

**Parallel Report on Second State Report on ``Convention to
Eliminate All Forms of Discrimination Against Women``
(CEDAW)**

**Government institutions to realize gender equality remain
inadequate and the human rights of workers continue to be
violated**

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February 2014

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I. Main Proposals and Civic Recommendations

The Convention to Eliminate All Forms of Discrimination Against Women (CEDAW) was ratified in 2009 together with related budgets and feasibility studies for the mainstreaming of gender equality and other institutional mechanisms to spur government ministries and agencies to pay attention to gender issues. However, the ``Enforcement Act of the Convention on the Elimination of All Forms of Discrimination against Women`` only took effect on January 1, 2012. At that time, all levels of government were again brought into a large scale drive to implement CEDAW, but the results have been limited. Progress has especially been limited in the fields of the review of laws, regulations and administrative measures, the institution of mechanisms to promote gender equality, education and training and reference to CEDAW in judgments in Taiwan`s judiciary. The Taiwan government has not only failed to actively incorporate CEDAW into domestic law but has even cited the comprehensiveness of domestic laws as a pretext to delay the process of revision of the legal code to be in accord with CEDAW. Use of CEDAW in court judgments also remains quite rare as CEDAW was only cited in only seven cases from January 2009 through November 2013. The work plan of the Gender Equality Commission of the Executive Yuan from 2010 through 2013 failed to include comprehensive and required training in CEDAW for officials in related government agencies, judicial officers, law enforcement agencies or legislators. Concerned civil society organizations will pay close attention to how the newly established Executive Yuan Gender Equality Department with its resources and manpower further promotes gender mainstreaming issues through the second international CEDAW review.

In this review, the TAHR is particularly concerned with the condition of women who are among the stateless persons or are held in detention centres for foreigners. Due to the regulations of our Nationality Act, persons who wish to obtain Republic of China (Taiwan) citizenship must first abandon his or her existing citizenships and must provide certification of loss of previous nationality with the application for naturalization under Article 9 of the Nationality Act. This provision makes it very easy for foreign spouses, who are usually women, of Taiwan citizens to become stateless persons. Moreover, since Taiwan has yet to legislate a proposed ``Household Workers Protection Act,`` foreign nursing women are not covered under the protections of the Labour Standards Act (LSA) and therefore cannot benefit from its provisions for the basic wage, paid vacations, the right to organize unions, the freedom to change employers or other fundamental rights. At present, there are still women who have been pregnant for less than five months being held in foreigner detention centres as well as mothers who need to take care or breastfeed their infants or infants. The conditions in such detention centres are certainly unsuitable for pregnant women and mothers or for the nurturing and growth of young children.

In light of the conditions described above, the TAHR urges the international human rights experts to consider the adoption of the following proposals in their deliberation on their final concluding observations and recommendations:

1. In order to ensure the adoption of robust and comprehensive institutional mechanisms for CEDAW implementation, the TAHR strongly recommends that the ROC (Taiwan) government implement Points Eight and Nine of the ``Concluding Observations and Recommendations Adopted by the International Group of Independent Expert`` on March 1, 2013 after their review of the first State report on implementation of the International Covenant for Civil and Political Rights (ICCPR) and the International Covenant for Economic, Social and Cultural Rights (ICESCR) concerning the establishment of an independent national commission for the protection and promotion of human rights in accordance with the Paris Principles as a priority objective.

2. We recommend that the Taiwan government should as soon as possible remove the provisions in the Nationality Act that create stateless person to eliminate the indirect discrimination caused by these provisions against most women foreign spouses. In addition, before such revisions can be approved and promulgated, the government should first use special provisional measures to directly apply the relevant provisions of CEDAW and the ICCPR and ICESCR to ensure their fundamental human rights.

3. Before the completion of the legislation and promulgation of a Household Workers Protection Act, we strongly urge the Taiwan government to permit the direct application of the LSA to household workers, the overwhelming majority of whom are women, or use special provisional measures to directly apply CEDAW and the two covenants so that household workers can directly use the basic wage and have the freedom to change employers.

4. We recommend that the Taiwan government as soon as possible draft an alternative policy to the deportation or detention of foreign citizens and urge that the Taiwan government promptly pay special attention to the unsuitability of the holding of pregnant women and infants in detention centres and take action as soon as possible to resolve this situation.

II. Responses to the Second CEDAW State Report

1. Has the government taken legal actions to incorporate CEDAW into domestic law? Are there legal mechanisms to require that all agencies at all levels of government (including parallel and subordinate agencies) respect CEDAW?

In the first CEDAW State Report, the Taiwan government delineated the content of existing laws and statutes which it maintained contained numerous protections for gender equality. However, during the review of the State Report, independent international experts expressed strong doubt about the effectiveness of these laws.

