

Localizing Human Rights Treaty Monitoring: Case Study of Taiwan as a Non-UN Member State

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[Draft; January 2018; please do not cite or circulate without the author's permission]

Abstract:

The current operation of international law on justice and human rights is often criticized for being remote and invisible to local stakeholders whose lives it seeks to improve. Paul Gready, for instance, condemns some international criminal tribunals as representing “distanced justice.” This problem of local alienation—not unique to international criminal trials—is also prominent in the workings of the United Nations (UN) human rights treaty body system, which is often faulted for being inaccessible to many local communities.

How should we address this challenge? This paper argues that the current approach by the human rights treaty bodies to seek to conduct more local outreach initiatives is inadequate as a solution. Instead, a new framework is required to redefine treaty monitoring as a joint project co-owned by the local as well as the global actors. This new framework calls for placing local stakeholders at the center of the monitoring exercise to review the human rights performance of their State, rather than as merely an outreach target. It also calls for empowering local stakeholders with global resources and interventions.

To illustrate how human rights treaty monitoring can benefit from this new framework, I present the empirical study of the self-created, on-site human rights treaty review of the Republic of China on Taiwan, a non-UN member state that cannot take part in the UN human rights treaty system. In the Taiwan experience, the local actors are in full command of making crucial decisions concerning the design and administration of the review processes while global resources are constantly drawn upon to enhance its efficacy, credibility and legitimacy. This case study helps us think in concrete terms about how human rights treaty monitoring can be enriched by a framework that honors the notion of local-global co-ownership.

This paper contributes to the scholarship by offering a new understanding of how the local and global components can complement each other in monitoring human rights treaty implementation, and more broadly, other international human rights projects that require extensive local engagement. It also demonstrates the need for ongoing research on the application of international human rights norms and institutions in Taiwan which, excluded from the UN system, provides a fertile ground for experimentation.

Keywords: human rights treaty monitoring, UN human rights treaty bodies, local alienation, local-global co-ownership, Taiwan, on-site human rights treaty review, localization.

I. Introduction

The current supra-national regimes of human rights have often been criticized for alienating local communities. This criticism is, for example, notable in the study of international criminal tribunals, which have generally been blamed for being out of touch with the local society on their shared path of seeking justice and social reconciliation.¹ Paul Gready uses the term “distanced justice” to capture the phenomenon of local alienation from criminal justice projects sponsored by the international regime. “Distanced justice,” he explains, generates little impact on the lives of local people. On the other hand, a framework that is attentive to local voices and ownership—what he calls “embedded justice”—would be more effective in achieving goals such as enhancing local participation, developing the local legal system and contributing to societal education, democratic development and peace.² That said, Gready acknowledges that the application of the framework of “embedded justice” has the potential weakness of preserving the local social and political order that international human rights norms seek to challenge. Therefore, he argues that we should endeavor to achieve a “correct balance” by building on the “complementary capacities and legitimacies” of both local and international justice.³

Gready’s proposition, while focusing on international criminal justice, raises questions that have important implications for international human rights projects generally. How do the local and the global efforts complement each other in the pursuit of justice and human rights? How can international human rights projects better harness the power of the cooperation between the local and the global actors in this sense? What is a constructive local-global relationship?

These questions are crucial to enhancing international human rights norms and institutions. Yet, they have been under-examined outside the field of international criminal justice. This paper seeks to explore them in the context of human rights treaty monitoring, which is one of the most important scrutiny mechanisms of the international human rights regime and yet also suffers from a similar problem of local alienation. I propose a new framework that understands international human rights projects as jointly owned by the local and the global actors and seeks to live up to this co-ownership. Under this framework, the powers of the local and global components

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¹ See e.g., Jose E. Alvarez, *Crimes of States/Crimes of Hate: Lessons from Rwanda*, 24 YALE J. INT’L L. 365 (1999); Michelle Sieff & Leslie Vinjamuri, *Prosecuting War Criminals: The Case for Decentralisation*, 2(2) CONFLICT, SECURITY AND DEVELOPMENT 103 (2002); Paul Gready, *Reconceptualising Transitional Justice: Embedded and Distanced Justice*, 5(1) CONFLICT, SECURITY AND DEVELOPMENT 3 (2005).

² Gready, *supra* note 1, at 9.

³ *Id.* at 3.

can be mustered in mutual benefit to strengthen the mobilization and legitimation effects of human rights treaty monitoring.

