2021 Parallel Report

- On Government's Response to 2018 COR
- On the Implementation of CEDAW

Modern Women's Foundation

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T A I W A N

2021 Parallel Report on the International Convention on the Elimination of all Forms of Discrimination Against Women

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About MWF:

In 1987, Modern Women's Foundation MWF was established, We had stayed with who were victims of abuse, children in so much pain they refuse to speak, victims of sexual abuse whose hearts were torned and children living in families with conflicts. We help them during their darkest times to stride over their trauma and gain courage to move on.

With a firm force, we strive to defend the rights and interests of women and children who witnessed domestic violence, and to eliminate inequality in the system and modern culture.

By providing professional services, we comfort the injured hearts and souls, and we hope to become the most trusted organization for gender-based violence victims.

COR Point 28-29 Gender-based violence against women

CEDAW Article 2

Implementation of Domestic Violence Prevention Act

1. **In response to paragraph 2.17-2.19 of the State's response to 2018 COR.** The statistical data found in Paragraph 2.17-2.19 of the 4th Country Report indicates that 70% of the domestic violence and the order of protection violation cases captured by the police would receive a penalty. Among them, more than 80% would receive penalties lighter than detention. It shows that domestic violence and the violation of an order of protection are often considered as misdemeanor.
2. In practice, in cases that resulted in detention commuted to a fine or merely a fine, we see frequently that the accused coerces the victim into paying the fine. These penalties bring no deterrent effect on the accused, but instead oppress and exploit the victims. This usual kind of judgements ignore the fact that the gender power imbalance within domestic violence has forced victims to bear the consequences of the crime. It leads to a vicious cycle in which the victims are unwilling to search help from public authorities or judicial system and their and the children's struggling become worse.
3. CEDAW General Recommendation 33 Paragraph 51: (1) recommend that countries *(a)bolish discriminatory criminalization and review and monitor all criminal procedures to ensure that they do not directly or indirectly discriminate against women; decriminalize forms of behaviour that are not criminalized or punished as harshly if they are performed by men.* As mentioned also in CEDAW General Recommendation 33 Paragraph 14 (d), the justice systems should be *contextualized, dynamic, participatory, open to innovative practical measures, gender-sensitive and take account of the increasing demands by women for justice*.
4. **Our recommendations:**

(1) Examine whether there are dissimilarities of the current sentences between domestic violence as well as violation of an order of protection cases and general criminal cases.

(2) Develop effective penalties that can be particularly applied to domestic violence and violation of an order of protection cases.

5. According to Article 76 of the Family Act, *(a)fter receiving the written statement or the transcript of an oral statement, in addition to ordering the applicant to submit written statements to provide details on specific matters within a designated period of time or on a designated date, the court shall expeditiously serve the copies of the said written statement or transcript of an oral statement* upon the counterpart. In practice, there have been judges asking domestic violence victims to deliver the copied documents to the counterpart on their own when applying for an order of protection. It shows that the Article does not consider that it would bring higher risks to the victims while their whereabouts are disclosed or while they enrage the counterparts by making them aware of the legal actions. For judges who would like

to be considerate about the victims' situation and take measures regarding it have found themselves in a dilemma because of the limitation of the law.

6. **Our recommendations:**

(1) Regarding order of protection cases, to follow through on the initial intention of an order of protection, before clarifying the danger against the victim or granting a temporary order of protection to ensure and protect the victim's safety, the court, in principle, should not send the copies of relevant documents to the counterpart.

(2) In addition, regarding cases in need of protection, the copies of the documents could be served by the court instead to reinforce the country's role to protect its people.

(3) As stated previously, the country should amend the articles regarding contentious proceedings in the Family Act aiming to take the particularity of order of protection cases into consideration when it comes to the regulation of serving the copies of court documents.

The Social Safety Net Program and the Marginalization of Gender-based Violence

7. **In response to paragraphs 2.22-2.24 of the State's response to 2018 COR.** Since the "2016 Taipei Neihu Murder"[1], major criminal cases are reported more frequently in Taiwan. In order to improve and stabilize social safety and security, the Taiwan government launched a "social safety net" program in 2018, believing that strengthening family and community systems can effectively prevent and resolve public safety issues. The Domestic Violence and Sexual Assault Prevention Center, which is mandated to tackle domestic violence, has also been integrated as a component of the Social Safety Net program, and launched the Enhanced Social Safety Net Phase II Program (2021-2025) in 2021.[2]
8. We were pleased to see that in 2020, the Taiwan government proposed a draft amendment to the Domestic Violence Prevention and Control Act, which explicitly states that the legislative intent is "based on gender equality"[3] and brings the perspective of the domestic violence law back to the main focus of gender-based violence. However, in the Social Safety Net Phase II Program introduced in 2021, the perspective and policy direction of gender-based violence sensitivity and gender mainstreaming, as shown in the amendment to the Domestic Violence Prevention and Control Act, unfortunately, failed to manifest. The following is a breakdown by points to clarify.
9. The gender impact assessment[4] of the Social Safety Net Phase II Program indicates that "there is a 36% disparity in the gender ratio of domestic violence victim service recipients, in which women outnumber men...Marital/divorce/cohabitation violence is associated with inequality

