

Observations on the Review for the State Reports of Two International Human Rights Covenants in Taiwan: Written Interviews for International Experts*

Interviewees: Virginia Bonoan-Dandan, Jerome A. Cohen, Miloon Kothari, Peer Lorenzen, Manfred Nowak, Eibe Riedel, Theo van Boven

Virginia Bonoan-Dandan

UN Independent Expert on Human Rights and International Solidarity

Member of the ICESCR Review Committees for the initial and the second State Reports

1. Why I agreed to serve on the Review Committee?

I made a commitment a long time ago that I would do my best to go wherever my long experience working on human rights is needed and provide assistance to States and civil society, to promote, protect and fulfill human rights.

2. The challenges encountered and what can be improved to facilitate review.

It is a challenge for me personally to make sure my statements are being interpreted accurately. I try my best to make my English clear and simple

* The Chinese version of this interview is released at the website of the Taiwan Human Rights Journal, <http://www.taiwanhrj.org>.

so that (a) my statements can be accurately interpreted, and (b) that my statements are not interpreted in such a way that they become offensive rather than constructive. But the bigger challenge is really the use of human rights language, which is technical and nuanced. It would really help very much if the interpreters came from the UN in New York because they are familiar with human rights language and can communicate to the members of the Committee when there is a question of interpretation. This would greatly help in minimizing misunderstanding that can arise from interpretation. Of course this would impact on the budget considerably because there are two Committees, and each would require at least two interpreters taking turns.

3. Advantages and disadvantages of Taiwan's review practice as compared to the UN treaty body review.

The most significant advantage is that the review is being held in the country itself where the RC can observe first hand, the factors behind the issues at hand, and where Taiwanese civil society is well represented because they do not have to travel to faraway and expensive Geneva! Furthermore, the RC can engage with representatives of government without any difficulty, and can access additional information without difficulty when necessary, unlike in Geneva where the additional information has to be sent from the capital, if and when available. Very often, the treaty bodies cannot make informed Concluding Observations because the information is late in arriving from the capital. This can give rise to misunderstanding based on misinformation. Another important advantage is that the Review Committee is hand-picked and the members are all internationally recognized experts with proven track records in the review process. While I am not saying that treaty bodies have less expertise, it is sometimes embarrassingly obvious that the levels of expertise among treaty body members is very uneven.

A major disadvantage in my opinion is the language/interpretation as mentioned in the previous paragraphs. Very often I wonder if the statements made by individual members of the Review Committee are being accurately interpreted. I have no doubt in the competence of Taiwanese interpreters' accuracy when interpreting from Chinese to English but I always have doubts about English to Chinese especially when it comes to the use of human rights language, which has its nuances that may not be captured by interpreters who are not familiar with human rights concepts. A lesser major disadvantage is that the treaty bodies are supported by a secretariat of human rights officers who have a high level of human rights expertise, and can be counted upon to give advice where necessary. Perhaps for the next review process, there can be two such "advisors" who have human rights expertise and who can be on hand for technical assistance to each Review Committee in a manner similar to the secretariat of the treaty bodies.

4. Major challenges for Taiwan in implementing the Concluding Observations of 2013; challenges that remain for implementing the Observations at this time; advice for addressing them.

I am sure my colleagues will answer this question in mostly similar ways. But I would just mention (probably I am the only one who will mention this) that it is my personal observation that the major challenge for Taiwan in implementing the concluding observations, aside from political will, arises from the fact that among government agencies, there is a lack of a common understanding of a "human rights based approach to governance." My advice is that there should be a seminar-workshop series for relevant representatives of government agencies on precisely what a "human rights based approach" really is all about. It should be stressed that in a human rights based approach to governance, the law is only a small part of the whole concept.

5. Significance of the review process for Taiwan and other States, NGOs and others; recommendations for how to strengthen Taiwan's practice in future.

The review process for Taiwan is an excellent model as to how a government takes its compliance with treaty obligations seriously. It signals to everyone the importance of human rights as standards of good governance, the genuine and sincere efforts for a transparent and accountable form of delivering government services to the people, and the government's willingness to place its human rights performance under close examination is an indicator of its good will and good intentions. There is no perfect government anywhere in the world and the challenges keep growing almost on a daily basis. But a government willing to be held accountable in such a public manner by a periodic review is certainly admirable and the Taiwanese people are fortunate to have such freedom to speak out publicly.

6. Other comments and suggestions.

My comments and suggestions are already contained in the paragraphs above. I just wish to reiterate my suggestion contained in number 4.

Jerome A. Cohen

Professor, School of Law and Co-director of U.S.-Asia Law Institute, New York University

Member of the ICCPR Review Committees for the initial and the second State Reports

I agreed to serve on the Review Committee because of the importance I attach to Taiwan's democratic development, social progress and protection of human rights. While isolated from the international human rights system because of its exclusion from the United Nations, Taiwan nevertheless

deserves great support for its admirable efforts to protect the rights of its 23 million people. Moreover, Taiwan today offers vivid rebuttal to the canard that people of Chinese descent are incapable of organizing a society that practices political democracy, respects individual freedoms and protects people from arbitrary deprivations of their liberties.

I want to see the progress that Taiwan has made in the past three decades continue, not only for the benefit of the residents of the island but also for the benefit of the 1.4 billion residents of China who, although currently frustrated in their attempts to undertake a similar journey, can learn much from Taiwan's experience. I believe that the work of our Committee, in collaboration with Taiwan officials and NGOs, can make a modest contribution to this crucial cause.

I have been favorably impressed by the way the review has been conducted on each of the two occasions in which I have taken part. government cooperation has been very satisfactory, and the NGOs have performed as well as can be expected in fulfilling their complex roles. Although I do not have the experience of my Committee colleagues in participating in UN treaty reviews, I believe that our Taiwan counterpart has certain advantages over its UN model. Above all, we have the luxury of time — three full days of hearings that allow much greater opportunity for presentations by both government and NGOs and for questioning and comments by the Committee. We also have the advantage of location — being in Taiwan rather than far away in Geneva and having access to a much broader spectrum of official and unofficial representatives. The disadvantage, of course, is that, not being part of the UN system, we are denied the support, prestige and publicity that can accompany UN review processes.