To illustrate this framework, I present the empirical study of the human rights treaty review self-created by the Republic of China on Taiwan (ROC or Taiwan). Taiwan, a non-UN member state excluded from the UN human rights treaty regime, has established, on its own initiative, a unique treaty review model as part of its implementation measures for the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which it adopted and incorporated into the domestic legal system in 2009. Despite being unable to be reviewed by UN human rights treaty bodies, Taiwan has designed the model in ways that adhere to the practice of the treaty bodies to the extent possible and invite reputable, independent international experts to conduct the review to ensure the impartiality and credibility of the process. More impressively, the model has introduced a number of important adaptations that take into consideration demands to amplify local voices and enhance local engagement, such as holding the review sessions in Taipei, instead of Geneva or New York, and giving local non-governmental organizations (NGOs) more exposure to international experts on the review committee. All the major decisions in designing and implementing this model have been made by local actors, including domestic civil society as well as government officials. This case study helps us develop in more concrete terms a new framework under which human rights projects are meaningfully connected to both the local and global components in various ways.

It should be acknowledged here that the terms “global” and “local” are ambiguous in many situations, as Sally Merry notes.⁴ What is “global” and what is “local” is not always easily defined. A “local” advocate can be, at the same time, a “global” activist who promotes transnational diffusion of human rights norms. And a “local” legal process may be considered more or less “global” when it is motivated by international advocacy campaigns. However, these terms are still helpful when we try to understand and describe how the different political, social and cultural spaces at the international, domestic and local levels interact (or fail to interact) with each other. By using “global” and “local,” I hope to expand the understanding of the potential synergy in the relationship of these different spaces.

The paper is organized as follows. Part II starts by critiquing the framework of the current operation of the UN human rights treaty body monitoring in terms of the relationship between global and local actors and the processes they brought about. The existing framework assumes global actors to be the center of treaty monitoring while local actors ends up being a target of outreach efforts—something of an afterthought. I propose that the local and global components should be equally crucial to the success of the international human rights treaty regime. I then suggest a new framework for considering how to better mobilize local and global activities in human rights treaty monitoring, a framework under which international human rights projects are conceptually co-owned by local and global actors, both of which share the responsibility for making it work.

⁴ SALLY ENGLE MERRY, HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE 212 (2006).

Part III discusses the case study of Taiwan's unique human rights treaty review for the ICCPR and ICESCR. I focus on the processes by which Taiwan's review model has been conceived, designed and implemented by the local actors, who consistently seek to draw on global resources despite Taiwan's exclusion from the international human rights treaty system. I examine Taiwan's initial review (2013) and second review (2017) with special attention to the procedures and actors involved. This research relies on extensive field research in Taiwan, including semi-structured interviews I have conducted with NGO activists, scholars, officials, government advisors and legal practitioners. It also draws on my direct observations of the review sessions in Taiwan in late February and early March 2013 and January 2017, as well as formal and informal discussions during and after the meetings I attended. The interviewees are kept anonymous, unless attribution is required to describe the development concerned, with the permission of the interviewee.

Part IV offers an assessment of the case study in terms of the complementarity of local and the global processes in human rights treaty monitoring. The case study helps us put flesh on the proposed new framework that seeks to construct a more productive relationship between local and global actors in international human rights projects. It also broadens our imagination of the possibilities of human rights treaty monitoring and offers useful guidance for how it can be strengthened.

II. Relationship Between Local and the Global Efforts: Modus Operandi and a New Framework

The current international human rights system operates in a largely globalized, centralized manner. Its activities and discussions are concentrated at the organizational headquarters that is intended to serve as a common, transnational platform for experts from around the world. Using this platform, global issues are debated as well as issues concerning local human rights challenges.

A number of examples suffice to illustrate this centralized model. The monitoring exercises of UN human rights treaty bodies are held in Geneva (or in some cases New York) where a state party's delegates and civil society representatives gather to discuss local human rights challenges with treaty body experts. The European Court of Human Rights sits in Strasbourg, France to hear cases from all member states. The commissioners of the Inter-American Commission on Human Rights meet several times a year in Washington, D.C. to examine allegations of human rights violations of member states. The Inter-American Court of Human Rights hears all cases, referred by the Inter-American Commission on Human Rights or a state party, at its seat in San José, Costa Rica. Similarly, the African Court on Human and Peoples' Rights reviews cases in Arusha, Tanzania. The International Criminal Court is based in The Hague where it hears cases from around the world that fall within its jurisdiction.

