

After the review then what?

Mab Huang

Liberal Arts Chair Professor, Soochow University, Taiwan
Founding Editor in Chief, *Taiwan Human Rights Journal*

Abstract

For a week in January, 2017, ten experts, quite a few of them who had served or were serving in fairly high positions at the United Nations were invited to Taipei to review the Second National Report for the implementation of the two international human rights covenants. They met with both government officials and representatives of non-governmental organizations to require additional information, to clarify some of the points made in the documents submitted to them earlier in the process and to issue a report with observations and recommendations by the end of their work. This is not, however, the first exercise of the kind. In 2013, a precedent was first set and received high marks from the international community for its creativity and effectiveness. In the closing observations and recommendations, the experts reiterated many of their criticisms and policy recommendations they had made four years prior, indicating that not enough progress had been made during the four year interval.

The primary concern of this brief paper is why no more has been done and what will be happening next? Will the new administration of President Tsai Ing-wen, publicly committed to the promotion of human rights do more in heeding the advice of the experts, and if so what policies and measures can be anticipated? By the end of its first two years in power, it is fairly clear that the new administration has been giving priority to certain issues, such as transitional justice, not only the February 28 Incident of 1947 and the White Terror Era of the 1950–1960s, but the historical injustice done to the indigenous people, pension system reform and reclaiming what is declared to be illegally gained property of the Chinese Nationalist Party. However, as it is not clear what the results of the policies and measures which have been adopted to deal with the issues referred to above will be, this paper can only provide a tentative assessment of the performance of the new administration.

The material used for this paper includes documents and reports of the government, alternative reports from non-governmental organizations as well as scholarly studies. It is supplemented by the observations of this writer during his years serving as a member of the President's Advisory Committee on Human Rights, and in particular as the chief advisor to the seven-person group supervising the review process in 2013 and 2017.

Keywords

International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, National Report, Alternative Report, Concluding Observations and Recommendations, United Nations human rights mechanism

For a week in January 2017, ten experts—quite a few of them who had served or were serving in fairly high positions at the United Nations—were invited to Taipei to review the Second National Report for the implementation of the two international human rights covenants. They met with both government officials and representatives of non-governmental organizations to require additional information, to clarify some of the points made in the documents submitted to them earlier in the process and to issue a report with observations and recommendations by the end of their work. This is not, however, the first exercise of the kind. In 2013, a precedent was set and received high marks from the international community for its creativity and effectiveness. In the closing observations and recommendations, the experts reiterated many of the criticisms and policy recommendations they had made four years prior, indicating that not enough had been done during the four year interval (for the list of members of the review committee for the second national report, see appendix).

The primary concern of this brief paper is why no more has been done and what will be happening next? Will the new administration of President Tsai Ing-wen, publicly committed to the promotion of human rights, do more in heeding the advice of the experts, and if so what policies and measures can be anticipated? By the end of its first two years in power, it is fairly clear that the new administration has been giving priority to certain issues, such

as transitional justice, not only for the February 28 Incident of 1947 and the White Terror Era of the 1950-1960s but also for the historical injustice done to the indigenous people, pension system reform and reclaiming property that is said to have been illegally acquired by the Chinese Nationalist Party. However, as it is not yet clear what the results of the policies and measures which have been adopted to deal with the issues referred to above will be, this paper can only provide a tentative assessment of the performance of the new administration. However, to better understand what took place in 2013 and 2017, it is necessary to briefly go back to the beginning of engagement with the international human rights regime.

The material used for this paper includes documents and reports of the government, alternative reports from non-governmental organizations as well as scholarly studies. It is supplemented by the observations of this writer during his years serving as a member of the President's Advisory Committee on Human Rights (hereinafter, PACHR), and in particular as the chief advisor to the seven-person group supervising the review process in 2013 and 2017.

I.

With the creation of the United Nations in 1945 and the adoption of the Universal Declaration of Human Rights three years later, a new world was in the making. In Taiwan, however, martial law was declared in 1949 and human rights were a taboo for some forty years under the authoritarian rule of Chiang Kai-shek and his son, Chiang Ching-kuo. There were no lack of challenges to the father and son. It was not until the first peaceful transfer of political power in the year 2000 that the issue of international human rights standards was seriously contemplated. The initiative came from a coalition of human rights non-governmental organizations, bar associations and the academic community. Some twenty persons came together and advocated the establishment of a national human rights commission based on the Paris Principles during the Presidential campaign (Su, 2002). In his inaugural speech, President Chen Shui-bian (2000), said, to quote:

The Republic of China cannot and will not remain outside global human rights trends. We will abide by the Universal Declaration of Human Rights, the International Convention on Civil and Political Rights, and the Vienna Declaration and Program of Action. We will bring the Republic of China back into the international human rights system.

The new government will request the Legislative Yuan to pass and ratify the International Bill of Rights as a domestic law of Taiwan, so that it will formally become the “Taiwan Bill of Rights.” We hope to set up an independent national human rights commission in Taiwan, thereby realizing an action long advocated by the United Nations. We will also invite two outstanding non-governmental organizations, the International Commission of Jurists and Amnesty International, to assist us in our measures to protect human rights and make the Republic of China into a new indicator for human rights in the 21st century.

The language of this speech was not elegant, but the message was pregnant with significant implication. It is surprising that the International Covenant on Economic, Social and Cultural Rights was not explicitly mentioned, but a fairly reliable source suggested that it was merely a typing mistake, indicating the rush with which the inaugural speech was prepared. Indeed, the passage on human rights, about four hundred words, was proposed by civil society organizations, and the President-elect only approved it the night before the inauguration.

Even so, the President’s speech was well received in the international community and civil society organizations were very much encouraged and excited, looking forward to a new era of great progress in human rights matters.

