it difficult to effectively change the violent behavior of domestic violence perpetrators.
36. Response to section 2.25 of the National Report. The central government subsidizes local governments and civil society groups to support perpetrators of domestic violence who volunteer to join prevention programs. From “2013 to 2016, an average of 22 cases received funding each year”. Clearly this level of funding is seriously inadequate and should be increased in coming years, especially when compared to the 2016 budget of NT\$240 million for the

domestic violence and sexual assault prevention fund. In addition, “domestic violence offender treatment” should not just be “voluntary”, but should emulate international models to include legally compulsory measures.<sup>10</sup>

37. Response to section 2.27 of the National Report. Adjudication on issuing emergency protection orders on average takes less than the required 4 hours, which should be lauded. But according to the Judicial Yuan’s gender statistics of January-October 2017<sup>11</sup>, 7,632 cases of temporary protection orders on average still need 27 days, and 13,941 cases of standard protection orders still need 49 days for completion. We recommend the number of days needed for completion should be shortened to give timely and effective protection to victims of domestic violence.
38. Regarding vulnerable groups. Over 90% of people with physical and mental disabilities do not live in institutions. The state should explain how places other than boarding schools and institutions can prevent violence against women and girls with disabilities. For example: Do women’s shelters have universal access facilities and support measures? To what extent are anti violence promotional and teaching materials, promotional channels and promotional activities accessible to members of the public with different kinds of disabilities (vision, hearing, mobility, psychological and others). For example, are there large print versions, sign language versions, promotion venues with universal access etc? We demand the state explain its current policy, and release a specific plan and timetable for future preferred measures.
39. In addition, the National Report completely overlooks statistical data on same-sex intimate partner violence. The government has yet to invest sufficient resources into studying the causes, dynamics and intervention strategies for same-sex intimate partner violence.
40. Although same-sex couples were included within the guarantees of the Domestic Violence Prevention Act in 2007, according to the 2012 “Same-Sex Couple Intimate Partner Violence Survey”<sup>12</sup> by Taiwan Tongzhi (LGBTQ+) Hotline Association and Modern Women’s Foundation, 58% of LGBTI respondents did not know the Domestic Violence Prevention Act already

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<sup>10</sup> For example, the New York Model for Betterer Programs: <http://www.nymbp.org/>

<sup>11</sup> See: <http://www.judicial.gov.tw/juds/report/eg-25.htm>

<sup>12</sup> For the results of this report see: <https://hotline.org.tw/news/201>

applied to same-sex relationships, and respondents were generally very concerned about the LGBTI friendliness of relevant agencies.

41. Victims of same-sex intimate partner violence are very likely to ask the police for assistance, but the Taiwanese police lack systematic educational training on LGBTI issues. Specialist staff in the intimate partner violence case system frequently lack sufficient understanding of the particular problems of the LGBTI community. There is also a clear urban-rural divide in treatment of LGBTI individuals. However, providing educational training to relevant specialist staff in LGBTI issues currently heavily relies on a very few civil society organizations.
42. The majority of shelters for victims of intimate partner violence only accept women by biological sex, and cannot shelter transgender women. Furthermore, shelter organizations for child and adolescent victims of domestic violence often have an anti-gay, anti-bi and anti-trans culture, and lack the capacity to serve LGBTI minors. In other words, there is a serious lack of shelters for LGBTI survivors of violence, and especially shelter resources for children and adolescents who identify as LGBTI.
43. In light of the situation where cases of people seeking assistance for same-sex intimate partner violence are currently few and far between, we demand: the government should appoint permanent expert consultants for intimate partner violence prevention related institutions, and build up and enhance practical experience and knowledge in services for same-sex cases, which at the same time will create a staff support system.

## **Conclusions and recommendations on items 21-24: Education and training**

### *Gender segregation in higher education*

44. Regarding the continuing presence of gender apartheid in higher education, we recommend: (1) the government combines “encouraging female students to enter science and technology fields” in the National Report section 5.14 with the Ministry of Science and Technology’s gender responsive budget to increase the number of female scientists; (2) strengthening elimination of gender stereotypes by encouraging men to enter into the traditionally female sphere of

education studies.

45. The National Report does not explain the effect of the gender apartheid on women and girls with disabilities. According to the 2011 Living Conditions of People with Disabilities Needs Assessment Survey<sup>13</sup>, only 11.64% of people with disabilities aged 15 and above have high education qualifications, which is far lower than the average of 38.18% of citizens who have higher education qualifications. In that group, the percentage of women with disabilities who have higher education qualifications (7.3%) is nearly half that of men with disabilities (13.99%).
46. For women with disabilities in higher education, apart from being held back by gender stereotypes, another source of discrimination comes from the attitude of schools that exclude people with disabilities. For years the prospectuses of many university departments have noted that students with disabilities should “think carefully”. For example: National Central University Department of Electrical Engineering states: “Lecturers in our department all use spoken instruction, if candidates have hearing difficulties in class they should think carefully before applying”; China Medical University states: “laboratory courses include field studies, so candidates with visual impairments, color blindness and mobility impairments should think carefully”; the Chung Chou University of Science and Technology Department of Health Food briefing asks students: “to be able to walk up and down stairs unaided, and note that lecturers all use spoken instruction”, and does not offer information on a timetable for universal access improvement or other reasonable accommodation measures, which regrettably discourages students with disabilities from applying<sup>14</sup>, creating indirect discrimination and intersectional discrimination.
47. We recommend: (1) the government should analyze the pressures on women with disabilities entering higher education and choosing to study natural sciences, engineering and technology fields, including: existing gender stereotypes, the system and culture of channels to further education, on campus provision of universal access facilities and support services, etc.; (2) active removal of the limits and barriers in higher education to people with disabilities

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<sup>13</sup> See: <https://www.mohw.gov.tw/dl-4758-648b1bea-f391-4cc2-88d7-314c7df85662.html>

<sup>14</sup> See: 2018 University & College Admission Prospectus for People with Physical & Mental Disabilities

entering the academic department of their choice, including the establishment of anti-discrimination principles, the establishment of a timetable to effectuate universal access facilities and services on higher education campuses, and the establishment of principles for the provision of reasonable accommodation.