The success of our Committee efforts must be judged by the extent to which our Concluding Observations and Recommendations are eventually

implemented by the Taiwan government. Some progress has been made but many suggestions have not yet made much of an impact on Taiwan's political system.

One reason is that, until recently, executive and legislative institutions have not been dominated by the same political party, and Taiwan's feisty partisan politicians have often failed to achieve a unified view on issues that are frequently very controversial. Another reason is that the bureaucratic process moves slowly in Taiwan as elsewhere.

Perhaps the most important reason is the practical philosophy of Taiwanese political leaders, who are reluctant to take on very controversial issues, such as the abolition of the death penalty, and provide strong leadership the way many European leaders have done in order to achieve abolition despite initial popular opposition. Instead, Taiwan leaders too often take the temperature of public opinion and follow the dominant view rather than use all the powers of their position to persuade their constituents to adopt a more enlightened policy.

Yet even understandably risk-averse leaders should push ahead with some of our less controversial proposals, such as the establishment of an independent human rights commission in accordance with the Paris Principles. Certainly it is inexcusable that Taiwan has been so slow to ratify and implement the UN Convention Against Torture. I hope President Tsai Ing-wen will give a high priority to enactment of these proposals.

In the second set of hearings as in the first, to my surprise I detected among the officials who sought to explain the government's slow response to further significant reform proposals an implicit assumption that Taiwan can comfortably wait until more advanced countries, such as the United States and Japan, enact the reforms in question. This, as I said at the recent hearings,

is an outdated and unfortunate posture that fails to realize that Taiwan has become an advanced country, with a sophisticated electorate and a high degree of civilization, that should be among those states taking the lead regarding human rights protections.

Finally, the greater Taiwan's progress in demonstrating adherence to the universal values underlying human rights, the greater will be its security against a Mainland government that is relentlessly mobilizing all the pressures at its command to make Taiwan submit to its will. It is Taiwan's human rights achievements, more than its strategic importance, that can be counted on to persuade the American people and their government to come to the island's defense if and when that might prove necessary.

Miloon Kothari

President of Universal Periodic Review Info., former UN Special Rapporteur on Adequate Housing

Member of the ICESCR Review Committee for the second State Report

1. Could you tell us why you agreed to serve on the Review Committee?

I very much believe in the international human rights instruments and very much appreciate the countries that attempt to respect and implement their human rights obligations. I also appreciated that Taiwan had volunteered to take on the responsibility of abiding by the international instruments and follow the UN treaty body review methodology. I also think it is a very good step—one that should in fact be considered in the current GA 2020 treaty body strengthening process—to conduct treaty body reviews 'in country' as this brings the UN bodies closer to the situations they are monitoring.

2. What were the challenges you encountered during the review? What could be improved to facilitate the review?

The review was carried out very well and we did not encounter any major challenges. One minor challenge is the limited time available for the review committee to deliberate and prepare the concluding observations.

3. Compared with UN treaty reviews, what are the advantages and disadvantages of Taiwan's review practice?

I did not see any disadvantages. The major advantage is that the review takes place 'in country' and there is a chance for much larger participation of civil society, government officials and independent parties. This serves a very important human rights education process in the country. Subsequently a more robust accountability atmosphere is created for the government to implement the concluding observations that emerge from the review.

The other advantage is that the review committees can be creative in developing the concluding observations—beyond the limited framework followed by the UN treaty bodies. The concluding observations of the Committee that I served on are, in fact, a combination of the framework of treaty bodies and UN Special Rapporteurs—which I think is a very good model.

4. What do you think were the major challenges for Taiwan in implementing the Concluding Observations and Recommendations made by the review committee in 2013? Do the challenges remain for implementing your Concluding Observations and Recommendations this time? What advice do you have for addressing them?

Given that Taiwan is attempting the review of all UN treaties there may be an overload of work for the government to implement the concluding

observations. One way of improving the implementation procedure for the government would be, in the period between two reviews, to follow up on specific themes. This is currently being attempted on the ‘right to adequate housing’ (in December 2017) although led by independent institutions and civil society networks. If this thematic review process is adopted, then the review for each them could cut across different human rights instruments and not be limited to any one. So, for example, the right to housing review will attempt to also address the housing provisions in other instruments that have been accepted by Taiwan and not be limited the provisions of the right in the Covenant on Economic, Social and Cultural Rights.

5. What is the significance of the review process for Taiwan, other states, NGOs and others? Do you have recommendations for how to strengthen Taiwan’s practice in the future?

There are many positive implications of the review process: it stresses the universality and indivisibility of all human rights; raises awareness of human rights in the country amongst different sectors; indicates

The recommendations for improvement are in the answer to question 4. A further improvement would be to create statutory national mechanism such as national human rights institutions that can independently monitor the concluding observations of the review committees. The creation of a permanent inter-ministerial coordination committee, with the participation also of civil society, that would routinely review implementation, would be very helpful. A discussion of the concluding observations and the implications for the country’s economic, social and cultural laws and policies, in Parliament would also be very useful.

Peer Lorenzen

Retired Judge, the European Court of Human Rights

Member of the ICCPR Review Committee for the second State Report

1. Could you tell us why you agreed to serve on the Review Committee?

It goes without saying that being invited by the Vice-President of the Republic of China to join a group of international experts entrusted with the task of evaluating the human rights situation in Taiwan is a great honor which it is difficult not to accept.

But quite apart from that I have had the pleasure of being invited to take part in conferences organized by the European Economic and Trade Office (EETO) and the Taiwanese judicial authorities concerning the rights in respect of civil and criminal proceedings under Article 14 of the ICCPR. The discussions with Taiwanese judges, prosecutors and lawyers as well as with NGOs have given me a great interest in and admiration for the judicial system in Taiwan and its engagement to respect human rights. It definitely played a role for my decision to join the Review Committee.

2. What were the challenges you encountered during the review? What could be improved to facilitate the review?

It is my impression that the review procedure generally is quite well organized and give a good basis for the work of the experts. When assessing the organization of the work of the experts more in details one can usefully distinguish between the following periods: (1) the presentation of the written reports and the lists of issues selected by the experts, (2) the oral hearing in Taiwan, and (3) the preparation of the recommendations.