The Chen Shui-bian administration, to be sure, was fairly energetic in its first term. They moved on several fronts, including efforts to ratify the two international human rights covenants, with which this paper is primarily concerned, the setting up of a national human rights commission based on the Paris Principles, and drafting a human rights basic law. They also managed to establish a PACHR, an inter-ministerial Human Rights Protection and Promotion Committee for the implementation of policies and measures in the Executive Yuan, not to speak of human rights committees at the Ministry of Foreign Affairs and the Ministry of Education, among others, to help the bureaucracy learn about policies and measures in their domains and implement them. Beginning in 2002, a national human rights report was issued every two years on an experimental basis. More on this later.

This ambitious vision, given the legacy of the traditional values which is very much critical, if not absolutely hostile to the more individualistic

approach to rights and a more open style for living, could only be partially realized. If the lack of courage on the part of the political elite and the conservatism of the bureaucracy are taken into account, the difficult task of bringing about such an unprecedented social change was indeed a daunting challenge.

On the specific issue of the ratification of the two international human rights covenants, which the Republic of China representative in the United Nations had signed in 1967 but the government in Taipei did not ratify, the Chen Shui-bian administration submitted its draft to the Legislative Yuan in the year 2001 (Official Gazettes, 2001). It was referred to the Foreign Affairs and Overseas Chinese Affairs Committee for review and that Committee proceeded to hold three public hearings on October 15, 2001, May 30, 2002 and November 25, 2002. However, the hearings could not reach a consensus, either on the ratification or the need to make reservations. After much hand-wringing, the Ministry of Foreign Affairs proposed that a statement should be appended to the effect that Article 1 only applied to colonies and trusteeship territories or non-self-governing peoples, and the Republic of China as a sovereign state need not make any reservations. This was, of course, a compromise to break the deadlock. As a result, the two international covenants could be ratified with a statement concerning Article I and reservations on Article 6 and Article 12 of the International Covenant on Civil and Political Rights (Official Gazettes, 2002).

To the surprise of legislators from both political parties, the Executive Yuan requested a reexamination and the bill died. It was reported that a member of the PACHR speaking on behalf of the emerging non-governmental human rights organizations, was vehemently opposed to the compromise. He argued that if it were accepted, Taiwan would become a laughing stock of the international community, for it would have hindered the effort for promotion of national self-determination (Wang, 2003). In the light of what happened in the following years, it was a most serious error in judgment and an exaggerated sense of self-importance on the part of the nascent human rights NGOs.

II

Upon the re-capturing of political power by the Chinese Nationalist Party under the leadership of Ma Ying-jeou in the presidential election in

2008, Taiwan had witnessed substantive changes. The people were fairly well-educated and the lifestyle of the middle classes in the cities was free and individualist. The political process was open and competitive, and non-governmental organizations, not only in the human rights field, were becoming more robust and influential. However, President Ma's attitude and policy towards human rights was something of a puzzle. He plainly took great pride in being a scholar in international law trained at Harvard Law School, yet he was from the very beginning of his term explicitly against the creation of a national human rights commission based on the Paris Principles and the abolition of the death penalty, to cite two well-known examples. He chose to set up a PACHR very much on the model of his predecessor. Nevertheless, he was for the ratification of the two international human rights covenants. He managed to persuade the Legislative Yuan to do this without any reservations in 2009. An implementation law was adopted simultaneously to make the two covenants domestic law in anticipation that submission of the documents of ratification would be rejected by the United Nations Secretariat, which indeed came to pass. The stage was set for the review by international experts and the follow up of their concluding observations and recommendations for both 2013 and 2017.

The procedure for the review exercise, including how to select the international experts, the submission of the national report, the return of the list of issues, the alternative reports from the non-governmental organizations and the review conference in Taipei as well as the press conference to present the concluding observations and recommendations were thrashed out long before 2013. On the whole, it followed the United Nations model but consciously tried to do better in that it provided more time for government and non-governmental organizations to interact and engage in detailed discussion. It is this dimension, which was really a necessity because the submission of the national report would not be accepted by the United Nations Organization, which received much praise from the international community (Chen, 2013).

It needs to be noted, however, that many of the non-governmental organizations and part of the mass media closely affiliated with the Democratic Progressive Party were highly suspicious of this move by the Ma Ying-jeou administration, arguing that given the human rights record of his Party and his accommodating position vis-à-vis the Chinese Communist

Party and the Beijing government, it could not be anything more than a smoke screen signifying nothing. And in the early stage of meetings where the government officials and the non-governmental organizations met to discuss what material should be included in the report, shouting matches were not unusual.

As narrated in a summary report by Min-li Kuo, who was a prosecutor reassigned to the Ministry of Justice to head the group designated as the secretariat for the PACHR and who has contributed much to the success of the review enterprise, the Committee was quickly engaged in preparing the initial national report as soon as it was established, almost to the neglect of its other functions. The debate on many related issues was sharp and at times impolite. To cite an example, the decision to adopt the United Nations procedures was taken in the third meeting of the Committee on April 12. It was a complete turnaround from the previous practice of the Chen Shui-bian administration which had been issuing national reports on human rights every two years since 2002. In the second meeting of the Committee on January 14, it was still the dominant opinion that a national report for the years 2009-2011 should be issued following the earlier model. Briefly this report would be the responsibility of the Executive Yuan, with the Research, Development and Evaluation Commission under it serving as the secretariat. The report would be divided into three parts, the first dealing with civil and political rights, the second with economic and social rights, and the third with specific issues such as the rights of minorities, etc. It was also stipulated that scholars would be invited to write the report according to their expertise. International experts would be consulted, but emphatically as it is not our “international obligation, Taiwan is not held accountable to international human rights experts.” As for the role of the Committee, much discussion took place between those who argued for greater responsibility, not excluding writing chapters of the Report against those who urged a more moderate role, that of guidance and supervision. This debate is referred to as “who is the chef?” The image conjured up is that the Secretariat would gather material from the government agencies as if shopping ingredients in the market and give them to an individual or a group to compose the national report just like the chef would organize a feast. A few members of the Committee indeed have volunteered to write chapters in their area of competence, but in the assessment of this writer, they did not know enough to do a good job. Fortunately, the latter approach prevailed.