### *Gender diversity and equality in education*

48. Regarding the drive to eliminate discrimination through educational measures, section 10.40 of the National Report mentions the status of gender equity education, which appears to have been included in course credits of pre-service teacher education programs. But in terms of inclusion in compulsory credits, there is no room for new courses such as gender equity education. Section 10.41 of the National Report, on the achievements of gender equity in social education, makes no mention of gender equity education “taught outside schools”. In light of this, we recommend: (1) gender equality be a compulsory subject in teacher training courses to improve teachers’ knowledge of gender equality; (2) gender equity education be actively promoted among students and parents.
49. Regarding gender diversity education, section 10.42 of the National Report only brings up press releases, but does not itemize specific educational practices. Also, since 2011 LGBTI hatred has started to raise its ugly head in Taiwanese society. There have been malicious attacks on Gender Equity Education Act and teachers who teach gender equity education, especially sex education and LGBTI education. Yet the Ministry of Education has not release a single statement in support of or to uphold the rule of law. Clearly press releases are an empty pledge. In addition, section 10.44 of the National Report mentions the “Gender Equity Education in Junior High and Elementary School Textbooks – Gender Prejudice Assessment Indicators”, which have been sent to textbook publishers and editorial committees for reference use, but when gender equity education materials were attacked or questioned as mention above, the Ministry of Education did not respond by using these indicators.
50. Section 10.45 of the National Report, which mentions e-learning courses, does not explain how they are promoted or offer data on the number of subscribers. Section 10.46 of the National Report points out that the review process of teaching materials for different educational stages will be strengthened, but does

not explain why the current textbook review machinery is unsuitable. Moreover, in existing textbooks, the names of LGBTI groups and online resources that would be useful to LGBTI students have been removed because “parents complained”, which ignores the requirement for teachers to educate and provide counseling resources.

51. Current elementary and junior high school textbooks only have very little content on sexual orientation and gender identity, which restrain LGBTI children of resources to help them explore their identity and learn from role models. In addition, elementary school teachers rarely receive LGBTI issues of gender equity education, which makes elementary schools collectively turn a blind eye to the situation of LGBTI children.
52. Anti-LGBTI academics and groups continue to misquote academic documents on same-sex couples and gay adolescents, even using fake data to attack gender equity education, and overlook age-appropriate teaching expertise that already exists in Taiwan’s gender equity education. Moreover, Taiwan’s Ministry of Education has never offered an opinion or got involved in these kinds of controversies, which harm academic ethics and hold back the advancement of the rights of children who identify as LGBTI.
53. To effectively promote gender equity education, the Gender Equity Education Act in Taiwan clearly requires Taiwan’s central competent authorities, regional competent authorities, and schools of all levels to establish gender equity education committees. However, since 2011, anti-LGBTI religious groups acting as “parents” started opposing gender equity education. As of today, the central government has done nothing, allowing the groups put pressure on city and county councils, and even force local government gender equity committees to increase the number of parental seats to as many as four times, which scorns educational expertise and allows religion to interfere in education. When county and city mayors oppose gender equity education, the minister of education and policy implementation agencies do not come forward to make statements or demand respect for the rule of law.
54. In 2014, without checking the gender consciousness of the candidates, the Ministry of Education appointed several members to sit on Gender Equity Education Committee—the highest level committee under the Ministry of

Education, who were notoriously homophobic and had opposed LGBTI inclusive education. Many NGOs protested against their appointments, but the Ministry of Education refused to make any change. In 2016, the Ministry of Education again appointed representatives from the anti-LGBTI parents group as Gender Equity Education Committee members. As a result, the Gender Equity Education Committee did not operate fully and smoothly for the terms of 2014-15 and 2016-17. The Ministry of Education in 2017 announced the “Gender Equity Education Committee Members Selection Regulations”, specifying that gender equity committee members “must maintain gender equity consciousness, and not behave in ways defined as gender discrimination in the Gender Equity Education Act, or ridicule, attack, threat, or sexually bully anyone based on sexual orientation or gender identity.” However, these regulations are currently only applied to central government level, and are not applied to gender equity education committees at the local government level and all levels of schools.

55. Summing up sections 49-54, we recommend the Ministry of Education should respect and defend the legal spirit of the Gender Equity Education Act: (1) the Ministry of Education should actively promoting student-centered gender equity education, (2) the Ministry of Education should do research and develop LGBTI inclusive educational materials suitable for schools of all levels, (3) the educational competent authorities should carry out assessment and research on textbooks according to the “Gender Equity Education in Junior High and Elementary School Textbooks – Gender Prejudice Assessment Indicators”, (4) regional authorities and schools at all levels should ensure gender equity committee members with gender equity conscious, and should establish complaints mechanisms, so if gender equity education committee members act or speak in a way that shows gender discrimination (including anti-LGBTI behavior), which is confirmed after an investigation, they will be disqualified and removed from the committee board.

#### *Sexual bullying and sexual harassment on campus*

56. Regarding sexual bullying and sexual harassment on campus, the National Report makes no mention of relevant data on counseling for victims and

perpetrators of sexual assault, sexual harassment or sexual bullying. In addition, concerns have been raised over sexual assault, abuse and other incidents in Taiwan's residential institutions and specialist schools, but the situation has not improved. We recommend the state should carry out an analysis of data on the scope and prevalence of sexual bullying and sexual harassment in all categories of residential institutions and specialist schools, to assess whether prevention work is effective or not.

57. In addition, regarding teachers who while performing their duties are sexually harassed by fellow teachers, the Act of Gender Equality in Employment applies. However, according to article 2 of this act, complaints, remedies and processing procedures for educational personnel shall be handled in accordance with the Teachers' Act regulations. Yet in practical applications, only a teacher who has been punished as a perpetrator can lodge an appeal if dissatisfied with the decision according to the Teachers' Act. A teacher who is a victim has no recourse if dissatisfied with a decision. There is clearly a disparity between the legal protection given to victims and perpetrators in cases of sexual harassment in education.

58. We recommend: (1) In deliberations on legal protections in the Teachers' Act, or other legal interpretations of safeguards for civil servants<sup>15</sup>, recourse channels, measures and procedures should be established for plaintiffs who are dissatisfied with decisions. (2) The Ministry of Education, the Ministry of Labor and the Ministry of Health and Welfare should jointly discuss and approve an appropriate authority, complaints system and procedural process; establish a working model; and officially inform schools at all levels and labor affairs competent authorities, to create a benchmark for managing similar cases in the future.

### *Adolescent pregnancy*

59. Section 10.15 of the National Report mentions the "2015 Amendment Announcement on 'Protecting the Rights of Pregnant Students to Education and Counseling Assistance'", the content of which focuses on dealing with the

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<sup>15</sup> For example, the Civil Service Protection and Training Commission April 13, 2011 CSPTC No. 1000005427 announcement

issue and not “preventing” it <sup>16</sup>. We recommend the government should first clarify statistical data on adolescent pregnancy.

60. Regarding channels for information and services on reproductive and sexual health, the National Report does not explain how to give girls with disabilities the support services they need to return to school during and after pregnancy. Also, section 12.45 of the National Report mentions the Adolescent Pregnancy Help Website, which despite being the national integrated portal for advice and resources does not meet standards for universal access.