The second CEDAW State Report seems to repeat a similar exposition of the content of Taiwan's constitution and laws and the content of articles in various laws and statutes concerned with gender equality. The content of the draft second State Report indicates that the Taiwan government itself believes that it has adopted a considerable number of measures and actions to eliminate discrimination. However, the apparent sense of self-satisfaction manifested by the officials who authored the State Report masks their blindness to the insufficient implementation of the government's own laws and regulations. They evidently believe that Taiwan's laws and protections for gender equality are already complete and comprehensive and that there is therefore no need for any further review or revisions of laws or regulations that could conflict with CEDAW. At a time when executive agencies have yet to truly appreciate the responsibility undertaken by States which ratify international covenants, it is unfortunately likely that implementation of such covenants will only be seen as a formal and routinized process of reporting and that the critical process of re-examination of domestic laws and regulations will lose momentum.

In 2009, Taiwan's national legislature ratified the ICCPR and ICESCR and approved the the "Act to Implement the ICCPR and the ICESCR." This method of incorporation into domestic law can allow international covenants to have domestic legal effect and, through the provisions of the Implementation Act, require the re-examination and revision of laws and regulations which contravene the two covenants. The Implementation Act also implies that the effect of international human rights covenants takes precedence over ordinary laws and statutes even though possessing less stature than the Constitution itself.

Feminist organizations believe that CEDAW, which was ratified earlier than the two covenants, should also follow this model and therefore pressed for the passage of the "Enforcement Act of Convention on the Elimination of All Forms of Discrimination against Women" in order to more proactively demarcate the obligations of the State in eliminating all forms of discrimination against women, including with respect to the incorporation of the content, principles and spirit of international human rights covenants into domestic law and institutions. Article Eight of the CEDAW Enforcement Act, which was approved by the national legislature in May 2011 and took effect on January 1, 2012, mandates that: "All government units shall review all rules, regulations and administrative measures administered by them in accordance with the Convention. Shall there be anything in conflict with the Convention, the relevant government unit shall complete the

enactment of a new rule or regulation, amendment or abolishment of the old rule or regulation, and improvement of the administrative measure within three years after this Enforcement Act comes into effect.`` According to the State Report, central government agencies have completed the re-examination of over 700 laws (only 2% of the total number of laws and regulations). With such a rate of efficiency, it is evident that effective completion of the required re-examination of the legal system remains a major challenge.

In addition, the government offered an explanation for its proposal of a draft ``Gender Equality Basic Law.`` Although discussion on this draft bill began in late 2012, it remains at the level of staff work in the related executive agencies and it is far from certain how much time will be required for its approval by the Executive Yuan and then its passage by the Legislative Yuan. The government should provide a timetable for the progress of this draft law and make a concrete political commitment and not simply report about it on paper. Without such a timetable or commitment, how can our citizenry monitor its progress?

In sum, during the six years since the ratification of CEDAW, the Taiwan government has yet to actively incorporate CEDAW into domestic law. Indeed, the second State Report demonstrates that the government is using the pretext that existing laws already are complete to delay comprehensive implementation of the spirit and letter of CEDAW and the required re-examination and revisions in the legal code.

2. Are courts adopting CEDAW? Have domestic courts directly cited CEDAW articles to appeal for equality in women`s rights? Can lawyers or defence counsel directly cite CEDAW in court? Do judges make reference to CEDAW or other human rights principles when making judgments?

At present, the use of CEDAW in courts remains quite rare. According to official and civic indices of court judgements, ²from January 2009 through November 2013, only seven cases could be found in which CEDAW was cited in judgments, including one in 2009, three in 2012 and three in 2013. In terms of character, there was one case of state compensation, one related to sexual harassment, three involving emotional incidents and two concerned with the rights of women workers.

For example, Civil Law Judgment Number 25/2007 issued by the Taipei District Court on March 11, 2009 concerned the infringement of labour rights of a worker from the Philippines. Because the case was filed under the State Compensation

² The Judicial Yuan of the Republic of China Laws and Regulations Retrieving System (<http://jirs.judicial.gov.tw>), which has a limited English menu, and the civic PingLuWeb search engine (<http://www.pingluweb.com/#search>).

Act, the judgment quoted CEDAW and other related international covenants and other positions raised by the migrant worker. However, the judges ultimately did not adopt this position and rejected the suit for state compensation.³

In Marriage Case Judgement 269/2011 issued on April 10, 2012 by the Changhua District Civil Court regarding a divorce case, the defendant cited Article 16 of CEDAW in the course of her defence. The article in question mandates that ``States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.`` Based on this article, the defence advocated that ``the parents have the same rights and responsibilities with regard to their children. The decision by the judges to resolve the guardianship of the children based on the defendant`s choice of gender identification was unfavourable to the defendant and was a substantive act of inequality which violates the concept of equality among men and women, especially if the defendant clearly has difficulties in gender identity or self-choice.`` However, the judges did not adopt this advocacy by the defendant in their judgment.⁴

In its Number 129/2012 decision on a criminal case on appeal issued on August 1, 2012 involving a Vietnamese woman migrant worker who had been sexually assaulted by a Taiwan male adult, the Taiwan High Court mentioned in its judgment that the prosecution had appealed the case due to its position that ``Taiwan has approved the `two human rights covenants` and `the Convention to Eliminate All Forms of Discrimination Against Women` (CEDAW), but to date there have not been any laws enacted to protect the safety and work rights of foreign workers.`` However, the judges did not make any further references to the content of CEDAW and did not correct this distorted advocacy by the prosecution. The High Court ultimately rejected the appeal and the sexual assault case was not established.⁵