[1] Taipei Neihu Murder: https://bit.ly/3yO4py8
[2] The Ministry of Health and Welfare Social Safety Net - The Approved Version of Social Safety Net Phase II Program, https://topics.mohw.gov.tw/SS/cp-4515-62472-204.html
[3] The 4th National Report/Specific Document 2.24
[4] Same as Footnote 2 The Gender Impact Assessment Table is available in the approved version of Social Safety Net Phase II Program P.186.

in gender power, with approximately 81% of victims being female, resulting in a significant gender disparity in the overall domestic violence victimization rate." Though it mentions that the difference in the beneficiary gender ratio is attributed to gender power inequality, it does not further explain the needs and circumstances of the disadvantaged gender in accordance with guidelines (2), and the proposed measures to address the issue, but instead it explains the reasons why the gender ratio is not 1:1. It fails to highlight the Social Safety Net's interpretation of gender mainstreaming, and its underlying concern about how "gender roles in the family can lead to a situation in which the human rights of the parties involved are oppressed."

10. There is a clear tendency that resources for gender-based violence services are being marginalized in Social Safety Net policies. According to the total funding requirements for the Social Safety Net Phase II Program[5], the Taiwan government is investing a total of more than $40.7 billion in the program, of which $11.5 billion is expected to be spent on Strategies for Vulnerable Families Services and Poverty Alleviation Assistance (1), which accounts for the highest percentage of the program allocations at 28.32%. Strategies for the Implementation of Protective Services (II) is expected to require more than $8.2 billion, or 20.27% of the program. Excluding the budgets for child protection and network connections, the projected demand for the "Family-Centered Integrated Services Program" is just over $700 million, or 1.93%, and the projected demand for the "Sexual Assault Trauma Recovery Program" is just over $100 million, or 0.27%, with only 2.2% of the budget allocated to domestic violence and sexual assault victim services in the Social Safety Net Phase II Program.
11. The service model of the Social Safety Net is "family-centered and community-based." The Phase II Program proposes four strategies, with "protective services" falling under strategy (2), "optimizing protective service delivery and improving risk management. Only the first paragraph of this chapter mentions responses to gender-based violence, while the remaining paragraphs focus on services related to children who witness to, or are abused themselves . In the only remaining paragraph[6], it is revealed that the Taiwan government's view on intimate violence is based on the definition by the scholar, Johnson: "...can be roughly classified into four types: situational couple violence, intimate terrorism, violent resistance, and mutual violent control (Johnson, 2000). Unlike the power-control type of violence, which is mostly used by men to control women, it is necessary to develop family-centered interventions to address the above-mentioned situational types of violence and to help both victims and perpetrators in order to truly ameliorate the violence problem." After the theoretical statement, no further research or statistical analysis was conducted to verify whether the reported cases of domestic violence in Taiwan are significantly consistent with Johnson's theory, nor was there any explanation of the use of this theory for policy planning.

[5] Please refer to the approved version of Social Safety Net Phase II Program P. 137.
[6] Please refer to the approved version of Social Safety Net Phase II Program P. 78.

12. The intention of the social safety net policy is a good one. The original expectation was that, with the gender-based violence tasks that strengthen community connections and support for future life reconstruction, the social safety net would serve as a backbone to the recovery journey for victims of gender-based violence in returning to their communities. However, the current Social Safety net system easily regards family hardship as the core issue that triggers violence, and believes that helping those in the family, who are in a difficult situation and have various needs, will allow the family to function better and overcome the hardships, and thereby mitigate the violence. In observing the safety net meetings for high-risk cases, one can see that in practice the system has also turned its attention to vulnerable factors in the family, and if these factors are mitigated (cessation of violence, input of resources, couple separation, etc.), the case is de-listed from the system, and the risk of violence is considered to be reduced. Under the stereotypical gender role divide, victims of violence are often also the very caregivers of these disadvantaged family members. Even though welfare services have been provided, it is difficult to effectively thwart the dynamics and break the cycle of domestic violence, without prioritizing the intervention of gender and power control issues.
13. In practice, even in cases of intimate partner violence (IPV), the county and city authorities, and prevention networks still imagine family harmony as the "family-centered" working model, and pay less attention to discussing and treating the dynamics of gender and power control in the victim's family, physical and mental safety, subjective power and self-determination, and their thoughts and plans for future intimate relationships and family. As a result, social safety net policies, in terms of content and resource allocation, make less direct reference to supporting practitioners who enhance victims' sense of empowerment, as well as assist and be there for the victims. Over time, gender-aware practices have received less and less attention in social safety net policies, and gender issues have been comparatively trivialized.
14. **Our recommendations:**

(1) That the gender-based violence prevention and treatment policy of the Social Safety Net Program, which focuses on family-centered gender-based violence prevention and treatment, should implement gender mainstreaming policy analysis, pay attention to the dynamics of intimate relationship violence, protect and empower victims of the weaker sex, and promote gender equality.

(2) That gender-based violence policy should give more priority to and reflect the inputs from gender-based violence prevention and treatment authorities and civilian groups. And, that the government should allocate more manpower and budget to gender-based violence prevention and treatment authorities and service systems, and value the roles, functions, and opinions of these authorities in order to highlight the subjectivity of gender equality awareness.