The first period begins with the presentation of the government's reports followed by shadow reports from the NGOs. Based on the reports the

experts prepare a list of issues, which all of the Parties have an opportunity to comment upon and give answers to questions put. This definitely is an adequate way to proceed. However, I have considered whether one would gain something by starting with the NGOs presenting the problems as they see them followed by the government's replies. But I have reached the conclusion that the present order is preferable as the detailed reports from the government — apart from a follow-up to the earlier recommendations by the experts — give a useful general information on the human rights situation in Taiwan.

However, I have experienced some inconveniences in the way the system worked in 2016:

Firstly, despite prefixed time-limits for presenting the reports, some of those from NGOs arrived belatedly and reduced the time available for the experts to prepare the lists of issues. I fully understand the difficult conditions for the NGOs who do not have access to the same facilities as the government. But it is important for the experts to have the necessary time to prepare the list of issues. If need be the time-limits for the NGOs should be revised in order to give them some more time without reducing the available time for the experts.

Secondly, the number of NGO reports is considerable and there definitely is some overlapping between them. It would in my opinion facilitate the work of the experts, if the reports were better coordinated and to the extent possible merged.

Thirdly, also the work of the experts could be better organized. The appointment of the experts, the composition of the two groups as well as the responsibilities of each expert for preparing the lists should be clarified as early as possible. Time limits for presenting their proposals for the lists should equally be respected. And it would in my opinion be useful if the experts

were informed of the proposals made by the other members of the group before the lists were sent to the Parties in order, in order, if need be, to make some coordination possible and avoid any overlapping.

Concerning the oral hearing in Taiwan I found the time available insufficient. One week for the preparation of the work, the hearings themselves, the preparation of the conclusions and the presentation of them is too short. Thus, the experts, who had not had the opportunity to meet before, should in my opinion be given more time — probably a day or at least a half day instead of just one hour and a half — to discuss between them the organization of the work, in particular the issues to concentrate upon during the hearings, and the role of the individual experts. A joint meeting as well as meetings in the two groups would be desirable.

Finally, concerning the preparation of the concluding document, experience showed that one day was clearly insufficient. The presentation of the conclusions should not have been scheduled for Friday morning, but for Saturday or the following Monday.

3. Compared with UN treaty reviews, what are the advantages and disadvantages of Taiwan's review practice?

I have only limited experience with the reviews made under the UN treaties, and it is therefore not possible for me to make any detailed comparison of the two systems. An important difference is that the UN review system is obligatory for the participating States and that the review committees are dealing with reports from a great number of countries and accordingly have a vast experience. However, this does not necessarily mean that the UN system is working more efficiently than the system established in Taiwan. It is thus my impression that many States reporting under the UN system are often reticent and not cooperating with the review committee in

a positive and open-minded way. On the contrary, Taiwan has voluntarily decided to establish a review system and, based on my experience from the review proceedings in 2016–17, the government’s cooperation with the committee has been excellent. The possibility for the Taiwanese government together with the NGOs to compose a review committee with independent, international experts having knowledge of the Taiwanese society may be a further advantage.

4. What do you think were the major challenges for Taiwan in implementing the Concluding Observations and Recommendations made by the review committee in 2013? Do the challenges remain for implementing your Concluding Observations and Recommendations this time? What advice do you have for addressing them?

I did not take part in the 2013 review proceedings but see no reason to assume that the challenges they posed are much different from those arising from the 2017 review. Without going into details, let me just state in general that the challenges in my opinion are many not least because the recommendations are numerous, many of them very general in scope and having important political implications. Apart from getting the necessary legislative support for implementing the recommendations, many of them may also arouse more or less strong opposition among the public. During the 2017 review proceedings, I sometimes heard the defense against measures aiming at enhancing human rights protection that it would create strong opposition among the public opinion. The abolition of the death penalty is a clear example of that. For the implementation of the 2017 recommendations, I would recommend the government together with the NGOs to take active measures, where necessary, aiming at creating a better understanding, and acceptance of, the recommendations in public opinion.

5. What is the significance of the review process for Taiwan, other states, NGOs and others? Do you have recommendations for how to strengthen Taiwan's practice in the future?

The Taiwanese example, with a voluntary review system, is, as far as I know, unique in the world. The commitment of Taiwanese society to the protection of human rights is in my opinion very important — not least in the Asian region where Taiwan has obtained status as a leading country. I think that Taiwan could strengthen its practice even further by developing its implementation procedure. Thus, for example, it might be a good idea for the government, a short time after the presentation of the recommendations, to make public a decision on how and to what extent, in the period until the next review proceedings, to implement them and indicate a list of priorities.

It could also be considered to establish some permanent connection with the experts in the period until the next review proceedings in case clarifications might be useful. If Taiwan decides to establish a National Human Rights Institution — as recommended by the experts — it could maybe be done in that context.

Manfred Nowak

Professor of International Law and Human Rights, School of Law, University of Vienna; Director, the Ludwig Boltzmann Institute of Human Rights

Chair of the ICCPR Review Committees for the initial and the second State Reports

1. Could you tell us why you agreed to serve on the Review Committee?

I have been several times in Taiwan and advised also previous governments on the respective possibilities to ratify international human rights treaties. In 2011, I was invited to hold various lectures at Taiwanese universities. At this time, the government of President Ma Ying-jeou also

asked me whether I could put together a group of internationally well-known experts to review, on the invitation of the government, the initial reports on the domestic implementation of the two International Human Rights Covenants. Since the UN is prevented from officially accepting Taiwan as a State party to international human rights treaties, I felt that this is the best opportunity of ensuring that Taiwan is in fact complying with the rights and obligations deriving from the two Covenants. I recruited a total of 10 experts from various regions to serve as “International Group of Experts.” In February 2013, we spent a full week in Taipei to review the reports in the presence of various government representatives as well as representatives from non-governmental organizations (NGOs) which had submitted “shadow reports.” At the end, we jointly drafted and adopted a number of Concluding Observations and Recommendations, which we submitted to the government and President Ma on 1 March 2013. In 2016, I was again requested to chair a group of experts now called the “International Review Committee” for the review of the second periodic reports. I agreed again, as did the majority of the members of the former “International Group of Experts.” The review took place again in Taipei in January 2017. We split up into two review committees. The “Committee on Economic, Social and Cultural Rights” was chaired by the German expert, Eibe Riedel, the “Committee on Civil and Political Rights” by myself. But we adopted again joint Concluding Observations and Recommendations, which we presented on 20 January 2017 during a public meeting at the Ministry of Justice, followed by an official lunch with President Tsai Ing-wen in the Presidential Palace. It was both a pleasure and an honour to chair these high level expert committees aiming at reviewing the initial and second periodic reports submitted by the government of Taiwan under both Covenants and assisting the government in the implementation of the various rights and obligations deriving from the two Covenants.