While this centralized model obviously has the advantage of bringing together various actors from all corners of the world to discuss mutual concerns and facilitate transnational networking, its disadvantages cannot be overlooked, particularly in addressing human rights problems confronting particular local communities. For one, the physical distance between the institutional headquarters and the locality whose situation is under examination can often be so great as to inhibit local participation in the discussion. While well-funded NGOs—mostly international groups—may be able

to afford the travel required, under-resourced grassroots NGOs and local communities that cannot pay for a ticket are forced to give up the opportunity to make their voices heard. Physical distance breeds psychological distance as well, hurting the accessibility and visibility of the international system to local communities whose rights are at stake. If human rights norms are seen as distant and irrelevant, it reduces the probability that they will be invoked by local actors in the struggle to better their lives. Without adequate local input and engagement, international human rights projects run a devastating risk of not only downplaying or ignoring local particularities,⁵ but also alienating themselves from the key stakeholders, thereby failing to make an impact on the ground.

These problems have been articulated in the study of international criminal tribunals.⁶ For example, Jose Alvarez critiques the tendency of international lawyers to prefer international fora for pursuing criminal accountability for mass atrocities at the peril of discouraging local forms of criminal accountability. This is demonstrated in the case of the International Criminal Tribunal for Rwanda (ICTR), which, among various controversial features, lacked local representation on the bench and was located in a remote place from Rwanda.⁷ He argues that international processes should instead seek to encourage and complement good-faith local processes for justice.⁸

Michelle Sieff and Leslie Vinjamuri observe that “centralized” trials, such as those of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the ICTR, alienated local actors in their establishment and daily management, thereby contributing to the sense that they were institutions “by the West.”⁹ The feeling of alienation was further exacerbated by the geographic isolation of these tribunals from the locality concerned. Sieff and Vinjamuri advocate a “decentralized” model of administering international criminal justice, demonstrated by the Special Court for Sierra Leone. They note that the Special Court’s setup and management involved the Sierra Leone government and officials, and its location was chosen to be inside the country to enhance local participation. This model, Sieff and Vinjamuri argue, has the greatest potential of contributing to local democratic development and peace building.¹⁰ It highlights the importance of designing institutions and procedures to enhance local engagement.

Similarly, Paul Gready uses the term “distanced justice” to describe international criminal tribunals that are generally insulated from the local community, which has a crucial interest in the process of transitional justice promoted by these tribunals.¹¹ He proposes the framework of “embedded justice,” which ideally would involve more local participation and help the local societal, political and legal

⁵ *Id.* at 3 (“Global sites are a bricolage of issues and ideas brought to the table by national actors. But transnational actors, and even some national elites, are often uninterested in local social practices or too busy to understand them in their complicated contexts. Discussions in transnational settings rarely deal with local situations in context.”).

⁶ See sources cited *supra* note 1.

⁷ Alvarez, *supra* note 1, at 481.

⁸ *Id.* at 370, 481.

⁹ Sieff & Vinjamuri, *supra* note 1, at 104.

¹⁰ *Id.* at 109.

¹¹ Gready, *supra* note 1, at 3.

development.¹² Embedded justice, he argues, “is at least in part locally defined, claimed and owned, and as a result resonates locally.”¹³

The problematic phenomenon described in these studies actually goes beyond international criminal tribunals. It is not uncommon in other international human rights projects. The UN human rights treaty monitoring—constructed based on a centralist model—is confronted with a similar challenge of being remote to the local communities, both physically and psychologically. The monitoring process begins with a lengthy exchange of documents between the respective treaty body and the state party and NGOs. First, the process begins with a report presented by the state party discussing the measures taken to implement the respective treaty, followed by the treaty body experts’ “List of Issues,” which raises questions and concerns to the state party. Then the state party submits written replies in response to the List of Issues. In the meantime, treaty body experts receive “shadow reports” and other information from NGOs that verify, supplement or correct the information provided by the State. The crux of this process is the dialogue held in Geneva or New York, where treaty body experts have an opportunity to engage official delegates face-to-face to raise concerns and suggest improvements in the domestic human rights situation. State parties dispatch their delegates to take part in the dialogue, which often lasts a few days.¹⁴ It is costly to send a large delegation, notably for smaller, less-developed states. It is also expensive for NGOs to send their representatives to take part in this dialogue, sometimes prohibitively so for under-resourced, grassroots groups. For those NGOs that do attend the review session, they can only speak with treaty body experts on the sideline of the review session. Each NGO gets mere minutes to present their case during the hour-long meeting with treaty body experts. At the end of the dialogue, the treaty body issues the so-called “Concluding Observations and Recommendations,” which raise human rights issues in the state under review, but such recommendations rarely attract the level of attention they deserve beyond Geneva and New York.¹⁵

The weakness of this monitoring exercise in lacking visibility and accessibility at the national level has been identified by those working in the treaty body system themselves. The High Commissioner for Human Rights, Louise Arbour, for example, when proposing reforms to the treaty body system in 2006, noted that there is a “lack of awareness or knowledge among national constituencies about the monitoring procedures and their recommendations,” making them “invisible at the national level.”¹⁶ Many treaty body experts and other specialists, in meetings that later

¹² *Id.* at 9.