## **Conclusions and recommendations on items 25-27: Employment and economic opportunities**

### *Family responsibilities and women’s participation in employment*

61. Response to section 11.41-11.43 of the National Report. Regarding 2-6 year-olds the National Report states “in 2016 96.3% of 5-year-old children were in preschools”, and in 2020 the ratio of public to private preschools will be adjusted from the original 3:7 to 4:6. We agree with the policy direction of increasing the proportion of public preschools. The only reminder for the government is that among these, preschools offering childcare services for 5-year-old children make up the highest proportion, whereas there are far too few that offer childcare services for 2-3 year-olds. If the number of 2-3 year-old children in preschool is divided by the total population of 2-3 year-olds, we find that the percentage of 2-3 year-old children in preschool is just 13.92%, creating a service gap. The National Report does not point out this situation or set targets and a timetable for improvement.
62. In reality in the last four years, the government has not taken up any active measures to universalize public childcare services for 0-2 year-olds. The percentage of households with children under the age of 2 years old in childcare outside the family is 9.4%. When responsible government officials are asked in media interviews, governmental meetings, Legislative Yuan public hearings and a variety of other situations, how the government plans to increase public childcare coverage for 0-2 year-olds, they even say the current situation of low coverage for childcare outside the family for 0-2 year-olds

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<sup>16</sup> For example, the “CEDAW & CRC Joint Action Plan: Including Young Parents and their Children in the Conversation on Sex Education” organized by the Mental Health Association Taiwan, with sponsorship from the Ministry of Health and Welfare’s Social and Family Affairs Administration and Taipei City Government’s Department of Social Welfare, was classified as a prevention project.

reflects “Taiwanese parenting preferences” and say “the government only needs to provide childbirth subsidies and parental leave”.

63. Furthermore, according to research carried out in 2014 by Wang Shuyun and Zheng Qingxia<sup>17</sup>, the childcare preferences of Taiwanese parents of children between the ages of 0-2 years old are deeply influenced by class and gender inequality. As many as 82.73% of families who earn less than NT\$30,000 (approximately USD 1,000) a month care for their children themselves, and only 2.36% put their children in childcare outside the family. Only 27.25% of families who earn more than NT\$80,000 (approximately USD 2,667) a month take care of their children themselves and 23.74% put their children in childcare outside the family. In situations where the mother earns less than the father (the majority of Taiwanese families fall into this category) up to 73.38% take care of the children themselves and only 4.02% put the children in childcare outside the family. In situations where the mother earns more than the father, only 28.57% look after the children themselves, and up to 35.71% put the children in childcare outside the family. Clearly low-income families and low-earning or non-earning mothers generally cannot afford childcare outside the family, so caring for the children themselves is the only option. Government officials portray this phenomenon as “parental preference”, wholly refusing to face the fact that it is very difficult for women who are burdened with the role of family caregiver to stay in employment.
64. In addition, the state provided systems for 0-2 year-old infant and child childcare and preschool childcare are seriously deficient. Taiwanese workers currently get off work between 17:00-19:00 (or later for long-distance commuters), and the vast majority of service industry workers must work weekends or evenings. However, public childcare institutions require parents to pick up their children at 16:00-17:00, and those who work evenings or weekends have nowhere to leave their children. In addition, during school winter and summer vacations, public preschools and some private preschools do not provide childcare or only provide childcare on some days, creating a large increase in childcare costs for parents, or forcing them to leave the children at home. If there is no one at home to take care of the children, they are faced with the risk of the children having an accident. If unhelpful childcare systems and prices are not improved, it will be hard for women to find employment, and difficult for labor force participation to increase.

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<sup>17</sup> Wang Shuyun, Zheng Qingxia (2014) “Circumstances of Provision and Institutions of Expense of Child Care Services in Taiwan”, 2014 research project commissioned by the Social and Family Affairs Administration, Ministry of Health and Welfare.

65. We recommend: (1) the government should immediately produce targets and a timetable to explain how it will establish a public childcare service for 0-2 year-olds to eliminate social inequality; (2) the state should design a convenient and affordable childcare system that is compatible with labor market working hours, which should include provision of junior year after-school childcare and winter and summer vacation childcare.
66. In November 2017, the Taiwanese government proposed “deregulating one-day-off-in-seven”, extending the upper limit on monthly overtime to 54 hours”, “shortening gaps between shift times”, “delaying special time off, “verifying overtime calculation” and other regressive amendments to the Labor Standards Act, even attempting to force these through the Legislative Yuan, in a manner diametrically opposed to the trend in other countries towards reducing working hours and preventing overwork. Apart from being a step back for Taiwanese workers, their families and work equality, it also further worsens the status of women’s employment.
67. According to research by Cheng Ya-Wen et al<sup>18</sup>, the proportion of women who are overworked by their employers far exceeds that of men, especially 30-40 year-old women who burn the candle at both ends and are by far the most run down group. Over 20% of women workers are at risk of burnout. In Taiwan one-third of workers earn a monthly salary of less than NT\$30,000, including 57% who are women. The main child caregivers in Taiwan are almost always women. On average, women give birth to their first child at the age of 30.7 years old. Apart from holding down a job, after going home, working women are also burdened with the responsibility of doing the housework and caring of the children. These hidden labor hours are usually packaged as household work done in the name of love, and for a long time have been taken for granted by the government and society. Years of overwork takes its toll on women’s health, and is detrimental to family and work equality.
68. In a society with long labor hours, employers prefer workers who can cooperate by doing overtime. The proposed legal reform is going to make it harder for women to enter fulltime employment, and make pay increase and promotion even more difficult. Despite the double protection given by the Labor Standards Act, which has not yet been regressively reformed, and the Act of Gender Equality in Employment, there are still cases of women workers who cannot exercise their legal right to take time off work. In some

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<sup>18</sup> Chang Yen-Jung Chang, Yeh Wan-Yu, Chen Chun-Wan, Chen Chiou-Jong, Shih Tung-Sheng, Cheng Ya-Wen (2007), “Distribution and Correlates of Burnout among Paid Employees in Taiwan”, *Taiwan Journal of Public Health*, 26(1): 75-87.

cases they become so exhausted they are prescribed bed rest to prevent miscarriage, or actually have a miscarriage, because they are afraid of losing their job, and not being able to afford the rent, baby formulae and diapers. As for women who are not able to stay in fulltime employment, and must support their economic needs through several part-time jobs, proposed legal reforms will further destabilize their economic status. Women who frequently enter and leave the labor market, because they have to care for children or a relative, suffer from long-term overwork, and cannot enjoy annual paid leave, maternity leave and other measures that a worker with a stable job has, which is also detrimental to their future life in retirement.

69. We demand: before executing major labor policy or law reforms, the government must release a gender impact analysis by industry sector and age bracket to reduce the risk of overwork.

