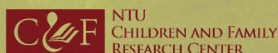




# **TAIWAN NGOs FOR CRC**

## Alternative report on the implementation of the Convention on the Rights of the Child

March 2017









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the Convention on the Rights of the Child**

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## **List of Members**

- ◆ Child Welfare League Foundation
- ◆ ECPAT Taiwan
- ◆ Good Shepherd Social Welfare Foundation
- ◆ Harmony Home Association Taiwan
- ◆ Harmony Home Foundation Taiwan
- ◆ Hualien County Growth Holistic Care Association
- ◆ NTU Children and Family Research Center
- ◆ Parents' Association for Persons with Intellectual Disability, Taiwan
- ◆ R.O.C. Probation Association
- ◆ Taipei Women's Rescue Foundation
- ◆ The John Tung Foundation
- ◆ World Vision Taiwan
- ◆ Zhi-Shan Foundation Taiwan

The Coalition expresses its gratitude to Peggy Pei-Chun Lin for her ongoing assistance and advice during the compilation of the report.

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## Introduction

This alternative report was prepared by the Taiwan NGOs for CRC (the “Coalition”), a network of 13 civil society organizations working to advocate for the full incorporation of the United Nations Convention on the Rights of the Child (“CRC”) into Taiwanese law, and to monitor compliance with and the implementation of the CRC by the Government. In previous years, the Coalition has played a major part in initiating the drafting of the Act to Implement the Convention on the Rights of the Child (the “Implementation Act”) and has influenced the process of incorporation by actively engaging in dialogue with the legislature, governmental agencies, and the general public.

This report consolidates the expertise of our member organizations and presents the results of approximately twenty (20) intensive meetings held among members. It highlights certain omissions and misrepresentations of the Government’s state report and offers a clearer and more practical view of the current status of children’s rights in Taiwan. Considering the importance of our own prerequisite knowledge of the CRC, the Coalition also draws on experiences of the international community by holding children’s rights workshops and participates in international symposiums with other NGOs in Asia.

The Government’s initial state report, while setting out the overall situation of children in this country, largely lists relevant legal provisions and provides descriptive outlines of governmental policies. The state report has failed to evaluate the effectiveness of the Government’s measures to implement the CRC and has omitted major issues such as the inadequacy of domestic mechanisms to safeguard the rights of our children and the need for a comprehensive action plan for children’s rights. The Coalition further urges the Government to address, as a priority, public authorities’ general lack of understanding of the CRC.

Notwithstanding the above, the Coalition highly commends the Government’s efforts in formulating a state report on the CRC and conducting the present review by international experts. We believe this process has stimulated debate on controversial children’s rights issues and contributes to enhanced awareness of the CRC at a multisectoral level.

As set out above, this alternative report consolidates first-hand observations of our member organizations’ extensive experience in the field of children’s rights. Our main recommendations are as follows:



- (1) The resolution of the ambiguity relating to the legal status of the CRC in the domestic legal system should be a priority. Specifically, issues concerning the justiciability of the CRC in domestic courts and whether the CRC takes precedence in case of a conflict with either pre-existing or subsequent legislation need to be clarified.

In addition, the current status of the two Optional Protocols to the CRC, namely, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (“CRC Optional Protocols”), remains uncertain. To avoid any ambiguities and ensure full coverage of the legal framework for children’s rights, we urge the Government to incorporate these two Protocols into domestic law.

- (2) The Government should set up, at the ministerial level, a governmental agency responsible for children’s rights to better facilitate inter-ministerial coordination and to bring together the currently fragmented child welfare responsibilities among different authorities.

In addition, Taiwan does not have an independent mechanism for human rights/children’s rights complaints. The current mechanism relies on government officials taking the initiative to investigate human rights violations. Thus, children’s voices are not effectively heard in such situations, and the need to provide children with a “child-friendly” complaints mechanism is overlooked.

- (3) The Government should eliminate discrimination against unexpected teenage pregnancies. According to statistics, “public perceptions/pressures” and “child rearing difficulties/availability of resources” are the decisive factors influencing whether such a teenage mother is to place her child up for adoption. In addition to financial assistance, the Government should develop policies to better meet the needs of those young girls.

- (4) In Taiwan there is a group of children whose birth parents are “run-away foreign workers”. Although relevant laws state that all children shall be entitled to certain rights and benefits in Taiwan, in practice, these children, who lack legal residence status in the country, often do not have access to social welfare resources (including basic survival, medical, and educational services) and are left alone in our society as





an invisible group of children.

- (5) On the problem of excess workloads experienced by child protection social workers, which is a serious growing concern, the Government should review the effectiveness of its recent “Program to improve allocation and recruitment of local government social workers” and consider the need to take further action to increase the manpower committed to social work.
- (6) For children who have witnessed violence, this report recommends that the Government review the overall design of the relevant counseling programs and services. In particular, such children’s opinions should be considered in the evaluation process, and their right to privacy should be safeguarded.
- (7) In child protection cases, the Government should consider and strengthen the effectiveness of the “113 national protection hotline” and diversify methods of reaching out to these children. Furthermore, demographic and social data relating to the number of children who call for help through these hotlines (namely, the 113 national protection, SOS, and anti-campus bullying hotlines) such as their gender, age and ethnic group, should be collected and analyzed by the Government.
- (8) For children whose parents have divorced by mutual agreement, the Government should establish mechanisms to ensure that both parents are taking responsibility for raising the child and to assist children in maintaining relationships with both parents.
- (9) In adoption, child custody and other judicial/administrative procedures involving children, there is a need to establish a friendlier environment for children to express their views and feelings so that their right to be heard and have their best interests taken as a primary consideration can be truly protected.
- (10) Children with disabilities should be entitled to all rights and protection, and additional assistance and measures should be provided so that their right to survival and development can be fully enjoyed on an equal basis with other children.
- (11) Regarding children who have a need for out-of-home care, at present, the number



of children placed under kinship care is far less than the number of children in institutional care. This represents a clear gap between the law and practice. The Government should review the relevant regulations and provide support to incentivize kinship care.

- (12) Regarding the protection and placement of indigenous children, it should be the Government's policy to give priority to suitable relatives from the same ethnic community, so that such children's identity can be better preserved.
- (13) Health care disparities in rural areas also prevent children living in those areas, especially children who suffer severe medical conditions, from enjoying the same rights to health and medical care as other children. Statistics show that less than 4% of the total number of hospitals in Taiwan are located in eastern Taiwan.
- (14) Children now frequently use internet and electronic devices. Government should take effective measures to prevent internet addiction, establish standards on the level of internet usage for children, and provide guidance for parents and teachers.
- (15) The Government should take a comprehensive review of its legislation on status offence and take all necessary measures to ensure that status offenders are dealt with through child protective measures.
- (16) On the issue of children's use of drugs, the current approach taken by the Government merely emphasizes investigation and punishment. It thus overlooks the importance of active preventative measures for children who have just been exposed to drugs owing to curiosity. For children who have become drug dependent, it is recommended that the Government develop and promote more community-based, child-friendly and professional treatment methods.
- (17) Indigenous children as a group should be separately identified and included in all governmental data collection and statistics. The Council of Indigenous Peoples should also share their data with other ministries so that such data can be widely accessible and be consolidated with other children's rights statistics.



## General implementation measures

### Harmonizing national laws and policy with the provisions of the Convention

1. The Government notes in paragraph 6 of the state report that Article 2 of the Implementation Act states that the CRC “shall have the effect of domestic law”. This provision has led to debates among legal scholars and practitioners on the legal position of the CRC in the domestic legal system - specifically whether CRC provisions prevail over inconsistent domestic laws.

The abovementioned controversy is not unique to the CRC; the issue has remained unresolved since the incorporation of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 2009. As such, during the drafting stage of the Implementation Act between 2013 and 2014, the Coalition proposed to the legislature that the draft version of the Act needs to explicitly state that the CRC takes precedence in the case of a conflict with either pre-existing or subsequent legislation. This proposal was not made into law and the legal position of the CRC under domestic law remains controversial.

Moreover, there is no legal requirement that upon the proposal of new laws, the responsible administrative authority or the legislator must ascertain and declare that provisions of the draft version of the law fully comply with ratified and/or fully incorporated human rights instruments. Thus, subsequent legislation may override provisions of the CRC, even though the latter has now been fully incorporated into domestic law.

2. The Coalition continues to urge the Government to set up, at the “Executive Yuan” level, a governmental agency responsible for children’s rights. Such a governmental agency will better facilitate inter-ministerial coordination and bring together the currently fragmented child welfare responsibilities among different units of the Ministry of Health and Welfare. Although the “Child and Youth Welfare and Rights Promotion Group, Executive Yuan” (the “Promotion Group”) has been established since the Implementation Act came into force, it meets only four times a year. Given the poor attendance of government officials, it is ineffective and serves only as an advisory body without real authority. Furthermore, no representative has been appointed by authorities at the Executive Yuan level to serve as a member of the Promotion Group.





Hence, it is difficult for the Promotion Group to carry out tasks requiring inter-ministerial coordination, as its members lack “high-level” authority.

