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Institutional Human Rights Protection without a UN-membership: Taiwan's Domestication of International Human Rights Law

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Institutional Human Rights Protection without a UN-membership: Taiwan's Domestication of International Human Rights Law

This memo examines the mechanisms through which Taiwan, as a non-Member State of the United Nations, protects human rights, including domestic judicial review and the voluntary implementation of international human rights conventions. Not only does the voluntary nature of Taiwan's commitment render its binding force vulnerable, it also results in a lack of accountability when the government is reluctant to fulfill its obligations. To bridge these gaps, local non-governmental organizations (hereinafter "NGOs") resort to transnational advocacy networks and raise international awareness of local human rights threats, encouraging and pressuring the government of Taiwan to adhere to its Convention obligations.

1. Implementing International Human Rights in Taiwan

The ROC on Taiwan has been excluded from the UN system and the human rights regime due to its non-member status in the United Nations since 1971, when it lost the seat of China to the People's Republic of China (PRC).¹ Since then, Taiwan has been unable to join most international organizations as an official member and lacks access to the Universal Periodic Review (UPR) which aims to ensure compliance with the UN's conventions. In response to this plight, Taiwan incorporates international human rights treaties into its domestic laws and has established an alternative mechanism for periodic review.

Historical Background: International Status of Taiwan

While ROC was still a member of the United Nations, it signed several human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1967. However, the process of ratifying the two Covenants had not been completed when ROC lost its seat in the UN.²

Despite signing several treaties while remaining in the UN, the ROC government's support for human rights treaties did not appear to be followed through in practice. The then ROC government, ruled by the authoritarian Kuomintang (KMT or Chinese Nationalist Party), imposed one of the world's longest periods of martial law (1949-1987), during which serious human rights violations and restrictions on individuals' freedom lasted for decades.³ During this period, Civil Society was hindered from discussing democratization and the development

¹ In 1949, after an extended period of the Chinese Civil War between Kuomintang (KMT or Chinese Nationalist Party) and the Communist Party, KMT went into exile in Taiwan and continued to operate under the name of the Republic of China (ROC). The People's Republic of China (PRC) was not immediately admitted to the UN when it was established in 1949. Instead, KMT's ROC continued to represent China at the UN until 1971, when the UN General Assembly passed Resolution 2758, expelling the representatives of the ROC and recognizing the PRC as the sole legitimate representative of China in the United Nations.

² Yu-Jie Chen, *Localizing Human Rights Treaty Monitoring: Case Study of Taiwan as a Non-UN Member State*, 35 WISCONSIN INT. LAW J. 277, 289 (2018).

³ *Id.*, at 289.

of Taiwan's human rights regime. Despite this, democracy activists kept advocating for individuals' freedoms. The opposition forces eventually converged and established the Democratic Progressive Party (DPP) in 1986. As then-President Chiang Ching-kuo faced both domestic legitimacy crises and international pressure, martial law was lifted in 1987.⁴

Voluntary incorporation of International Human Rights Treaties into Domestic Law

Following the democratization transition in the 1990s, the Legislative Yuan (the Congress), pressured by both Civil Society and driven by its own concerns about Taiwan's international standing, ratified the two Covenants. However, Taiwan's attempt to deposit them in the UN Secretariat in 2009 was without success.⁵ Subsequently, the Legislative Yuan continued ratifying the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2011, the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD) in 2016. However, none of the above-mentioned ratifications could be deposited with and accepted by the UN.⁶

Due to Taiwan's unique status, the Taiwanese government could only be held accountable for international human rights by "domesticating" international human rights standards on the legislative level. To show Taiwan's commitment to follow the international human rights treaties and to ensure their domestic legal effect, Taiwan promulgated several Implementation Acts, which obliged the government to issue State reports and to create an independent international review system. Notably, not all conventions were subject to this procedure, with some remaining unratified by the Legislative Yuan so far (see Appendix A).