### *Gender Wage Gap*

70. Response to section 11.29 of the National Report. The international expert committee recommend developing “concrete measures with specific targets and enforcement mechanisms to address the wage gap and other barriers to ensure that women enjoy equal pay for work of equal value”, and did not recommend that the government once again commissions explorative research into its feasibility. For example, the Equal Pay Day for both sexes in Taiwan announced by the Ministry of Labor should not be limited to “promotional slogans”, but needs to involve salary transparency, promotion of women’s membership of trade unions, promotion of policies to strike a balance between work and family, and other concrete measures.
71. Response to section 11.25 of the National Report. One of the reasons the wage gap between the sexes is closing is because men’s actual income has stalled while women’s salary has continued to increase from a lower base. However, over the last decade women’s actual income has also not increased.
72. In the second CEDAW international review meeting of 2014 the Mental Health Association Taiwan noted that gender statistics of work in the informal economy were not being taken seriously by the government. We again point out that gender statistics and related analysis of surveys on work in the informal economy are currently the most urgently needed measures, including understanding the motivations of the target group, the conditions and needs of laborers, the urban-rural divide, and so one.
73. Response to sections 11.3, 11.4, 11.9, 11.16 and 11.28 of the National Report. The National Report does not explain how to advance the stable employment

and salary income of women with disabilities. The Ministry of Labor's 2014-2017 Action Plan to Promote Gender Mainstreaming made "promoting measures to advance the employment of women with disabilities" and "increasing the rate of participation of women with disabilities in professional training" key targets, but has not publically disclosed the results.

74. At the same time, Taiwan still has a large number of laws and regulations on the right to work that still imply ideas that are insulting to people with disabilities and lack reasonable accommodation. There are legal requirements on "physical and mental illness, physical and mental disability, and persistent physical and mental conditions" that force retirement, stop people obtaining or maintaining professional and technical qualifications, applying for career counseling or participating in specialist civil service examinations, and being qualified for promotion and transfer. For example: people with mental illness who have never harmed anyone are viewed as a risk to children and public safety and are not permitted to obtain qualifications in teaching, childcare, social welfare, medicine and many other fields. People with certain physical and mental disabilities are not allowed to take specialist civil service examinations for judges, diplomats, police officers and other professions. Article 81 of the Constitution makes being declared to be under custodianship grounds for removing a judge from office; and article 54 of the Labor Standards Act makes mental handicap or physical disability grounds for forced retirement.
75. We recommend the CEDAW international expert committee review the 2017 CRPD initial review and concluding observations item 69 and item 51, to guarantee the right to work and freedom of movement for people with disabilities. We demand the government immediately revises or repeals discriminatory regulations in laws regarding the right to work and freedom of movement for people with disabilities, and universally incorporates the concept of reasonable accommodation in all relevant laws and regulations that limit or violate the right to work; and authorizes concrete goals, measures and monitoring and assessment mechanisms that target improving employment for women with disabilities. The goals should include strengthening provision of public childcare services for women with disabilities.

*Labor rights for female domestic and foreign migrant workers*

76. Response to sections 11.62-11.63 in the National Report. According to

Ministry of Labor statistics<sup>19</sup>, up to October 2017, the total population of foreign laborers in industry and social welfare in Taiwan is 671,228 people, which is an increase of around 46,000 people from figure quoted in the current National Report of 625,000 at the end of 2016. Among these, female foreign domestic workers (who are actually what the authorities call social welfare foreign laborers) total 246,721 people, which is 37% of all foreign laborers. In this group of female foreign domestic workers, 188,769 come from Indonesia, which is a very large population. In second place are female migrant workers from the Philippines, who total 31,092 people. It is none other than this large number of foreign domestic workers who help many Taiwanese people who do not want to work as long-term caregivers. Yet they are denied the protection of basic labor rights to which they are entitled.

77. The National Report tries to use the draft Domestic Service Act as grounds to “guarantee the labor conditions and rights of domestic caregivers and housekeepers”, but until now the Legislative Yuan has yet to pass this law. A fact that the National Report neglects to mention is that foreign female domestic migrant workers are not protected by the Labor Standards Act, and are not entitled to the minimum wage. In addition, because almost all of them live in their employers’ homes where they work, you can say that they are on call 24 hours a day, work extremely long hours, and may not be able to take time off on weekends and holidays, which is a serious violation of article 7 of the International Covenant on Economic, Social and Cultural Rights and CEDAW general recommendation number 26. Incredibly, the reason the Ministry of Labor gives is because an employer’s home is a private residence, so it is difficult for labor inspectors from the Ministry of Labor to carry out their work at a private address. In addition, the special nature of domestic work demands constant care for immobile and incapacitated elderly family members, so there is no option but to compromise labor standards.
78. Another risks is female domestic workers are vulnerable to being sexually harassed and sexually assaulted by their male employers and other family members. For example, former legislator Elmer Fung was only recently sentenced for sexually assaulting his Filipina housekeeper after a 12-year court battle finally reached a conclusion, when Fung was sentenced to 3 years and 4 months in prison<sup>20</sup>, long after the abused migrant worker had left Taiwan. In fact, because the working conditions for female foreign domestic migrant

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<sup>19</sup> See: <http://statdb.mol.gov.tw/html/mon/i0120020620.htm>

<sup>20</sup> See the Liberty Times report “Elmer Fung sentenced 3 years 4 months jail for sexually assaulting Filipino maid”: <http://news.ltn.com.tw/news/politics/paper/1039822>

workers are comparatively isolated, and inevitably because they want to take advantage of the opportunity to stay in Taiwan, there is a concern that even if they are sexually harassed or assaulted they will not dare report the crime, seek help, or pursue further human rights remedies. As legislator Lin Shu-fen has said, “Foreign domestic migrant workers and their employers are in an unequal power relationship, in isolated working conditions it is very difficult to prove sexual abuse, and there is also a language barrier. Furthermore, under the condition that you ‘cannot change employers without a conviction’, for a migrant worker in debt to her broker and under economic pressure, the importance of keeping her job may even outweigh being sexually abused.”