Another example was the decision issued by the Taipei High Administrative Court on December 28, 2012 on appeal case No 1471/2012 regarding a woman who participated in a civil service examination and did not pass the examination because of an injury. The plaintiff had cited the guarantee advocated in Article 11 of CEDAW against discrimination on the grounds of

³ The Chinese text of this judgment is available on the PingluWeb at <<http://www.pingluweb.com/#reportDetail?id=TPD,96,,25-01411e70-08bd-4eae-ac57-6c51de1548a4>>

⁴ The Chinese text of this judgment is available on the PingluWeb at <<http://www.pingluweb.com/#reportDetail?id=CHD,100,,269-2628aff9-5a57-461e-9388-f3a1e1070ee5>>.

⁵ The Chinese text of this judgment is available on the PingluWeb at <<http://www.pingluweb.com/#reportDetail?id=TPH,101,,129-1fc1bf6b-bd6c-4c9e-8ee0-9619169b1545>>.

pregnancy and maintained that physical injury should be seen as equivalent to the situation of a pregnant woman and that she should therefore have been given special protection. However, the judges decided that the plaintiff's position was too weak to adopt.⁶

In a decision on another divorce case handed down February 27, 2012 (Number 697/2012) by the Taichung District Court, the judges in discussing ``protection for women and motherhood in family affairs`` in a section of the judgment on ``the laws and legal principles involved in divorce cases`` cited the CEDAW as follows:

``States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.`` Article Four, Paragraph Two: ``Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.``

The judges also referred to the discourse of substantive equality in the incorporation of CEDAW into domestic law: ``The afore-mentioned incorporation into domestic law of the covenants supports the necessity of special protective measures towards women in order to substantively realize the constitutional principle of substantive equality and therefore the law can no longer only be satisfied with formal equality between men and women. State agencies including judicial agencies should recognize that there exists substantive inequality between men and women in the actual operations of state, society and family and that the existence of this inequality requires more active protective methods to realize the substantive equality required by the Constitution.`` This judgment marks a rare example in which judges have substantively referred to the covenants.⁷

Similarly, in a judgment on a divorce case issued July 17, 2013 (Number

⁶ The Chinese text of this judgment is available on the PingluWeb at <<http://www.pingluweb.com/#reportDetail?id=TPB,101,,1471-f92d8af0-8112-4a50-8f84-518078d024af>>.

⁷ The Chinese text of this judgment is available on the PingluWeb at <<http://www.pingluweb.com/#reportDetail?id=TCD,101,,697-1759828f-d8a4-400b-b91d-0207d1d7f58a>>.

70/2013), a panel of judges of the Taichung District Court cited the principle of CEDAW that priority should be given to the protection of women and mothers in family affairs.⁸

The final example occurred in a judgment issued by the Taipei District Court October 11, 2013 on an administrative lawsuit (Number 206/2013) regarding a petition filed against the decision by the Taipei City Government to deny the rights of an Indonesian migrant worker. In the case, Legal Aid Foundation lawyer (Mr) Chou Han-wei cited CEDAW. Although the judges affirmed the applicability of CEDAW, their judgment nonetheless went in roundabout way to uphold the rights of the employer and sacrificed the rights of the female Indonesian worker. According to the judgment, Unipah, the worker in question, had been banned from becoming pregnant by the contract signed with her employer, who had, after she had completed a period of work, notified her again that she could not become pregnant and refused her request to meet with her husband. After the employer became aware that Unipah had already had a child, he filed a civil lawsuit against her for previous shortcomings in her work and refused to pay her wages or give her maternity leave. After the Taipei City government referred the plaintiff and her child to arbitration, the Indonesian migrant worker and her child filed an administrative petition, which was rejected.⁹

Taipei District Court Judge (Mr) Lee Ming-yi acknowledged that this case contravened the spirit of CEDAW regarding the right to be paid wages and the right of women migrant workers to have maternity leave. Nevertheless, the judge maintained that the court should also take account of the provisions in our country's Gender Equality in Employment Act with regard to sanctions against discriminatory actions in the workplace. The judge maintained that since the behaviour concerned in this case was not covered in the scope of Article 7 of the GEEA¹⁰, it was not subject to sanction. Moreover, court found that the original hiring request did not discover any clause excluding workers who were pregnant or that notified the worker that she could not meet with her spouse. The judge maintained that as both of these requirements were imposed after the employment contract was signed, there was no violation of the Gender Equality in

⁸ The Chinese text of this judgment is available on the PingluWeb at <<http://www.pingluweb.com/#reportDetail?id=TCD,102,,70-0ef4f329-801c-4ac1-90eb-6b43f9bbfade>>.