2. What were the challenges you encountered during the review? What could be improved to facilitate the review?

During both reviews, we enjoyed the full cooperation of the government of Taiwan, which prepared in time its reports and its responses to our Concluding Observations and Recommendations from 2013. We also received various “shadow reports” from NGOs which critically reflected upon the legal and factual human rights situation in Taiwan. During the reviews, various representatives from the Office of the President, the Legislative, Executive, Examination and Control Yuan were present and did their best to respond to our many questions and concerns. From a procedural point of view, these reviews certainly constitute best practice. However, despite comparatively high human rights standards, there still remain a number of concerns about the legal and factual implementation of both Covenants. The biggest challenge, in my opinion, is the fact that the government seems to lack the political will to abolish the death penalty. In December 2012, only a few weeks before our arrival in Taipei, the government of Taiwan had decided to resume executions of death row prisoners. Since we had already expressed serious concerns about the continuing existence of capital punishment in our list of issues, which we had submitted to the government in autumn 2012, the experts considered this as a provocation, and we almost decided to cancel the entire review. Although we had strongly criticized the government for having resumed executions in our Concluding Observations and Recommendations of 2013, the government ignored our concerns and continued with executions during the following years.

3. Compared with UN treaty reviews, what are the advantages and disadvantages of Taiwan’s review practice?

The review of State reports before the various treaty monitoring bodies

of the United Nations usually takes place in Geneva and is confined to a maximum of two days. The governments send delegations to Geneva, but often these consist of only a few representatives of the respective State authorities. Since the review is public, NGOs may participate and inform the experts in written and oral form about their concerns. Nevertheless, usually only few domestic NGOs from the respective countries have the financial means to travel to Geneva.

Compared to this UN practice, Taiwan's review practice has many advantages. The experts travel to Taiwan and spend a whole week in Taipei reviewing the respective reports. As a consequence, there are many more representatives of the government and civil society in Taipei to discuss the reports and questions posed by the experts. From this point of view, Taiwan's approach is more effective than the practice of the UN treaty monitoring bodies. On the other hand, the "International Review Committee" is not an official body of the United Nations, and its Concluding Observations and Recommendations have no legal relevance. While many recommendations of UN treaty bodies have been taken up again by the UN Human Rights Council during the "Universal Periodic Review" (UPR), no similar mechanism exists to put pressure on the government of Taiwan to implement the Concluding Observations and Recommendations of the "International Review Committee."

4. What do you think were the major challenges for Taiwan in implementing the Concluding Observations and Recommendations made by the review committee in 2013? Do the challenges remain for implementing your Concluding Observations and Recommendations this time? What advice do you have for addressing them?

In my opinion, the government of Taiwan has problems to implement

international human rights standards against the will of the majority of Taiwan citizens. government representatives reiterated many times that they could not abolish the death penalty because the people of Taiwan still wish to keep it. If all governments would have followed this logic, most States would still apply the death penalty today. Since international human rights law is based upon the values of respecting human dignity, the majority of States in all world regions has gradually abolished the death penalty as the most obvious example of a cruel, inhuman and degrading punishment, often against the will of their own populations. The UN General Assembly and other UN bodies have repeatedly called upon all States to gradually abolish capital punishment and to at least stop executions and introduce a moratorium on executions. Rather than relying on opinion polls, as the government of Taiwan is continuing to do, it would be better advised to raise public awareness against this cruel and inhuman punishment. The same argument has been advanced by the government of Taiwan for not complying with the Concluding Observations and Recommendations of the “International Group of Independent Experts” of 2013 to abolish the crime of adultery, which, according to international human rights standards, violates the human right to privacy. It would also be difficult to advance the rights of minorities and specific discriminated groups such as the LGBTI community, if the government would be inspired primarily by opinion polls. In order to advance the implementation of international human rights standards, governments sometimes have to take “unpopular” decisions. The history of the gradual abolition of the death penalty in most countries of the world best illustrates that, as soon as a State decides to abolish it, the public debate about the usefulness of this cruel and inhuman punishment also ceases as experience shows that abolition of capital punishment does not lead to a higher crime rate. Other examples of our Concluding Observations and Recommendations of 2013, which had not been implemented by the government of Taiwan, concern

the establishment of a completely independent National Human Rights Institution, the direct applicability of economic, social and cultural rights before domestic courts (which the Supreme Administrative Court even had ruled out in a judgment of 2014), the improvement of the situation of migrant and domestic workers, the enactment of a specific crime of torture in the Criminal Code, the adoption of a Refugee Act, the reduction of the maximum period of pre-trial detention and the improvement of prison conditions. With respect to the overcrowding of prisons, the government even tried to excuse this by a lack of human resources and financial restraints! In order to address all these recommendations in full compliance with international human rights standards, the government would simply need the necessary political will and courage.

5. What is the significance of the review process for Taiwan, other states, NGOs and others? Do you have recommendations for how to strengthen Taiwan's practice in the future?

In view of the fact that Taiwan is not a member of the United Nations, the efforts of the government of Taiwan to nevertheless ratify most of the core UN human rights treaties and to subject some of them to international scrutiny by appointing independent international review committees is certainly best practice which could be followed by states in a similar situation. This practice also enables Taiwanese NGOs to enter into a more formalized dialogue about the legal and factual human rights situation in the country. I have no specific recommendations as to how the government might strengthen the review procedure. I would, however, advise the government to take the Concluding Observations and Recommendations of the "International Review Committee" more seriously and to show the courage to take steps of implementing international human rights standards against the will of the people as expressed in opinion polls.