79. Female migrant workers are more directly exposed to pregnancy discrimination than Taiwanese women. Employers require foreign female migrant workers to sign a ‘pregnancy ban contract’, as in the case of Indonesian migrant worker Unipah<sup>21</sup>. Although the Ministry of Labor has stated that if an employer unilaterally terminates an employment contract because a foreign laborer becomes pregnant, gives birth or is nursing a child, according to the Act of Gender Equality in Employment, apart from receiving a maximum fine of NT\$1.5 million, they can be shut down and their permission to hire can be revoked<sup>22</sup>. However, in reality many female migrant workers do not dare become pregnant, or do not dare tell their employer if they do<sup>23</sup>.
80. Article 53 paragraph 4 of Taiwan’s Employment Service Act rules that foreign migrant workers are prohibited from freely switching employers. Although this paragraph applies to all foreign migrant workers, regardless of trade or gender, the paragraph is clearly a discriminatory regulation for foreign migrant workers, and puts female domestic migrant workers who are already not protected by the Labor Standards Act in an even more vulnerable situation, and less able to escape the risk of labor exploitation and potential sexual abuse and sexual harassment.
81. In addition, according to articles 18 and 36 of the Immigration Act, and article 13 of the Regulations Governing Permits for People of the Mainland Area

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<sup>21</sup> See Taipei High Administrative Court 2013 Jianshang No.183 Indonesian migrant worker Unipah case: <https://goo.gl/Av32e1>

<sup>22</sup> See UND article “Employers may not dismiss migrant workers who become pregnant or give birth”: <https://udn.com/news/story/7314/2425940>

<sup>23</sup> There has been a case in Tainan of a migrant worker who complained of stomach pains before suddenly giving birth to a child. See the Liberty Times report “Brokers call for return to pregnancy tests after migrant worker unexpectedly gives birth”: <http://news.ltn.com.tw/news/life/breakingnews/1785302>

Entering the Taiwan Area, if female migrant workers are found to have “mental illnesses or other illnesses that jeopardize social peace”, this is sufficient reason to prohibit their entry, and deport them from the country.

82. We recommend: (1) before the Household Service Act is passed into law, the CEDAW Committee’s General Recommendation No. 26 should first be applied to protect female domestic migrant workers, and priority should be given to use of the Two Covenants to provide basic labor human rights guarantees, especially a minimum wage, working conditions, working hours, holidays, and various other social insurance and protection; (2) abolish regulations of the Employment Service Act that prevent freely switching employers to allow migrant workers to freely transfer to a new employer; (3) strengthen on-job education of legal personnel to make them more aware of the unequal power relationship between migrant workers and their employers, dispel myths surrounding sexual assault, and avoid re-traumatizing victims when dealing with cases of sexual assault and sexual harassment of female migrant workers. The government should also provide employment transfer and psychological counselling mechanisms for migrant workers who have been sexually assaulted<sup>24</sup>.

### *LBTI-friendly workplaces*

83. Since 2008 Taiwan’s Act of Gender Equality in Employment has banned discrimination on the grounds of sexual orientation, but subsequent National Reports have failed to propose concrete policies that highlight how to promote LBTI-friendly workplaces. The Taiwan Tongzhi Hotline (LGBTQ+) Association carried out an LGBTI-Friendly Workplace Survey<sup>25</sup> in 2016, which showed that although 80% of LGBTI people who were questioned knew about the anti-discrimination rules in the Act of Gender Equality in Employment, when discrimination actually occurred in the workplace, over half the time nothing was done in the end. Over 60% of those questioned said their companies made no LGBTI- or gender-friendly statements, or offered proportionate benefit policies and educational training. The situation for transgender people is even more difficult because of their outward gender expression. When looking for work they are continually rejected, but employers will not tell them the reason they were not hired, which makes it difficult to prove the employer was breaking the law.

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<sup>24</sup> See UND article “Employers may not dismiss migrant workers who become pregnant or give birth”: <https://udn.com/news/story/7314/2425940>

<sup>25</sup> For results of this survey see: <https://hotline.org.tw/news/1000>

84. In light of the fact that LGBTI women are subjected to an endless tide of workplace discrimination, we recommend the government should: (1) establish machinery to monitor whether the labor complaints and labor assessment mechanism and personnel are sufficiently gender equality conscious and LGBTI-friendly; (2) establish workplace LGBTI-friendly indicators, to actively help corporations initiate internal policies on equal integration of LGBTI employees, improve internal corporate gender discrimination, and develop measures to give LGBT-friendly corporations genuine rewards<sup>26</sup>; (3) draft proactive and effective temporary special measures to do everything possible to eliminate both public and private sector workplace discrimination faced by LGBTIs, and create LGBTI-friendly workplace environments; (4) the public sector in particular has a responsibility to lead the way by setting an example, now the Civil Code's prohibition of same-sex marriage has been ruled unconstitutional, the government should propose concrete measures to remedy the violation of the constitutional rights of public sector LGBTI employees, who today are still unable to legally register their marriages, so they can enjoy the same labor and social welfare benefits as heterosexual employees after they marry<sup>27</sup>.

### **Conclusions and recommendations on item 28: Right to health**

85. Response to section 12.14-12.21 of the National Report. The women-friendly medical environment and services mentioned in the National Report do not reflect the different needs of women with disabilities and the LGBTI community.

86. First, regarding accessibility of medical services for women with disabilities, in over 90% of housing and communities for people with disabilities in Taiwan, the right to health for people with practical disabilities on an equal basis to others is a major issue. In addition, basic level clinics, which make up over 70% of all medical facilities in Taiwan, generally lack universal access facilities, and do not provide support measures and universal access information (in truth, the state only requires physiotherapy clinics to have universal access facilities), creating many times longer travel times and higher financial costs for people with disabilities seeking medical treatment compared to others. According to the Ministry of Health and Welfare's

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<sup>26</sup> For example, LGBTI-friendly companies should be given priority when awarding government procurements

<sup>27</sup> For example, LGBTI employees should be given the same marriage, funeral, paternity, childcare leave, or childcare subsidy allowances.

“Research Project on the Status of the Uptake of Preventative Healthcare Services by People with Disabilities”, disabled people’s uptake of preventative healthcare is less than half that of others. Individual preventative healthcare measures, including Pap smear, mammography and maternity tests, are used by women with disabilities at a rate of 7.71%, 8.47% and 2.77% respectively, which is much lower than the take-up rate of 22.25%, 13.27% and 72.61% for others.