3. We recommend that the CRC Optional Protocols be incorporated as soon as possible. In the draft version of the Implementation Act proposed by the Coalition, it was suggested that these two CRC Optional Protocols be incorporated together with the CRC. The Implementation Act, however, lacks an explicit provision with regard to the two Optional Protocols. We urge the Government to accept and incorporate these Optional Protocols in order to ensure full coverage of the CRC framework.

## **Coordinating child and youth policies and monitoring the implementation of the Convention**

### ***Overview of the current situation***

1. The state report notes, in paragraph 20 thereof, that a total of 86 cases relating to children were investigated by the Control Yuan in recent years. This statement omits the following information:
  - (a) Control Yuan’s main function focuses on the investigation and supervision of unlawful actions or misconduct on the part of civil servants. As it is not a specialized human rights institution, whether its members have the requisite human rights expertise or knowledge is contentious.
  - (b) None of the aforementioned 86 cases were brought by children themselves, indicating that Control Yuan’s complaints / investigating mechanism is not “child-friendly” and that the mechanism is inadequate for addressing with children’s rights violations.
2. There is no mention of the establishment of an independent children’s rights institution in the state report. The absence of such a children’s rights institution, or a system similar to that of ombudsmen, is one of the most important issues in implementing children’s rights in Taiwan.

### ***Recommendation(s)***

The abovementioned independent children’s rights institution / ombudsman Taiwan is



important to children in Taiwan, particularly as they do not have access to the Communications mechanism established under the third optional protocol to the CRC. We therefore urge the Government to establish, as soon as possible and as a priority objective, an independent institution to handle children's rights violations and monitor the implementation of the CRC.



## General principles of CRC

### Children of new immigrants

#### *Overview of the current situation*

1. Over the last decade, there has been a significant rise in the number of children whose mother is immigrating to marry. Statistics show that, in 2006, such children represented 3.9% of all elementary school children, peaking at 12.2% in 2013. This reflects the dual effects of low birth rates and the increase of the marriage immigrant population in Taiwan. The rights of such children, especially for non-discrimination and equal right to education, is of particular concern. According to a survey of 237 women marriage immigrants in 2014 conducted by the Good Shepherd Social Welfare Foundation, nearly 60% of the interviewees felt that they have experienced discrimination in Taiwan, while 22% often had to face disrespectful and belittling verbal violence from their husband's relatives. When our society is unfriendly toward marriage immigrants, their children may also face derision or become vulnerable, which sometimes affects their children's cultural identity and relationship with their mother.
2. Multicultural courses promoted in schools usually are attended by female marriage immigrants and their children. Participation by other school children and/or their parents is rare. Consequently, such courses have the labelling effect of singling those children out from other children. This suggests that more training is needed for school teachers to fully understand and implement children's rights.
3. In some situations, to avoid high nursery costs, children from these families are sent back to countries where their maternal grandparents live to receive their care. When these children return to Taiwan for education, they often face language and cultural adaptation challenges, sometimes leading to them to drop out of school and to face family conflicts. The Government fails to provide a comprehensive policy to help them deal with their difficulties and adjust to the environment, particularly in areas such as learning Mandarin Chinese (especially in term of reading) for older children and establishing relationships with other students when they are marginalized at school.

#### *Comments on the state report*

The report merely sets out, in paragraph 357, the current regulations and policies targeting





children of transnational marriage but does not provide an assessment and review on how such laws are implemented in practice.

***Recommendation(s)***

1. The Government should respond by enhancing public awareness and promotion of respect for cross-border / immigrant families, particularly in areas relating to human rights education and cultural sensitivity.
2. The Government should comprehensively review the implementation of cultural rights of children in the school curriculum and improve adults' awareness and sensitivity toward children's rights to cultural assimilation and non-discrimination.
3. The Government needs to provide supporting measures for children of transnational marriages who do not grow up in Taiwan but return at an older age.

## **Unexpected teenage pregnancies**

***Overview of the current situation***

According to statistics of Department of Household Registration, there were 1,736 births to mothers less than 18 years of age in 2015, representing 8% of the total number of newborns in that year. Factors influencing whether these teenage mothers keep their babies or give them up for adoption include the availability of family support, childcare resources and social perceptions. Additionally, fathers of these babies rarely participate in the adoption or decision process and the importance of which is often overlooked.

***Comments on the state report***

Paragraph 69 of the state report indicates the number of pregnant students who continue to attend secondary schools, but it neither indicates how continued schooling helps pregnant girls adapt to this change nor presents the situations of the girls who dropped out of schools because of pregnancy.

***Recommendation(s)***

Financial assistance to pregnant girls is not enough. The Government needs to take more action to eliminate discrimination against pregnant teenagers, provide supportive measures, and develop strategies to meet the needs of these girls.



## Civil Rights and Freedoms

### Undocumented children

#### *Overview of the current situation*

1. According to official statistics, as of June 2016, there were more than 52,000 undocumented foreign workers in Taiwan. Among these foreign workers, nearly 60% are women of childbearing age. Whether children born to such undocumented foreign workers are entitled to rights in this country depends on the residency status of their parents<sup>1</sup>. In certain situations, the child will become an “undocumented” non-national<sup>2</sup>.
2. The Government lacks adequate mechanisms to trace undocumented foreign workers, let alone their new born children. The Government states in paragraph 57 of its report that the law gives foreign or stateless children the same rights to medical services, care and education as those enjoyed by ROC nationals. However, a child’s social welfare entitlement in Taiwan is based on the “household registration” system, notwithstanding laws providing for their rights. In practice, they are less favorably treated than nationals and alien children with residency permits. Their basic rights, such as the right to health and education, are of particular concern.
3. The main difficulties faced by undocumented foreign workers and their children include low prenatal checkup rates, inability to pay for medical expenses, and struggles with schooling. Examples of their difficulties are further elucidated below:

- A mother owed NT\$250,000 in medical expenses due to emergency surgery for

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<sup>1</sup> If the child’s biological father is a Taiwan national, he can apply for nationality for the child under the law through the adoption procedure, and the child will be deemed a national. If the biological father of the child is a lawful resident alien, he can obtain nationality for the child in accordance with the legal procedures of his home country, and the child can reside in this country as an alien in accordance with Article 26, Paragraph 3 of the Immigration Act. However, if a female migrant worker abandons the child after giving birth without an official record, and there is no relevant information about the biological father, the case will be handled by the local competent authorities in accordance with Articles 6 and 7 of the Regulations for Placement of Helpless Children and Youth for matters related to identity, adoption, and schooling. If either the biological father or the biological mother has relevant records, the National Immigration Agency, Ministry of the Interior will assist in taking up residence valid for one year before the biological father or mother is found, and such residence can be extended.

<sup>2</sup> Such situations include where the biological father is a Taiwanese national but has no intention of adopting the child and the biological mother (who is a foreigner) is unable to pursue legal action to require the father to adopt the child pursuant to Article 1067 of the Civil Code, or where the biological father is an unaccounted foreign worker or is unknown.



her ill child. To earn her living and pay the surrender penalty, repatriation airfare and even the living expenses of her relatives in the home country, she had to undertake illegal work. Moreover, because of her economic vulnerability and poor living conditions, her baby was prone to diseases.

- Article 22 of the “Protection of Children and Youths Welfare and Rights Act” protects these “undocumented” children’s right to education. In practice, however, these children are not able to meet the local government’s school enrollment regulations. When such a situation arises, fears of being deported often prevent their parents from seeking help.
- An undocumented mother once said to us: “my child speaks Chinese now and he told me who bullied him, but my Chinese is not good enough. It is hard for me to understand what he was talking about.” This statement indicates that these children have little contact with the language and culture of the home country of their mothers or fathers but have adopted the lifestyle in Taiwan. Even if their parents have a home-return plan, these children may be forced to withdraw from a familiar environment without being mentally prepared for it. Without adequate time and resources for preparation and adaptation, they might face difficulties adjusting to their new environment.

### ***Recommendations***

1. The actual number of undocumented non-national children in Taiwan is unknown. The Government should make more efforts to identify this group of “undocumented” children. Unless the Government acquires a better understanding of the number of these children and their wellbeing, these children still fall outside our systems.
2. These children’s rights to medical treatment, education and development should be safeguarded and should not be conditioned upon, or affected by, the status of their parents. We recommend that to protect their rights on an equal basis, their needs should be identified independently of their parents, regardless of the status of their undocumented parents
3. These children, as well as their mothers, should have access to the healthcare services offered by our National Health Insurance system, including basic care, nutritional supplements, environmental health, accident prevention and prenatal and postnatal care so that the basic living condition of mothers and infants can be maintained.





Moreover, newborns are more dependent on medical care, and the Government should remove all restrictions preventing children from receiving necessary medical care.

4. Regulations preventing undocumented children from school enrollment should be revised to explicitly guarantee that all undocumented, stateless, and other children with an undetermined residency status are covered under our compulsory school system and are entitled to the basic right to education.
5. The Government should establish an evaluation mechanism that is grounded in the “the best interests of the child” principle. If it is in the child’s best interest to return to his/home country owing to stronger family support or better access to resources, for instance, the Government should take the initiative to cooperate with embassies and civil groups. Recommendations on the appropriate length of a child’s stay in this country can be made by professional personnel, and they can provide resources for home-return preparation and adjustment. Meanwhile, appropriate counseling or training can also be provided to undocumented foreign workers before they return to their home countries.
6. The Government should, as soon as possible, appoint a “competent authority” in charge of affairs concerning undocumented children and establish standard procedures for handling related matters.