¹³ *Id.*

¹⁴ In 2015, the treaty bodies on average met the objective of reviewing 2.5 State party reports per week under core treaties. Status of the Human Rights Treaty Body System: Report of the Secretary-General, UN GA, 71st Sess., Items 69 (a) and 124 of the Provisional Agenda, at 7, UN Doc. A/71/118 (2016).

¹⁵ Philip Alston, Final Report on Enhancing the Long-term Effectiveness of the United Nations Human Rights Treaty System, UN ESCOR, 53rd Sess., Agenda Item 15, at 68, UN Doc. E/CN.4/1997/74 (1996) (“The second is to acknowledge that the greatest need is for information to be made available at the grass-roots level, rather than in Geneva and New York where it seems likely the great majority of existing materials are disseminated.”).

¹⁶ The Concept Paper on the High Commissioner’s Proposal for a Unified Standing Treaty Body, Report by the Secretariat, International Human Rights Instruments, Fifth Inter-Committee Meeting of the Human Rights Bodies, 19-21 June 2006, Eighteenth Meeting of

stimulated efforts to strengthen the treaty body system, also acknowledged that “the general public remains largely unaware of the system, including findings specific to their own countries”¹⁷ and that “public awareness of the treaty body system outside specialist communities is very low.”¹⁸ At a time when human rights treaties are often criticized for failing to fulfill their promises,¹⁹ it is imperative to consider how to enhance the treaty implementation by reinforcing the monitoring practice.

These challenges, along with others regarding the system’s efficiency and effectiveness, have led the UN to launch a “strengthening process” for the treaty body system. In 2012, then High Commissioner for Human Rights, Navanethem Pillay, published a report on “Strengthening the United Nations Human Rights Treaty Body System,” which describes current challenges and recommends prescriptions.²⁰ The challenges that have been perceived included a serious backlog of state reports waiting for review, failure of state parties to comply with reporting obligations, and discordant working methods of different treaty bodies.²¹ To the extent the issue of the system’s visibility and accessibility are addressed, the report recommends measures such as webcasting and videoconferencing of the relevant meetings and a better media and communication strategy to disseminate the treaty body outputs and interactions.²² The Office of the UN High Commissioner for Human Rights has also taken action to enhance its field presence and offer direct assistance on the ground to the government and other stakeholders.²³ Some of the suggested reforms to strengthen the treaty body system have been underway and were recently evaluated by the UN Secretary General.²⁴ Notably, however, compared to other measures taken to address the challenges in efficiency and standardization, changes implemented to address the visibility and accessibility problems seem limited.

While these outreach efforts and proposals are commendable, they affirm rather than change the underlying assumption of a centralized global system that hopes to

Chairpersons of the Human Rights Treaty Bodies, 22-23 June 2006, Item 6 of the Provisional Agenda, at 26, UN Doc. HRI/MC/2006/2 (2006).

¹⁷ The Dublin Statement on the Process of Strengthening of the United Nations Human Rights Treaty Body System, adopted 19 November 2009 by current and former Treaty Body members, available at: www.nottingham.ac.uk/hrlc/documents/specialevents/dublinstatement.pdf.

¹⁸ Outcome Document, Strengthening the United Nations Human Rights Treaty Body System, Dublin II Meeting (Dublin, 10 – 11 November 2011), at 35, available at http://www2.ohchr.org/english/bodies/HRTD/docs/DublinII_Outcome_Document.pdf.

¹⁹ See e.g., Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935 (2002); Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110 AM. J. SOC. 1373 (2005). But see BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* (2009) (concluding that human rights treaties can be influential in improving a state’s actual practice under particular institutional and political conditions, examining how international treaties change domestic politics in ways that make improvements in practice more likely, and identifying three ways of doing so: altering the national agenda, leveraging litigation, and empowering political mobilization).

²⁰ UN High Comm’r for Human Rights, Strengthening the United Nations Human Rights Treaty Body System, UN GA, 66th Sess., Agenda Item 124, UN Doc. A/66/860 (2012).

²¹ *Id.*

²² *Id.* at 4.6.