"Taiwan Approach"—Unique International Review System in Taiwan

Since 2013, Taiwan has established an alternative international review mechanism that invited international scholars and experts with prior experience in UN treaty review to participate in the process.⁷ This unique review system outperforms the UN system in two ways. Firstly, it gives NGOs the same amount of time to present parallel/shadow reports to balance out the views prepared by the government; secondly, in addition to sessions with government participation, it allows NGOs to have a direct dialogue with international experts on various issues in specially designated sessions. To date, Taiwan has already completed four rounds of national reports submission and review on the implementation of the two Covenants (ICCPR, ICESCR) in accordance with United Nations guidelines in 2012, 2016, 2020, and 2025.

⁴ Jacques deLisle, "All the World's a Stage": Taiwan's Human Rights Performance and Playing to International Norms, in TAIWAN AND INTERNATIONAL HUMAN RIGHTS: A STORY OF TRANSFORMATION 173-206 (Jerome A. Cohen, William P. Alford, & Chang-fa Lo eds., 2019).

⁵ *Id.*, at 194.

⁶ The Act to Implement the ICCPR and the ICESCR took effect on December 10, 2009. Following the model of the Implementation Act of the two Covenants, the Implementation Act for the CEDAW became effective on January 1, 2012. Subsequently, the Implementation Act for the CRC and CRPD was passed in 2014. See Wen-Chen Chang, *Taiwan's Human Rights Implementation Acts: A Model for Successful Incorporation?*, in TAIWAN AND INTERNATIONAL HUMAN RIGHTS: A STORY OF TRANSFORMATION 227-247 (Jerome A. Cohen, William P. Alford, & Chang-fa Lo eds., 2019).

⁷ Chen, *supra* note 2, at 291-311.

However, since Taiwan’s voluntary incorporation of the human rights mechanism into its legal order, there is no mechanism to guarantee its compliance. When the government fails to implement its obligations, it faces no corresponding consequences. As the international experts consistently reported since the very first human rights review process, there does not seem to have been much progress on critical issues such as indigenous land dispossession, the enhancement of migrant workers’ labor rights, and the enactment of a comprehensive anti-discrimination law.⁸ Such observations highlight a consistent structural vulnerability in Taiwan’s human rights regime: without a comprehensive system of accountability, the unilateral commitment fails to function as a binding obligation but rather as a discretionary exercise of governmental bona fides.

2. The Domestic Check and Balance System in Taiwan

Taiwan, as a non-member of the UN and excluded from the international human rights framework, relied on domestic laws and Civil Society advocacy to address human rights concerns. At the domestic level, Chapter 2 of the Constitution sets out a range of traditional civil and political rights, as well as social rights, including enumerated fundamental rights such as equality right (Art. 7), personal liberty (Art. 8), freedom of movement and residence (Art. 10), freedom of speech (Art. 11), freedom of assembly and association (Art. 14), the right of existence, the right of work, and the right of property (Art. 15) etc., and unenumerated fundamental rights (Art. 22).

There are two domestic mechanisms to safeguard fundamental rights and human rights – the Control Yuan and the Constitutional Court. The Control Yuan is the highest “ombudsman”, exercising the powers of impeachment, investigation, censure, corrective measures, and audit. It consists of 29 members, including a president and a vice president, each serving a six-year term. They are nominated by the State President and approved by the Legislative Yuan (the Congress). The Control Yuan is one of the main institutions in Taiwan overseeing the compliance of human rights protection by all levels of the government, especially the administration. Although there have long been debates over whether the functions of the Control Yuan are oriented toward good governance or more toward human rights, the Control Yuan has concluded 1,515 investigation cases and 892 of these cases (58.88%) involved human rights issues.⁹ This sufficiently indicates that in practice the Control Yuan continues to discharge an important function in safeguarding human rights in Taiwan.

⁸ Int’l Grp. of Indep. Experts, Concluding Observations and Recommendations on the Initial Report of the Government of Taiwan ¶¶ 30-35, 38,39 (2013); Int’l Review Comm., Concluding Observations and Recommendations on the Second Report of the Government of Taiwan ¶¶ 19, 31-34, (2017); Int’l Review Comm., Concluding Observations and Recommendations on the Third Report of the Government of Taiwan ¶¶ 26, 36, 37, 42 (2022).

