

# **Follow-up report of concluding observations proposed by the International Review Committee for the initial state report on the Convention on the Rights of Persons with Disabilities**

1. Pursuant to Article 35 of the Convention on the Rights of Persons with Disabilities (CRPD) and Article 7 of the Act to Implement the Convention on the Rights of Persons with Disabilities, the Taiwanese government submitted the initial state report on December 2, 2016 and convened a review meeting concerning the initial CRPD report between October 30 and November 1, 2017. The International Review Committee (IRC) consisted of a total of 85 concluding observations, which will serve as references for future review and revision of relevant regulations, policies, and administrative measures in Taiwan. Paragraph 82 of the concluding observations requires that the Taiwanese government announce the measures to be taken in response to Paragraphs 23(b) and 81(c) in accordance with Article 35(2) of the CRPD within 12 months.
2. In Paragraph 23(b) of the concluding observations, the IRC recommends that Taiwan define in its national legislation and regulations the principle of reasonable accommodation in all areas in line with article 2 of the CRPD, ensure the legal recognition that the denial of reasonable accommodation constitutes a form of discrimination, and ensure their application in practice in both the public and private sectors;
3. In Paragraph 81(c) of the concluding observations, to conform to the Paris Principles, the IRC recommends that Taiwan immediately establish an independent monitoring mechanism in the form of a National Human Rights Institution or similar body, in conformity with all the requirements set out in the Paris Principles, thus mandating that the independent monitoring mechanism be fully independent and therefore not within the Presidential Office, the Control Yuan, or any part of the government structure.
4. Responses to Paragraphs 23(b) and 81(c) of the concluding observations are as follows.

## **Responses to Paragraph 23(b) of the concluding observations**

5. Four workshops were held between September and October 2018 in an effort to incorporate reasonable accommodation into national legislation. According to international experience, domestic experts and scholars specializing in human rights conventions were invited to help central government entities at all levels understand their obligations and responsibilities with respect to implementing a policy of reasonable accommodation in labor- and education-related areas.
6. The People with Disabilities Rights Protection Act mandates that the personality and legal rights of persons with disabilities be respected and protected. Persons with disabilities shall not be discriminated against with respect to their rights to education, examinations, recruitment, employment, residence, migration, and medical care. In addition, diverse and appropriate assistance should be provided to persons with disabilities according to individual needs. The Ministry of Health and Welfare plans to amend Article 16 of the People with Disabilities Rights Protection Act between 2019 and 2021, thereby ensuring that persons with disabilities are entitled to request and receive reasonable accommodation on the condition that the requested accommodation does not impose an excessive burden on the counterparty. Failure to provide reasonable accommodation would be subject to the penalty described in Article 86(1).
7. Taiwan has enacted several regulations to ensure that reasonable accommodation measures are implemented in the education field for persons with disabilities.
  - (1) Regarding reasonable accommodation in education, Article 4 of the Educational Fundamental Act demands that, to foster the personal development of persons with disabilities and respect their autonomy, the right of persons with disabilities to pursue an education is protected by law. Moreover, Article 12 of the Special Education Act stipulates that the special education students' education level, grade placement, and class location as well as the implementation of special education should be

flexible. The age for school admission and duration of schooling for special education students shall be adjusted to meet their actual needs. In addition, Article 19 of the Special Education Act states that the curriculum, materials, instructional methods, and assessments in special education should remain flexible to meet the needs and suit the characteristics of special education students. Article 28 of the Special Education Act and Article 9 of the Enforcement Rules of the Special Education Act specify that individualized education programs should be formulated according to the individual characteristics and needs of students with disabilities.

(2) Concerning the provision of reasonable accommodations in school examinations, the Regulations on Examination Services for Students with Disabilities mandate that schools and examination units provide various examination-related services according to the needs of students with disabilities. Examination subject characteristics and students' learning disabilities and special needs should be considered to determine which accommodation services to provide; such services may involve examination site services, assistive devices, modified examinations, and modified methods by which students answer examination questions. Article 10 of the Regulations on Examinations Services for Students with Disabilities specifies that schools shall consider the needs of students with disabilities when holding school activities to create an environment with minimal constraints. To engage students with disabilities in all types of school activities, schools may adjust the content and process of activities, provide assistive devices, arrange support personnel, formulate crisis management plans, and employ other relevant measures.