⁹ The Chinese text of this judgment is available on the PingluWeb at <<http://www.pingluweb.com/#reportDetail?id=TPD,102,,206-73dbb32f-05ab-4f89-b8de-8784e25052be>>.

¹⁰ Translators Note: Article 7 of the Gender Equality in Employment Act states: Employers shall not discriminate against applicants or employees because of their gender or sexual orientation in the course of recruitment, screening test, hiring, placement, assignment, evaluation and promotion. However, if the nature of work only suitable to a specific gender, the above-mentioned restriction shall not apply <<http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=N0030014>>.

Employment Act. As the worker later did not provide labour services, the employer naturally did not need to pay wages or grant the plaintiff maternity leave, according to this judgement.

With regard to this judgement, we can affirm that the judges recognized the legal applicability of CEDAW and also advocated that ``the application of domestic laws and regulations should as a matter of course should refer to the intent of the convention and the interpretations of the UN Committee on the Elimination of Discrimination Against Women.`` The judges also maintained that the existing provisions of the GEEA clearly contravened CEDAW. Nevertheless, the judges still transferred responsibility for the gap between existing laws and the convention to the Executive and Legislative branches and maintained that they should revise the existing laws based on Article Eight of the CEDAW Enforcement Act. The above mentioned logic of the judges is actually contradictory since Article Two of the CEDAW Enforcement Act already mandates that the convention has legal effect in domestic law. Therefore, the judges actually could have directly applied the content of the convention and did not need to wait until the process of revision of domestic law is complete. In other words, Executive agencies and the Legislature of course should adjust domestic laws and regulations to be in keeping with CEDAW as mandated by the enforcement act. However, this necessary process does not affect the fact that judicial agencies and courts should directly apply CEDAW to guarantee the fundamental rights of each individual. After all, Article Four of the CEDAW Enforcement Act states: ``All government units shall exercise their authority in accordance with all rules and regulations regarding protection to genders and human rights specified in the Convention, eliminate gender discrimination, and actively promote the realization of gender equality.`` The reference to ``all government units`` of course includes the judiciary.

3. Have all officials, judicial officers, law enforcement personnel and legislators in concerned government agencies received training in the obligation to implement CEDAW?

The 2009 State Report on CEDAW emphasized that the government should continue the development of specialized state agencies to handling of gender issues. The Executive Yuan Committee for the Promotion of Women`s Rights will continue the model of cooperation between the government and women`s organizations and cross-ministerial promotion of ``gender mainstreaming.`` This work will focus on education and training programs regarding gender mainstreaming including ``gender statistics,`` ``gender budget analysis,`` ``gender impact assessment,`` and ``civil employee gender consciousness training`` in order to bolster the awareness of public officials and employees on gender human rights and change the direction of public implementation and fundamental social values. Nevertheless, the work plan for the Executive Yuan

Gender Equality Committee for the years 2010 through 2013 did not comprehensively require government officials, judicial officers, law enforcement personnel or parliamentarians to receive training regarding the obligations of CEDAW.

With regarding to gender mainstreaming training, the Executive Yuan Gender Equality Committee's work plan for 2010-2013 was focussed on the concept of "gender impact assessment" and its courses included the following content: (1) gender mainstreaming camps, which include instruction in gender mainstreaming concepts, six major tool, utilization, and case studies which can be linked with ministry or agency operations. From 2010-2013, the focus of training was on gender impact assessment; and (2) special gender mainstreaming training for senior officials: Senior officials and supervisors in each ministry should receive gender impact assessment training. These training courses were limited to concerned ministries and agencies in the Executive Yuan and included training for senior or responsible officials. However, there was no requirement to hold CEDAW training for ordinary public employees. In addition, the scope of CEDAW training did not extend to the Legislative Yuan or its subordinate agencies.

An even more important issue concerns the question asked by the international experts who carried out the 2009 international review: "The implementation of plans to promote gender mainstreaming is praiseworthy, but have these plans been completed? What have been the results? Have all ministries carried out training for senior male and female officials and other civil employees?" Although the second CEDAW State Report has responses to these questions, it only provides data for the year 2012 and has no statistics whatsoever on the years 2009 through 2011. In addition, data provided by the Ministry of Civil Service of the Examination Yuan for 2012 indicates that the percentage of male to female civil service employees is approximately 60 percentage 40 percentage; however, the gender breakdown of civil service employees who participated in CEDAW training courses was 40 percentage male and 60 percentage female.

III. Issues Neglected in the State Report

1. A Review of the gender equality agencies in government ministries

Beginning in 2012, central government agencies began to carry out programs approved by the Executive Yuan for governmental reorganization. In order to bolster efforts to promote gender equality, the existing "Committee for the Promotion of Women's Rights" of the Executive Yuan was expanded into the "Executive Yuan Gender Equality Committee" (EYGEC) and a new "Gender Equality Department" was established within the Executive Yuan to provide staff

support for the EYGEC.