The selection of the experts, as can be anticipated, posed a serious challenge to the Committee. From fairly early on, it was decided that the review committee would have ten members, five for each Covenant. They should be balanced if possible in terms of geography, age and gender. But the most important criteria were their expertise and experience serving at the United Nations and/or other international organizations. The Committee was nervous as to whether any qualified experts would accept an invitation from Taiwan, as the Republic of China had been isolated from the world community for almost forty years. The Committee was especially concerned if women experts from Asian nations would respond to the invitation. As things turned out, through the personal efforts of many members of the Committee and non-governmental human rights organizations, Taiwan was fortunate to be able to assemble a first-rate team to help in this important initiative. This writer believes, then and now, that personal friendship played a part, but ultimately the experts agreed to help because they recognized that the government and civil society in Taiwan were making efforts to abide by international human rights standards, haltingly as they were, and deserved support. From a reliable source, it is known that one, if not more, of the experts had been gently or not so gently dissuaded to come to Taipei. This interference did not prevail.

When Min-li Kuo and his staff began to contact the ministries and commissions and other government agencies to provide reports of what they had done, or not done, in the field of human rights, the suspicion, hostility and resistance began to surface. In part, it was because they were not familiar with the idea of human rights. But more importantly, it was due to their instinct to defend their own turf. Hardly any ministry or agency would admit that they had ever done anything wrong. They were all abiding by international human rights standards. Their first response read as a public relations piece, praising their own achievements. Especially discouraging was the lack of many crucial statistics. Altogether, 82 meetings were held, in which the secretarial staff under Min-li Kuo, the government agencies and non-governmental organizations took part to decide what to include in the Initial National Report. Usually the meeting would be chaired by a member from the PACHR who would serve as arbitrator. It was in these meetings that the government agencies and the non-governmental organizations would come to shouting matches. Almost every member of the Committee had their favored black sheep government agency. Wang Yu-ling, an expert in

social welfare and a most diligent and hard-working member who had read almost all the material presented during the process, chose the Environmental Protection Agency, the Labor Affairs Commission and the Public Health Bureau under the Ministry of the Interior Affairs. The arguments, negotiations and compromises went on and on. After five drafts the Report was completed in April 2012 (Wang, 2013).

As has been mentioned above, human rights non-governmental organizations, especially the Taiwan Association for the Advancement of Human Rights, the earliest human rights organization in Taiwan and very close to the Democratic Progressive Party, and the Coalition to Monitor the Two International Human Rights Covenants with Peter Huang playing a leading role when it was first set up, were most influential. They argued for setting up an independent Secretariat for the review process. However, in January 2012, at the 7th meeting of the PACHR, this recommendation was rejected. In part, at that time, it was difficult to agree on an institute or agency capable of doing the job. Instead the Committee decided to use the group headed by Min-li Kuo in the Ministry of Justice as the secretariat and appoint a 7-person group to supervise its work. Three of its members were selected from the Committee, and four from the non-governmental organizations. At the end without much discussion, the Vice-President acting as the Convener of the Committee appointed this writer to serve as its chief advisor.

Unexpectedly, the review process met with a serious crisis. In November 2012, the whole enterprise was threatened when the news leaked out that the government was prepared to resume the execution of death row prisoners. The two conveners of the two panels for the Civil and Political Rights and the Economic, Social and Cultural rights wrote to protest, urging that no execution be carried out until they had completed their review. The President instructed the Ministry of Justice and the Ministry of Foreign Affairs to tread carefully. However, an official of the Ministry of Foreign Affairs through the press accused the experts of interfering in domestic affairs, opposing any idea of international human rights. The non-governmental organizations also briefly debated the pros and cons of boycotting the international review and withdrawing from the 7-person group (Huang, 2013).

The experts arrived in Taipei on time for the review meeting, plainly after some discussion among themselves. From February 25–27, they met with the government representatives and the non-governmental organizations,

seeking more information, urging them to define their positions more clearly and pressing the government on many points. The non-governmental organizations were actively engaged, thinking that this was a great opportunity for them to put pressure on the government, and they were right. In press conference held on March 1, the Concluding Observations and Recommendations with its 81 points was presented.

At the press conference, the international experts were most courteous in their praise for the commitment and efforts of the government and the civil society organizations. Yet their concluding observations and recommendations left no doubt that they had a fairly good understanding of the human rights situation in Taiwan. In simple and straightforward language, they pointed to the many defects and weaknesses in abiding by international human rights standards, and urged reforms. Among the recommendations they made, the following were given priority.

First in the priority list is the creation of a national human rights commission based on the Paris Principles (Points 8 and 9). As has been mentioned earlier, this issue had been the concern of civil society organizations since the year 2000. Yet nothing has yet been done. A study of this issue cannot be taken up here, as it is obviously outside the scope of this paper. Next follows the review of laws, regulations, directives and administrative measures provided for in the Implementation Act (Points 12 and 13).

The international experts also pointed to the hierarchy between the civil and political rights recognized in Chapter II of the Constitution and the economic, social and cultural rights identified as “fundamental national policies” in Chapter XIII, and recommended that more attention should be paid to the latter, including more legislative recognition and the training of the Judiciary concerning the two Covenants (Points 14–16). In this conjunction, the experts also urged the training of specific occupational groups, such as prosecutors, police officers and prison administrators, as well as human rights education in the school system. The curriculum was criticized for its emphasis on the history and structure of the international human rights system to the neglect of the human rights values and principles embodied in the Universal Declaration of Human Rights and the two Covenants (Points 17 and 18). Referring to transitional justice, the experts expressed their conviction that the period of transition had not ended and more needed to

be done to reconcile society, including measures of social and psychological rehabilitation and the right to truth and justice (Points 24–25). Gender equality and non-discrimination (Points 26–29) and rights of the indigenous peoples (Points 30–35) were very much in the minds of the experts.