Eibe Riedel

Emeritus professor, LL.B. (London), A.K.C.; Former member and Vice-Chair of the UN Committee on ICESCR

Chair of the ICESCR Review Committees for the initial and the Second State Reports

1. Could you tell us why you agreed to serve on the Review Committee?

I agreed to serve on the international Review Committee (RC) for several reasons:

- (a) The fact that both UN Covenants were looked at by all Committee members at the same time helped to stress the indivisibility, interdependence, inter-relatedness and equality of all human rights, as claimed by the Universal Declaration of Human Rights of 1948, and by the Vienna World Conference on Human Rights in 1993, and this was a unique exercise. At the UN-level, with by now nine different treaty bodies, there is the danger that closely inter-related issues with cross-cutting scope do not always get the necessary full attention.
- (b) Having served on the Committee for Economic, Social and Cultural Rights (CESCR) for 15 years, it seemed very challenging and interesting to compare the working of the UN-level procedures with a nationally-organized but internationally-composed RC, for which there is no precedent. The RC could well be a model for other non-member States of the UN, assuring full human rights protection irrespective of the status of the territory in question.
- (c) The intensive discussions amongst the Review Committee members throughout the RC sessions, blending the experiences of members from the ICCPR and ICESCR context, were an added incentive to participate

in this review.

- (d) The RC had the tremendous advantage of having a large number of government department officials attending the constructive dialogue throughout the three days of hearings. So, unlike at the UN-level, where frequently the information needed is not available because the government delegation cannot bring along all departmental experts, the RC questions by contrast were given the fullest immediate attention. With delegations coming from overseas at the UN-level, contacts with government departments in the capitals sometimes proves impossible. In the RC work, every single question raised by Committee members was answered immediately by a departmental officer. Moreover, instead of just having about 10-20 government experts coming to Geneva, in Taipei up to 100 government officials from most departments could, and did, attend the review sessions. While such a practice for reasons of costs cannot be developed as fully at the international level, in this specific country-based monitoring the costs did not present similar barriers. The large attendance of government experts clearly enables better awareness-raising of human rights than at the international level, and promises greater effects as regards implementation of the RC recommendations.
- (e) I was most interested in participating in this unique review process, because in addition, it proved that monitoring human rights even in countries that presently are not members of the UN is a most important innovation that deserves to be stressed, and taken note of worldwide. The fact that the ROC is willing to submit to a review of its human rights situation by a committee constituted of ten human rights experts coming from ten different countries representing major world regions is a unique step that opened the way for many interesting analyses,

transcending the nation-state approach of traditional international law. It ensured that the ROC allows human rights monitoring on the same footing as happens in the UN context, with the added advantages referred to.

- (f) National human rights institutions could address these issues, but the focus would be on the constitutional, statutory and judicial bases rather than on the human rights premises developed internationally. National monitoring is indispensable per se, because the international reviews merely make suggestions and recommendations. Application and implementation of human rights obligations ultimately require full controlling functions at the national level. But the effect of having an international assessment alongside the national endeavour of human rights protection in the ROC, in my opinion, proves to be a most worthwhile exercise. The uniqueness of such a proceeding clearly was an added incentive to participate in.
- (g) Last, but not least, spending a week together with nine other internationally-known human rights experts and personal friends that one normally only meets irregularly at conferences, or in treaty bodies or in the UN Human Rights Council context, where there is never much time to exchange views in-depth, except on specific issues, is an advantage and pleasure. The fact that instead of just one day, or a day-and-a-half dialogue with the country under review, the allocation of three full days of dialogue, allowing for an in-depth discussion, ensured a fuller and more differentiated and focussed analysis of the complex human rights issues encountered.

2. What were the challenges you encountered during the review? What could be improved to facilitate the review?

While the review process was generally extremely well prepared and organized, the two sections of the RC frequently suffered from time constraints. In fact, only one evening and one day was available to draft the Concluding Observations (COBs) and Recommendations, and very little time was available to coordinate both ICCPR and ICESCR recommendations. To have but one day (Thursday 19 January 2017) for drafting the COBs meant that the adoption of 79 paragraphs (15 pages of text) was stressful, and we all felt that too little time was available to make succinct recommendations on all the important issues raised. The distinction between follow-ups to the 2013 Review Recommendations, and how the government had applied and implemented our recommendations, and the raising of new problems could not really be managed very well. As it was, like in 2013, discussion of the COBs went on until midnight. This was really too much for one day. As the days usually began before 9 a.m., this actually meant that the two review committees and the Ministry Secretariat had to work for 15 hours which was not really acceptable. Moreover, translators had to work during the night. Also, as some members were new, issues and procedural matters had to be discussed on the other available days. For this reason, I strongly recommend that an extra full day for adopting the COBs ought to be made available to committee members of both sections. This might be done either by having the press conference on the Saturday morning, or if that should prove impossible because of the weekend, maybe an extra day for drafting could be set for the following Monday morning. This might also give committee members some time at the weekend to complete the drafting process. The first option would entail financing one extra day, the second option an additional three days, because of the weekend break.

Cutting the dialogue time with the government would not be an option. In sum, I strongly recommend that the RC be given two days for drafting its COBs and Recommendations. In any event, the RC could not have done its work at all, or only very superficially, if the enormous and competent assistance provided by the Ministry of Justice, and by the team chaired by Prosecutor Wen-hsiang Chou, had not been rendered so generously and almost around the clock, just as happened with the 2013 Review and the excellent assistance of Judge Ming-li Kuo and his team.

3. Compared with UN treaty reviews, what are the advantages and disadvantages of Taiwan's review practice?

The greatest advantage, as already mentioned, is that government departments, representatives of the Legislative Yuan, Judicial Yuan, Control Yuan, and of the Office of the President all were available at some time. As stated in paragraph 5 of the COBs of 20 January 2017, the RC “greatly appreciated the exemplary commitment to the process of monitoring compliance with the relevant human rights obligations.” Discussing the human rights issues raised in the government Report with the human rights experts of the Executive Yuan, the Legislative, Judicial and Control Yuan helped the RC members to understand some of the implementation problems encountered by the constitutional bodies, and might lead to these institutions reviewing internally what needs to be done to raise awareness nationally on a broader basis, and to reflect how the human rights obligations under the two UN Covenants might be addressed regularly and specifically from legislative, judicial, executive and controlling perspectives.