8. To ensure all students with disabilities receive reasonable accommodations, the Ministry of Education has engaged in discussion with experts, scholars, persons with disabilities, and nongovernmental organizations regarding regulation amendments. The conclusion of such discussion is that the Special Education Act or Educational Fundamental Act should specify the obligation to provide reasonable accommodation in education for persons with disabilities and codify the principle that failure to provide reasonable accommodation constitutes a form of discrimination.
9. To comply with the official implementation of the 2019 Curriculum Guidelines of 12-Year Basic Education, the Handbook of Curriculum Adjustment for Students with Disabilities was revised. The revision was made in accordance with the goal of providing an adaptive curriculum to students with disabilities. The principles of curriculum adjustment are specified in the aforementioned Handbook, which functions as a reference for educators designing adaptive curriculum content, learning processes, and assessments as well as arranging appropriate learning environments for students with different disability types. All adjustments should be specified in individualized education programs and confirmed after discussion. Major adjustments require the ratification of the Special Education Promotion Committee before implementation.
10. In addition to school examinations, the Regulations Governing Right Protection for Persons with Disabilities Attending National Examinations enacted by the Ministry of Examination also provide for reasonable accommodation. According to the aforementioned Regulations, persons with disabilities are entitled to apply for relevant accommodations, thereby ensuring their opportunity to equally participate in national examinations. Recognizing that rejecting requests for reasonable accommodation without legal justification constitutes discrimination, the Ministry of Examination will continue to review the implementation of its Regulations regularly.
11. Taiwan's civil justice system provides a mechanism for ensuring reasonable accommodation for persons with disabilities. For example, Article 51(1) and (2) of the Taiwan Code of Civil Procedure stipulates that any person who intends to conduct litigation against another person but is without the capacity to do so may file a motion to appoint a special representative. Pursuant to Subparagraph 3 of Article 5(4) of the Legal Aid Act, "a defendant who is unable to make full statements due to damage or impairment of the structures of the nervous system or of psychological or mental functions, or did not retain a legal representative during a trial in which retaining a legal representative was deemed necessary by the presiding judge" is regarded as a person who is unable to receive proper legal protection for other reasons and may apply for a legal representative. Such a legal representative is appointed by the Legal Aid Foundation and is responsible for filing a civil lawsuit on behalf of the litigant. Moreover, the

assistant system is described in Articles 76, 207(2), and 314 of the Taiwan Code of Civil Procedure; Article 314 of the Taiwan Code of Civil Procedure applies to Article 31 of the Non-Contentious Matter Law. That is, the disabled person may be represented in all court hearings by the assistant. In addition, in the case a witness is under the age of 16 or is mentally disabled and unable to understand the meaning and effect of an affidavit, he/she shall not be ordered to make an affidavit. In the case where a person who participates in a court hearing does not understand Chinese or has hearing/speech impairment, the court shall take measures to accommodate such an individual, such as appointing an interpreter.

12. The Code of Criminal Procedure also contains provisions to protect the rights of persons with physical/mental disabilities or other mental deficiencies:

(1) Article 27(3):

In the event that an accused or suspect is unable to make a complete statement due to mental disorder or other mental deficiencies, a statutory agent, spouse, lineal blood relative, collateral blood relative within the third degree of kinship, head of the household, or family member may independently retain a defense attorney for the accused or suspect.

(2) Subparagraph 3 of Article 31(1) and the first half of Article 31(5):

A. In the event that an accused is unable to make a complete statement due to mental disorder or other mental deficiencies, the presiding judge shall appoint a public defender or attorney for the defendant.

B. If an accused or suspect is unable to make a complete statement due to mental disorder or other mental deficiencies and has not retained a defense attorney during an investigation, the prosecutor, judicial police officer, or judicial police should notify a legal aid agency, which can assign an attorney for the accused or suspect in accordance with the law.

(3) The first half of Article 35(3):

In the event that an accused or a suspect is unable to make a complete statement due to mental disorder or mental deficiencies, he/she shall be accompanied by a qualified assistant, an authorized agent, or a social worker appointed by a relevant governmental agency or social welfare organization.

(4) Article 99:

If an accused is deaf, dumb, or not conversant in the language, an interpreter may be employed; such an accused may also be examined in writing or ordered to make a statement in writing. To realize the goal of human rights protection articulated by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, legislators proposed a draft amendment to the Code of Criminal Procedure that provides that if an accused is deaf, dumb, or not conversant in the language, the court shall appoint an interpreter to protect his/her legal rights. The draft amendment was approved in the 11th full meeting of the 6th Judiciary and Organic Laws and Statutes Committee of the 9th Legislative Yuan on October 31, 2018 and November 1, 2018 and was subject to review by members of various political parties.

(5) Subparagraph 2 of Article 186(1):

A witness who is unable, because of mental disorder, to understand the meaning and effect of an affidavit shall not be ordered to make an affidavit.

13. The Administrative Litigation Act also provides appropriate measures regarding the litigation process for persons with disabilities to achieve the goal of providing necessary legal protection. (1) The following adjustments can be made to the litigation procedure to accommodate various disabilities: having an assistant be present at court (Article 55), modifying service of process for persons without the capacity to litigate (Article 64), providing a litigation aid (Article 101), and exempting a witness who is mentally disabled from making an affidavit (Article 150). (2) Procedural modifications for persons with disabilities include the following: persons with disabilities who are incapable of making a full statement may file a motion, specifying in detail the reason(s) such an appointment is necessary, to have an assistant appointed to make statements on behalf of them in court (Article 55); service of process upon persons without the capacity to litigate shall instead be effectuated upon all of their statutory agents (Article 64); if a person with disabilities meets the criteria for a litigation aid, the administrative court shall grant a litigation aid according to the motion (Article 101); and a witness with disabilities that hinder his/her understanding of the meaning and effect of an affidavit shall not be ordered to make an

affidavit (Article 150).