²³ Status of the Human Rights Treaty Body System: Report of the Secretary-General, *supra* note 14, at 9, 12.

²⁴ See *supra* note 14.

intensify publicity initiatives to improve its accessibility, visibility and impact. In this view, many believe that through more local presence, better media strategies and wider information diffusion channels, international human rights can reach the local spaces from the global level. Yet, this vision assigns a passive role to the local actors in receiving information and training from the global actors, rather than an active role in engaging with the international human rights regime.

This paper argues that a fundamental rethinking is required for the relationship between local and global efforts in international human rights projects. To begin with, we must question the premise that the challenge of local alienation in these human rights projects can be addressed by doing more outreach. Instead of considering local communities as an outreach receptor, we would benefit from a new framework under which local voices and demands are consulted and integrated as early as a relevant human rights project is conceived and designed. That said, this new framework is not to negate the involvement of global efforts; instead, while human rights projects that call for extensive local participation should be rooted in local spaces, they must seek to be empowered by global resources that transnational actors and institutions can offer. That is, the framework is aimed at weaving both local and global processes into the fabric of international human rights.

For the local component, the key to success is a commitment to local ownership throughout the project, ranging from the very beginning stage of designing institutions, to the subsequent processes of communication, implementation and monitoring. Such engagement needs to be comprehensive to involve local government officials, expert communities, and civil society groups as well as general populations. It requires making practical choices, such as in designing procedures and selecting the venue in ways that help maximize local exposure, participation and mobilization. It further requires a political will of the global actors to engage, even when doing so may be difficult, inconvenient and onerous. In this continuing process, flexibility should be offered to local communities in their decisions to adapt international human rights projects in response to local demands, as long as doing so does not undermine the integrity of international human rights norms and institutions. Overall, the framework seeks to bring about participatory human rights processes at the local level.

For the global component, the global actors can empower the local actors by offering strong support in scrutiny, solidarity and legitimacy. In the process of monitoring local implementation of human rights norms and institutions, the global actors—including independent experts, UN officials and transnational advocates—not only can preserve the integrity of the international human rights regime by criticism but also can share useful expertise and best practice. When domestic civil society is repressed, the global actors can extend much-needed support by way of intervention and advocacy. An effective, principled international human rights system is also a major source of legitimacy in the eyes of the local audience.

To illustrate this framework that is founded on the idea of local-global co-ownership, the next section turns to the case study of Taiwan. Taiwan's self-established, on-site, UN-type treaty review is an example of local actors claiming ownership over a human rights project while making the most of global norms, expertise and other resources despite exclusion from the UN regime. The local stakeholders in this case—the Taiwan government and civil society actors together—take the initiative to create a unique human rights review to monitor treaty implementation. The venue of the

review—which is in Taipei instead of Geneva—fosters wide local participation and mobilization. In the course of designing and establishing the treaty review, the local stakeholders draw on UN norms and procedures, retain independent international human rights experts to conduct the review and invite international NGOs to observe and participate. This global assistance helps make the review effective and impartial, enhancing its credibility and legitimacy at the country level.

III. Case Study: Taiwan’s Self-Established, On-site Human Rights Treaty Review

A. Background: Taiwan’s Adoption of Two Major Human Rights Covenants

When the UN was established in 1945, the Republic of China (ROC) was a charter member and one of the five permanent members of the Security Council. From 1945 to 1949, a civil war broke out in China between the Chinese leader Chiang Kai-shek’s Kuomintang (KMT or Chinese Nationalist Party) and Mao Zedong’s Communist forces. Overpowered by the Maoists in 1949, Chiang’s government, still bearing the name of the ROC, retreated to Taiwan and its outlying islands. Taiwan, an island one hundred miles away from the southeast coast of mainland China, had been ceded by imperial China to Japan in 1895 after China’s defeat in the first Sino-Japanese War. When Japan surrendered in World War II, Taiwan was placed under Chiang’s administration by the Allied forces.²⁵ In 1949, the island became Chiang Kai-shek’s last bastion for resisting Mao.

On mainland China, Mao Zedong established the People’s Republic of China (PRC or China) in 1949. The PRC, however, was not promptly admitted to the UN. For more than two decades, Chiang Kai-shek’s ROC managed to stay in the UN as the representative of China, excluding Mao’s PRC government.²⁶ Only towards the end of the 1960s did the PRC begin a concerted effort to represent China at the UN.²⁷ In 1971, in an upheaval in international politics, the UN General Assembly passed Resolution 2758 to seat the PRC in all UN institutions and expel the representatives of the ROC.²⁸ Since then, the ROC has been ousted from all but a few intergovernmental organizations.²⁹

While in the UN, the ROC government signed and ratified a number of human rights treaties. For example, it signed the ICESCR, the ICCPR and the Optional

²⁵ Frank Chiang, *One-China Policy and Taiwan*, 28 FORDHAM INT’L L.J. 1 (2004).