- (a) The unique review practice initiated by the ROC was made possible by the truly excellent assistance rendered to the RC by Prosecutor Wen-

hsiang Chou and his team from the Ministry of Justice. Any technical, procedural or substantive issue that cropped up during the entire week of deliberations was competently dealt with by the Ministry of Justice team, rendering the work of the committee members considerably easier.

- (b) Preparing the meeting agenda and taking account of necessary last-minute changes was also administered in an excellent manner. However, the dialogue timeframe available for the departmental experts and for the NGOs was tight, but in my opinion was adequately balanced. Of course, civil society advocates would have liked to have more time — which can be witnessed in the UN context as well — but, on balance, I think that the timeframe was adequate. Moreover, NGOs were able to distribute additional last-minute information, particularly relating to government responses to RC members' questions.
- (c) The written documentation, consisting of the government Report, replies to the List of Issues raised by the RC, and NGO submissions were provided well on time, and formed an excellent background for the actual dialogue, and consequently real discussion could take place, unlike at the universal level where often — due to a lack of time — only a series of committee questions and very short and often unfocussed government answers are exchanged, particularly when only very few experts are present at the dialogue. Committee members then need to get the necessary information from other sources, where the focus often is on different perspectives, such as from specialized agencies, country desk officers of the Office of the UN High Commissioner for Human Rights, independent experts from the UN Human Rights Council and from academic sources. The

ROC procedure is much more focussed and inclusive, and a really novel mode of dealing with human rights issues. Above all, the direct participation of all stakeholders in the deliberations of the RC is a great advantage as compared with the Geneva procedures, and the costs are minimal as compared with the universal procedures.

- (d) The RC was also deeply impressed by the very active and highly professional input of NGOs, particularly when parallel or shadow reports to particular clusters of rights were presented. This helped a lot to devote adequate time to the key concerns facing the ROC in relation to both sets of human rights under the UN Covenants. NGO representatives were also willing to provide last-minute factual information which the RC made sure to be distributed to the relevant government department as well. The RC was full of admiration for the work and dedication of these NGOs that spend a lot of time, on a voluntary basis, and without much funding, on the key concerns facing society in Taiwan. Needless to point out, NGO propositions tend to be more radical in their claims, but their contributions helped the RC to find balanced solutions and to formulate suggestions and recommendations. As was shown after the first report in 2013, NGOs devoted a lot of time to analyse how the government had dealt with the recommendations offered by the RC.

Personally, and like my other RC colleagues, I also thoroughly enjoyed meeting quite a number of NGO representatives privately after our dialogue sessions, where additional information could be gathered. Other civil society actors might, in future, be added like at the UN-level. Civil society participation is crucial and indispensable for the RC to do its work properly.

(e) The issue of follow-ups should be given more attention in any future review process, as happens at the UN-level now. The RC did spend some time on that issue, but for lack of time could not decide on structured specific procedural steps to implement that task. As the 2017 Second Report shows, follow-up questions were raised with many rights issues, but in future, perhaps there should be an opening section of the Report, devoted entirely to follow-ups, before the new issues of the reporting period are dealt with. This is how the CESCR and HRCee and other UN committees are dealing with that question. Such a proceeding would also emphasize how priority concerns have been dealt with, and where further attention should be given to persisting particular human rights problems.

4. What do you think were the major challenges for Taiwan in implementing the Concluding Observations and Recommendations made by the Review Committee in 2013? Do the challenges remain for implementing your COBs and Recommendations this time? What advice do you have for addressing them?

(1) In 2013, the RC had recommended the establishment of an independent human rights commission in accordance with the Paris Principles. The RC learned in 2017 that so far no decision has been taken on that issue, either linked to the Presidential Office or the Control Yuan. The RC strongly reiterated its plea for a totally independent and pluralistic National Human Rights Institution (NHRI). After intense discussions in the Legislative Yuan and with the Control Yuan, I personally think that probably a linkage to the Control Yuan might offer a compromise solution, because of its control powers vis-à-vis the departmental branches of government. In that function a large number of officers with human rights competencies would be available,

thus saving costs of administration. But the NHRI should still be set up as a separate institution, in line with the Paris Principles, ensuring full independence from the Control Yuan, as regards its substantive human rights monitoring function. The annual reports of that NHRI could be presented to the Control Yuan, which could then decide on the concrete measures to be taken. Such a proceeding would fit neatly into the existing Yuan set up, while assuring full independence. From a budgeting point of view, that solution could benefit from the human rights expertise already present within the Control Yuan, while concentrating on the human rights issues freely chosen and independently assessed by a commission or other institution, and then submitted to the Control Yuan for implementation. Of course, the findings of such a commission would be made public, submitted in parallel to the Legislative, Judicial, and Executive Yuans, and where applicable even to the Examination Yuan. Such a solution would fit well into the existing constitutional arrangements of Taiwan. I do not think that a totally independent NHRI would need to be set up by constitutional amendment, because the majorities needed might prove difficult to achieve. A legislative act would suffice, detailing the powers and functions of such a NHRI. Such an institution would supplement existing review modalities, and the international Review Committee could contribute an additional dimension, to review the ROC human rights performance from an international perspective once every four years.

- (2) Another reason why the setting up of an independent NHRI might prove beneficial is the fact that the distribution of powers amongst five different Yuans with variegated competencies on the one hand reflects the constitutional framework of Taiwan, but on the other hand

sometimes means that necessary changes and implementation steps are not taken at all, or delayed or generally postponed. For this reason alone, the function of the RC and of a future NHRI seem to remain highly desirable.

- (3) A brief and non-exhaustive survey of the challenges for Taiwan in implementing the COBs and Recommendations follows. I will not dwell upon the achievements reached, as they have been fully covered in the COBs of the Second Report of 2017.