The above are the more important points in the category of general issues. For the specific issues, migrant workers and their working conditions (Points 38–39), minimum wages and the poverty gap (Points 40–41), the disabled (Points 42–43), the right to housing (Points 48-51), the right to privacy, in particular regarding HIV-positive aliens (Point 60), as well as a minimum age for marriage, domestic violence, same sex marriages and cohabiting partnerships (Points 76–78) are highlighted.

So much for the Concluding Observations and Recommendations. To follow up, a series of meetings were held and relevant government ministries and agencies were made responsible for what to do to meet the demands of the experts. The PACHR also set up four sub-committees to deal with what they deemed the most serious challenges judging from the comments and recommendations the international experts had made. These were, to be specific, the creation of a national human rights commission, a comprehensive plan for human rights education, review of the laws, regulations, directives and administrative measures judged incompatible with the two Covenants, and the making of a set of human rights indicators. Members of the Committee volunteered to serve on the subcommittees. This writer chaired the first two sub-committees.

The sub-committees duly proceeded with their assignments. At the 16th meeting of the PACHR held on December 5, 2014, the sub-committee on a national human rights commission reported back that a national human rights commission could be set up as a fully independent institution not affiliated with any existing government agency or under either the Presidential Office or the Executive Yuan, with the first of the three possibilities the preference of many members of the Committee. The Control Yuan, which had argued from the very beginning when this subject was broached, that is, in the year 2000, that they were the national human rights commission as well and were opposed to a new national human rights commission, proposed that the commission should be set up in the Control Yuan. At the 21st meeting of the PACHR held on April 14, 2016, the Convener upon hearing the opinions from the members, decided that further review was needed. He plainly did

not desire to move forward on the issue. He also emphatically insisted that the Second National Report on the two international human rights covenants should be completed before the new administration took over the government.

The sub-committee on human rights education, similarly and after elaborate investigation and study, involving many outside experts and groups, reported back at the 17th meeting of the Committee on March 26, 2015, and at the 18th meeting on July 1, 2015. The plan was referred to the Executive Yuan for facilitating its implementation by the ministries, commissions and other agencies (President's Advisory Committee on Human Rights, 2015a, 2015b): no reaction from any of them.

The other two sub-committees were on the whole more deliberative and thus slower in completing their tasks. By the end of the Ma Ying-jeou administration, they had not submitted their report.

III

By comparison with the first review process in 2013, the second review proceeded smoothly. This was primarily due to the fact that the previous experience made a great difference. Civil servants were more familiar with the procedures, and the non-governmental organizations better coordinated and more confident in their mission. The selection of the experts, the gathering of material from the government agencies, the response to the list of issues and the arrangements for the review meeting in Taipei were done in a fairly orderly manner. That does not mean that no mistakes were made. There were quite a few.

When the new administration of Tsai Ing-wen took over in May 2016, the arrangements for the second review had been proceeding according to schedule. One member of the 7-person group was worried that the new administration might have second thoughts about the procedures. Fortunately, this turned out to be wrong.

The review in Taipei was held January 16-20. Of the ten experts of the first review, six agreed to serve again, though two, who participated in an earlier stage of the review process, could not come to Taipei due to health reasons. In the end, the two panels for civil and political rights and economic, social and cultural rights respectively each had five experts of great experience, expertise and personal integrity.

During their busy week in Taiwan, the experts worked tirelessly. Drawing upon their previous experience, they were, in the impression of this writer, even more critical and straightforward in their questioning of the government officials. They expressed their regret that not more had been done in the past three-year interval. For example, Professor Virginia Bonoan Dandan pointed out that the report on human rights education hardly differed from the previous report, and urged the government to think critically about the values and goals of human rights education and come up with a comprehensive plan. Likewise, Professor Novak retorted, in the discussion on the abolition of death penalty, that why only on this issue, was public opinion taken so seriously, and asked if majority opinion favored discrimination against a specific minority, would the government abide by the results from a poll. After hearing the argument that the United States and Japan still retained the death penalty, Professor Cohen was moved to observe that Taiwan should think of itself as an advanced and progressive country, and not learn from backward nations.

And it was on the second day of the review, that is, January 17, that the experts were quite frustrated and made known their impatience when the government officials present seemed incapable of providing information and answering the questions concerning the right to housing and adequate living standards.¹ Contrary to the awkward situation confronting the civil servants at times in the review process, the non-governmental organizations came well-prepared. The Covenants Watch Coalition asserted that they had coordinated the work of some eighty groups. They had submitted their alternative reports and were highly orderly in their presentations and conversations with the experts.

The press, it need be noted, was not much interested, probably slightly more than in 2013, but not by much. The only time that the mainstream press reported in any detail was when the non-governmental organization dedicated to preserving the family and against same-sex marriage and sex education in schools protested during the press conference on January 20. Other civil society organizations, such as the group against forced evictions, also demonstrated during the review process.

¹ Taken from the on-site observation reports by a researcher and a volunteer worker of the Covenants Watch (Liu, 2017a, 2017b).

Nevertheless, and despite all the mismatches large and small, the review process was more clearly delineated and settled. A solid foundation has been set.