(3) That the State should emphasize and enhance awareness of Gender-based Violence with professionals in policy planning units and front-line implementation networks, as well

as promote the advocacy of, and professional services for gender-based violence prevention and treatment through additional professional training and discussions with experts and practitioners in the field of gender-based violence.

Improve gender awareness and knowledge among judicial personnel

15. One of the core spirits of the Family Act is protecting gender equality, which indicates that the related judicial personnel need to be highly sensitive to gender-based issues to be able to protect the rights of the plaintiffs during judicial proceedings and in judgments. Personnel including judges, judicial officers, and mediation committee members involved in the Family Act cases all need to be equipped with sufficient knowledge of gender equality and continue to receive relevant training.
16. Among the family law cases involving divorce and underage children, considerable proportion also involve domestic violence issues. However, it is often seen during the judicial proceedings or in the judgement results that judges or judicial officer are insensitive to the nature of domestic violence and ignorant of the necessity of protective measures. Some of the judges overlook the potential risk carried by the victims of domestic violence during judicial proceedings and the power imbalance reality while overemphasizing the idea of "co-parenting" or "family-centered." Some other judges consider fairness in family court cases so important that they reject the victims' requests to be questioned separately from their abuser or that they do not organize protective measures for the victims and the families.
17. As noted above, some judges hold gender stereotype, such as believing tall or brawny women do not need any protective measures during court appearance. It is ignorant of the psychological safety needs of the victims and their children. These similar situations happen repeatedly.
18. Moreover, gender discriminative speeches or behaviors among judges during the court judgement process frequently occur. For example, there was an incident in which the judge praised the father for occasionally doing housework while criticizing the mother of being inadequate because she could not manage between childcare, housework, and her own career. These events constitute discrimination against women.
19. There have also been judicial officers at local courts wishing to collect statistical data on cases in which an order of protection is being requested or withdrawn while involving divorce or child custody. It implies the misconception and myth that the order of protection is used only as a mean to file for a divorce, or domestic violence is made up as a mean to negotiate in a divorce or child custody case. Taking the victims' legal actions as merely out of interpersonal dispute stigmatizes their motivation to search for help and understates the gender-based violence and the struggling they endure.
20. **Our recommendations:**

(1) Based on Paragraph 15.23 and 15.24 of the States response to 2018 COR, the judicial systems should incorporate the concepts of gender equality and gender-based violence into the

internal and external monitoring mechanisms to be effective in monitoring and improving the professional capacities.

(2) Participate in conversations with grassroots organizations or case plaintiffs. Collect domestic violence and family court cases and the judgements of different positions and use them as training and teaching materials on topics of domestic violence myths, gender discrimination, and inappropriate questioning. The judicial personnel should reflect and improve the awareness of gender related issues as well as learn proper attitude and behaviors in questioning the case.

21. According to the Family Act, except for Category D, all family matters must undergo mediation before trial. Since the committee members are often the first judging persons encountered by the plaintiffs, the mediation committee plays a critical role in handling family cases. However, there has not been enough attention paid to the selection, qualification, professional training, knowledge of gender equality, monitoring, evaluation, dismissing due to incompetency, etc. of the committee in this Country Report.
22. It is not uncommon that members of the mediation committee treat the case plaintiffs with gender discriminative or stereotypical speeches, such as "women should feed their husbands well," "having quarrels is normal in a marriage," or criticizing the appearance, outfits, and make-ups of the plaintiffs. In one extreme case, the committee member even threatened the abused party to deprive her right to custody during the negotiation of child visitation if she did not agree to the terms of visitation. These behaviors perpetuate the power imbalance between the two parties. These incidents have not only repeatedly retraumatized the plaintiffs but also severely infringed and violated their rights. However, the imbalanced power dynamics has forced many plaintiffs to stay silent since they do not have the power or resources to make a complaint against the committee.
23. The mediation committee plays a major role in the judicial proceedings. In CEDAW General Recommendation 33, it is emphasized that the quality of the justice system is one of the most important elements in judicial relief. In Paragraph 57 and 58, it is also emphasized that the ratified countries should guarantee that rights of the plaintiffs would not be violated when they choose to use alternative methods to resolve disputes. Thus, we recommend that the country ensure that the mediation committee members receive systematic training to acquire knowledge regarding gender equality.
24. **Our recommendations:**

(1) Set goals for capacity building and improvement of the mediation committee members. Achieve these goals through providing systematic training on gender equality and gender-based violence topics before and during their time of service.

(2) To ensure non-discriminative speeches and behaviors based on gender, the criteria to select the mediation committee members should include the candidates' attainment regarding gender equality and gender-based violence issues. A mechanism to monitor, select, and dismiss incompetent members internally and externally should also be established.