## **Violence against children - child protection**

### ***Overview of the current situation***

1. Child protection social work suffers from understaffing and a high turnover rate, and the resulting problem of case overload affects social workers’ morale and service quality. The Government proposed the “Program to Improve Allocation and Recruitment of Local Government Social Workers” in 2010 and planned to gradually increase the overall workforce of social workers between 2011 and 2016. The current progress of implementation is unknown. No information on items such as the number of additional social workers allocated to child protection cases and its effect on reducing overload has been published by the Government.
2. In comparison with that in other countries, the number of cases involving children who have been neglected by their parents is relatively low - most child abuse in Taiwan



relates to physical abuse<sup>3</sup>. However, in practice, cases of mental abuse or child neglect are often deemed to be “unsubstantiated” by the Government’s child protection department upon reporting, with no subsequent services provided. Hence, the Government’s child protection department has a tendency to regard cases of mental abuse and child neglect as less serious and exclude them from child protection services. This “case dumping” may be related to the inadequate child protection workforce mentioned above.

3. Therefore, some cases of child neglect may be closed without any investigations or services, and others may be referred to community-based programs for high-risk families. Although they are designed as a supportive measure to prevent child abuse and neglect, these programs for high-risk families are inadequate in serving children who have already been abused or neglected because social workers in these programs do not have the skills and training to perform case investigations and intervention. Furthermore, the Government often outsources execution of these programs NGOs which do not possess statutory powers and therefore can do little to help families that are not willing to utilize government services.
4. The child protection system and high-risk family system appear to deal with child abuse services and child neglect services, respectively. The two systems belong to different governmental departments, and the lack of integration often leads to differences in child safety evaluations and risk assessment methods, as well as communication and case allocation problems. There are also horizontal coordination issues between different government departments in service delivery within both two systems.

### ***Recommendations***

1. The Government should review the effectiveness of its “Program to improve allocation and recruitment of local government social workers” and consider the need to take further action to replenish the manpower of social workers. The Government has provided no information on the execution of the program during the past six years. It also is our observation that the child protection workforce remains inadequate in some areas.

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<sup>3</sup> According to the statistics of the Ministry of Health and Welfare, cases of child neglect accounted for 26.5% of all cases in 2004, but this figure dropped to 10.8% in 2014. In contrast, in the United States, 78.5% of child abuse cases concerned child neglect in 2011 (U.S. Department of Health and Human Services. (2011). Child Welfare Outcomes 2008-2011.



2. There should be an appropriate communication platform between child protection services and high-risk family services. Consistent standards for evaluation and classification should be established so that each case can be assigned and intervened with appropriately.
3. Preventive and supportive services should be expanded and implemented within the community. Such services should include parenting courses, family courses, and family support units and should be made more accessible through the use of outreach programs.
4. The Government's child protection and prevention services should adopt an integrated networking approach to strengthen horizontal coordination between different departments. Relevant professionals, including police, health and education personnel, should also be included in this network.

## **Corporal punishment**

### ***Overview of the current situation***

Taiwan has banned corporal punishment in schools since 2006. However, a survey conducted by the Humanistic Education Foundation in 2012<sup>4</sup> showed that 31% of junior high school students and 24% of elementary students had experienced corporal punishment in schools. Corporal punishment is also a common means of parental discipline. According to a survey conducted by the Child Welfare League Foundation in 2014<sup>5</sup>, more than 40% of parents believe that physical punishment is necessary in the course of upbringing. Hence, many adults in society believe that corporal punishment is common and acceptable.

### ***Recommendations***

The policy of zero corporal punishment in schools should be implemented more effectively, where such cases should be investigated and reacted upon properly. The Government should also conduct more awareness-raising programs to prevent corporal punishment at home.

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<sup>4</sup> Yi-Hsin Shih (2013). United Nations, Taiwan and Children's Right to Education: Review on the Status of Education for Children in Taiwan. New Century Think Tank Forum, 64, pp. 69-79, retrieved from <http://www.taiwanncf.org.tw/tforum/64/64-12.pdf>

<sup>5</sup> Child Welfare League Foundation (2014). An Investigation Report on the Attitude and Status of Children's Discipline in Taiwan



## Children witnessing violence

### ***Overview of the current situation***

1. The newly amended “Domestic Violence Prevention Act” was revised to impose obligations on local authorities to provide appropriate referral services and intervention for children who witness domestic violence. The amendment to the law has the well-intended effect of encompassing those children within the child abuse network, but the manner in which these children are managed in the system has the following problems:
  - (a) The children’s right to privacy is not respected, as the scheme was designed so that the child’s school will be informed, through use of a “notification form”, of the occurrence of domestic violence after only a primitive and initial screening of the case. Although this procedure allows the child’s school to step in and provide counselling services to the child, the release of such private information about the child’s family circumstances to his/her school without consideration of the wishes of the involved child is a serious concern.
  - (b) Children’s right to be heard is not respected. The Government does not offer any opportunity for children to fully express their thoughts and willingness before referring them to the counseling programs and services. Children are not being involved within the decision-making process in which relevant to their own affairs.
  - (c) School teachers generally lack sufficient training on domestic violence. This raises the question of whether it is in the child’s best interest to refer such matters to the child’s school immediately.
  - (d) As the current system overemphasizes state intervention and undermines parental responsibility, the Government should establish strategies and programs to enhance parenting skills and foster parents’ sense of responsibility.

### ***Comments on the state report***

Little information is provided in the state report on issues relating to children who witness violence. For instance, no data are provided in the state report on the number of children who have witnessed violence, received referral/services or received compulsory intervention. The Government’s future policy plans should also be clarified and elucidated in this regard.



### ***Recommendations***

1. The new legal requirement that encompasses children who witness violence into the domestic violence framework, as mentioned above, lacks supporting measures to safeguard children's rights. It is recommended that the Government review and examine its intervention procedures. More specifically, the timing of the issuance of the "notification form" should be reconsidered, standardized guidelines and procedures should also be established for assessments, and these children's right to privacy and right to be heard should be respected.
2. The Government should establish a mechanism for collaboration between social affairs units and educational units so that an effective and mutually beneficial communication platform can be formed.
3. The Government should strengthen schools' counseling mechanisms, propose education and training courses, and equip all service providers in this field with professional knowledge and skills.
4. The Government has the responsibility to promote parenting skills and parents' competence in order to prevent parents' from using violence and abusive language in front of their children.

## **Bullying**

### ***Overview of the current situation***

1. According to a survey conducted by the Child Welfare League Foundation in 2014 (CWLS's 2014 Survey<sup>6</sup>), 15.2% of elementary, secondary and high school students had been bullied in the past year. Though the Government conducts similar surveys twice a year<sup>6</sup>; however, it is believed that such surveys are poorly conducted and students are unwilling to respond honestly. The low figure on bullying published by the Government therefore does not reflect the reality.
2. The Government's current approach toward school bullying is based on the "Guidelines for Prevention of Bullying on Campus". The term "bullying", as defined in these

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<sup>6</sup> One survey identifies interviewees' names, while the other survey is anonymous.



Guidelines<sup>7</sup>, includes physical and indirect non-physical behaviors (sexual bullying is dealt with separately<sup>8</sup>). However, in practice, schools primarily deal with physical bullying and do not actively respond to other types of bullying. Moreover, because of the lack of counseling resources, such cases are often handled only through dogmatic punishment, for instance, by requiring the perpetrator to write a letter of repentance or utilizing the deterrent effect of the law. At present, preventive measures used by schools (such as “friendly campus week”) sometime further stigmatize victims of bullying, as such measures often combine anti-drug and anti-gangster agendas.

3. According to the CWLS’s 2014 Survey, 40.3% of children who have been bullied state that most classmates “did nothing”, while 65.2% will not report to school teachers or tell their parents. The results show that children in such situations may not have access to support, and that more action needs to be taken to enhance the awareness of bystanders to bullying.
4. Given the increasing popularity of 3C products among the younger generation, the problem of cyberbullying requires the Government’s attention. According to a report conducted by the Child Welfare League Foundation in 2016, 74% of children believe that cyberbullying is a serious problem. In the absence of appropriate services or guidelines for handling complaints, children may be left helpless.

### ***Comments on the state report***

The state report notes, in paragraph 256 thereof, only the relevant regulations and policies on bullying. It does not indicate how these regulations and policies should be executed in practice and whether they are effective. In addition, according to attachments 7-10 of the state report, 204 cases of bullying were investigated in approximately 4,000 schools (including elementary schools, high schools and vocational schools) in this country in one year. The figure is significantly lower than that of other international studies<sup>9</sup>. We

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<sup>7</sup> Bullying refers to the act whereby an individual or group continues to directly or indirectly belittle, exclude, bully, harass or tease others by speech, text, pictures, symbols, physical movements or other means in order to expose others to a hostile or unfriendly campus learning environment or make it difficult for others to resist, which results in mental, physical or property damage or affects the normal conduct of learning activities.