14. Plans are being made to amend the Precautions for Handling Administrative Litigation in the future. In the interest of protecting the litigation rights of persons with disabilities, the administrative courts are encouraged to consider the special needs of persons with disabilities during trial and offer them sufficient time to prepare responses in a lawsuit.
15. The addition of Article 211-1 to the draft amendment of the Code of Civil Procedure was passed by the 169th meeting of the Judicial Yuan. If technical equipment is available to connect a party at a remote site with the court via audio and image transmission, remote interrogation may be conducted upon the party's motion to avoid inconveniencing the party through mandating their presence at court; thus, trial procedures can be expedited. The draft amendment was submitted to the Legislative Yuan on July 16, 2018 for review.
16. To protect the rights of inmates with disabilities in prisons, an amendment to the Prison Act is under consideration. Appropriate measures will also be adopted to implement a policy of reasonable accommodation.
17. With respect to reasonable accommodations in the financial field, the Financial Supervisory Commission invited organizations representing persons with disabilities to participate in meetings to discuss this topic. Financial industry associations were invited to formulate the Friendly Financial Service Guidelines. Related businesses are requested to provide financial services friendly to persons with disabilities and provide appropriate measures of accommodation according to individual needs; for instance, accessible environments, communication, services, commodities, and information. In addition, discriminatory behavior is prohibited, and a Friendly Financial Service Q&A should be drafted.
18. To enable persons with disabilities to understand medical treatments, a clause will be added to Item 2.1.2 of the 2018 Hospital Accreditation Criteria and Assessment Items: "Hospitals should communicate with patients and adequately explain their disease conditions and treatment processes and methods. In particular, in a case where an invasive examination or treatment is to be administered, hospitals shall formulate operational regulations and obtain a consent form signed by the patient." Moreover, hospitals should communicate with patients using simple words in conjunction with suitable pictures or written documents. To meet the needs of patients with disabilities, medical professionals can use pen talk, a writing board, a communication board, other people's company, and sign language/lip reading to communicate with persons with hearing impairment.
19. To increase the convenience of accessing medical services for persons with disabilities, the Ministry of Health and Welfare plans to implement a standard operating procedure for persons with various disability types to seek medical treatment and create examples of healthcare services that employ reasonable accommodations. In addition, the said Ministry plans to publish a handbook for use as a reference on the basis of which medical institutions can establish accessible healthcare environments between 2022 and 2024. The handbook will include a table specifying disability resource development, which can serve as a reference for medical institutions aiming to meet the diverse needs of clinical patients with disabilities.

### **Responses to Paragraph 81(c) of the concluding observations**

20. To ensure the implementation of human rights protection, The Presidential Office Human Rights Consultative Committee was established for the Taiwanese president to be briefed on affairs concerning research on international human rights law and legislation as well as efforts to promote human rights policies. The Human Rights Promotion Team was established under the Executive Yuan to examine and supervise the implementation of human rights protection policies among the agencies governed by the Executive Yuan, with human rights teams established for each agency. The Committee on Human Rights Protection was established under the Control Yuan to facilitate human rights protection. However, the majority of existing mechanisms for human rights protection are task forces and

consultative committees. Taiwan has yet to establish a national human rights institution that meets all requirements of the Paris Principles.

21. The establishment of an independent national human rights committee is a priority task for the government. The Presidential Office Human Rights Consultative Committee proposed three possible plans that received the most votes, namely, in descending order, Plan A (neither governed by the Office of the President nor by the Executive Yuan), Plan B (governed by the Office of the President), and Plan C (governed by the Executive Yuan). Prior to making a definite policy decision, a comprehensive and in-depth study was conducted to analyze the potential derivative disputes regarding the scope of authority among the executive, judicial, and control power and concerns regarding overlapping responsibilities of administrative agencies.
22. As a preliminary action, the Control Yuan has established a project team to discuss topics regarding various plans and relevant regulations in relation to the establishment of a national human rights institution in compliance with the Paris Principles. This may facilitate the president's policy decision, after which the Control Yuan will provide corresponding plans and bills in a timely manner. Between March and October 2018, the Control Yuan convened five project team meetings to discuss this topic. In the future, the Presidential Office Human Rights Consultative Committee, representatives of related nongovernmental organizations, and experts/scholars familiar with such topics may be invited to offer their opinions on this topic, thereby facilitating mutual communication and forging consensus.
23. Article 33 of the CRPD regulates that States Parties shall, in accordance with their legal and administrative systems, develop at least one independent supervision mechanism to monitor the implementation of said Convention. An ombudsman institution is globally perceived to be a form of national human rights institution. The central government in Taiwan is divided into five distinct branches. Under this five-power constitutional system, the Control Yuan is highly independent. In addition to responsibilities equivalent to those of a national human rights institution in other countries (e.g., handling complaints and investigations and making suggestions for improvement and follow-up), the Control Yuan may effectively monitor the implementation of CRPD and address failures of implementation with corrective measures, impeachment, and censure. In the future, the Control Yuan will strengthen its monitoring mechanism in accordance with Article 33 of the CRPD.