²⁶ Lung-Chu Chen, *Taiwan and the United Nations: Historical and Policy Perspectives*, in MEMBERSHIP FOR TAIWAN IN THE UNITED NATIONS 82 (Lung-Chu Chen ed., 2007).

²⁷ JEROME ALAN COHEN & HUNGDAH CHIU, PEOPLE’S CHINA AND INTERNATIONAL LAW: A DOCUMENTARY STUDY 22 (1974).

²⁸ G.A. Res. 2758, UN GAOR, 26th Sess., Supp. No. 29, UN Doc. A/8439 (1971) (“Decides to restore all its rights to the People’s Republic of China and to recognize the representatives of its Government as the only legitimate representatives of China to the United Nations, and to expel forthwith the representatives of China Kai-shek from the place which they unlawfully occupy at the United Nations and in all the organizations related to it.”).

²⁹ Vincent Wei-cheng Wang, *Taiwan’s Participation in International Organizations*, in CHINA’S RISE, TAIWAN’S DILEMMAS AND INTERNATIONAL PEACE 149, 151 (Edward Friedman ed., 2005) (noting that “in terms of IGO membership, Taiwan is the world’s most isolated state.”).

Protocol to the ICCPR in 1967, but failed to ratify them before losing UN membership.³⁰ Despite ostensible support for human rights, the ROC government imposed on Taiwan what became the world's longest martial law era at the time (1949-1987), and Chiang's secret police and military, during the infamous "White Terror" period, effectively silenced political dissent by killings, detention, torture, harassment and surveillance.³¹

Despite formidable challenges, democracy activists and opposition forces kept pressing on while international pressure to democratize Taiwan mounted on the leader Chiang Ching-kuo, Chiang Kai-shek's son, all of which contributed to the lifting of martial law in 1987. The opposition established the Democratic Progressive Party (DPP). Since the end of martial law, Taiwan has transformed itself into a vibrant democracy with a robust civil society. It has held six direct presidential elections that saw periodic changes of the ruling party.

In the late 1990s, a small number of advocates and scholars began to campaign for Taiwan's adoption of international human rights norms and institutions. At the time, the government and civil society in general were quite unfamiliar with international human rights. After all, Taiwan's exclusion from the UN and many other international organizations—combined with earlier domestic suppression of human rights under authoritarian rule—had effectively prevented Taiwan from interacting with the international human rights regime.³² These new initiatives on human rights at the turn of the century, including ratifying the ICCPR, ICESCR and establishing a National Human Rights Commission in accordance with international standards, were supported by the new government of the DPP that came to power in 2000. But they never came to fruition largely due to the fierce politics between the KMT-dominated legislature and the DPP administration.

This political stalemate changed after the election of Ma Ying-jeou of the KMT as President in 2008. With the approval of a KMT-majority legislature, President Ma—an international law expert trained at Harvard—ratified the ICCPR and ICESCR in May 2009. Not surprisingly, Taiwan's request to deposit the instruments of ratification was rejected by the UN Secretary-General.³³ To make sure that the UN rejection did not interfere with the binding force of the covenants, Taiwan's legislature, when approving ratification, also enacted a domestic law, the Law to Implement the ICCPR and ICESCR³⁴ (the Implementation Law). This granted human rights protections of the two

³⁰ For a list of all the international human rights treaties that the ROC signed and ratified, see HUMAN RIGHTS INFRASTRUCTURE-BUILDING FOR A HUMAN RIGHTS STATE – 2002 HUMAN RIGHTS POLICY WHITE PAPER OF THE REPUBLIC OF CHINA (TAIWAN) 21-22 (2002).

³¹ DENNY ROY, TAIWAN: A POLITICAL HISTORY 88-94 (2003).

³² See HUMAN RIGHTS INFRASTRUCTURE-BUILDING FOR A HUMAN RIGHTS STATE, *supra* note 30, at 21; interview with Mab Huang, Professor of Political Science, Soochow University, in Taipei (Jan. 13, 2012); interview with W.S. Peter Huang, former president of the Taiwan Association for Human Rights, in Taipei (Jan. 4, 2012).