<sup>8</sup> If an act of bullying constitutes “sexual bullying” defined in the Gender Equity Education Act, then it will be handled in accordance with the provisions of the Gender Equity Education Act.

<sup>9</sup> Inchley, J., Currie, D., Young, T., Samdal, O., Torsheim, T., Augustson, L. Mathison, F., Aleman-Diaz, A., Molcho, M., Webber, M., & Barnekow, V. (Eds.). (2016). *Growing up unequal: Gender and socioeconomic differences in young people’s health and well-being*. Copenhagen: WHO. Retrieved from [http://www.euro.who.int/\\_data/assets/pdf\\_file/0003/303438/HSBC-No.7-Growing-up-unequal-Full-Report.pdf](http://www.euro.who.int/_data/assets/pdf_file/0003/303438/HSBC-No.7-Growing-up-unequal-Full-Report.pdf)





recommend that the Government review the current criteria used to determine whether a case investigation will be opened, as they are too restrictive and should be revised.

### ***Recommendations***

1. The Government should reconsider its data collection approach to bullying surveys in order to increase students' response rate.
2. The Government should strengthen the prevention of bullying by enhancing both teachers and students' understanding and awareness on this subject. Work should be performed to reinforce teachers' ability to create friendly classrooms and encourage bystanders to come forward.
3. With regard to cyberbullying, the Government should urge platform operators to develop and strengthen appropriate services and mechanisms for handling prevention and cyberbullying complaints.

## **Child helpline**

### ***Overview of the current situation***

1. There are currently three nationwide hotlines available to children:
  - (1) the "113 national protection hotline" pursuant to "Domestic Violence Prevention Act" and "Sexual Assault Crime Prevention Act" - this hotline provides the public with a channel to report suspicions of abuse, sexual assault and exploitation of children. Children can also dial this number for immediate help, shelter placement or other protective services. It is free and available 24 hours a day, seven days a week.
  - (2) the "0800-788995 SOS hotline" on suicide prevention: this hotline provides initial telephone counseling and resource referral. It is free and children can also dial this number; and
  - (3) the "0800-200885 hotline for anti-bullying in schools": this is a 24-hour helpline set up by the Ministry of Education. Each county/city also has its own anti-bullying helpline.



***Comments on the state report***

1. The state report does not show the number of children using the 113 national protection hotline to seek help. According to official statistics, among the national child protection cases reported in 2013, there were 512 cases where children sought help themselves; but the number surged to 2,480 in 2014, and 2,660 in 2015. Thus, there has been a clear increase in children's ability to reach out for help. However, as these statistics do not identify or classify the different channels through which help was sought and children's age groups, the effect of such hotlines is unknown.

***Recommendations***

1. We recommend that the Government carefully consider and strengthen the effectiveness of the 113 national protection hotline for child protection and establish multiple channels for children seeking help.
2. The Ministry of Health and Welfare should provide statistical data on children seeking help through the 113 national protection hotline, the 0800-788995 SOS hotline and the 0800-200885 hotline, categorized by gender, age, and ethnic group.



## Family environment and alternative care

### Divorce, parental responsibility, child-rearing fees

#### *Overview of the current situation*

1. According to the laws of Taiwan, where couples agree to divorce by mutual consent, the procedure for divorce is completed upon registration at a local household registration office. Official statistics in 2014 show that 83.9% of couples in Taiwan were divorced this way. However, in such situations, whether children's rights are considered during the parents' divorce negotiations is questionable. The most common issues involve children's right to maintain contact with the non-residential parent and a parent's failure to pay the costs of the child's upbringing. In the latter case, most parents have little knowledge of the legal remedies available to them.
2. Where couples are unable to divorce by mutual agreement, the matter will then be settled through mediation, reconciliation or court judgement. In practice, in the course of such procedures, the children's right to be heard may not be safeguarded in a child-friendly manner. For example, a three-year-old child may be asked to appear in court to express his/her views and the prolonged litigation procedures may also inflict harm on the child's physical and mental development.
3. Supervised visitation is available for cases involving domestic violence only. Therefore, for other divorce cases where violence is not an issue, this service is not provided.

#### *Comments on the state report*

The state report fails to address the following issues: (1) To what extent is the child's right to maintain contact with both parents adequately protected after divorce? In cases of divorce by mutual consent, are there mechanisms to ensure that both parents share the costs of child's the upbringing? Are such mechanisms effective? It appears that the Government has not undertaken measures to gain an understanding of such matters and there are no official statistics in this regard.

#### *Recommendations*

1. The Government should actively promote community-based "family counseling" services and "parenting education for divorced parents," and it should make these



services more accessible to ensure that divorced couples gain an understanding of the impact of divorce on their children and make relevant arrangement in the best interests of their children.

2. For couples divorced by mutual consent, the Government should expeditiously establish a mechanism to assist children in maintaining a relationship with both parents. The Government should also ensure that both parents take responsibility for the upbringing of the child.
3. In the course of divorce litigation or parental rights disputes, courts should ensure that the child has an opportunity to express his or her views. However, children's physical and mental ability and maturity should be considered in determining how they are to be heard. If the child is to be heard in court, courts should ensure a child-friendly environment. In other cases, the Government should make sure that children's views are heard through other measures, such as reports prepared by social workers or guardians *ad litem*.
4. The Government should consider making supervised visitation services more widely available. If translation services are required for the minor's foreign father or mother during supervised visitation, the Government should provide an interpreter to assist the child in maintaining a relationship and contacting with his or her parents.

## Adoption

### ***Overview of the current situation***

Although Taiwanese laws protect the child's right to be heard during the adoption process, in our experience, the problems that they face in an adult-oriented system are evident, and they may be uncomfortable expressing their views in a court room. For example, usage of harsh language by court officials is not uncommon, and it is of the utmost importance that a child-friendly environment be created for children so that they can be heard more effectively in court.

### ***Comments on the state report***

In paragraphs 162 to 171 of the state report, the Government merely sets out the legal provisions on adoption, but it fails to acknowledge that the right to be heard for many children is not safeguarded during administrative and legal adoption procedures.



### ***Examples***

Although the Family Act expressly provides adopted children the right to express their views and their right to know the outcome of the judgement, according to our experience in practice, some adoptive parents are unwilling to let their adoptive child (7 years of age or older) know about the adoption and have successfully asked court officials not to have the child to appear in court.

### ***Recommendations***

The Government needs to construct a more equal and friendly environment for children to express their opinions in legal and administrative procedures. More specifically, the Government should consider enhancing the skills of the professionals involved in the process and ensure that social workers accompany children across all relevant stages of the adoption process in order to better protect the rights of these children to express their views about their own adoption.

## **Illicit transfer and non-return**

### ***Overview of the current situation***

1. According to official statistics, February 2014 and September 2015, a total of 427 children were illicitly taken away by their parent/relative and were reported to authorities as missing, between. Of these cases, 11.0% of children were taken to China, Hong Kong or Macau, 14.3% to Vietnam; and 3.0% to Indonesia. Moreover, as there is no mandatory requirement that illicit transfer cases be reported to authorities, it can be reasonably assumed that the number is higher.
2. According to the provisions of Article 31 of the Immigration Act, a divorced foreign spouse must obtain custody of his/her children in order to qualify for a residency visa. Given this requirement, the foreign spouse sometimes takes the children back to his/her home country, in the fear that he/she may not be able to stay in this country if he/she loses custody of the children.
3. Because Taiwan does not have mutual judicial assistance agreements with most countries, adequate mechanisms addressing illicit transfers of children abroad are lacking.



### ***Comments on the state report***

1. Although courts have the power to restrict parents from taking children abroad under specified circumstances, as mentioned in paragraph 175(a) of the state report, in practice, it may take weeks to obtain a court order, and there have been cases where children were able to leave the country before the court order is made.
2. In response to paragraph 175(b) of the state report, even after the police have confirmed that the child has been taken, but is still in Taiwan and have notified the immigration agency of the case, this notification does not authorize the immigration agency to prohibit the child from leaving Taiwan. If the child later returns to Taiwan, the immigration agency is also not required to take the initiative to inform the person who filed the missing child report of the child's return to Taiwan.

### ***Recommendations***

1. The Government should consider revising laws so that a foreign spouse's residency visa is not dependent on having custody of the child or offer flexible visa terms so that they can visit their children in Taiwan more easily. The government should also consider requiring both parents' consent when their child applies for a passport.
2. Where children who have been illicitly transferred abroad later return to Taiwan, contrary to the current practice, the Government should immediately inform the person who made the missing child report in the first place. Assistance should then be provided to identify the child's whereabouts.
3. The Government should proactively establish mutual judicial assistance mechanisms with common illicit transfer designations for Taiwanese children, including China, Vietnam, and Indonesia. Matters such as the extent of details to be provided in visitation reports, assistance with missing children searches and visitations should also be taken into account so that such mechanisms can be made more feasible in practice.

## **Protective placement**

### ***Overview of the current situation***

Attachment 5-21 of the state report observes that, in 2015, there were 1,600 children in long-term placement, of which 214 were initiated and arranged by the children's parents,





accounting for 13.4% of the total. In practice, there are many cases in which parents apply to the Department of Social Welfare to have their children placed in out-of-home care, as they feel that it is difficult to discipline their children at home and hope that their children will then learn to obey and be disciplined in an institutional setting. Such a practice violates the CRC's principle that "institutional care" shall be a last resort. Further, the children's wishes are not respected and they may feel abandoned.