87. In addition, outside the education system, state healthcare and advice channels do not take into consideration the needs of people with disabilities. For example, the Baby Education website mentioned in section 5.21 of the National Report, the Mother’s Handbook and the Child Health Handbook published by the Health Promotion Administration, and health education information in general, is not available in accessible formats. We recommend the government sets a timetable to actively review and improve the status of universal access to general healthcare (including basic level clinics), develop house call healthcare, and provide healthcare information in diverse formats.
88. Furthermore, for many years the government’s public health and healthcare treatment policy has overlooked the LGBTI community. The National Report does not have a single survey report or statistic on LGBTI physical and mental health. In addition, there is a lack of LGBTI understanding in education, training and research programs for medical, public health, consultation and other professionals. Medical workers almost always assume patients are heterosexual, and use standard male and female terminology to address them. Hospital and clinic medical forms, washrooms and other facilities are also gender binary, and lack an LGBTI perspective.
89. In Taiwan, assisted reproductive technology, Pap smear tests, motherhood-friendly medical care policies, geriatrics and other medical care policies and resources all lack LGBTI perspectives and overlook the needs of the LGBTI community. For example, promotional campaigns for Pap smear tests are targeted at married women, creating a low check-up rate for lesbians. According to a Taiwan Tongzhi Hotline (LGBTQ+) Association survey in 2011 of 2,219 lesbians<sup>28</sup>, when asked about their experiences of treatment in gynecology clinics, 13% said they had unhappy treatment experiences, and 30% were less willing to seek medical treatment because of same-sex experience and gender expression/role issues.
90. Also, section 12.19 of the National Report mentions LGBTI Health Community Service Centers funded by the Centers for Disease Control, Ministry of Health

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<sup>28</sup> “100” Isn’t Taboo – 100 Questions on Lesbian Sex: <https://hotline.org.tw/news/205>

and Welfare. Based on HIV-AIDS prevention requirements, the vast majority of service centers focus on HIV-AIDS prevention of the male gay community. Apart from the Centers for Disease Control's concern for HIV-AID prevention among gay men, the Ministry of Health and Welfare does not invest resources in developing policies for LGBTI-friendly medical care services and environments.

91. We recommend: (1) the government should commission academics with a solid background in the field of LGBTI health to carry out local studies and research, including a study of the habits of the LGBTI community when seeking healthcare, to understand the problems LGBTIs face in the healthcare environment, and thereby offer suggestions on how to improve healthcare; (2) to further improve gender-friendly understanding among medical personnel, in continuing education for medical personnel, gender studies credits should make LGBTI issues a separate and compulsory course, and courses in nursing/public health and psychological counselling also need to include courses in LGBTI, gender-friendly campuses, and LGBTI-friendly healthcare environments; (3) concerned government agencies should invest resources in LGBTI community physical and psychological health issues, and not just on HIV-AIDS prevention among gay men.
92. Regarding sexual and reproductive health, the University and College Sex Education Counselling and Guidance Hotline and the Junior-High and Elementary School Sex Education Teaching Resources Website, brought up in section 12.42 of the National Report, both refer directly to the Sex Education Resources Website, and show a lack of diversity in sex education resources. From 2013 to 2015, only 7.9% of website users were female. The government should make steps to understand the reasons for this wide gap in the ratio of male to female users and take appropriate measures to increase the proportion of women and girls who access sex education information and counselling services.
93. The above website and the Health Promotion Administration's Youth Website (Happy E-Campus) mentioned in section 12.43 of the National Report both focus on heteronormative male-female relationships and reproductive health, not only overemphasizing fidelity, and stigmatizing premarital sex and abortion, but ignoring the existence and needs of students who identify as LGBTI. The small section on same-sex content also seems to be stereotypical, and BTI issues are completely omitted. Therefore, we recommend: (1) executive agencies should actively plan for and promote genuine gender sensitivity, and follow recommendation 67 in the CRC Initial Report, to

protect the rights of young people who identify as LGBTI to sexual and reproductive health and educational programs; (2) schools should respect the neutrality principle of “not allowing specific religious faiths to conduct campaigns or activities”, and take practical steps to provide sex education that is gender-equality conscious.

### **Conclusion and recommendations on item 32: Women with disabilities**

94. Response to section 13.38 of the National Report. Data collected by the government on people with disabilities is still significantly lacking, and the state habitually limits the needs of people with disabilities to the narrow frame of only healthcare and welfare needs, so many other agencies in their routine work frequently overlook people with disabilities<sup>29</sup>. We recommend, apart from fine-tuning the survey items in the Survey on the Needs and Living Conditions of People with Disabilities, the state should further universally require agencies at all levels to include people with disabilities, disaggregated by gender, age, social status and ethnic group, in statistical data of their work.

### **Conclusions and recommendations on items 33-34: Marriage and family relations**

#### *Legal recognition of diverse families*

95. In section 16.7 of the National Report on the Report on Recommendations Regarding Legalization of Same-Sex Marriage, in November 2016, the Legislative Yuan reviewed motions related to legalization of same-sex marriage, and in March 2017 the Judicial Yuan opened a constitutional court session to hear the same-sex marriage constitutional challenge filed by Chi Chia-Wei and Taipei City Government. The competent authority for Taiwan’s Civil Code, the Ministry of Justice, denied that the limit on marriage between one man and one woman in the Civil Code discriminated against same-sex couples, and argued husband and wife, man and woman was the “social norm”, so if “man and woman”, “husband and wife” and other terms in the Civil Code were changed to gender-neutral terms of “spouse”, “couple” and so on, it would be a “legal mindset of the minority bullying the majority”. The

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<sup>29</sup> For example, the gender violence suffered by women with disabilities (see section 38 of this report) education rights (see sections 45-47 of this report), employment rights (see sections 73-75 of this report), health rights (see sections 86-87 of this report)

above arguments use discriminatory social norms, binary male-female divisions and heteronormative stereotypes to rationalize the current law and to formally and practically discriminate against people with alternative sexual orientations, which is in violation of the principle of “equality” defined in CEDAW General Recommendation No. 28<sup>30</sup>.

96. In addition, the above report also includes false statements that children in same-sex families could become confused about their gender identity, rejecting the legal parenting rights to which same-sex families are entitled. The Ministry of Justice also used public opposition to adoption by same-sex families and other arguments as an excuse for delaying the timeframe for law reform, in opposition to the recommendation of the international experts to “recognize the diversity of families” as a positive direction.
97. Regarding section 16.12 of the National Report, which notes that same-sex couples may register with local government household registration systems, this is only an administrative registration measure, which is not legally equivalent to partnership, and has not been assigned by the government with the status of any actual legal rights. According monitoring of laws and regulations conducted by the Department of Gender Equality, Executive Yuan, there are 498 rights and responsibilities which only apply to spouses, and cannot be extended to same-sex couples unless the Civil Code is revised. In hospital treatment situations as an example, cases continue to occur where same-sex couples produce proof that their partnership is registered, but they are not allowed to stay by the hospital bed or sign legal documents for medical treatment, on the grounds that they are “partners” or “relatives” and not spouses. Again using workers as an example, if a worker who is in a registered partnership dies, their same-sex partner cannot claim funeral expense benefits as a “spouse” according to the relevant regulations.
98. Happily on May 24, 2017, the Judicial Yuan’s Council of Grand Justices announced interpretation no. 748, ruling that the lack of protection for two people of the same sex in an intimate united relationship in Taiwan’s Civil Code was a major legislative omission, and ordered concerned authorities to rectify the unconstitutional oversight within two years. Although the Executive Yuan has put together a Same-Sex Marriage Legal Evaluation Project Team, it has not been able to decide even a direction for law reform. We are concerned that under pressure from opposing groups, the government will delay

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<sup>30</sup> CEDAW General Recommendation No. 28 paragraph 22 defines the principle of “equality”: all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices.

reforming relevant laws, resulting in bills that are not sufficiently comprehensive in content, and deny lesbians couples and their families basic rights.