By the end of a week of hard work, the experts offered 78 Points in the Concluding Observations and Recommendations, reiterating many points they had made in 2013. On general issues, they are, among others, the need to create a national human rights commission based on the Paris Principles, to emphasize human rights education and training, to counter the increasing growth of income inequality, to promote the right to gender equality and the rights of the indigenous peoples. On the side of civil and political rights, the experts are particularly concerned with the death penalty, conditions of detention, the concentration of news channels and newspapers in certain hands, as well as the age of marital consent and same-sex marriages. On the economic, social and cultural rights side, the serious issues include foreign workers in the household category, foreign fishermen in Taiwanese fishing vessels, homeless people, child laborers, the right to housing and the right to sexual and reproductive health as well as the rights of intersex people, to put it differently, the rights of the poor and downtrodden in a society which takes great pride in its wealth and benevolence. Clearly understanding the position of, and promises in the field of human rights made by President Tsai Ing-wen, the experts pointedly urged her to take “a more proactive attitude towards the full implementation of international human rights law” (International Review Committee for the ROC’s Second Report under the ICCPR and ICESCR, 2017).

At the end of the review process, three experts were persuaded to stay on for a few days so that they could participate in two seminars. They were respectively sponsored by the European Economic and Trade Office (with participation of the British Office in Taipei, French Office in Taipei and the German Institute in Taipei) and the Legislative Yuan Cross Party International Human Rights Promotion Association (in collaboration with the Judicial Yuan, the Ministry of Justice, the Taiwan Association to End the Death Penalty and the Taiwan Covenants Watch). The theme for the seminar held at the Judges Academy on January 23 was designed to further explore the Concluding Observations and Recommendations for the International Covenant on Civil and Political Rights Article 6 and Article 9 and their implications for Taiwan’s legal practices. The international experts met there

with the President of the Judicial Yuan, several judges from the Constitutional Court and district courts as well as scholars from the academic community. Similarly, the seminar held at the Legislative Yuan on January 24 was used to discuss possible legislation. In this seminar, Professor Riedel made a presentation as to what could be useful for the needs of Taiwan in term of legislation. The experts met with several members of the Legislative Yuan, judges and scholars.

The fact that these two seminars were held was indeed a breakthrough. The European Union and the several offices of European countries in Taipei have through the years been most supportive of the universities and non-governmental organizations in their human rights efforts. They have, without exaggeration, made the government during the eight years of Ma Ying-jeou's presidency fairly upset with their position on the abolition of the death penalty. They have also arranged for European scholars and experts to visit Taiwan and to consult with the government and to give lectures to the government officials, judges and prosecutors on many issues relating to their work. However, this is the first time that the Judicial Yuan, the Legislative Yuan, the academic community, non-governmental organizations and the international experts came together under the umbrella of the two international human rights covenants. During the 2013 review process, the Judicial Yuan and the Legislative Yuan hardly played any role. Yet they are indispensable if progress in bringing about an international human rights regime is to be made.

IV

How would the new administration and the civil society organizations respond to the challenge posed by the international experts? It is well-known that during her campaign and first two years in office, President Tsai Ing-wen made her commitments fairly clear. She pledged to reform the judicial system, to set up a national human rights commission, to proceed with transitional justice, including dealing with the historical injustice suffered by the indigenous peoples, to reclaim from the Chinese Nationalist Party what are deemed illegal properties, as well as to reform the pension system. The first meeting of the PACHR after the new administration was inaugurated took place on July 22, 2016 with Vice-President Chen Chien-jen (陳建仁) as Convener. The expectations were high. A straw vote was taken on the establishment

of a national human rights commission. The results were as follows: 16 for housing it at the Presidential Office, 9 for a free-standing commission, and 10 went with the Control Yuan. The Convener stated that the results would be reported to the President and a decision could be expected by the end of the year (Huang, 2018: 115).

On April 6, 2017, the PACHR met to discuss the follow up on the report by the international experts. They spent much time debating a set of procedural rules proposed by the Secretariat. Briefly, the members of the Committee were to be divided into three groups, each with its own convener and in charge respectively of the civil and political rights covenant, the economic, social and cultural rights covenant, and all other covenants and treaties. Any proposal, inquiry or recommendation should be channeled through the three groups. The new procedure seemed complex and detrimental to the free exchange of ideas among the Committee members. This writer was opposed to the new procedure.

While the three sub-committees plodded on with the follow up, point by point in the order of the Concluding Observations and Recommendations, the Executive Yuan decided to hold a series of meetings for the same purpose but with the difference that the Executive Yuan being in charge, the ministries and agencies would have to take the discussion more seriously. At the 7th meeting of this series held on Oct 27, 2017, and chaired by the newly appointed minister without portfolio, Mr. Lo Bin-cheng (羅秉成), a wide-ranging and soul-searching discussion took place. The issues taken up included, among others.

1. How to define cruel punishment, and if the definition by the government was far too narrow and not in accord with the International Covenant on Civil and Political Rights?
2. The treatment of the prisoners and if their rights were violated. It was recognized that this is a complex issue and no decision could be taken without the coordination of many government agencies. So Mr. Lo decided that discussion should be postponed until a later time.
3. The issue of a national action plan, referred to in point 78. This issue provoked much wrangling, and ended up with a compromise: the short-term work on monitoring the follow up was entrusted to the Secretariat, with the understanding that a more comprehensive, thorough national

action plan taking into account the human rights indicators, could only be tackled later. Mr. Lo brought the discussion to an end and announced that the more ambitious and comprehensive plan should be the task of the Commission for the Promotion and Implementation of Human Rights in the Executive Yuan.

No doubt this compromise was a step forward in the right direction. For reasons that this writer finds puzzling the Secretariat proceeded to assert that what they were doing was the national action plan and the key performance indicators they used were the equivalent of the U.N. human rights indicators. This patently false assertion was soundly rejected in the 32nd meeting of the PACHR held on June 29, 2018.

As for substantial issues, two important issues seem to be beyond the reach of the reform effort of the civil society organizations and the academic community, namely the death penalty and the creation of a national human rights commission based on the Paris Principles. President Tsai, after a long year of silence, declared cautiously that as far as legal status goes, Taiwan has not abolished the death penalty yet (Chiu, 2018). Her Minister of Justice denied that the government was in favor of abolition. Apparently under the pressure of public opinion, on August 31 Mr. Hung-chi Li, an inmate on death row was executed (Wang & Lin, 2018).