The RC felt that in quite a number of human rights issues too little has been achieved between 2013 and 2017. I will single out only some such issues on which the RC group reporting on the ICESCR put particular emphasis:

- a) The question of household foreign workers and of foreign migrant workers generally was raised in 2013, but no major actual improvements were made by 2017. The five concrete suggestions for changes made by the RC have so far not been implemented (RC 2013, paras. 38 ff, RC 2017, paras. 31 ff).
- b) In 2013, under ICESCR article 11, questions centred on the right to housing and on families residing in informal settlements and their resettlement due to construction of an MRT station (RC 2013, para. 47), but the problems still persist. The RC had outlined then that in forced eviction cases the General Comments Nos. 4 and 7 of the CESCR were not taken into account (para. 49), and this again was raised by the RC in 2017 (paras. 39 ff).
- c) The living conditions of homeless people – a problem in most countries of the world – was discussed fully in 2013 and 2017, but little effect was given to the recommendations made by the RC.

The figures provided by government departments and by NGOs differed substantially. The RC felt that as yet too little is being done to prevent and combat homelessness.

- d) Considerable time was spent in 2017 on the issue of deposits of radioactive waste on Orchid Island, which already was raised in the 2013 dialogue with the government. The RC now recommends that a concrete plan is developed in such a way that other indigenous communities are not adversely affected. The public hearing instituted by the government was seen as a welcome step in the right direction, though it falls short of a needed solution.
- e) The increase of sexually transmitted diseases amongst young persons was raised in 2017 (para. 48) but classified under ‘concerns’, thus leaving implementation steps open.
- f) In 2013 the problems of the LGBTI community were raised, in particular as regards discrimination and marginalization (RC 2013, paras. 54 ff). In 2017, the RC felt that much still needed to be done in that respect. The RC recommended (RC 2017, para. 50) that sex education should play a much more prominent role, bearing in mind that apparently large numbers of Taiwanese people still hold prejudices against LGBTI people, and still favour discriminatory treatment of such groups, and do not devote sufficient time to the problems of sexual orientation and gender identity (SOGI).
- g) In contrast, it is most remarkable that since the RC Report 2017, the Taiwanese Constitutional Court has just handed down a landmark decision on same sex marriage, even though the Constitution does not specifically mention same sex marriages. If the Legislature does not change the law within two years, then the Court will direct

judges and administrators to apply this new decision directly. This case shows that constitutional change through interpretation caused by changed societal conditions and attitudes can, in fact, sometimes bring about constitutional change without textual amendment. It would be good if the international human rights parameters of non-discrimination, as found in the ICCPR and ICESCR treaty texts, and supplemented, *inter alia*, by General Comments Nos. 14, 20 and 22 of CESCR, were fully taken into account in that debate.

- h) A few examples of newer topics that were raised in the 2017 COBs follow:

The problems of foreign fishers on Taiwanese fishing vessels were thoroughly discussed. The RC felt, however, that serious concerns remain that existing Taiwanese laws are not properly implemented (RC 2017, para. 33).

The internationally hotly disputed issue of equal pay for work of equal value was dwelt upon and three recommendations were handed down by the RC (RC 2017, para. 35). In 2017, the question of the child labour of students between the ages of 16 and 18 who work to pay for their tuition was raised, and the RC emphasized the need to address exploitation of children in small enterprises.

These examples show that Taiwan, like most other states, still is facing challenging human rights issues, but at the same time it must be stressed that the Taiwanese government is doing more than many other states to bring its practice in line with the human rights obligations under the two UN Covenants. This is exemplary practice.

5. What is the significance of the review process for Taiwan, other states, NGOs and others? Do you have recommendations for how to strengthen Taiwan's practice in the future?

As indicated above, the review process is a most valuable instrument to highlight human rights obligations, as measured against executive, legislative and judicial activities, and Taiwan has realized fully that the parameters of the rule of law and the fight to secure human dignity for all under Taiwanese conditions are the most beneficial components in the set up of a modern nation. The human rights initiatives taken by the Taiwanese government, also allowing significant civil society participation in the process, are outstanding, and other states could learn from the Taiwanese experience. To strengthen human rights practice even more in future, I would recommend including some CEDAW, CRC and CRPD questions on priority issues under the two UN Covenants. But that could also be done by separate reviews.

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1. Personal motivations

- (a) Let me start with a background note as an explanation about my getting involved in the review process relating the implementation of the International Human Rights Covenants in Taiwan. First of all, I had the opportunity to become familiar with important sectors of academia and civil society in Taiwan. When teaching a course under the auspices of the Chang Fo-chuan Center for the Study of Human Rights of Soochow

University (Taipei, April–May 2007) on “International Human Rights Law: Concepts, Mechanisms and the Practice”, I became impressed by the genuine commitment and expertise of the leading educational staff and the keen interest of the participating students. It was also at that time that I became involved in the agonizing issue of the death penalty. I attended as an observer a court hearing relating the famous Hsichih-Trio-Case. Further, capital punishment was an important subject of discussion at a private audience granted by the then President of Taiwan who in the years of his office observed a *de facto* moratorium on executions.

- (b) Another set of issues that attracted my special interest and attention, already prior to my coming to Taipei as well in the years thereafter, was Taiwan’s determination to peacefully overcome a long period of gross violations of human rights, known as the years of “White Terror”. With the lifting of martial law in 1987 and the efforts of the Taiwanese society to learn the full truth and to recognize the plight of the victims and their right to reparative justice, Taiwan took her share in the defense of the rule of law and in setting standards of good governance.

2. Advantages and Disadvantages of Taiwan’s review practice¹

- (a) It is an obvious advantage of Taiwan’s review practice in comparison with United Nations treaty review procedures that an important part of Taiwan’s review practice is conducted in the country itself and thus more readily enables national and local parties and stakeholders to get actively engaged in the review practice. The review in local also offers the media on the spot more feasible opportunities to cover the review

¹ When in the present paper various aspects of human rights treaty review are being discussed, it is understood that review activities are more encompassing and comprehensive than a periodic and ad hoc examination of reports. They are part and parcel of an overall and on-going process.

proceedings and interview Committee members and others involved in these proceedings. For members of the Review Committee it is an advantage to be in touch with and sense the political and social climate of the country.