99. Response to sections 16.20-16.23 of the National Report. Regarding child adoption by lesbian families, although Taiwan has liberalized single-parent adoptions, when adoption agencies recruit potential adoptive families, they advertise for “husband and wife couples interested in adoption”. Almost all adoption agency websites do not clearly state that single or LGBTI people can apply to adopt. Furthermore, current adoption agencies still use assessments that are based on heterosexual families, and are not qualified to serve same-sex families. In addition, social workers, adopting or foster families, and judges may not sufficiently understand LGBTI families, and may oppose them adopting children. Even though in recent years people who openly identify as LGBTI have passed the adoption assessment process, only a handful of cases have successfully adopted children, and have encountered judges with “reservations” that led to additional court hearings. Therefore, we recommend: the government establishes LGBTI-friendly indices to be incorporated into evaluation items, and increase state resources to assist adoption agencies and associated legal professionals to conduct educational training programs focused on LGBTI adoptions.
100. At the 2017 CRC initial National Report review committee meeting, the attending Ministry of Justice official publically stated that interpretation no. 748 did not cover the rights of offspring (eg. adoption, legal parentage assumption). According to current Taiwanese laws, for a family of a lesbian couple and a child under their care, only the biological mother and her child can establish a legal parent-child relationship, and the non-biological party and the child cannot establish a parent-child relationship. These incomplete laws and regulations create uncertainty and detrimental circumstances both in real life and on an emotional level for lesbian families.
101. To give some examples, for lesbian couples raising children together, the non-biological party cannot claim accompanying maternity leave, leave for raising children, or supplements for raising children. Given that women’s average wages are generally lower than men’s, and women in the labor market often suffer pregnancy discrimination, the burden on lesbian families raising children is clearly heavier than heterosexual families. In the past there have been cases of lesbian couples with children who separate, and then the maternal mother refuses to allow the non-maternal party to visit the children, which is not only a potential violation of the CRC principle of the best

interests of the child. Furthermore, without protection of the law, the non-maternal party and the children will lose their right to have reunions. We are concerned that if the government in reforming the law does not pay attention to relevant rights and protections for lesbian families and their children, hundreds of lesbian families who are already in Taiwan will continue to face uncertainty.

102. Regarding non-married families, Taiwan's government has yet to establish relevant official statistical surveys. According to the Taiwan Alliance to Promote Civil Partnership Rights, in a questionnaire survey starting in August 2010 and running until February 2011, 83% of respondents said they had friends or relatives who were cohabiting. Over 30% of heterosexuals, 40% of gay men and 60% of lesbians said they had personal experience of living together with a partner. The average length of cohabitation was three years. The longest length of stay for a lesbian couple was 23 years, and 15 years for a gay couple<sup>31</sup>. According to National Sun Yat-Sen University professor Yang Ching-li's estimation, based on the results of the 2010 census, indicate that the cohabiting population was around 760,000 to 800,000<sup>32</sup>. This huge population has long been treated with indifference by the government. The government needs to treat them seriously and respond to their respective rights and needs.
103. According to the Ministry of the Interior's demographic statistical data, the number of women have never married is increasing every year. Taking the 30-34 year-olds as an example, the proportion of unmarried women has risen from 5.53% in 1983, to 24.2% in 2003 and 42% in 2016. For 35-39 year-olds, the numbers increase from 2.73% in 1983 to 25.8% in 2016. This shows Taiwanese family structure has faced a dramatic change in the last 30 years. Yet official data on unmarried cohabiting relationships, same-sex unions and other diverse families are seriously wanting. The state has no grasp whatsoever of the dynamics, general conditions and potential risks these families could face in the future, let alone a plan for appropriate family policies and legislations. Section 16.13 of the National Report only mentions the possibility of an exploratory survey in October 2019, but offers no specific promises that relevant surveys will be completed by the next national population and household census.

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<sup>31</sup> A total of 5,887 were returned. For an analytical report see: <https://tapcpr.org/hot-news/press-release/2011/09/09/01>

<sup>32</sup> Yang Ching-li (2014) "Cohabitation, Marriage & Life: Family Diversity for a Demographic Perspective", published on the Taiwan Street Corner Social Studies website (<https://twstreetcorner.org/2014/01/06/yangchingli>)

104. We are deeply troubled by the current situation for unmarried families. We recommend the government actively draws on the experience of other countries in designing population surveys of diverse families; researches how to protect the privacy and personal data of respondents in unmarried cohabitation, same-sex unions and other relationships while conducting surveys; studies how to improve the tolerance of data collectors; increases the feasibility and reliability of surveys; swiftly collects relevant data; and develops research on the dynamics and general social conditions of unmarried families.
105. In addition, we want to emphasize that the above survey should at the same time include statistical data on the social circumstances of LGBTI people. This information is necessary and useful for policy making. Collection of this information should be properly managed: the information must be sufficiently reliable for unmarried couples and sexual minorities (gender diverse people) to be included in the goal to improve the protection of human rights. Only then will we properly recognize the effect of stigmatization and prejudice on the income, security, health, domestic violence and other factors facing unmarried couples and sexual minorities. This will help us understand and assess the work the government needs to do to achieve basic human rights for unmarried families and human rights for sexual minorities.

#### *Transgender identity change*

106. Response to sections 16.28-16.30 of the National Report. Regarding registration of gender change, transgender people are prevented by current inhumane and highly demanding gender change requirements from obtaining legal recognition of their desired gender. As a result, the barriers they encounter in everyday life are well documented. For example, last year (2017) there was the case of a National Taiwan University transgender student whose request to transfer dormitories was rejected. The Intersex, Transgender and Transsexual People Care Association has asked: the Ministry of the Interior and other concerned ministries and commissions to quickly and actively deal with this issue, so transgender people can live in security and human rights, with legal recognition of their desired gender.
107. In the opinion of the Taiwan Tongzhi (LGBTQ+) Hotline Association: when transgender people change their legal gender, should not be subjected to forced sex reassignment surgery and psychiatric assessment as limiting conditions, and the government should not initiate legalization of gender change registration without consulting the opinions of the transgender

community.