Friendly Judicial Environment for Sexual Assault Cases

25. In response to paragraph 2.34 **of the State' s response to 2018 COR**. From 2019 to 2021, among the 751 sexual assault cases served by the Modern Women foundation with victims over 18 years old, 10-20% of the cases involved alcohol-related sexual assault. Since the blood alcohol test is classified as physician evaluation, the testing result instead of transferring to the police will only be recorded in the medical record and kept by the hospital in which the victims go for physical examination. Although prosecutors can request access to the result, the hospital does not need to actively report the blood alcohol testing results to the police in the first place, which might lead to such critical evidence being omitted, or even missing the best timing for testing and can result in incomplete evidence for case investigation and possibly affect the final judicial outcome.[7]
26. In addition, after the victim reports the case, the police agency will conduct the essential evidence collecting process to facilitate the prosecutor in the investigation of the case. However, during the evidence collecting process, there is no specification to point out what should be treated as essential evidence and which kind of evidence should be collected within a specific time limit. It all depends on the discretion of the investigating police officer. Although the prosecutor can request the police unit to collect additional evidence afterward, it may have exceeded the time to collect, which leads to evidence being omitted, affecting victims' judicial rights and interests.[8]
27. Interference of sex liberty is identified as one of the serious criminal cases. However due to the difficulty of evidence collecting, and the lower prosecution rate of these cases than other criminal cases, the collection of evidence should be conducted more carefully and comprehensively, so as not to omit essential evidence.
28. As paragraph 25 of CEDAW General Recommendation No. 33 states: "Inadequate case management and evidence collection in cases brought by women, resulting in systemic

[7] Case 1: The alcohol concentration was not tested at the very beginning after the incident. The case went through two reconsiderations and three prosecutors. In the end, the sexual assault case was not prosecuted, but the second prosecutor indicted the victim for false accusation. In the first instance of the false accusation case, the victim's lawyer found that there was no alcohol concentration testing when reviewing the file. After the court sent an official letter to the hospital, it turned out that the alcohol concentration was not tested. After five years of the sexual assault incident, the victim was falsely accused and convicted. Case 2: This is a drug-and-alcohol-facilitated sexual assault case. After the prosecutor prosecuted the case, the victim's lawyer reviewed the file and found that there was no alcohol concentration test. In the first instance, the perpetrator was acquitted because there was not enough proof that the perpetrator drugged the victim.

[8] Our service case: The victim almost got sexually assaulted by the perpetrator in the passenger seat of the car. The victim resisted with all her whole body and escaped from the car to run for help and avoid being victimized. The prosecutors initially charged the perpetrator with the crimes of physical injury and coercion, which are completely unrelated to the sexual assault. When the victim's lawyer checked the file and found that the dashboard camera at the time of the incident was not seized by the police. Therefore, the lawyer claims that there is the DNA of the perpetrator on the victim's face, and advocates changing the applicable law to paragraph 2 of Article 221 of the Criminal Code. However, because there is no recorder of the dashboard camera to prove it, the case only changed from the prosecution of the crimes of physical injury and coercion to the crimes of attempted Sexual Intercourse Without Consent.

failures in the investigation of cases." Professional and prudent measures should be taken during the evidence collecting process in sexual assault cases to ensure the rights and interests of investigation and judicial prosecution of the victims.

29. **Our Recommendations:**

(1) Re-examine the physical examination and evidence collection procedure to avoid the omission of blood alcohol test results. For example, evaluating whether to include the blood alcohol test as a necessary item in the physical examination and evidence collection process of sexual assault cases, so that the test result can be transferred to the police unit with the evidence collection box.

(2) Establish professional training in the investigation to promote the susceptivity of investigators in identifying the essential evidence and the timeliness of evidence collection, improving the overall accuracy of evidence collection.

30. In response to paragraphs 15.14, 15.19, and 15.24 **of the State' s response to 2018 COR**. Due to the difficulty in collecting evidence, the percentage of indictments of sexual violence cases is already lower than in other criminal cases.[9] Nevertheless, since some violators plead guilty during the first instance, some judicial officials expect victims to accept the compromise on the court in the name of "Restorative Justice."[10] However, compared to other criminal cases, the legal system often fails to achieve the expected "justice" for victims experiencing sexual violence, the act of judicial officials asking victims to forgive violators without asking their willingness in the name of "Restorative Justice" is against the purpose of it.

31. Restorative Justice and Retributive Justice are two different crime theories and they take divergent perspectives on how to respond to criminal behaviors. Retributive Justice focuses on the punishment of the offender, while Restorative Justice emphasizes the importance of caring for the needs of the victim and the responsibility of the offender's repairing harm.[11] It is worthy of recognition that the judicial system intends to care for the needs of the victim and reduce the second victimization of the victim during the judicial process. However, sexual violence and intimate partner violence cases involve the issue of power asymmetry; we need to put a question mark on whether these kinds of cases apply to the concept of Restorative Justice. Moreover, according to the Instructions and Precautions on Transferring Cases to

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[9] Taiwan Technology Law Institute (2017). **The Study of Analyzing Reasons for Sexual Violence Cases with Innocent Ruling - Centered on Forced Sexual Intercourse Cases.** Special Research Report Contracted by Ministry of Justice. Executive Yuan: Ministry of Justice.

[10] Case 1: During the preliminary proceeding in the first instance, the judge wanted to know whether our client was willing to accept the compromise, but the client was unable to give her answer in court. The judge wanted to know why the client needed time to think over and explained the compromise procedure with "Restorative Justice." Our client was under huge pressure when going through the procedure. Case 2: During the preliminary proceeding in the first instance, the prosecutor wanted to persuade our client to accept the compromise and give the accused a chance to turn over a new leaf. The prosecutor asked the client to forgive the accused in the name of religion, Bodhisattva compassion and Restorative Justice.