³³ Although the instruments of ratification of the covenants are not deposited with the UN, for the purpose of this article, I use the term "ratify" to refer to the fact that Taiwan complied with all the constitutional and domestic legal procedures required for ratification, which include approval of treaties by the legislature, issuance by the President of the instrument of ratification, and promulgation.

³⁴ Gongmin yu Zhengzhi Quanli Guoji Gongyue ji Jingji Shehui Wenhua Quanli Guoji Gongyue Shixingfa (公民與政治權利國際公約及經濟社會文化權利國際公約施行法) [The Law to Implement the International Covenant on Civil and Political Rights and the International

covenants the status of domestic legislation and required implementation measures such as a review of all laws, regulations, directions and administrative measures in accordance with the covenants.

B. Designing a Human Rights Reporting System

Expecting that Taiwan would not be allowed to take part in UN treaty reviews, the legislature also requires in the Implementation Law that the government “set up a human rights report system in accordance with the two covenants.” But what does it mean for a country that has no access to the UN treaty regime to “set up a human rights report system in accordance with the two covenants”?

This question was delegated to the Human Rights Consultative Committee (HRCC), which was set up in 2010 by President Ma Ying-jeou under the Presidential Office. The HRCC consists of important officials and a majority of non-governmental representatives.³⁵ Its first task was to consider what kind of report system should be created.

Meanwhile, Taiwan’s NGOs quickly mobilized to monitor government implementation of the two covenants. Various advocacy groups formed an alliance called “Covenants Watch” in 2009 when the Implementation Law went into effect. Peter Huang, a pioneering advocate for Taiwan’s adoption of human rights treaties since the late 1990s, served as its first convener. Through lobbying the HRCC, especially its non-governmental members who welcomed suggestions from civic groups, Covenants Watch ensured the groups’ voices would be heard in the design of the report system.

In its first meeting in December 2010, the HRCC began to discuss how to design the report system. The first rule decided by the HRCC was that the report should be written by government agencies themselves, not the HRCC members, whose role should be to oversee the writing process and to review the draft prepared by the bureaucracy.³⁶ This decision proved to be crucial in expanding bureaucratic participation in the coming human rights review.

Covenant on Economic, Social and Cultural Rights] (enacted by the Legislative Yuan, March 31, 2009, promulgated by the President, April 22, 2009, effective December 10, 2009). In Taiwan, this model of passing a short implementation law to grant international treaties domestic legal status has been applied to other treaties, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (ratified in February 2007; the Law to Implement the CEDAW effective January 1, 2012), the Convention on the Rights of the Child (CRC) (the Law to Implement the CRC effective November 20, 2014), the Convention on the Rights of Persons with Disabilities (CRPD) (the Law to Implement the CRPD effective December 3, 2014); United Nations Convention against Corruption (UNCAC) (the Law to Implement the UNCAC effective December 9, 2015).

³⁵ It had 17 members, consisting of four government representatives, including the Vice President (as the Convener), leaders of the government’s executive, judicial and ombudsman branches, and 13 prominent human rights experts and civil society representatives, who were retained as part-time, pro bono consultants.

³⁶ Presidential Human Rights Consultative Committee, 1st Meeting (December 10, 2010), Meeting Minutes (in Chinese language). All the HRCC meeting minutes are available at <http://www.president.gov.tw/Page/227> (last visited July 30, 2017); interview #16 (member of the HRCC), in Taipei (Aug. 7, 2012).

The next question was what kind of reports should be prepared. Various ideas were proposed at the beginning. Those ideas that do not necessarily comport with UN human rights treaty practices were at the time the dominant option.³⁷ Unable to decide, the HRCC asked the Ministry of Justice (MoJ), which served as the HRCC's secretariat, to research how human rights reviews were conducted at the UN. Upon this request, the secretariat team at the MoJ—led by prosecutor Ming-li Kuo—presented both the Universal Periodic Review (UPR)³⁸ and the UN rules relating to the reporting procedures under the two covenants to the HRCC for consideration.³⁹

In the meantime, Covenants Watch submitted to the HRCC a detailed proposal of how the government should fulfill the reporting requirement in accordance with UN standards.⁴⁰ To write this proposal, Covenants Watch held many internal meetings and workshops about state reports and the role of NGOs in UN treaty reviews.⁴¹ Their proposal asked the government to follow various UN standards and guidelines in writing state reports, including a common core document and treaty-specific documents for the ICCPR and ICESCR separately.⁴² They also asked the government to consult with the civil society throughout the reporting process in accordance with the working methods of the two treaty bodies, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights.⁴³