⁹ THE HUMAN RIGHTS PROTECTION COMMITTEE OF THE CONTROL YUAN [監察院人權保障委員會], A RECORD ON THE CONTROL YUAN’S WORK ON CHILDREN’S AND YOUTH HUMAN RIGHTS, 2014-2019 [2014-2019 監察院兒少人權工作實錄] (2020).

The National Human Rights Commission (NHRC), as an administrative agency established in 2020, also serves as a mechanism for supervising the domestic implementation of conventions and a channel for individuals to file complaints. Unfortunately, the NHRC was designed as a commission under the Control Yuan and does not have its own Authority Exercise Act. As a result, the independence of the NHRC and its relationship with the Control Yuan remain unclear. During the COVID-19 pandemic, the NHRC, which was expected to ensure the government's compliance with the UN's COVID-19 Guidance, suspended its checking power when the government expanded the digital fence - a quarantine enforcement mechanism linking public (immigration and health) and private (cell tower history) data - without clear legal authorization.

The second mechanism safeguarding human rights is Taiwan's Constitutional Court (hereinafter TCC) (since 2022), which used to be "the Council of Grand Justices of the Judicial Yuan" (1947-2021). According to Paragraph 1, Article 171 and Article 172 of the ROC Constitution, statutes inconsistent with the Constitution are void, and so are ordinances inconsistent with the Constitution or statutes. On this basis, it may be observed that there exists a clear and strict hierarchy within the legal order of Taiwan's judicial system. Taiwan adopted a centralized constitutional review system. TCC, formed by Constitutional Court Justices (Justices), has the exclusive competence to *ex-post* review the constitutionality of legal statutes. The amendment of the Constitutional Court Procedure Act (CCPA) that took effect on January 4, 2022 introduced a constitutional complaint system, which adds a new type of litigation - the judicial review of final court decisions, including a **concrete** review (as-applied review) alongside the existing **abstract** judicial review of regulations.¹⁰ In addition, the CCPA maintained the requirement of at least two-thirds of the incumbent Justices to hear the constitutional cases, while lowering the voting threshold from two-thirds of sitting Justices to a simple majority, which aimed to address inefficiency in decision-making.

The judicial review mechanism has long been acknowledged as having an important role in ensuring the constitutionality of all government actions, especially the protection of fundamental human rights in Taiwan. For example, the Justices, through judicial reviews, have ensured positive personal freedoms and incorporated unenumerated fundamental rights—such as the right to privacy, sexual autonomy and same-sex marriage—into the framework of human rights protection under the Constitution.¹¹ Nevertheless, it is noteworthy that in 2023, TCC dismissed its only COVID-19 case (regarding Article 7 of the Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens, Special Act), lodged by the High Administrative Court. This Article grants broad authorization to the executive power, potentially violating the principle of explicit delegation. Basing its reasoning on purely procedural language and reasoning, the TCC refused to review the constitutionality of the

¹⁰ Judicial Yuan, *The Taiwan Constitutional Court in a New Era* (Jan. 7, 2025), <https://www.judicial.gov.tw/en/cp-2083-358640-47e30-2.html> (last visited Jan. 26, 2026); Chien-Chih Lin, *The Pros and Cons of Taiwan's Constitutional Court Procedure Act*, 2 USALI PERSPECTIVES 1 (2022). <https://usali.org/usali-perspectives-blog/the-pros-and-cons-of-taiwans-constitutional-court-procedure-act>.

¹¹ Tzong-Li Hsu, *How does the Judicial Activism of Taiwan's Constitutional Court shape the Liberal Democratic Constitutional Order in Taiwan*, 1923 J. WKLY.16, 26 (2018).

Special Act and dismissed scrutiny regarding potential human rights infringement, voluntarily relinquishing its oversight power.