[11] The Q & A of Restorative Justice: https://www.ljc.moj.gov.tw/media/192135/%E4%BF%AE%E5%BE%A9%E5%BC%8F%E5%8F%B8%E6%B3%95qa.pdf?mediaDL=true.

Restorative Justice during the Court Process issued by the Judicial Yuan[12], it is clearly stated that "Since sexual violence and domestic violence cases involve continuing intimate, family or power relationships, it needs extra expertise and care in this domain." That is, the judicial officials should scrutinize thoroughly beforehand when considering transferring gender-based violence to the process of Restorative Justice.

32. From the experiences of our clients, some judicial officials either understand the purpose of Restorative Justice or apply normal procedures. Even worse, some of them misappropriate the concept of Restorative Justice, and pressure victims to accept the apology of the offender and agree on the compromise. These acts undoubtedly are against General Recommendation No.33 paragraphs 57 and 58 on the principles of alternative dispute resolution processes. They also break the statement of the Judicial Yuan President in 2018, which declares that "Make the Judicial System the Backing of Ending Gender Discrimination."[13]
33. CEDAW General Recommendation No.33 paragraphs 57 and 58 stress that "Ensure that cases of violence against women, including domestic violence, are under no circumstances referred to any alternative dispute resolution procedures" and "Guarantee that alternative dispute settlement procedures do not restrict access by women to judicial and other remedies in all areas of law, and does not lead to further violation of their rights."
34. **Our Recommendations:**

(1) Restorative Justice is different from the procedure of compromise and conciliation. One should evaluate the suitability of the cases before transferring cases to the procedure of Restorative Justice rather than exercise rashly and cause a second victimization to victims. Moreover, the judicial system should provide education training to prevent the second victimization.

(2) Gender-based violence cases involve the issue of power asymmetry. The judicial system will undoubtedly weaken the accusation made by survivors and amplify the defense argued by the accused when one only abides by the out-of-date concept and stereotypes. Therefore, the judicial officials should set up a more complete procedure of evaluation and implementation to prevent that from happening.

The Judicial Predicament of Sexual Assault Cases with Abuse of Authority

35. In response to paragraphs 2.30, 2.32, and 2.35 **of the State's response to 2018 COR**. MWF provides social services to 1,263 women equal to or above 18 years old who suffered from sexual assault from 2014 to 2018. Among them, there are 211 cases related to the abuse of authority, in which the accused takes advantage of his/her/their authority over the victim in an educational, caring, or occupational relationship, and they make up one-sixth (16.7%) of

[12] Instructions and Precautions on Transferring Cases to Restorative Justice during the Court Process: https://www.judicial.gov.tw/tw/dl-131144-d075007ade82415aa27ef2256e495a9b.html.

[13] Make the Judicial System the Backing of Ending Gender Discrimination – Speech made by Judicial Yuan President on Heads of Justice Seminar: https://www.judicial.gov.tw/tw/cp-1901-123148-f17d1-1.html.

the cases we provide services to. According to State Report paragraph 2.30, only the number of indictments and convictions based on Criminal Code Article 228, which regards sexual violence cases with abuse of authority, from 2017 to 2020 are presented in the statistics. These figures fail to show the real proportion of sexual assault cases with abuse of authority in the overall sexual assault cases, and it is hard to reflect the actual status of sexual violence cases with abuse of authority.

36. In practice, there are few cases where prosecutors or judges decide to adopt Criminal Code Article 228 to prosecute or impose a sentence during investigation or trial. Against one's sexual autonomy is the legal element of Criminal Code Article 221 and 222, the judicial officer will not adopt Article 228 if he/she/they can apply Article 221 or 222 to the case. However, the essence of sexual assault cases is sometimes mingled with unequal power relationships, if there is not enough conclusive evidence to prosecute or impose a sentence with Article 221 or 222, it is of importance whether the prosecutor or the judge is aware of the power dynamics under the case and tries to collect other corroborating evidence. In this way, the case might have a bigger chance to be indicted or convicted with Article 228.[14]
37. In Taiwan, sexual assault cases with abuse of authority won't come to the surface or aren't widely discussed by the public until there are serious consequences such as the suicide of the victim or the victimization of many people. Also, these cases are disclosed years after the incident, not to mention that the abuse of power in such cases can't always be proved in court. For example, the case of LIN, YI-HAN in 2017 involves the hierarchy of social status influenced by social culture instead of an obvious power asymmetry relationship. The case of Lin[15] working in the Department of Health, New Taipei City Government, and the case of Sakuliu Pavavaljung[16] in the art circle are not typical occupational relationships; however, the violators are key opinion leaders or influencers in the industry, and the victims might be obliterated in the industry and therefore lose their jobs, which prevents them from standing out for themselves; or even if they pluck up the courage and speak out, it is of the high possibility that these cases can't be tackled with Criminal Code Article 228.
38. Power is often used as a weapon to bring people into victimized situations, but it is hidden in the social-cultural context. Observationally, it is difficult for the victims who suffer from sexual violence with abuse of authority to disclose the experience in the first place. Not only do the victims are terrified and panic, but also the abuser may be an authority figure like a

[14] Our service case: The client was a single mother, who took over the operation of the deceased husband's company and was in arrears; the perpetrator signed a cooperation contract with the client. Although the contract was not an employer, he paid salaries and mastered the payment, and had substantial employer power. The perpetrator was aware of the client's financial difficulties, so he often asked the client to cooperate with him to discuss business in the hotel room and attempted sexual assault. Although the administrative complaint of the Labor Bureau determined that the perpetrator was the actual employer, in criminal justice, it was only determined that the two parties were in a contractual relationship, the perpetrator was not a legal employer, and the two parties had a relationship according to the statement of the perpetrator. Therefore, the case only focused on the violation of sex liberty but ignored the influence of the perpetrator's use of authority, and was eventually not prosecuted.