Under the existing structure of the Executive Yuan, the GEC, which meets about every four months, is actually composed by 35 commissioners appointed by the Executive Yuan, of whom 17 are ministers or have ministerial rank (including the premier who is convenor and the vice premier who acts as deputy convenor) along with 18 civic personages or representatives of women's rights organizations. In other words, the GEC is a body without specialized personnel or an allocated budget. Substantive work on gender issues must be divided among Executive branch ministries and agencies based on their areas of responsibility and with the civil society representatives of the committee invited for discussion. Since little time has passed since its establishment at the end of 2011, it is difficult to evaluate the performances of the EYGEC and its current commissioners. However, it is noteworthy that the EYGEC belongs to the Executive branch and therefore the regulations regarding its establishment and the composition of its civil society representatives were decided entirely by the Executive Yuan. There are therefore questions as to whether its appointment procedure could be more transparent, whether the background of the commissioners could be more diverse and conducive to accumulating and transferring experience and whether decision-making process could manifest more pluralism and democratic participation. Besides improvements in appointment procedures, there are also the questions of how to build openness of information and accountability of both official and civic commissioners to satisfy the public's right of knowledge and allow gender related policy and personnel decisions to be resolved in a manner with effective disclosure to enhance civic monitoring and accountability. This issue is not only a matter of expanding the public character and visibility of gender issues but also of allowing more citizens to become involved in public debate on gender policies and thereby continue to promote social progress.

Nevertheless, even though the Executive Yuan Gender Equality Department has already been established as the main coordinating agency for CEDAW, the Taiwan government during the second international review of CEDAW implementation continues to be unable to resolve the issue raised by the international experts panel regarding the establishment of an independent secretariat. If it plays the role of secretariat for the second review, the Executive Yuan Gender Equality Office will face similar doubts concerning its acting both as player and umpire as did the Ministry of Justice in the review of the first State Report on the ICCPR and ICESCR by the 10-person International Group of Independent Experts in February 2013.

Moreover, if the Taiwan government acts in accordance with Recommendation No. 11 of that group of international experts and initiates the necessary procedures for the ratification and incorporation into domestic law of all

international conventions not yet ratified, the result could be that the preparation work for these nine core human rights covenants may be parcelled out to different ministries. For example, the Convention on the Rights of the Child could be handled by the low-level Society and Family Administration of the Ministry of Health and Welfare, the Convention on the Rights of Persons with Disabilities may be given to either the MHW or to the Ministry of Interior. If this trend continues, Taiwan`s NGOs may be exhausted in running from ministry to ministry and mired in the drafting of numerous shadow reports to cope with the innumerable reports and meetings generated by this dispersal of responsibility.

To avoid such confusion and difficulties, the TAHR strongly urges the Taiwan government to abide by Points Eight and Nine of the ``Conclusions and Observations`` of the Independent Experts Group issued on March 1, 2013.

Point Eight states: ``In many countries, including a reasonable number in the Asia/Pacific region, the need was recognized to establish, in addition to existing constitutional structures, an independent national human rights commission that meets the requirements of independence and autonomy set out in the Paris Principles Relating to the Status of National Human Rights Institutions, adopted by the United Nations General Assembly in 1993. Such a commission would, inter alia, carry out advisory, monitoring and investigative functions in the broad area of civil, cultural, economic, political, and social rights and should also be instrumental in drawing up a National Action Plan for the Promotion and Protection of Human Rights.``

Point Nine states: ``The Experts recommend that a specific time frame be set for the establishment of an independent national human rights commission in accordance with the Paris Principles as a priority objective.``

Only the establishment of an independent national human rights commission in accordance with the Paris Principles and its undertaking of the role of carrying out the preparatory work for the nine core human rights conventions and international reviews can suitably resolve the above-mentioned shortcomings in Taiwan`s institutional mechanisms for human rights and gender equality.

2. The Nationality Act is liable to turn Southeast Asian spouses of Taiwanese into stateless persons.

The TAHR is not an organization whose prime concern is gender equality, but for a considerable time it has carried out visitations to detention centres for foreign persons and provided assistance for the human rights issues of stateless persons and has paid attention to the aspects of gender equality of issues concerning migrant persons and migrant workers and the multiplication of discrimination that such persons face in our society. Article Two of CEDAW is

an important anti-discrimination clause and is seen as an article of utmost importance in the full realization of the covenant.

Nationality of the Republic of China, Taiwan`s formal name, is obtained mostly through the principle of ``jus sanguinis`` (``right of blood``) supplemented by territoriality. Therefore, any infant, regardless of gender, whose father or mother possessed ROC nationality at the time of his or her birth will also possess ROC nationality.

With regard to the process of obtaining ROC nationality through naturalization, country`s Nationality Act does not explicitly impose restrictions based on race, skin color or gender on obtaining nationality and does not explicitly compel women to change nationality due to marriage. Nevertheless, the fact that many social welfare and social insurance benefits and the exercise of rights are closely linked with the possession of ROC National Identity Cards effectively compel foreigners to naturalize if they want to enjoy social welfare guarantees.