108. The government is dragging its heels on what conditions and procedures to apply to gender change registration if the compulsory surgery requirement will be abolished, creating an ongoing dilemma for transgender people who are forced to choose between “gender identity change” and “keeping their sex organs”. Although section 16.30 of the National Report mentions the government is already committed to adding a third gender option as a policy development direction, policy delays and uncertainty have forced transgender people to continue to wait in limbo, living in a distressing and insecure situation. The Taiwan Alliance to Promote Civil Partnership Rights proposes: the state clearly announces a gender change policy direction, scope and timeframe to reduce public insecurity and uncertainty, and avoid the continuation of transgender people being forced into practically irreversible organ removing operations.
109. We are happy to see section 16.30 of the National Report take the initiative to bring up the identity rights and responsibilities of intersex people. What needs to be remembered is the state still lacks relevant statistics on intersex children. Cases still happen of healthcare institutions and parents forcing children to have sex assignment surgery before they are able to decide their own gender. These operations frequently result in long-term physical and psychological harm to intersex people. Furthermore, the state currently still has no grasp of the proportion of cases of intersex children who undergo gender alignment surgery. We recommend: the state should swiftly announce appropriate orders, based on the premise of protecting the health and lives of intersex children, to ban unnecessary operations on intersex children. For children who have already been subjected to nonconsensual surgeries, active remedies should be provided, including medical, social welfare and others.

## **Other Main Recommendations**

### *Women’s rights to housing and land*

(Response to concluding observation and recommendation no. 45 of the international review committee for the 2<sup>nd</sup> National Reports on the Two Covenants)

110. Thanks to improper speculation the price of housing in Taiwan has double or tripled in the last decade. On the other hand, wages have been stagnant since 1990. Many salary earners are unable to afford the cost of a home. Though section 13.14 of the National Report mentions the Integrated Housing Subsidy Resources Implementation Project, which provides equal

opportunities for mortgage interest subsidies, as the price of housing skyrockets, these become less and less effective. In terms of policy implementation, the proportion of women receiving subsidies is gradually overtaking that of men, however the National Report fails to explain whether women who are buying or renting homes are under greater pressure than men, and whether they need more welfare resources and access to opportunities than men.

111. Land development instigated by the government or private individuals is leading to real estate speculation. Since Taiwan has yet to complete the legal framework to ban forced eviction, there is no remedy available or place to go for help for people whose right to housing is being violated. Inasmuch as the rationale of the government and courts does not go beyond a single-minded core concept of property rights, the problem of forced eviction of residents in informal settlements without tenure rights is very serious. When forced eviction takes place, because women generally shoulder the main burden of household labor and care-giving work, they are the first to feel the impact of an upheaval in family life, and subsequent conflicts and prejudice attached to eviction.
112. To summarize the above, according to concluding observation and recommendation no. 37 of the international review committee for the second National Reports on the Two Covenants, the government should reorient the housing and land regime, the first step of which would be a more accurate database. We recommend the government follows the indicators on the right to adequate housing released by the Office of the United Nations High Commissioner for Human Rights to establish the database, and ensure all data is disaggregated by prohibited grounds of discrimination, including gender based discrimination.
113. According to observation and recommendation no. 39 of the international review committee for the second National Reports on the Two Covenants, there should be a moratorium on all forms of displacement until the Displacement, Resettlement and Rehabilitation Act is established. When displacement occurs, according to general comment no. 7 of the International Covenant on Economic, Social and Cultural Rights, the government should adopt appropriate measures to ensure no form of discrimination occurs.
114. A survey by the Homeless of Taiwan Association suggests that because there are not enough refuges for homeless women, and crisis shelters lack gender sensitivity, homeless women cannot access these resources. The government should swiftly follow observation and recommendation no. 43 of the

international review committee for the second National Reports on the Two Covenants, and formulate a National Homelessness Welfare and Human Rights Act, allocate adequate budgetary resources to ensure the human rights of homeless people, and consider the needs of homeless women.

*The crime of adultery adultery*

(Response to concluding observation and recommendation no. 70 of the international review committee for the 2<sup>nd</sup> National Reports on the Two Covenants)

115. Article 239 of the Criminal Code on the crime of “committing adultery with another” (hereafter referred to as the crime of adultery), legally seems to give equal punishment to men and women, but in practice creates real inequality against women, in contravention of article 2 of CEDAW, and article 17 of the International Covenant on Civil and Political Rights. In the reviews of National Reports on the Two Covenants in 2013 and 2017, the committee’s concluding recommendations on both occasions recommended the Taiwanese government take steps to swiftly abolish the crime of adultery. In light of these recommendations, the government should immediately develop a plan to deal with the issue of abolishing the crime of adultery.

116. **An indifferent and irresponsible government responds in a perfunctory way with opinion polls and online surveys:** In the last four years the Ministry of Justice has refused to comply with this concluding recommendation, twice stating that Taiwanese public opinion is against decriminalization of adultery, based on the results of opinion polls and unreliable online surveys. These opinion polls confuse the concepts of “abolishing the crime of adultery” and “adultery having no legal consequences”. They deliberately blur the three different levels of responsibility in the Criminal Code, Civil Code and the moral code; and use contradictory language to avoid mention of the relevant regulations and guarantees in the existing Civil Code. Furthermore, the opinion polls lack credibility and validity. Yet, the Ministry of Justice has still responded by announcing that “opinion polls show the time is not right, society has not reached a consensus”. In February 2015 the South Korean Constitutional Court ruled that the Korean crime of adultery was unconstitutional, which reignited calls for adultery to be decriminalized with immediate effect in Taiwan. Civil society organizations have continued to put pressure on the government to follow step, but as ever the Ministry of Justice reiterated the same monotone response that there was no social consensus, continuing its indifference and irresponsibility.

117. **The crime of adultery in the Criminal Code creates real inequality for women:** The existence of the crime of adultery does not make marriages happier and healthier. Extramarital affairs show no sign of disappearing. But because traditional morals are far less tolerant of women's sexual autonomy than the leeway given to men's sexual autonomy, the proportion of women who are prosecuted, given a deferred prosecution, or found guilty of the crime of adultery has always been higher than that of men. The fiercely confrontational entrapment and litigation process inevitably tears the family apart, creating emotional bruises for the spouses and their children, and making it much more difficult to restore the marriage. We have heard of some cases of women who have sued men for sexual assault, but because of a lack of evidence, the sexual assault case was dropped, only for the women to be countersued for adultery. There has also been a case of an infant born from an extramarital affair who was used by the state as "evidence" to bring charges of adultery, hurting the involved parties in ways that are difficult to repair.

118. In terms of the government using opinion polls as an excuse for official statements on waiting for a consensus to be reached, we also repeat our demand for the government to use gender equity education to move forward the dialogue on intimate partner relationships and other issues, and encourage the public to deal with changes in emotional connections and intimate relationships in healthier ways, rather than encouraging the use of state laws to make threats and seek revenge. In addition, we once again demand the government faces up to the fact that the continuation of the crime of adultery has a disproportionately negative effect on women, and speedily abolishes the law.