The Legal Effect of International Human Rights Treaties in the Domestic Court

Exactly how binding the international human rights covenants are within Taiwan's judiciary, and how they relate to the Constitution and other domestic law in the legal hierarchy, is occasionally contested. Practically, since the Implementation Acts effectively mirrored the Covenants, this issue is mitigated in two ways. First, domestic courts could simply uphold international covenants by citing corresponding domestic statutes when rendering decisions. Second, if a law is considered inconsistent with international human rights law, it would have to be declared unconstitutional by the TCC. In other words, the TCC will need to identify a constitutional right that is also crystallized in an international human rights treaty. For example, in Interpretation No. 709 (2013), the Justices blended the Constitution and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) to support their arguments. This case involved the issue of whether forced evictions resulting from an urban renewal project violated Article 10 of the Constitution, which guarantees the freedom of residence. This decision supplemented the meaning of freedom of residence (Article 10 of the Constitution) with Paragraph 1, Article 11 of the ICESCR (people enjoy an adequate standard of living with safety, peace, and dignity), and declared that the procedural rules defined by the Urban Renewal Act (Article 10, Paragraph 1) violate the freedom of residence due to lack of due process.

However, in ordinary courts and administrative courts, the role of international conventions is very limited. While the Implementation Acts oblige the courts to rule in conformity with international conventions that Taiwan has ratified, the majority of court rulings cite international convention provisions and include general comments as mere decorative elements rather than as substantive grounds.¹² Nevertheless, a number of administrative courts have utilized international conventions to hold governments responsible for realizing human rights guaranteed by the conventions.¹³

Counter-Strategies Against State Misuse of Conventions

The government's problematic use of international human rights treaties can be observed across multiple areas. For instance, Prof. Song-Lih Huang, a human rights expert, noted in one of the HRJust workshops that the government has frequently distorted international human rights treaties and selectively appropriated them as justifications, rather than genuinely treating them as binding regulations. One example involves the deportation of a Chinese national, who was holding a dependent residence permit in Taiwan, for promoting military unification on the

¹² Ting-Chi Liu, *The Impact of International Human Rights Treaties on the Judicial Practices after Their Incorporation into Domestic Law -- Focusing on the Judgments of Administrative Courts in R.O.C. (TAIWAN)*, 67 LAW MONTHLY 78, 78-103 (2016).

¹³ Naiyi Sun, *The Right of Disabled Civil Servants to Request Accommodation – A Brief Commentary on Taipei High Administrative Court Judgement 109-Su-688* [身心障礙公務人員之合理調整請求權——簡評臺北高等行政法院 109 年度訴字第 688 號判決], 15 FORMOSAN JURIST [台灣法律人] 89-102 (2022).

social media platform YouTube. The government invoked Article 20 of ICCPR— any propaganda for war shall be prohibited by law— to justify the deportation, and the argument was ultimately accepted by the court.¹⁴ Following this case, in December 2025, the government put forward a proposed amendment to the National Security Act and added a provision prohibiting any public advocacy for eliminating Taiwan’s sovereignty by war or other non-peaceful means. The stated rationale for the amendment is that this is in accordance with the obligations under Article 20 of ICCPR and the General Comment No. 11.¹⁵

Without the recourse of individual communication to UN Treaty Bodies, the protection of Covenant rights in Taiwan appears to be compromised. Nevertheless, evidence gathered from the HRJust workshops and focus group sessions reveals a recurring approach among local NGO advocates: appealing to international and intergovernmental organizations after all domestic remedies have been exhausted. Such advocacy is pivotal for Civil Society to counter government misuse or even infringement of human rights. Given its complex international status, Taiwan’s pursuit of international participation and global recognition makes the government particularly responsive to the opinions of its allies and, therefore, it may be more willing to change its behavior when there is external pressure.

This strategic alignment has been conceptualized as ‘Boomerang Pattern’, when the channels between local groups and government are blocked or ineffective for dealing with a conflict, the transnational networks may be the one and only means that actors can work on.¹⁶ Non-state actors uncover the perils of human rights violations by providing alternative sources of information to that provided by the government itself, and first-hand accounts from victims.¹⁷ In this regard, international pressure serves as a critical mechanism to rectify the (mis)behaviour of the Taiwan government and ensure adherence to its obligations under international conventions.