### ***Comments on the state report***

1. The state report omits certain crucial data and assessment in connection with children in care. In particular, it fails to show why children are being placed in out-of-home arrangements, the duration of the placement and evaluations of post-placement.
2. Paragraph 186 of the state report sets out procedures for placing a child in long-term out-of-home care. However, children are often forgotten in public placement because there is no time limit on the duration of administrative procedures by law.

### ***Examples***

1. The following is a statement from a child who was subject to emergency placement:  
"I escaped and asked for help. After being placed in the short-term emergency care, I feel like an isolated criminal."  
Children may be placed in public care by authorities after being abused or raped. During the initial phase of short-term emergency placement, they are usually isolated for two weeks until their condition is stable and restrictions on their freedom are lifted. In addition, upon entering the emergency institution, they have to undergo a body search, where their private items will be laid out in the open for examination. They may be placed in emergency institutions for up to three months, during which time there is little provision for their education and protection of their privacy.
2. A senior worker at a child care institution stated: "whether the children's condition or behavior will improve after the placement depends on whether the competent authority can implement family work and family rebuilding while the child is in care." Without support for the child's family, most children remain in care until they become adults. The Government's current policy lacks strategies and planning for post-placement programs, along with community support strategies and planning.
3. For children who have been in placement for more than two years, the authorities



concerned should formulate a long-term care plan for the child (see paragraph 186 of the state report). However, in our experience, some children have been in public care for as long as four or five years before being assigned to assessment meetings on whether parental rights should be suspended. When children are placed for adoption, because of the lengthy court procedures and adoption arrangements, children may remain in foster care or institutions for an additional one to two years, where they miss out on the best timing for adoption.

### ***Recommendations***

1. The decision for placement care must be based on "the best interests of the child ", and such placement must not be made to help parents discipline their children.
2. To avoid inaction on the part of administrative and/or judicial agencies, it is recommended that a procedural time-limit should be set by law to ensure that such agencies perform their tasks within a specified timeframe. Permanent alternative care should be made for children prior to the expiration of the time limit.
3. The Government should raise care workers' awareness and protection of children's privacy, right to liberty, right to family, right to education and right to leisure, while children are in care.
4. The Government should ensure a friendly environment for child care workers. Such an environment is important because the feelings related to powerlessness, frustration, and overburdening by workers can result in a more authoritative and controlling style in handling children.
5. The Government should develop diversified family service programs for prevention, to avoid institutional care. Where children are placed in institutions as a last resort, the Government should develop and offer family and community support strategies to reduce the time children are in care and uphold children's right to family life.

## **Kinship care**

### ***Overview of the current situation***

1. It is stated in the relevant law that "priority for placement will be given to the child's kinship family, then a foster family, and finally a placement institution" (also refer to paragraph 158 of the state report). In Taiwan, kinship is especially meaningful for



children who come from an indigenous background for preservation of their culture and identity.

2. However, the Government did not start to encourage kinship care until the adoption of "Kinship care assistance guidelines" in 2011. These regulations impose onerous eligibility criteria on the caregiver and the amount of subsidy, and hence have not been successful in increasing the number of children in kinship care. On the other hand, the number of children in institutional care remains high (see attachment 5-36 of the state report).

### ***Comments on the state report***

As stated above, although the law requires priority should be given to kinship placement, we have not seen the Government providing incentives to potential caregivers nor has the Government offered feasible plans to examine existing laws and policies, particularly in the area of kinship arrangements for indigenous children.

### ***Examples***

1. Attachment 5-36 of the state report provides statistics on the number of children placed in kinship care. In both emergency care and long-term care, the number of children placed in kinship care is significantly lower than that placed in foster homes or children's institutions. More precisely, in 2015, for emergency cases, the number of children placed in children's institutions was 8.4 times higher than that of kinship placements, while the number was 5.9 times higher for continuous placement cases.
2. In relation to protective placement arrangements for indigenous children removed from their homes, the Government's state report does not indicate whether such placements are made with regard to the child's ethnic, cultural and linguistic background, as stipulated in Article 20(3) of the CRC. We believe that it is fundamental for indigenous children to be placed, as a priority, with a relative sharing the same cultural background as the children.
3. The cost of kinship care is less than that for both foster care and institutional care. For example, in the Taipei district, the local government's subsidy to kinship caregivers is lower than foster care and institutional care. The gap is wider in other cities.

### ***Recommendations***



1. As explained above, the Government should provide incentives to increase kinship care providers through amendments to current laws and policies. In particular, adjustments need to be made to the kinship eligibility criteria, more support needs to be offered and kinship programs should be widely distributed.
2. In child protection cases, to preserve indigenous children's culture and heritage, they should be placed first within their ethnic groups before consideration is given to other placement options.



## Basic health and welfare

### Children with severe mental or physical disabilities

#### *Overview of the current situation*

1. In Taiwan, developmental delay among children of 0 to 6 years of age is conservatively estimated at 6%. Official data show that there were 20,658 reported cases of early intervention in 2015. Although there is a developmentally delayed children program run by the Social and Family Affairs Administration of the Ministry of Health and Welfare<sup>10</sup>, the program lacks specific provisions on the required human resources and other supporting measures.
2. Official data also show that there were 8,079 children with physical or mental disabilities in the third quarter of 2016, of which 2,327 children were classified as “highly severe” or “severe”, representing 29% of the total number of children with disabilities. These children require additional professional assistance and support in their daily lives and at all stages of their development. However, early intervention largely depends on services offered by the healthcare system. Once such children are discharged by their hospital, pathway services need to be provided to assist such children with special needs. At present, given the inadequacy of such services and restrictions on non-medical personnel to engage in certain sputum suction and invasive care (nasogastric tube, tracheal intubation, PEG), kindergartens and social welfare organizations cannot step in when a situation occurs without healthcare personnel onsite. A tremendous burden is placed on children’s caregivers and their families’ finances.
3. To demonstrate the point made above, in one case, a severely disabled pre-school child, while enrolled at an early treatment institution, was asked by the institution to have a full-time family member onsite during school hours to help with the child’s special needs because their staff could not perform invasive nursing treatment. Once such children reach school age, they are generally required, by education authorities, to study at home, for health and safety reasons<sup>11</sup>.

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<sup>10</sup> Namely the "Early Treatment Service Program for Developmentally Delayed Children", which sets out, amongst others, responsibilities of competent authorities and auxiliary equipment specifications.

<sup>11</sup> In that case, which was re-considered upon application, the child was placed at a special needs school. However, school nurses indicated that for child safety reasons, they would not perform nursing care for the child.



### ***Recommendations***

1. Services provided for severely disabled children should be child centered and should be reviewed regularly to ensure they respond to children's needs:
  - (a) The health authorities should consider taking a less restrictive approach to the criteria for "invasive caregivers". With appropriate training, non-medical personnel should be permitted to assist children with special needs at school.
  - (b) The current approach of hiring care staff in the education system should be more diversified to allow for the personal assistant of a student with special needs to receive specific training, so that he/she is able to assist with the in-school care of the student.
  - (c) The government should take the initiative to provide stationed or rotating professional nurses or personal assistants at kindergartens and social welfare institutions for severely disabled pre-school children, so that such children's parents can maintain their employment or seek jobs.

## **Child health, healthcare measures and medical care**

### ***Overview of the current situation***

1. A survey on "Nutrition and Health Survey in Taiwan (NAHSIT)" shows that the calcium in-take of children in Taiwan is insufficient (98% of boys and 99.98% of girls take less than 1000mg, the recommended daily intake), and fiber intake is also inadequate (the average fiber intake of boys and girls is only about 60% of the recommended daily amount in US Dietary Guidelines in 2005). These unhealthy dietary habits not only affect the child's growth and development, but also may lead to obesity and other chronic diseases (diabetes, hypertension, etc.) occurring early in life, or an increase in the risk of chronic disease in the future.
2. According to the Nutrition and Health Survey in Taiwan (NAHSIT) survey, the daily sugar intake from beverages alone for primary school students is 36g; 89.9% junior high school students and 85.3% high school students drink at least one sugar sweetened beverage every week. This problem is exacerbated by media reports that the Government intends to reduce the excise tax on beverages. This is contrary to the





practice of many countries, which have introduced a tax on sugar and sugar-added beverages with a view towards improving national health.

3. Problems with diet and nutrition are also reflected in children's body weight: according to data published by the Ministry of Education in 2014, only 60% of children in Taiwan maintain a healthy weight, 29% of children are obese, and 7.28% are underweight.