However, the Nationality Act requires that persons who wish to apply to obtain ROC nationality through naturalization must first abandon their original nationality and then must wait a period of time until all administrative procedures are complete before they can obtain the certificate of naturalization.¹¹ The design of this system has already created many stateless persons and, in its actual operation, again and again we can discover that after renouncing their original citizenship, administrative agencies discover reasons to determine many foreign spouses as unsuitable for naturalization and are therefore are unable to obtain ROC nationality or find that their permission to obtain ROC nationality is cancelled. Moreover, due to the laws of their original countries, such as Vietnam and Malaysia, many persons who have renounced their mother nationality are unable to restore their former nationality. The fact that such persons are thereby rendered stateless may affect their right of free movement, participation in political and civic affairs, employment opportunities and access to social insurance or social welfare rights and benefits. According to data provided during a public hearing regarding ``The Treatment of Stateless Persons and the Prohibition of Marriage Brokering`` held at the Ministry of Interior August 28, 2013, there were 153 persons who had been refused naturalization as of December 31, 2012. As of August 27, 2013, the applications of 69 of these

¹¹ Article 9 of the Nationality Act states: A foreign national who applies for naturalization according to Article 3 to Article 7 shall provide the certification of his/her loss of previous nationality. But if he/she alleges he/she cannot obtain the certificate for causes not attributable to him/her and foreign affairs authorities investigate and determine that this is true, he/she does not need to provide the certificate.`` See also Sun Wei-lun, ``A foreign doctor in the Taichung countryside becomes a stateless ping-pong ball due to the requirement that applications for naturalization must first abandon their original nationality,`` NOWnews, March 25, 2013 <<http://www.nownews.com/2013/03/25/91-2918097.htm>>.

persons had been approved, leaving 84 whose ``applications could not be approved`` and were therefore ``stateless``.

Actual Case

Ms Nguyen, originally of Vietnamese nationality, came to Taiwan to live after marrying a Taiwanese man. In 2007, she decided to apply for naturalization and based on the requirements of the Nationality Act, renounced her Vietnamese nationality and then went to the district Household Registration Office (HHRO) to continue her application process. At this time, it was discovered that because her husband had secretly successfully applied to the district court for a divorce because he wanted to marry a woman with whom he was having an extramarital affair. Ms Nguyen therefore was deprived of her status as a spouse and thus was considered ineligible for naturalization and the Ministry of Interior therefore rejected her application. As it is impossible for Vietnam to restore her original nationality, Ms Nguyen has now become stateless.

Taking a step back, we can still discuss whether the loopholes in the design of the Nationality Act structurally generates stateless persons. Based on the requirements of the Nationality Act, persons who wish to naturalize must first renounce their original nationality. Based on MOI statistics, foreign spouses accounted for 95.6 percentage of such applicants, with the majority hailing from Southeast Asian nations. As related above, our country`s social welfare, social security and the exercise of rights all are closely linked with the possession of ROC nationality. In order for a foreign spouse to integrate into life in our country and enjoy its social welfare guarantees, she must obtain ROC nationality and must first therefore renounce her original nationality.¹²

The design of the existing Nationality Act therefore evidently violates Article Nine of CEDAW, which mandates: ``States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.`` This act also violates Paragraph Six of General Recommendation Number 21 issued in 1994 by the Committee Against All Forms of Discrimination Against Women on

¹² See the report ``Give Him A Way Out: Losing both identities! After Renouncing her original citizenship, she also lacks Taiwan nationality.`` produced by the TVBS satellite television network on September 14, 2011

<http://www.tvbs.com.tw/news/news_list.asp?no=sunkiss20110914192649>. Another case in which a 37-year-old woman was deprived of her naturalized ROC nationality on the grounds of having had an extramarital affair with a Vietnamese worker is described in a Taipei Times editorial ``The long fight against discrimination`` published December 15, 2013 <<http://www.taipeitimes.com/News/editorials/archives/2013/12/15/2003579036>>.

“Equality in marriage and family relations” which states: “Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality.”

3. Female household labour is subject to discriminatory treatment

According to statistics of the Bureau of Employment and Vocational Training (BEVT) of the Council of Labour Affairs (CLA), as of June 30, 2013 there were 462,658 foreign migrant workers in Taiwan, of whom were 253,024 were industrial laborers (of whom 72.1 percentage were male) and 209,634 were social welfare workers (of whom 99.16 percentage were women).¹³

Since Taiwan has no “Household Workers Protection Act”, these predominantly female nursing workers are not covered by the protections of Taiwan’s Labour Standards Act and do not have the fundamental rights equal benefits as the predominately male industrial laborers, such as being paid at least the basic wage, having required paid leave and the right to join or organize unions. This state of affairs demonstrates that the gender right guarantee policies promoted by the Taiwan government have not been applied to foreign migrant workers. This obviously discriminatory treatment violates the provisions of Articles Two and 15 of CEDAW and General Recommendation 26.

According to General Recommendation Number 26 on “Women Migrant Workers” approved on December 5, 2008, States parties are responsible for ensuring that “migrant women, like all women, should not be discriminated against in any sphere of their life” and emphasizes in “countries of destination,” the occupations of migrant women “may be excluded from legal definitions of work, thereby depriving women of a variety of legal protections.”