Taiwan is still in the process of institutionalizing the human rights protection system. Confronted with the inherent limitations of the unique voluntary incorporation model, we are compelled to explore diversified oversight mechanisms at both domestic and international levels. These serve as a necessary counterbalance to guarantee substantive accountability, preventing the State from sidestepping its statutory mandates.

¹⁴ Liu Zhen Ya v. Ministry of the Interior, 2026 (Taipei Admin. High Ct. Mar 21, 2026). [臺北高等行政法院高等庭 114 年度停字第 17 號裁定]

¹⁵ The Executive Yuan[行政院], *The Draft Amendment to the National Security Act* [國家安全法部分條文修正草案], THE EXECUTIVE YUAN[行政院] (Dec. 18, 2025), <https://www.ey.gov.tw/File/6F62FEE11693C388?A=C>

¹⁶ KECK, MARGARET E. & KATHRYN SIKKINK, ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS 9-11 (1998); Keck, Margaret E. & Kathryn Sikkink, *Transnational advocacy networks in international and regional politics*, 51.159 INT’L SOC. SCI. J. 89, 93-94 (1999).

¹⁷ *Id.*

Recommendations:

1. Period review processes should take into consideration clear differences in resources between governments and Civil Society. NGOs should have enough time to prepare parallel reports to balance out the views prepared by the government.
2. Periodic review processes should include a mechanism by which NGOs can have direct dialogue with international experts.
3. EU should not stop prioritizing human rights protections in its external actions. As a non-member of the United Nations, Taiwan has developed a unique approach to integrating international human rights conventions into domestic law. Yet without access to formal UN oversight mechanisms, the viability of this “Taiwan model” depends on a well-respected international human right mechanism. By continuing to prioritize human rights protection in its external actions, the EU will remain a critical player in the existing international human rights mechanism, as EU is one of the few remaining formal diplomatic channels, this gives EU an almost unique opportunity, and the Taiwanese government is more likely to respond to the EU's approach.
4. The EU has long engaged Taiwan Civil Society in human rights consultations and has been an invaluable partner of local NGOs. With a human rights-centered foreign policy, the EU is both well-positioned and has good reason to be motivated to play a greater role in pushing for the Taiwan government to live up to its claim as a beacon of liberal democracy in the region.

Appendix A

Listed below are the conventions that have undergone internalized procedure in Taiwan to varying degrees.

- Conventions ratified by ROC when it was a member of the UN before 1971: The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Labour Organization (ILO) C007, C011, C014, C015, C016, C019, C022, C023, C026, C027, C032, C045, C053, C058, C059, C073, C080, C081, C091, C095, C098, C100, C104, C105, C107, C111, C112, C113, C114, C116, C117, C118, C119, C123, C124.¹⁸
- Conventions signed by ROC in 1967 but had not completed ratification before 1971, and then were incorporated into domestic law through Implementation Acts in the 2000s: ICCPR and ICESCR.
- Conventions signed by ROC and incorporated into domestic law through Implementation Acts after the 2000s: CEDAW, CRC, and CRPD.
- Conventions not signed and ratified by ROC: The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).¹⁹

¹⁸ MINISTRY OF THE INTERIOR (TAIWAN) [內政部], INTERNATIONAL LABOUR ORGANIZATION CONVENTIONS RATIFIED BY THE GOVERNMENT OF THE REPUBLIC OF CHINA [中華民國政府已批准之國際勞工公約] (1965). <https://taiwanebook.ncl.edu.tw/zh-tw/book/NCL-9910009748/reader>

¹⁹ National Human Rights Commission, Taiwan, *International Conventions* (Mar. 27, 2024), <https://nhrc.cy.gov.tw/en-US/cp.aspx?n=8693> (last visited Jan. 26, 2026)