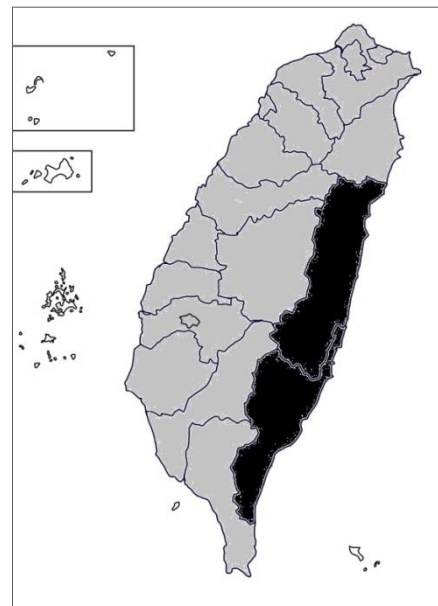
### **Recommendations**

1. The Government's efforts to promote healthy eating habits among school children should be conducted on a coordinated basis. Indicators and the contents of such promotion or education should be more clearly defined in relevant laws such as the School Health Act.
2. The Ministry of Health and Welfare should consider specifying upper limits for daily intake of sugar, salt, and saturated fat in its regulations.
3. The Government should not reduce the excise tax on sugar-added beverages, and should consider imposing taxes on such beverages and sugar.

## **Medical treatment in remote areas**

### **Overview of the current situation**

1. Hualien and Taitung (areas highlighted in black, as shown in the map of Taiwan on the right) are the first and third largest counties, ranked by land area, in Taiwan. However, the total number of hospitals and clinics located in the two counties is only 3.5% and 2%, respectively, of the total number of hospitals in Taiwan.<sup>12</sup> In addition, these two counties are large in size, with the northern and southern ends of the city being 300 kilometers apart. Trains and buses are the main forms of public transportation, and access to medical services for



<sup>12</sup> The Ministry of Health and Welfare (2016)  
From: [http://www.mohw.gov.tw/CHT/DOS/Statistic.aspx?f\\_list\\_no=312&fod\\_list\\_no=6222](http://www.mohw.gov.tw/CHT/DOS/Statistic.aspx?f_list_no=312&fod_list_no=6222)



residents in these cities usually involves higher transportation costs.

### ***Comments on the state report***

The state report fails to provide any description of the current state of unequal distribution of medical resources and lack medical-related data on gynecology / obstetrics and pediatric care. There is also a lack of information on the Government's medical care strategies for children in these regions.

### ***Examples***

1. The inconvenience of the public transport system and shortage of pediatric care make it difficult for children living in the eastern part of Taiwan to have equal access to medical care. In Hualien County, for example, general clinics close at 9 p.m. Tzu-Chi Hospital and the Mennonite Christian Hospital are the only two hospitals capable of treating children with severe conditions, but both are located at the northern end of Hualien. If children living in central and southern Hualien fall ill after 9 p.m., a journey to the nearest hospital will take 30 minutes to two hours by car.
2. A good example is the Kiwit community located in the hills in Hualien. There is no bus there, and it is difficult to get a taxi. Going in and out of the area requires private transport, and a trip to a children's clinic takes at least 1.5 hours by car. The Good Shepherd Social Welfare Foundation nevertheless provides services to the community. For instance, there was a case involving a child with cardiovascular conditions. The child exhibited frequent breathing difficulty complications, and an abnormality in one foot was also found during a free-clinic visit. Although there was no immediate threat to the child's life, the family was unwilling to seek further treatment because of the long journey to a clinic.

### ***Recommendations***

Rural areas in Taiwan face serious healthcare shortages and poor accessibility to medical resources. The Government should put forward specific assessments, strategies and actions to implement and assure the right to health for children living in these rural areas. For example, it should increase the number of hospitals and clinics with pediatrics departments and enhance the accessibility of pediatric care for rural areas.



## Internet addiction

### ***Overview of the current situation***

1. According to the Primary and Secondary School Internet Use Survey, conducted by the Ministry of Education in 2015, the rate of high-risk group prevalence of primary and secondary school students was 2.6% and 4.9%, respectively. The following statistics from private organizations/NGOs provide further insight into this problem:
  - The rate of internet addiction among adolescents was about 12% to 30%, according to a survey conducted by the internet addiction prevention and control centers.
  - 83.5% of primary school children use the internet every day during weekdays, with slightly heavier usage of 89.7% on the weekend, according to the statistics of ECPAT Taiwan in 2015. In terms of the number of hours spent online, 16.5% of children surveyed spend more than 4 hours a day and 20.5% of children spend 2 hours online.
  - 34.9% of parents have used digital communication products until midnight, which is 1.2 times that of children (29.5%), according to the Child Welfare League Foundation's survey in 2015. This survey shows that many parents are heavy internet users themselves.
2. In response to problem of internet addiction among children, private organizations run internet addiction prevention centers to provide advocacy, prevention resources and research. The child psychology departments of hospitals and clinics are also available for parents and children to seek help.
3. Use of electronic products by preschool children is common today, but the Government has not yet conducted surveys on the health effects of internet use on very young children (aged 0 and above).
4. Parents and teachers generally lack awareness of internet addiction and therefore do not have the competence to provide assistance to children in the early stages of addiction.

### ***Recommendations***

1. The Government should include internet safety for children in the relevant awareness



raising and educational programs. Standards should also be established for children's usage of internet and electronic devices.

2. The Government's programs should also target parents and school teachers. Information on counseling referrals and psychological clinic resources should be made available to facilitate the development of their competence and ability to step in and provide assistance at an early stage.
3. The Government should gain an understanding of preschool children's usage of internet and electronic devices and its impact on the children's health.
4. The Government should consider formulating standards on the level of internet usage for children, to provide guidance for parents and teachers.
5. The Government should develop and offer schemes on diversified leisure activities so that children can expand their life experiences through other interactions and activities rather than spend time on the internet.



## Special protection measures

### Status offences

#### *Overview of the current situation*

1. With regard to issues concerning juvenile criminal offences and status offences, the relevant sections of the state report appear to stress “a juvenile justice system targeting the positive and physical and psychological rehabilitation” and the use of protective measure as a priority. However, current provisions for status offences in the Juvenile Delinquency Act are problematic. Article 3(2) of the Act states:

“Where a juvenile has one of the following behaviors and may violate the criminal law due to their personality and environment:

- (a) Frequently associated to those with criminal habits;
- (b) Frequently visits unsuitable places for juveniles;
- (c) Skips school or runs away from home regularly;
- (d) Participates in gangs;
- (e) Carries knives or weapons without a valid reason on a regular basis;
- (f) Takes or injects narcotics other than anesthetic;
- (g) Intends to or attempts to commit an offense but are not punishable by criminal law.”

Despite the Act that it is declared in Constitutional Interpretation No. 664 that detaining a juvenile status offender who regularly misses school or runs away from home violates the principle of proportionality under the Constitution (see paragraph 297 of the state report), juvenile courts have, since the Interpretation was adopted in 2009, continued to play a key role in status offence cases. We are of the opinion that such an approach is contrary to the best interest of these children and fails to give priority to protective measures.

2. On the other hand, child welfare laws<sup>13</sup> already provide that relevant authorities “may coordinate with the appropriate agencies to assist, guide or place the children and youth, subject to applications from, or the consent of parents, guardians or other people looking after children and youth”.<sup>14</sup> The way that status offence cases are

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<sup>13</sup> Namely Article 52(1)(2) of the Protection of Children and Youths Welfare and Rights Act.

<sup>14</sup> The wording of this provisions is as follows: “...If parents, guardians, or other people looking after children



handled should reflect such a protective principle and be reexamined to adopt a "pre-trial diversion" approach, with priority given to allowing a local authority to offer assistance and counseling for the child.

3. In 1899, the world's first juvenile court was established in the United States at a time when social workers and counselling professions were not yet developed. At present, with the help of social workers and counselors, the Government should make the best of these professionals to keep juveniles out of the justice system. General Comment No. 10 of the United Nations Committee on the Rights of the Child also recommends abolishing provisions on status offences in order to establish equal treatment under the law for children and adults.

### ***Recommendations***

1. The current statutory provisions on status offences are abstract and subjective. For instance, a child associates himself/herself with "those with criminal habits", the child is deemed under paragraph (a) of Article 3(2) Juvenile Delinquency Act outlined in paragraph 114 above, to have committed a status offense.
2. For status offenders, diversion shall occur before juvenile court proceedings (i.e., "pretrial diversion") and not after court proceedings have started (i.e., "in-court diversion"). Further, in practice, all status offence cases are handled by juvenile courts, and applicable laws such as the Prevention Measures for Juvenile Misconduct and Status Offense must be better implemented.
- 3 In addition to the above, we recommend that children with such behavioral problems be dealt with, and assisted under, the Protection of Children and Youths Welfare and Rights Act so that local social welfare authorities are notified by social workers or school teachers in the first instance. In this way, they can take responsibility for such cases and commencing the necessary protective measures.

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and youth have tried their utmost to correct any serious deviant behavior but do not succeed, authorized municipal agencies and county (city) governments may coordinate with the appropriate agencies to assist, guide or place the children and youth, subject to applications from, or the consent of parents, guardians or other people looking after children and youth".



## **Minor offenders' transferred counseling**

### ***Overview of the current situation***

For first-time juvenile offenders or minor juvenile offences, relevant laws adopt a “minimal intervention” principle so as to avoid stigmatization and criminalization. In practice, this is termed “transferred counseling”. The legal provisions require that such juveniles be transferred to a youth and child welfare institution and that the juvenile and his/her family be supervised for at least one year.