According to Article 53 of Taiwan’s Employment Services Act, foreign workers who are employed as “household assistants” “may not shift to a new employer or new work.”

This kind of provision can all too easily cause the majority of female household assistants or nursing workers to be trapped in dangerous or exploitative working environments. Quite often there are individual cases in which a foreign household assistant does not even get one day of vacation during a full year and are even required to perform additional work besides providing nursing care or whom have their passports or identification documents confiscated by their employer or broker. The confiscation of identity documents effectively deprives the female

¹³ See Bureau of Employment and Vocational Training, <http://www.evta.gov.tw/files/57/721096.pdf>.

foreign worker of any chance to enjoy any legal guarantees and rights which require identity documentation and directly violates the stipulations of CEDAW's Article 15. When they encounter such bad employers, female foreign workers do not necessarily have the channels or opportunities to appeal to the CLA or demand to change employers, but frequently have no alternative but to flee and become ``illegal foreign workers.`` Migrant workers on the run are also liable to become victimized by human traffickers or locked up in foreigner detention centres by inspectors from the National Immigration Administration (NIA).

4. Accelerate the process of revising the Immigration Act to ensure the right of personal freedom of female migrant workers and promote the replacement of the detention system

According to NIA Specialized Operation Corps data, as of July 31, 2013, there were 39,169 missing foreign workers, of whom 25,740 were women. In addition, there were 661 foreign workers whom had been discovered by the NIA and were being held in foreigner detention centres, 630 of whom were women.¹⁴ However, by comparison, the NIA as of July 31, 2013 had recorded a total of only 106 human trafficking cases.¹⁵

According to the proceedings of a forum on alternatives to detention held on August 27, 2013, numerous CSOs engaged in providing human trafficking asylum centres reported that there were extremely obvious cases of victims of human trafficking whom had not been for various reasons determined by courts as human trafficking cases and that there were extremely few employers who had been convicted or punished for human trafficking. It seems apparent that judges have an excessively narrow definition of human trafficking and lack the sensitivity to identify victims.

Article 38 of the Immigration Act mandates that the NIA can only detain someone ``temporarily if a compulsory exit order has been proven difficult or impractical to enforce.`` However, in their actual operations, after discovering undocumented foreign workers, police do not distinguish between whether or not there exists a need to place individuals under detention but usually directly place them under detention. Conditions of Taiwan's four major detention centres are poor and they also manifest a gaping gender imbalance as the vast majority of their guards and staff are male. For example, the Yilan Detention Center has only two female NIA officers and, as a result, the needs of women detainees are often neglected.

In addition, foreigner detention centres have an excessively narrow definition

¹⁴ See <www.immigration.gov.tw/public/Attachment/3829104411638.xls>.

¹⁵ See <www.immigration.gov.tw/public/Attachment/38291040462.xls>.

of whom should not be placed under detention. For example, there are still women who have been pregnant for less than five months who are under detention as well as mothers who need to take care of their infants or breastfeed. The conditions in Taiwan's foreigner detention centres is extremely unsuitable for expectant women, mothers or growing children.

Foreign detention centres only divide detention space for males and females. However, Taiwan news media have reported that the Yilan Detention Center in August placed a male to female transgender person under detention. Because this person's gender was listed on the passport as "male," the detention center staff gave her a solidarity cell in the male section. However, this person had already begun to use female hormones and manifest female characteristics during her period of working in Taiwan and identified her gender as female and presented herself as female in appearance and lifestyle. Although she had not had undergone major surgery and retained male features, it was certainly unsuitable to place her in the male detention zone. Such a polarized detention environment is undoubtedly unfriendly for transgender persons.¹⁶

Given the long-term systematic exclusion of transgender groups in Taiwan society, transgender persons are more vulnerable to discrimination, violence, torture or mistreatment than ordinary detainees. Moreover, the supply of hormones and other medicines vital to the health of transgender persons can also be abrogated due to the restrictions on physical freedom in detention centres.

In Interpretation No. 708 issued on February 2, 2013 regarding "Immigration Detention of Foreign Nationals Pending Deportation," Taiwan's Constitutional Court stated that Article 38 of the Immigration Act allows for unreasonably long detention and the temporary detention "does not provide the detainee with prompt judicial relief" and that "an extension of the aforementioned temporary detention also is not subject to judicial review." The Constitutional Court found this provision violated the constitutional protection for physical freedom and was unconstitutional and has instructed the NIA to revise the law as soon as possible.¹⁷ After their review of Taiwan's ICCPR/ICESCR State Reports in February 2013, 10 independent international human rights experts stated in their "Conclusions and Observations" issued March 1, 2013 that the detentions of foreigners and mainland Chinese under Article 38 contravenes Article 9 of the ICCPR regarding guarantees for physical freedom. Moreover, in Interpretation No. 710 issued on July 5, 2013 regarding deportation and detention cases involving Chinese nationals, the Justices of the Constitutional Court determined that the provisions in Article 17 of the "Act Governing Relations between the

¹⁶ See Chiang Chih-hsiung, "Thailand Male Worker Escapes and Turns into a Woman in Two Years," Liberty Times (Chinese), <http://www.libertytimes.com.tw/2013/new/aug/20/today-so4.htm>.