[15] A fan page established by Lin's family: https://bit.ly/3zbqdnu

[16] New about the case of Sakuliu Pavavaljung: https://news.pts.org.tw/article/562974 https://newtalk.tw/news/view/2021-12-24/686412

teacher, religious leader, or caring elder.

39. Such a "muted" situation is easy to be considered consensual sexual behavior in the judicial process. In paragraph 2.32 of the national report, although it is mentioned that the sexual assault prevention courses are held widely, however, it is difficult to determine the influence and effectiveness of these courses in enhancing the perceptivity of judicial personnel to sexual violence cases which has a power imbalance base.
40. Paragraph 25 of CEDAW General Recommendation No. 33 addresses the importance of breaking down stereotypes and gender biases in the justice system. Hence, it is critical to ensure that judicial personnel can identify the "subordination" of victims under the operation of various power relations in sexual assault cases, and truly seek judicial justice for this group of powerless victims of sexual assault.
41. **Our Recommendations:**

(1) Statistics and research: To reflect the current situation of power imbalance in sexual assault cases, statistical data should reveal the proportion, the prosecution rate, and the conviction rate of sexual assault cases related to the power imbalance in the overall cases. Only by analyzing and researching the facts and judgments of sexual assault cases related to the power imbalance can we further discuss the direction of improvement in the legal system or practice.

(2) Education Training: Through studies on sexual assault cases that relate to the power imbalance, we can raise the perceptivity of judicial personnel to power.

(3) If the case involves sexual assault by coercive means and sexual assault relates to power imbalance when the evidence of coercive means is not sufficient to prosecute or convict, the prosecutor or judge should actively consider the situation involving sexual assault relates to power imbalance. And it is not appropriate to list the violation of will as a sentence element in Article 228 of the Criminal Code of the Republic of China.

(4) Adding the elements of using authority to Article 222 of the Criminal Code of the Republic of China: Adding the terms of using authority to the second item of aggravating crime of offense against sex liberty in Paragraph 2 of Article 222 of the Criminal Code, and aggravates the punishment of sexual assault cases relates to power imbalance and violating the victim's will.

Stalking and harassment laws and practices

41. **In response to paragraph 2.42 of the States response to 2018 COR**. It is worth recognizing that the approval of stalking and harassment prevention Act[17] is an important milestone for Taiwan in terms of human rights and gender-based policy-making. However, based on the association's experience in long-term investment in the areas of legislative work and services

[17] Stalking and Harassment Prevention Act https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080211

provided for real-life cases, there still exists a considerable gap between the law and the demands of non-governmental organizations as well as the people, which are listed below as:

(1) Stalking behavior is limited to being in relation to [sex or gender] and lacks a more general provisional application. Criteria for judging that which is considered [in relation to sex or gender] is unclear and cannot encompass all practical instances of stalking and harassment cases. Even if there are the facts and evidence of stalking and harassment are objective, it is not easy for front-line law enforcement officers to determine if the motive is [related to sex or gender]. In addition, there are many changing varieties and patterns of stalking, including but not limited to surveillance, stalking, watching, waiting, threatening, insulting, discriminating, interfering with the use of electronics, demanding meetingsm, and any other new forms of stalking, etc.

(2) The [Written Warning] distributed by the police lacks a sense of immediacy, clarity, and efficacy: the police's [Written Warning] does not clearly specify the sentencing criteria, the content, the time when the written warning will be issued, nor does it stipulate the penalties for violating the written warning. A concern regarding this issue is, If the victim chooses not to sue, the only consequence of the suspect's recidivism will be the victim's qualification to apply for a protection order from the court.

(3) The application for a protection order is still subject to obtaining a written warning from the police and is still lacking appropriate funding. The application for a protection order for stalking harassment requires that the police agency has already issued a written warning against the suspect and that the suspect has committed the crime once again within two years, only then can the victim apply for a protection order from the court. It is difficult to address the issue of stalking harassment during the period before a written warning is obtained or before a protection order is issued. At present, protection orders act more as passive prohibitions that do not address the recovery and the compensation that arose from the situation of harassment. The delivery of such items does not protect the rights and interests of the victims.

42. In practice, there is proof that when women with disabilities formally seek help from the system after being stalked and harassed, the personnel often doubt the suspects' involvement in the stalking and harassment cases due to the women's disabilities. The suspects deny the crime, saying things such as "I only wanted to help them" as pretext, or "I wouldn't like someone like this" in a way to belittle women with disabilities. The symptoms of women with disabilities also make it more difficult to gather evidence. For instance, it is difficult for women with visual impairments to identify their stalkers and when exactly they were stalked and harassed. As a result, they experience interactive discrimination of both gender-based violence and ableism.