The need for human rights education and training deserves urgent attention, having been urged by the international experts both in 2013 and 2017. Yet for many years, the promotion of human rights education in the formal sector has been piecemeal and loosely connected, hardly a comprehensive plan. There is still none.

During the National Conference on Judicial Reform which was completed in June 2017, many issues concerning the administration of justice and participation by citizens were heatedly debated, with few concrete proposals adopted, nor were they implemented. The verdict is clearly still not in.

The Committee on the Promotion of Transitional Justice was duly set up under the Executive Yuan in May this year. Much criticism of its composition and especially its chairman, Mr. Huang Huang-hsiung (黃煌雄) did not portend well. The Chinese Nationalist Party and their supporters took the Committee as a new instrument designed to destroy them once and for all. Some well-

known scholars and NGOs doubted Mr. Huang's integrity for the task at hand. At the time of writing, the Committee has announced that the priority should be to gather together all the files kept in various government agencies, especially intelligence agencies concerning the prosecution of political opponents under authoritarian rule. Following that, the symbols such as buildings and monuments which celebrate authoritarian rule would be tackled in due time.

When it comes to the disadvantaged classes, the urban poor, the indigenous peoples, and the immigrant workers, among others, it is difficult to anticipate that the government will go for basic changes. Primarily the ruling Party and the government are far too closely tied to the propertied classes, the bankers and the business community. The political elite lack the will and determination to turn things around. In this they are not different from their predecessors, the Chinese Nationalist Party and the Ma Ying-jeou administration.

V

The follow up to the Concluding Observations and Recommendations is indeed a great opportunity for the government and civil society organizations to take stock and reflect on the human rights situation of Taiwan. The experts have rendered a valuable service for Taiwan. Yet hope for a great breakthrough in the years to come is not realistic. It would seem that the most serious obstacle is the lack of will of the political elite, and behind that the close liaison of the ruling Party and government with the rich and powerful. For far too many years the laboring class, immigrants, and indigenous peoples were made to bear the brunt of discrimination and unfair treatment and they still are. The legacy of traditional values and superstition play a role, to be sure, in the opposition to the abolition of death penalty and to same-sex marriage. Yet such traditionalism is a declining force. After all, the rapid economic and social changes and the promotion of human rights education, even though somewhat ineffective, make it impossible to turn back to the past. The bureaucracy almost by definition is conservative and passive, refusing to take any initiative. They are sensitive of their domain and privileges. Yet they are fairly well-trained and will abide by the policy decisions of their superiors.

To sum up, the key to an effective follow up is to persuade, conjure and

pressure the political elite to come along. Education and training of citizens and civil servants in human rights promotion and protection is indispensable. Myths and superstitions must be discarded. The political elite and the bureaucracy must be made to abide by the international human rights laws Taiwan has signed and ratified, by mobilizing the citizens, turning out to vote, taking the government and the business to court and making new laws or amending existing laws Simultaneously, support from the international community would be most valuable. Without their support, Taiwan would not have gone as far as it has. Yet much work remains to be done, and a concerted effort is urgently needed.

Appendix

Table 1 Review Committee for Second State Reports of ICCPR

No.	Name & Nationality	Gender	Current Position & Experience
1	Manfred Nowak (Austria)	M	<p>Current position: Professor of International Law and Human Rights at the University of Vienna School of Law; Director of the Ludwig Boltzmann Institute of Human Rights</p> <p>Experience:</p> <ul style="list-style-type: none"> • United Nations Special Rapporteur on torture and other forms of cruel, inhuman, degrading treatment or punishment (2004-2010) • Judge of the Human Rights Chamber for Bosnia and Herzegovina (1996-2003) and Deputy Chief Justice of the Chamber (1998) • Member of the United Nations Working Group on Enforced or Involuntary Disappearances (1993-2001) • Expert on United Nations Missing Persons in the Former Yugoslavia (1994-1997)
2	Jerome A. Cohen (USA)	M	<p>Current position: Professor at New York University School of Law and Co-director of U.S.-Asia Law Institute</p> <p>Experience:</p> <ul style="list-style-type: none"> • Vice dean, Harvard University School of law • Founder of U.S.-Asia Law Institute, New York University (1990) • Editor-in-Chief of Yale Law Journal • One of the first delegation of American scholars visiting North Korea (1972)

No.	Name & Nationality	Gender	Current Position & Experience
3	Shanthi Dairiam (Malaysia)	F	<p>Current position: Member of Gender Equality Task Force, UNDP</p> <p>Experience:</p> <ul style="list-style-type: none"> • CEDAW Committee Member (2005-2008); CEDAW Committee Rapporteur (2007-2008) • Member of Advisory Panel, Disability Rights Fund, Boston, USA (2008-present) • Member of the Board of Directors, International Women Rights Action Watch Asia Pacific (IWRAP), Malaysia (1996- Present) ; Executive Director (1993-2004) • Member of the National Advisory Council on Women, Malaysia (March 2005- present)
4	Peer Lorenzen (Denmark)	M	<p>Current position: Retired Judge of the European Court of Human Rights</p> <p>Experience:</p> <ul style="list-style-type: none"> • Member of the European Commission of Human Rights (1995-1999) • Judge of the European Court of Human Rights (1998-)
5	Sima Samar (Afghanistan)	F	<p>Current position: Chairperson of the Afghanistan Independent Human Rights Commission</p> <p>Experience:</p> <ul style="list-style-type: none"> • United Nations special Rapporteur on the situation of human rights in Sudan (2005-2009) • Minister of Women's Affairs for the Interim Administration of Afghanistan (2001-2003)

Source: Ministry of Justice Affair, Republic of China (2016a)