¹⁷ See http://www.judicial.gov.tw/constitutionalcourt/EN/p03_01.asp?expno=708 (in English).

People of the Taiwan Area and the Mainland Area` regarding the unlimited detention or deportation of Chinese spouses of Taiwanese citizens without clear time restrictions and without appeal mechanisms or channels for judicial remedy were unconstitutional.¹⁸

In addition, the foreigner detention centres in Taiwan still hold women who have been pregnant for five months or less and mothers with infants who need care or breastfeeding even though conditions in these detention centres are unsuitable for expectant women, mothers or children. In 2012, there were nine couples of mothers and children kept in foreigner detention centres and there was still one such pair in detention as of November 30, 2013.

Taiwan`s legal code appears to guarantee equality between men and women and physical freedom, but in fact gender equality is not ensured in substance with regard to the physical freedom of spouses of foreign nationality or migrant workers.

IV. Recommendations

1. Urgently establish a national human rights institution to correct the inadequacies of the CEDAW gender institutions:

Based on the above civic shadow report, we believe that the main problems lie in the excessively low level of administrative officials who are given responsibility for implementing CEDAW and the inability to effectively coordinate powers and responsibilities across government ministries and the lack of surplus personnel and budgets to comprehensively promote this work.

Therefore, we strongly urge the government to initiate preparatory work for the establishment of a national-level human rights agency with a concrete timetable and clearly defined power and objectives and to establish a national human rights commission to carry out overall planning and cross-ministerial coordination of human rights affairs.

2. The Judicial Yuan should intensify education and training for judicial officers and personnel regarding CEDAW as well as human trafficking and utilize the two examples in family courts in 2013 as a model for discourse and broaden CEDAW`s application in similar judgments in other courts.

3. The government should re-examine why the reasons for the gap in gender composition of government officials who participate in CEDAW-related training

¹⁸ See <http://www.judicial.gov.tw/constitutionalcourt/p03_01.asp?expno=710> (in Chinese).

and the gender composition of the overall civil service. The government should do its best to ensure that the percentages of male and female civil service employees who participate in CEDAW training reflects the gender distribution of the overall civil service.

4. At present, the government`s promotion of on-line education is overly passive and the government should genuinely implement related CEDAW training. In addition to the fact that senior government officials ``should`` participate in related training, ordinary civil service employees have not been required to attend such courses and the government should set up more CEDAW courses so that ordinary civil service employees can participate as well.

5. The government should revise the Nationality Act as soon as possible.

Since 2012, numerous CSOs, including TAHR, the TransAsia Sisters Association, Taiwan (TASAT), and the Taiwan International Family Association (TIFA) in the Alliance on the Amendments of the Human Rights Protection Law (AAHRPL)] have advocated revision of the Nationality Act and have cooperated with legislators to put forward a civil society draft of proposed revisions. The civil society version calls for a relaxation of the conditions for naturalization of foreign spouses in order to reduce the obstacles to such naturalization and guarantee the right of foreign spouses to be united with their families in Taiwan. The draft package of revisions also advocates respect for the national identity concepts of all individuals and the adoption of dual citizenship in order to allow persons to naturalize as ROC citizens without being forced to renounce their original nationality or citizenship and thereby substantively guarantee the right of nationality of female foreign spouses.

6. The State should guarantee the rights of existing stateless persons in Taiwan.

The existing Nationality Act mandates, in order to renounce their original nationality, foreign citizens must apply to the ROC government an ``Application for Naturalization Candidature Certificate`` and then wait for the Ministry of the Interior to review the application to see if it accords with the conditions for naturalization before the MOI issues the naturalization candidature certificate. This ``certificate`` can then be used by the foreign applicant to carry out the renunciation of his original nationality. Therefore, there are at present persons within our country`s boundaries who have become stateless because they have applied for naturalization based on our Nationality Act and possess ROC Naturalization Candidature Certificates and have passed the MOI review of naturalization conditions and should receive naturalization permits. The TAHR advocates that all stateless persons who have obtained ROC Naturalization Candidature Certificates should be given channels to reapply for ROC nationality in order to comprehensively resolve the issue of nationality for stateless persons

in Taiwan.

7. The government should do its utmost to avoid unnecessary detentions and do its best to delegate responsibility to CSOs or family and friends as alternatives to traditional detention and should revise related laws and measures to facilitate implementation of alternatives to traditional custodial forms of detention.

8. The government should not place persons belonging to groups that are liable for victimization into detention. Expectant women and mothers who need to breastfeed their children should not be held in detention centres.

9. Foreign detention centres should have better gender balance among staff and should be allocated interpreters for all relevant languages.

10. The government should legislate a ``Household Labour Protection Act`` as soon as possible to ensure that female foreign migrant workers have the right to be paid basic wage, have vacations and have the freedom to change employers.