- (b) Whereas reasons of national and local nearness or proximity provide considerable advantages to Taiwan's review practice and might ideally be a model for UN treaty review, Taiwan's practice lacks the international dimension which characterizes the UN treaty reviews carried out at the UN Offices in New York and Geneva. The international dimension holds a range of opportunities such as consultations with experts from other nations and the UN Secretariat regarding comparative approaches towards fulfilling treaty obligations. International visibility and accessibility are further promoted by increasing resort in UN conferences and centers by holding side events and by the presence and involvement of experts from National Human Rights Commissions.
- (c) Another and related aspect in the comparison between Taiwan's review practice and UN treaty reviews is the status of Taiwan's International Review Committee (NB. The 2013 report refers in its title to the International Group of Independent Experts but the 2017 report uses the title International Review Committee).² As regards UN treaty bodies one of their principal functions is to hold states accountable. This function has gained increasing prominence over the years. This evolution had a bearing on the quasi-judicial role of UN treaty bodies, in particular by the examination of individual "communications" (complaints). Distinct from judgments by full judicial bodies, the

2 References to the 2013 and the 2017 reports are indicated in this paper by the capital numbers I and II, followed by the relevant paragraph(s).

“views” of UN treaty bodies are, formally speaking, not legally binding but they do carry a good deal of authority as pronounced by a collectivity of independent experts entrusted with the task to interpret the terms of a legal document. It appears however that current Taiwan’s international review practice cannot be understood in terms of an accountability exercise but rather as a unique and creative international review process (I, 82 and II, 78), with due recognition of Taiwan’s acceptance of the obligations undertaken under the UN International Covenants and other UN Core Human Rights Treaties. The unique and creative nature of this review process holds potentials for the further strengthening of the process. Some of these will be briefly discussed in the next section of this paper.

3. Strengthening the Review Process

- (a) Follow-up is evidently a crucial component in the strengthening of the review process. In their 2013 report the Experts strongly encouraged the continuation of the process and recommended, without going into specifics, that follow-up review be undertaken (I, 82). In its 2017 report the Review Committee, as the natural embodiment of the 2013 recommendation, pursued the follow-up track quite further by recommending that the government of Taiwan formulate a National Human Rights Plan with concrete targets, indicators and benchmarks to implement the obligations under both Covenants as well as the recommendations to that effect by the Review Committee (II, 78). No doubt giving effect to this recommendation about a National Human Rights Plan would require study and examination of similar practices in other countries as instructive precedents and may constitute an important step towards the consolidation of the review process.

- (b) Both the 2013 and 2017 reports recommend as a priority objective the setting up in Taiwan of a National Commission for the Promotion and Protection of Human Rights, meeting the requirements of independence and autonomy in accordance with the Paris Principles (I, 8-9; II, 9). The setting up of such an institution is more than overdue and must be considered an additional and complementary component in the strengthening of the review process. While the International Review Committee, as it now stands, is organized on the basis of a four-year cycle and forms part of a periodic exercise, the National Commission would be a standing and permanent domestic institution so as to underline that the review process is an ongoing venture. In addition to contributing to and overseeing in a permanent setting the implementation of the recommendations of the International Review Committee, the National Commission may also play, as appropriate and regarding specific cases or situations, an early warning role.
- (c) As observed above, the main function of the International Review Committee is that of a monitoring body. It is a unique and *sui generis* organ. The Committee is not primarily expected and equipped to play a judicial or quasi-judicial role, such as by the examination of complaints of individuals or groups who allege violation of their rights. For them the ultimate redress and remedy is resort to a competent organ of the judiciary of Taiwan. As the Experts noted in their 2013 report (I, 14), the provisions of the two International Human Rights Covenants constitute, as a result of the Implementation Act, part of Taiwanese law and prevail over inconsistent domestic laws other than the Constitution. The Experts observed however that the Covenants continue to be invoked only rarely in judicial decision-making. They recommended therefore that in depth, intensive, and applied training in relation to the

two Covenants be provided for the judiciary by high-level experts with the appropriate expertise (I, 16). In the same spirit and more in general, in the reports of the Group of Experts (I, 17-19) and of the International Review Committee (II, 14-15), it is strongly recommended that all due emphasis and priority be given to human rights training in education at all levels. Measures to that effect will certainly have in direct and indirect ways, a positive impact on the review process.

- (d) As a last and cautious observation attention may be paid to the merits and demerits of coordinating or even merging the review of all UN core human rights treaties which Taiwan has accepted. The International Review Committee warmly welcomed Taiwan's acceptance, without reservations, of the obligations contained in six of the core human rights treaties of the United Nations: the two Covenants (ICCPR and ICESCR), the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD) (II, 10). The International Review Committee further encouraged the government of Taiwan to accelerate the efforts to also accept the remaining three core human rights treaties: the Convention against Torture including its Optional Protocol (CAT, OPCAT), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) and the Convention for the Protection of All Persons from Enforced Disappearance (CED) (II, 11). The question now arises whether and how Taiwan would organize the international review procedure so as to cover all UN core human rights treaties accepted by Taiwan. At the level of the United Nations the idea of the replacement of the nine

existing treaty bodies by a single, unified standing treaty body failed to receive broad international support. More modest proposals of coordination and cooperation among the existing treaty bodies found wider approval and are still on the UN agenda for further elaboration. As far as the review of UN core human rights treaties in Taiwan is concerned, and taking into account that all these treaties accepted by Taiwan need to be a substantial and integral part of the international review process, it would appear that the existing International Review Committee as the body that was created to monitor the implementation of the two UN Human Rights Covenants should also give due attention to the whole fabric of the interrelated core human rights treaties. In fact, in the concluding observations and recommendations drawn up as part of the current review process, a good number of these observations and recommendations do already touch upon issues that are specifically covered in the “specialized” human rights treaties. This approach and practice may be applied in a more explicit and consistent manner so as to do justice to the whole corpus of the interrelated human rights core instruments. This would also imply that reports and other information to be supplied by the government of Taiwan in the review process be organized according.