According to statistics of the Judicial Yuan, between 1995 and 2014, the number of child protection cases “dismissed on grounds of minor offences” in district courts was 21.03% of the all closed cases, where 952 juveniles were transferred to protective services, representing 0.89% of all cases dismissed on grounds of minor offences. These figures show that only a minimal number of juveniles are being transferred to protective services.

### ***Comments on the state report***

As explained above, the state report notes that protection measures are provided under the relevant laws of Taiwan. It should be noted, however, that according to attachment 8-2 of the state report, only 112 and 85 juveniles were transferred to counseling services by courts in 2014 and 2015, respectively. Hence, the “minimal intervention” and “no stigmatization” principles set out in the law are not properly observed in practice, and whether the legislative intent of such provisions is imposed remains questionable.

Furthermore, for minor and/or first-time juvenile offenders, current regulations do not provide for victim-offender mediation programs to promote their reintegration and offer an opportunity to right the wrong to the victim.

### ***Examples***

As shown in the table below, most courts have not pronounced juvenile that cases should be transferred to counseling in the past two decades. In addition, based on a 2014 survey, the causes of juvenile delinquency are as set out below:



### Reasons for committing the offense

	Psychological	Social	Familial	physiological	School-related	Others	Total
<b>2014</b>	5,007	1,473	1,159	567	26	1,793	10,025
<b>% of total</b>	49.95%	14.69%	11.56%	5.66%	0.26%	17.98%	100%

#### **Recommendation**

There should be more specific provisions relating to the implementation of “transfer to counseling services” in the relevant laws (namely Juvenile Delinquency Act and the Protection of Children and Youths Welfare and Rights Act), and a victim-offender mediation system should be established.

### Supervised placement

#### **Overview of the current situation**

1. Article 42 of the Juvenile Delinquency Act stipulates that instead of transferring the juvenile to a prosecutor, a juvenile court may, make four kinds of orders: (1) warning (with additional holiday counseling upon the judge’s discretion); (2) probation and supervision (with labor services upon the judge’s discretion); (3) placement in a welfare or educational institute; and (4) reformatory education. The “welfare or educational institute” mentioned in (3) above provides the dual function of protection and placement. Juveniles placed in such settings, however, often regard such court orders as a punishment rather than a means of assistance or protection.

Juveniles placed in the abovementioned welfare or educational institutions are not first-time offenders or those who have committed only a minor offense. To provide proper assistance to meet the different circumstances and needs of those children, Article 19 of the “Standards for Establishing Children and Youth Welfare Institutes” requires that the institute plan methods of placement and education by using different floors and zones depending on the needs and circumstances of each juvenile. This legal requirement has nevertheless largely been ignored in practice. Some placement institutions adopt a “mixed placement” approach, under which regardless of the reasons for their placement (e.g., general placement as a result of domestic violence,





emergency placement or others), all juveniles are placed together. This represents not only non-compliance with the law, but with the intention of the aforementioned law, which seeks to avoid peer influence among these juveniles

Placement in welfare or educational institutions is thus a protective measure, but paragraph 3 of Article 55-2 of the Juvenile Delinquency Act allows a juvenile court to, upon completion of placement, extend the placement for 2 years or less. It is recommended that where such an extension is necessary, more diversified protective measures be considered so that the best interests of the child can be better served.

### ***Recommendations***

1. It is recommended that juveniles under placement supervision not be mixed with other children placed for other reasons in welfare or education institutions.
2. Paragraph 3 of Article 55-2 of the Juvenile Delinquency Act should be deleted so that juveniles who have completed placement supervision may not be placed for an additional period. More diversified protective measures should be provided.
3. Regulations relating to supervised placement, particularly those set out under the “Establishment and Management Rules of Welfare and Education Institutes for Juveniles under Placement Guidance”, are inadequate and fail to safeguard the rights and interests of juveniles placed thereunder.

## **Detention**

### ***Overview of the current situation***

Article 26 of the Juvenile Delinquency Act stipulates that a juvenile court may order a juvenile to a “juvenile detention center”. Some juvenile detention centers are attached to, and on the same site of, adult detention centers. These centers lack space and facilities for their juvenile detainees. For example, at one such juvenile detention center in the northern part of Taiwan there is only a small classroom available for juveniles during the day, while another center located in the central part of the country has two classrooms for use by juveniles during the day (one for juveniles under protection orders and one for juvenile criminal offenders), and the remainder of the facility is for use by adult offenders.



### ***Recommendations***

The CRC stresses that every child deprived of liberty must be separated from adults. We urge the Government to comprehensively review the conditions of juveniles detained in such centers, particularly with regard to the functions of such centers and whether adequate space, facilities, and assistance are being provided in these centers.

## **Drug abuse**

### ***Overview of the current situation***

1. Criminal justice system data show a continuous increase in the number of juveniles committing drug-related crimes, which have emerged as one of the three major types of crime in this country. The 2005 National Survey of Illegal Drug Use among adolescents showed that the lifetime rate of illegal drug use for high school and vocational school students was 1.28% and 3.04%, respectively; 11.65% and 8.85% for male and female adolescents wandering in streets. In 2015, 1.3% and 1.8% of youngsters attending schools in metropolitan areas reported having previously used or possessed illegal drugs, respectively, and the corresponding estimates for those in the detention centers were 4.3% and 4.2%.
2. According to the Juvenile Delinquency Act and the Narcotics Hazard Prevention Act, underage drug-offenders in Taiwan are still regarded as having behavioral problems, and being perpetrators and criminals, without acknowledgment of their status-related vulnerabilities.
3. The regulation defining the role of the "Drug Abuse Prevention Center" is unclear. Further, there is no clear division of duties between the central and the local authorities, resulting in a lack of accountability, network collaboration, and a functioning integrated team. Overall, the implementation of a preventative network approach is ineffective.
4. For the juveniles who use class 3 or 4 drugs, children not enrolled in schools are counseled by the local government alone or together with civil groups, and the school attendants are counseled by the school-led "Chun Hui (Youth-Support) Unit". However, the counseling responsibilities are not defined for children who have dropped out of school or who are in the transition from secondary to high school and for juveniles staying in the judicial system. In short, governmental agencies avoid accepting



responsibility, and there is a lack of accountability among governmental authorities for the aforementioned groups of children.

5. Healthcare organizations focus on only class 1 and 2 juvenile drug users; thus, they are not involved in the prevention of juvenile illegal drug use. Apart from the limited medical resources introduced through regular and reformatory education efforts, there is no collaboration with the social services system and communities, and a juvenile-friendly medical treatment environment barely exists.
6. The provisions of Article 53 of the Protection of Children and Youths Welfare and Rights Act stipulate that relevant personnel, upon knowing juveniles' drug- or controlled substance-using behavior, should report such use to the competent authorities. However, a huge gap exists between the number of people reported or investigated and the number of people who actually use drugs. The reporting system is thus not implemented based on the reality.

### ***Comments on the state report***

Current protective measures target adolescents who are already addicted to drugs or who are frequent users. This fails to meet the needs other children and adolescents who misuse drugs because of curiosity and who have been exposed to drugs for only a short period of time. For example, the state report treats all drug-using children in the same way and focuses only on investigation and punishment. There is a lack of active and phased prevention measures for children who are in the initial stages of exposure to drugs or who are experimental users.

### ***Examples***

1. The health sector offers a very limited assessment of drug use during pregnancy and addiction treatment services, and there is a lack of consistent and comprehensive integration between medical care and social services<sup>1516</sup>.
2. Drug-related knowledge and resource integration need to be strengthened. The

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<sup>15</sup> Chen CY, Lien YT, Yeh HH, Su LW, Ho IK. Comparison of adverse obstetric outcomes and maternity hospitalization among heroin-exposed and methadone-treated women in Taiwan. *International Journal of Drug Policy* 2015; 26(2):191-8.

<sup>16</sup> Fang SY, Huang N, Lin T, Ho IK, Chen CY. Health insurance coverage and healthcare utilization among infants of mothers in national methadone maintenance treatment program in Taiwan. *Drug and Alcohol Dependence* 2015:153:86-93.



anti-drug activity offered in the educational system is mostly limited to the provision of drug knowledge. For juveniles who smoke, the smoking cessation service provides smoking cessation lectures as the focus, and these lectures supplemented with smoking cessation counseling. However, juveniles under the age of 18 are not permitted to have anti-smoking medicine. Further, the contents of drug rehabilitation services are mainly focused on anti-drug education, supplemented by social punishment. School and community counselors, along with social workers, are lacking.

3. Drug Abuse Prevention Centers lack network cooperation and integrated services. Moreover, Drug Abuse Prevention Centers operate under the Ministry of Justice at the central government level and the health department at the local level, and some counties and cities do not even have a prevention center. The services provided by the Drug Abuse Prevention Center in a health department are also mainly focused on rehabilitation for addicts and prevention of re-offense. Some counties and cities do not have anti-drug use services for juveniles. In cases where the central government oversees operations, local governments should integrate service data from social/educational units and anti-drug related programs and then report on the overall operating performance. In practice, however, there is no such integration in individual cases.
4. Counseling services for juveniles using class 3 or 4 drugs, whether in school or not, are fragmented, particularly among school dropouts, graduated students and those who have not yet enrolled for the school semester. Before graduation, they are counseled for a period of time by the Chun Hui Unit of the particular education organization. After they graduate, social services perform the counseling services for a period of less than two months - or until they return to school. The interruption of counseling renders the service ineffective.