Table 2 Committee member who had contributed to the formation of the LOIs but would not come to attend the review meeting in Taiwan

No.	Name & Nationality	Gender	Current Position & Experience
6	Nisuke Ando (Japan)	M	<p>Current position: Professor Emeritus of Kyoto University and Director of the Kyoto Human Rights Research Institute</p> <p>Experience:</p> <ul style="list-style-type: none"> • Member of Human Rights Committee (1987-2006) • Chairman of Human Rights Committee (1993-1994) • Judge of the Administrative Tribunal of the International Monetary Fund (1994 - Present) • Member of the Permanent Court of Arbitration (2001 - Present) • Member of L'Institut de Droit International (1999 - Present) • Japanese Society of International Law (Member 1959-Present; • Editor-in-Chief 1991-1993; President 1998-2000) • Life member of American Society of International Law (1962 - Present)

Source: Ministry of Justice Affair, Republic of China (2016a)

Table 3 Review Committee for Second State Reports of ICESCR

No.	Name & Nationality	Gender	Current Position & Experience
1	Eibe Riedel (Germany)	M	<p>Prof. Eibe Riedel is a former member and Vice-Chairperson of the UN Committee on Economic, Social and Cultural Rights, professor (emeritus) of Comparative Public Law, International and European Law of the University of Mannheim/ Germany and Adjunct Professor at the University of Adelaide/Australia. He presently is Visiting Professor at the Geneva Academy of International Humanitarian Law and Human Rights. He is Chairperson of the board of trustees of the German Institute for Human Rights, Berlin, and a member of the German UNESCO Commission, a director of the Institute for German, European and International Medical Law and Bioethics of the Universities of Heidelberg and Mannheim, as well as a director of the Institute for Transport Law and Inland Navigation Law at the University of Mannheim and Judge at the Permanent Court of Arbitration, The Hague.</p>
2	Virginia Bono-an-Dandan (Philippines)	F	<p>Current position: UN Independent Expert on Human Rights and International Solidarity</p> <p>Experience:</p> <ul style="list-style-type: none"> • Chairperson of the CESC (1998-2006); member (1990-2010) • Professor of Fine Arts, University of the Philippines: Dean • National Project Manager, Human Rights Community Development Project in three Philippine Indigenous Peoples' Communities • National Project Manager, a bi-lateral project of the Commission on Human Rights of the Philippines and the New Zealand Human Rights Commission (2008-2010)

No.	Name & Nationality	Gender	Current Position & Experience
3	Heisoo Shin (South Korea)	F	<p>Current position: Member of the United Nations Committee on Economic, Social and Cultural Rights</p> <p>Experience:</p> <ul style="list-style-type: none"> • Member (and Vice Chair for 2003-2004) of the Committee on the Elimination of Discrimination against Women (CEDAW) for the terms of 2001-2004 and 2005-2008 • Commissioner of the National Human Rights Commission in Korea (2005-2008) • Member of the International Advisory Committee for the UN Secretary-General's in-depth study on all forms of violence against women (2005-2006) • Member of UN High-Level Mission to Afghanistan (August 2006) • Member of Asia Pacific Forum on Women, Law and Development, on its Task Force on Violence against Women (1992-1999), Steering Committee (1995-1999), Working Group on Women's Human Rights (2000-2007) and Organizing Committee (2009-Present) • Chairperson of the Committee on Gender Policies, Ministry of Justice, Republic of Korea (2006-Present)
4	Jannie Lasimbang (Malaysia)	F	<p>Current position: Secretary General of Jaringan Orang Asal SeMalaysia</p> <p>Experience:</p> <ul style="list-style-type: none"> • Independent Expert of Expert Mechanism on the Rights of Indigenous Peoples (2013-2014)
5	Miloon Kothari (India)	M	<p>Current position: President of UPR Info</p> <p>Experience:</p> <ul style="list-style-type: none"> • Special Rapporteur on adequate housing with the United Nations Commission on Human Rights and the Human Rights Council (2000-2008)

Source: Ministry of Justice Affair, Republic of China (2016b)

Table 4 Committee member who had reviewed the second state reports but would not come to attend the review meeting in Taiwan

No.	Name & Nationality	Gender	Current Position & Experience
6	Theodoor Cornelis van Boven (Netherlands)	M	<p>Current position: Honorary Professor of International Law at Maastricht University School of Law, the Netherlands</p> <p>Experience:</p> <ul style="list-style-type: none"> • Official of the Netherlands Ministry of Foreign Affairs (1960-1977) • Representative of the Netherlands on the United Nations Commission for Human Rights (1970-1975) • Director of the United Nations Division of Human Rights (1977-1982) • Member of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities (1986-1991) and Sub-Commission's Special Rapporteur on the Right of Victims to Reparation (1989-1993) • Member of the United Nations Committee on the Elimination of Racial Discrimination, CERD (1991-1999) • Registrar of the International Criminal Tribunal for the Former Yugoslavia, ICTY (1994) • United Nations Special Rapporteur on Torture (2001-2004)

Source: Ministry of Justice Affairs, Republic of China (2016b)