43. **Our Recommendation:**

(1) Two years after the implementation of the Stalking and Harassment Prevention Law, the Ministry of the Interior should conduct a comprehensive review of stalking cases that

do not meet the requirements, thoroughly review the differences with the definition of the "Three Laws of Sexual Harassment", consider the harm caused by stalking and harassment, and deal with stalking and harassment cases. Statistical, research and discussion on definitions, behavior patterns, and the implementation of harassment laws to facilitate subsequent review and revision of laws and regulations.

(2) Suggestions for Future Legal Revisions:

A. Follow the laws and regulations of other countries to define stalking in terms of the process and results of the behavior, specify the conditions for exemption or exclusion, exclude stalking situations that are legally justified or reasonable, and add general provisions for other similar behaviors.

B. The "written warning" should be clearly defined within a certain period of time and the effect of violation, so as to restrict the tracking behavior of the perpetrator in the early stage, avoid the evolution into casualty cases, and serve as a protective measure for the gap period before the victim obtains the protection order, which is conducive to social security and crime prevention.

C. Victims can directly apply to the court for a protection order, so that the procedure of protection order and written warning can be carried out on two tracks, avoiding protection loopholes and empty windows. In addition, damage recovery, compensation, delivery and other protection orders should be added to actively recover and compensate for long-term damage. Especially for cases of digital or technological stalking and harassment that have been increasing in recent years, the content of the protection order in response to technological stalking and harassment should be clearly defined, such as: removal, removal, destruction, etc.

(3) Education, training, and case studies should be utilized to educate professionals in various fields, such as police administration, social affairs, education, health care, and psychology, so that they may increase their understanding of the concept, nature, and risks associated with stalking and harassment, while simultaneously enhancing their sensitivity to different gender barriers. This training would also seek to enrich the knowledge and skills necessary for the collection and investigation of case evidence, as well as coping strategies for personal safety and the protection of individual rights and interests.

CEDAW Article 11

Sexual Harassment Prevention and Outreach Programs

44. **In response to paragraph11.12 of the States response to 2018 COR**. Although the Ministry of Labor has in its gender statistics bulletin published the statistical data on various types of compliant cases that violate the Sexual Harassment Prevention Act as well as the case judgements, it has not analyzed more than 90% of the inadmissible ones and their reasons of

inadmissibility. Thus, the statistics cannot be utilized as the foundation to examine whether the government's enforcement of the law has been effective or to deliberate whether the current mechanisms are appropriate.

45. In addition, although the Ministry of Labor specifies in the Regulations for Establishing Measures of Prevention, Correction, Complaint and Punishment of Sexual Harassment at Workplace that workplace sexual harassment prevention measures shall include education/training and continuous outreach and campaigning via multiple methods that raise awareness of sexual harassment prevention at workplace among employers and the public, according to our foundation's (Modern Women's Foundation, MWF) "Sexual Harassment against Women at Workplace[18]" online survey in 2021, 43% of the 1,057 women participants experienced sexual harassment at workplace, among whom 90% chose not to take actions through formal channels under the pressure of judgements from others, the attitude of the company, and the power and the influence of the perpetrator. Besides, according to our foundation's (MWF) years of practical experience, we have noticed that employers are not familiar with the appropriate remedies and their responsibilities while handling sexual harassment incidents, let alone being capable of providing their employees and job applicants a working environment safe from sexual harassment.
46. According to the Act of Gender Equality in Employment, when the perpetrator of a sexual harassment case holds the highest position in the company, to make a compliant, the victim still needs to go through the company's internal administrative procedure. The legitimacy, the fairness, and the effectiveness of the disciplinary action against the perpetrator are all disconcerting. According to our foundation's (MWF) field observation, many companies assign their entry-level employees to be responsible for handling sexual harassment cases which leads to the dilemma between following the legal regulations and securing their own future career development. The dilemma would become the barrier to protecting equal right to work, the core spirit of the Act of Gender Equality in Employment.
47. As stated above, besides having to deal with re-traumatization caused by company's insufficient mechanisms and overall unfriendly environment when filing an internal administrative complaint about being sexually harassed by a person with the highest position in the company, victims feel even more infuriated and aggrieved that there is neither disciplinary action nor deterrent effect against their perpetrators to hold them accountable even when the sexual harassment cases are admitted after the investigation. It is obvious that to have these cases handled internally by companies is not appropriate.
48. Additionally, according to Article 2 Paragraph 2[19] of Regulations for Establishing Measures

[18] "The Distance between Us and Sexual Harassment – An Online Survey of Sexual Harassment at Workplace against Women": https://bit.ly/3LAT6vR

[19] Regulations for Establishing Measures of Prevention, Correction, Complaint and Punishment of Sexual Harassment at Workplace, Article 2: For an employer hiring over thirty employees, he/she shall set up measures of prevention, correction, complaint and punishment of sexual harassment in accordance with the regulations. These measures shall be openly displayed in a noticeable place in the workplace and given to all employees.
The measures in the preceding paragraph shall specify that when the employer is the harasser, the employee or

of Prevention, Correction, Complaint and Punishment of Sexual Harassment at Workplace, when the perpetrator of a sexual harassment incident is the employer, the victimized employee can file a complaint not only through the enterprise's internal channels but also with the local competent authority. However, in practice, because the primary law of the Regulations, the Act of Gender Equality in Employment does not specify the responsibilities nor authorize the power to investigate, local competent authorities can only inspect or supervise regarding whether the companies' internal correction and compensation measures are effective immediately, or whether the investigations are done appropriately after employers become aware of the incidents. It shows that Paragraph 2 of the Regulations is mere formality. It does not benefit this particular kind of sexual harassment at workplace.