### ***Recommendations***

1. Research on issues relating to drug sales and drug abuse, using children and youth as subjects, analyze the causes and trajectory, and put forward effective monitoring and enforcement measures. The protection measures relating to the supply of cigarettes, alcohol, betel nuts, and drugs to children and youth are in need of promotional education, and the involvement of various governmental agencies.
2. The Government should increase the number of school and community counselors and



- social workers, and strengthen counselors' psychosocial intervention skills with drug users.
3. The Government should develop community-based treatment, including a friendly clinic and professional treatment system for drug-dependent juveniles, and juvenile harm-reduction services.
  4. The Government should amend the legal provisions regarding the criminalization of juveniles who possess or use drugs, treat them as victims and ensure that the criminal justice system does not hinder juvenile access to appropriate protection services.
  5. To reduce the harm to the offspring of drug users, the Government should facilitate cross-department linkage of information and integrate subgroup-oriented resources. It should also reduce the economic and social barriers to prenatal examinations for drug-using women.
  6. The Government should strengthen the position of Drug Abuse Prevention Centers and implement the three-phase-five-level services program for juvenile drug abuse prevention.
  7. The Government should strengthen the reporting system and in particular, strengthen the reporting awareness and operation of personnel in the education system and police officers.
  8. Life-skills training courses should be integrated into the education system to strengthen juvenile problem-solving skills, enhance social adaptation, and provide anti-drug prevention work.
  9. The Chunhui and Echinacea programs used in the education system should have periodic reviews for effectiveness and should be assessed by a number of skilled professionals knowledgeable in juvenile drug use.
  10. The Government should develop integrated team services, establish network cooperation platforms for central agencies and local authorities, and strengthen the service processes and cooperation mechanisms of social affairs, education, health, police, justice, corrections and other related systems.



## Sexual exploitation

### *Overview of the current situation*

1. The Child and Youth Sexual Exploitation Prevention Act was amended in 2015 with reference to the CRC. Specifically, the title of the Act was renamed from “sexual transaction” to “sexual exploitation”, and provisions relating to the compulsory placement of such child victims were substantially revised so that their needs and their families’ functions are now the main factors for determining whether a child is to be taken into care by the social welfare authorities after being sexually exploited. Because the revisions came into force only in January 2017, its full impact remains to be seen.
2. Some law enforcement, judicial and educational personnel remain biased against sexually exploited children, leading to further harms through the judicial process or upon their return to school.
3. The trial process in which child victims act as witnesses is lengthy, hindering their re-adaptation and social reintegration. Additionally, according to official data, between 2008 and 2010, of the 12 cases involving sexual exploitation of children under 14 years of age, there was only one case in which the perpetrator was sentenced to imprisonment for three years or more. In 75% of the cases, the perpetrator received less than a two-year sentence. None of these judgments complied with the legal requirement that a minimum three-year imprisonment shall be imposed.
4. The reintegration of these child victims from placement to community and their subsequent stability are impeded by the lack of employment resources and support.
5. ECPAT Taiwan’s reporting hotline receives about 200 to 300 reports of child sexual abuse materials a year. The penalties prescribed by law for the possession of such materials are an administrative penalty for the first offense (fined by local governments) and a criminal penalty upon arrest for the second arrest (fines only). The severity of these legal punishments is too light, and an administrative penalty database is lacking.
6. With regard to case investigations of child sexual abuse materials, there are insufficient specialized personnel and departmental units at both the central and local level. Consistent investigation operation procedures are lacking, and the allocation of power and duties among the various types of units (e.g., women/children or criminal) is



unclear. These problems are compounded by the associated costs of high turnover rates owing to difficulties in capacity building and the accumulation of valuable expertise.

### ***Recommendations***

1. The Government should create comprehensive planning and supporting measures as soon as possible to facilitate a swift transition to the newly amended law on child sexual exploitation.
2. The Government should improve education and training for professionals in schools, the social welfare system, law enforcement, and the judiciary on child sexual exploitation and the new law.
3. The Government should establish a child-friendly judicial process for these children. Further, statistics, including the duration of court proceedings and case results, should be made available by the judiciary.
4. The Government should enhance the accessibility of vocational training for children and encourage the business sector to provide more job opportunities for them.
5. Possession of child sexual abuse materials should be prohibited, as soon as possible, by criminal law.
6. Specialized personnel in the central government should be assigned to handle cases involving online child sexual exploitation. Standard procedures and guidelines should also be formulated for the investigation of these cases.

## **Indigenous children**

### ***Overview of the current situation***

1. The population structure in Taiwan is complex, with the Han people as the vast majority, while the indigenous peoples are composed of more than twenty different tribes of Austronesian languages, accounting for 2.3% of the total population. Additionally, due to a history of four hundred years of colonization by Spain, Holland, Qing Dynasty China, Japan, and the Republic of China, indigenous peoples are a relatively disadvantaged and stigmatized minority in Taiwan's social structure.



2. Ethnic identity is usually acquired through generations of cultural inheritance. But, many indigenous children grow up in urban areas, and so their traditional culture, including history, native language and rituals, is gradually disappearing, due to their frequent exposure to the mainstream culture and lesser contact with their indigenous communities and people.
3. Mainstream Chinese culture is taught in schools in the urban areas, even when there are provisions of Native Education, as they are offered in Hokkien or Hakka. For the second generation of urban indigenous peoples, without access to relevant education in indigenous languages and customs, their children are losing their ties with tribal traditions and cultures.
4. In the ‘12-year Curriculum for Basic Education’ published in 2014, the curriculum for indigenous children that teaches their mother tongue has changed from compulsory to elective. As a result, many indigenous children may not have a chance to learn their own native languages from primary through high school education. This shows that current educational system remains insufficient in implementing the protection of the rights of indigenous children to have access to their own languages and cultures.
5. In 2001, the Ministry of Education, coordinating with local governments, carried out a large-scale “Primary School Consolidation or Merger Program”. The schools in the indigenous regions play a vital role in linking the children with local culture and agriculture, and promoting the experience of cultural immersion. With the disappearance of small schools in the indigenous communities, that connection is broken.
6. The Resettlement Policy, which can force an entire indigenous community to relocate after Typhoon Marakot, has the effect of forcing entire indigenous villages to relocate to cities from their own lands, creating uncertain futures for indigenous children.

***Comments on the state report***

1. Although Paragraph 55 of the State Report mentions that there should be a general establishment of public pre-schools, non-profit pre-schools, and community cooperative or tribal cooperative educare services in the indigenous regions, it mentions nothing about how the State is to promote pre-school education, and the current status of such operations.





2. Paragraph 356 of the State report barely mentions the indigenous-centered education, and it only proposes programs and types of ethnic education.
3. There is no description concerning the rights to education and culture of urban indigenous children in the State report.
4. It is evident from the state report and its attachment that data regarding the rights of indigenous children are missing. For example, attachments 3-1, 3-3, 3-5, 3-6, 3-7, 5-3, 5-4, 5-5, 5-8, 5-9, 5-10, 5-20, 6-19 etc. offer no specific information on the status of indigenous children.

### ***Recommendations***

1. Article 10 of the Education Act for Indigenous Peoples clearly states that the Government should provide preschool education by establishing a wide distribution of tribal cooperative educare centers and public preschools. Therefore, the government should immediately conduct data collection the number of children living in the rural indigenous areas, who are older than two and have not yet included in the national care system, and should assist local indigenous assemblies, associations and churches in promoting tribal cooperative educare centers, thus establishing the mechanism for local communities to inherit and revitalize their own culture.
2. There should be consistent policy and program guidelines on how to advance the division of labor and cooperation between the Council of Indigenous Peoples and the Ministry of Education on the indigenous-centered education in the indigenous areas. It should not be divided into general education and ethnic education, but should focus on the legislation of establishing a child-centered indigenous education system.
3. The Government should promote the indigenous education system in the indigenous regions. The provisions of Article 25 of the Education Act for Indigenous Peoples clearly stipulate that the proportion of teachers with indigenous identities shall be at least one-third of the teaching staff in an indigenous school. But, due to a flaw in overall system of teacher training, the Council of Indigenous Peoples has no direct control over the numbers of teacher training programs and quota of teaching staff in schools. Thus, it is difficult to promote the indigenous-centered education system.
4. The Government should, for the purpose of implementing Article 30 of the CRC, establish an “indigenous-centered education system for indigenous peoples” by



amending / implementing the “Education Act for Indigenous Peoples” and promulgating an “Indigenous Schools Act”.

5. The Government should ensure sustainability of Indigenous Schools. In particular, in relation to matters such as relocation policies following major typhoons or school mergers/closures due to low birth rate, priorities should be given to preserving the culture, history and lifestyles of indigenous peoples and maintaining their ethnic sustainability. Specific laws should be made to safeguard and promote the sustainability and development of Indigenous Schools.
6. Indigenous children as a group should be disaggregated and included in all governmental data collection and statistics. The Council of Indigenous Peoples should improve and consolidate the statistical database in the official website.