Reference

- Chen, Shui-bian. 2000. "President Chen's Inaugural Address" [Press release]. 20 May 2000. Taipei: Office of the President, Republic of China (Taiwan). In <https://english.president.gov.tw/NEWS/2643>.
- Chen, Yu-jie. 2013. "Dui Taiwan renquan baogao guoji shencha de yixie guanCha [對台灣人權報告國際審查的一些觀察 (Some Observations on the International Review of Taiwan's National Human Rights Report).]" *Taiwan Human Rights Journal* 2, 1: 161–165.
- Chiu, Tsai-wei. 2018. "Tsai zongtong: Falyu sianjieduan haimei feisih [蔡總統：法律現階段還沒廢死] (President Tsai: In Terms of Legal Status, Taiwan Has Not Abolished Death Penalty Yet)." *United Daily News* 24 July 2018: A4.
- Huang, Mab. 2018. "A National Human Rights Commission for Taiwan?" Eds. by Jerome A. Cohen, William P. Alford and Chang-Fa Lo. *Taiwan and International Human Rights: A Story of Transformation*: 115–128. Springer.
- Huang, Song-lih. 2013. "Cong gongmin shehui de jiaodu guanCha chuci guojia renquan baogao de zhuanxie he shencha [從公民社會的角度觀察初次國家人權報告的撰寫和審查] (Observing the Drafting and Review of Taiwan's Initial National Human Rights Report from the View of Civil Society)." *Taiwan Human Rights Journal* 2, 1: 123–131.
- International Review Committee for the ROC's Second Report under the ICCPR and ICESCR. 2017. *Review of the Second Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants: Concluding Observations and Recommendations*. Taipei: Ministry of Justice Affair, Republic of China (Taiwan).
- Liu, Jung-chen and Yi-ching Tsai. 2017a. "Liang gongyue guoji shencha: Renquan liguo zao zhiyi, shehui gongshi cheng dunci [兩公約國際審查：人權立國遭質疑，社會共識成遁辭] (Doubt about Building a Human Rights State, Social Consensus Becomes an Excuse)." In <http://pnn.pts.org.tw/project/inpage/450/48/132>. Latest update 8 September 2018.
- . 2017b. "Liang gongyue guoji shencha: Taiwan moshi jian minglang, zhengfu taidu reng fuyan [兩公約國際審查：台灣模式漸明朗，政府態度仍敷衍] (With the Pattern of the Review Process for Taiwan Being Set, the Government Still Slides Backward)." In <http://pnn.pts.org.tw/project/inpage/451/68/132>. Latest update 8 September 2018.
- Ministry of Justice Affair, Republic of China (Taiwan). 2016a. "Review Committee for Second ICCPR Report In <http://www.humanrights.moj.gov.tw/dl-16941-0308e1c9dd3f48bf8f26b8ff4e0f4f84.html>. Latest update 7 November 2016.
- . 2016b. "Review Committee for Second ICESCR Report In <http://www.humanrights.moj.gov.tw/dl-16942-a430ff9083c041da83b9c81155a1c479.html>. Latest update 7 November 2016.
- Official Gazettes. 2001. "Lifayuan di 4 jie di 5 huiqi di 11 ci huiyi [the 11th Sitting, 5th Session of the 4th Term, Legislative Yuan]." *Legislative Yuan Gazette*: 3–99. Taipei: Official Gazette

- Department of Legislative Yuan, Republic of China (Taiwan).
- . 2002. “Lifayuan di 5 jie di 2 huiqi di 15 ci huiyi [the 15th Sitting, 2nd Session of the 5th Term, Legislative Yuan].” *Legislative Yuan Gazettes*: 264, 278. Taipei: Official Gazette Department of Legislative Yuan, Republic of China (Taiwan).
- President’s Advisory Committee on Human Rights, Republic of China. 2015a. “Zongtongfu renquan zixun weiyuanhui di 17 ci weiyuanhuiyi jielun [總統府人權諮詢委員會第十七次委員會會議結論] (Conclusion reached at the 17th meeting of the President’s Advisory Committee on Human Rights).” In <https://goo.gl/tPMwpb>. Latest update 14 April.
- . 2015b. “Zongtongfu renquan zixun weiyuanhui di 18 ci weiyuanhuiyi jielun [總統府人權諮詢委員會第十八次委員會會議結論] (Conclusion reached at the 18th meeting of the President’s Advisory Committee on Human Rights).”
- Su, Yiu-Chen. 2002. “Lun guojia renquan weiyuanhui de jiaose yu diwei [論國家人權委員會的角色與地位] (The Role and Status of a National Human Rights Committee).” *National Policy Quarterly* 1, 2: 1–32.
- Wang, Ping Yu. 2003. “Renquan gongyue erfa, Minjindang ti fuyi [人權公約二法，民進黨提復議] (The Democratic Progressive Party Requests Reconsideration of the Two International Human Rights Covenants).” *Liberty Times* 9 January 2003. In <http://old.ltn.com.tw/2003/new/jan/9/today-p10.htm>.
- Wang, Sheng Li and Meng Chieh Lin. 2018. “Tsai Zongtong rennei shou zhihxing sixing [蔡總統任內首執行死刑] (The First Execution of a Death Row Inmate of the Tsai’s Administration).” *United Daily News* 2018/9/1: A1.
- Wang, Yo-ling. 2013. “Canjia guojia renquan baogao zhuanxie de qihuan zhi lu [參加國家人權報告撰寫的奇幻之旅] (A Fantastic Journey of Attending the Work of Drafting the National Human Rights Report).” *Taiwan Human Rights Journal* 2, 1: 107–121.

國際人權公約執行報告的審查過程 及其影響

黃默

東吳大學文理講座教授
台灣人權學刊創刊主編

摘要

本文旨在審視 2013 年與 2017 年國際學者專家應邀來台審查《公民與政治國際權利公約》與《經濟社會文化國際權利公約》的經過，他／她們提出的「結論性意見與建言」，以及政府的對應。關注所在是歷屆政府對國際學者專家的建言，採取什麼樣的政策與措施，為什麼在兩次審查報告期中少有進展？蔡英文政府可能有什麼樣的對應？

本文所使用的資料可分作三部分，包括政府報告、民間人權組織的平行報告，以及學術界的討論。另外，作者親身參與這兩次報告的提出、撰寫與邀請國際學者專家來台審查，他的觀察與見聞也影響本文的書寫與分析。

關鍵字

公民與政治國際權利公約、經濟社會文化國際權利公約、國家人權報告、平行報告、結論性意見與建議、聯合國人權機制