49. Our Recommendations:

(1) Present accurate data on the reasons and other related factors of the inadmissibility of cases in all three categories that infringe the Act of Gender Equality in Employment: we recommend that relevant authorities rethink and design the data collection via gathering information on quantitative data as well as qualitative case studies and documentation regarding situations and concerns faced by persons responsible for handling sexual harassment incidents as well as the difficulties and needs faced by employers in establishing preventing measures; that relevant authorities understand the existing mechanisms and measures that need to be reinforced and improved, and further develop policies that strengthen field practices and enhance employers' responsibilities in prevention.

(2) Establish explicit and executable contents as references in the measures to prevent sexual harassment at workplace: To ensure the resources invested are effective in raising awareness of sexual harassment prevention among employers and the general public, the relevant authorities must consider practical and implementable contents and samples that can serve as the foundation to help employers establish complete sexual harassment prevention measures. For example,

A. Different categories and levels of training topics and curriculum guidelines developed and designed according to the different needs, knowledge, and skills of general employees, case officers, and investigators.

B. Research and draw up guidelines as references for employers to take correction and compensation measures that are effective immediately once becoming aware of the incidents.

(3) Amend Act of Gender Equality in Employment to authorize competent authorities to investigate and judge sexual harassment incidents: since the power inequality is difficult to be resolved with individual effort, it takes more powerful mechanisms from the formal system to intervene. We recommend that the government take more vigorous

applicant may also file a complaint with the local competent authority in addition to filing a complaint through the company's internal channels. https://law.moj.gov.tw/LawClass/LawSingle.aspx?pcode=N0030019&flno=2

actions to amend Act of Gender Equality in Employment and give power to the local competent authorities to investigate and judge on the cases in which the perpetrator is the person of the highest position in a company, and to enforce certain degree of punishment against the perpetrators based on the judgement to prevent probable negative effects of authority and coercion. We expect by doing so, the spirit of the Act's legislation can be fortified.

COR Point 16-18 Access to justice

CEDAW Article 15

50. **In response to Paragraph 15.13 of the States response to 2018 COR**, although the number of courses that enhance gender awareness among judicial personnel has increased over the years, until 2020, only 40% of the personnel had received training. Besides, there has not been any information on the training rate among family court judges nor regarding the impact of these training courses on case judgements.
51. **Our recommendation: Beside continuing to increase the percentage of judicial personnel that receive gender awareness related courses, the rate of trained judges, judicial officers, and other personnel that are handling family matters and domestic violence cases should be strategically increased to 100%. These numbers and data should also be available.**
52. After examining current court judgements on domestic violence cases or family matters, we have discovered that the judicial remedies are still insufficient without appropriate, gender sensitive, and effective facilities and measures.
53. Physical facilities, such as proper spaces for breastfeeding, washrooms that are safe from threats from the domestic violence abusers, and safe passage are neither available nor accessible.
54. Cases regarding family matters that involve underage children often need to bring their young children along during court appearances. However, since most of the local courts do not provide childcare support, many domestic violence or family matter plaintiffs who are often the primary caretakers must miss the court appearances because they cannot find childcare. There have also been situations in which children became unattended while the adult plaintiff is being questioned, or the questioning had to end quickly and unfinished because young children continuously cried in the courtroom preventing the court from conducting questioning or receiving statements effectively.
55. **Our recommendations:**

(1) Judicial Yuan should examine the courts' current spaces, environments, and physical facilities. It should A. set up or improve safe passages or other protective measures to ensure the safety of judicial officials and victims; B. set up safe and appropriate spaces for breastfeeding and washrooms.

(2) We recommend that judges make safety plans for the court appearance of domestic violence cases and take it seriously when the victims or their social workers request a safety assessment and arrangements to ensure safe court appearance. (3) We recommend that the courts set up childcare service to help plaintiffs with young children attend the court hearings. It could also help minimize the impact of the litigation on the children.

56. After analyzing Article 72 Form 28 of the 4th Country Report Common Core Document, we have noticed that the male to female ratio of our country's judiciary officials, including chief justices, chiefs of courts, presiding judges, and judges is 1.02:1. The male and female ratio of judges is 0.93:1 while in management is 1.64:1 and in positions higher than Chief of Court is 3.78:1. Moreover, the male to female ratio among all judiciary officials within and above High Court is 1.23:1; among judges is 1.04; among those in management is 2.56:1; among positions of and higher than Chief of Court is 4.89:1.
57. According to the above data, it is evident that although the gender ratio seems almost balance among judges, the gender gap becomes greater among the higher-level positions.
58. The image of gender relations among the country's high officials is not only representing the country's image of gender relations but also setting an example for the general public. In General Recommendation 33 Article 15(f), it is also recommended that the country should take measures to ensure gender ratio balance among the professional judicial positions.
59. **Our recommendation: The government should examine the gender ratio gap among judges and the contributing factors, such as gender stereotype or lacking gender awareness, and then systematically adjust and improve the situation.**