This proposal won support from a number of the non-governmental members in the HRCC,⁴⁴ and one of them, Professor Mab Huang, a respected human rights scholar who had worked closely with advocate Peter Huang in the promotion of international human rights in the late 1990s, proposed that the UN treaty model be followed to the extent possible.⁴⁵ The idea was approved without controversy by the HRCC,⁴⁶ which made a resolution that the government should follow relevant UN guidelines in drafting its initial reports and later periodic reports under the two

³⁷ Mab Huang, *After the Review, Then What?*, Draft prepared for the International Association of Methodist Schools, Colleges, and Universities 2017 Conference on “Tearing Down Walls: A Pathway to Peace, Healing, and Humanity,” Universidad Madero, Puebla, Mexico, May 27–31, 2017 (on file with author).

³⁸ The UPR is a review of each UN member state by its peers. The state under review can accept or reject recommendations made by other states. It is a mechanism that was established along with the UN Human Rights Council in 2006. It is structured to be an interactive dialogue about the human rights practice of the state under review and other UN member states. Each state is reviewed every four and a half years.

³⁹ Ming-li Kuo (郭銘禮), *Chuci Guojia Renquan Baogao zhi Zhuaxie yu Shencha de Chubu Jiantao yu Zhanwang* (初次國家人權報告之撰寫與審查的初步檢討與展望) [*A Preliminary Survey and Prospect of the Drafting and Review of the Nation's Initial Human Right Reports*], TAIWAN RENQUAN XUEKAN (台灣人權學刊) [TAIWAN HUMAN RIGHTS JOURNAL], Vol. 2, No. 1, 73, at 77, June 2013.

⁴⁰ Lianggongyue Shixing Jiandu Lianmeng (兩公約施行監督聯盟) [Covenants Watch], *Ruhe Sheji Fuhe “Lianggongyue Shixingfa” Diliutiao de Guojia Baogao Zhidu* (如何設計符合《兩公約施行法》第六條的國家報告制度) [How to Design a National Report System in accordance with Article 6 of the Implementation Law for the Two Covenants], April 7, 2011, available at <http://covenants-watch.blogspot.com/> (last visited July 30, 2017).

⁴¹ Interview #6 (lawyer; participant in Covenants Watch), in Taipei (Jan. 11, 2012).

⁴² *Supra* note 40.

⁴³ *Id.*

⁴⁴ Interview #6 (lawyer; participant in Covenants Watch), in Taipei (Jan. 11, 2012).

⁴⁵ Interview with Mab Huang, Professor of Political Science, Soochow University, in Taipei (Aug. 7, 2012).

⁴⁶ Interview #18 (member of the HRCC), in Taipei (Aug. 8, 2012).

covenants.⁴⁷ This marked the beginning of the government's general policy to follow UN procedures for Taiwan's human rights reporting system.⁴⁸

The next question followed: Who should conduct the review and how? Covenants Watch called for the government to retain international human rights experts, including former experts of UN treaty bodies, to consider Taiwan's reports. The group further recommended that Taiwan's review sessions be synchronized with UN treaty sessions and that they be held in a place close to the UN office in Geneva. This, the group argued, would "maximize the benefits of our country's unilateral ratification to demonstrate our credibility to international society," and would not only be "Taiwan's first time," but also "the world's first time (to have a treaty monitoring process implemented outside the UN human rights treaty system)."⁴⁹ The HRCC did not accept Covenants Watch's suggestion of going to Geneva, apparently due to budgetary constraints, but the idea of following the UN review procedure as much as possible and inviting renowned international experts to Taiwan was readily accepted.⁵⁰

The MoJ would continue to serve as the secretariat for the treaty review. Covenants Watch, however, raised the question of whether the MoJ, as part of government, would act impartially and independently to fulfill the task of the secretariat. As a compromise, the HRCC formed a "secretariat guidance group," consisting of three non-governmental members of the HRCC and four outside scholars and lawyers, including members of Covenants Watch, plus Mab Huang (an HRCC member himself) serving as the general consultant, to advise the MoJ and to ensure its neutrality.⁵¹

The secretariat guidance group played an important role in designing the review. First was the selection of independent experts who would conduct the review. The group worked with Mab Huang and Peter Huang to get in touch with a number of international human rights experts, including Professor Manfred Nowak, who had helped Peter Huang evaluate Taiwan's plan to adopt the ICCPR and ICESCR and train Taiwanese NGOs in the previous decade,⁵² and Dr. Heisoo Shin, who had visited Taiwan to review its report for the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2009. These experts recommended others, and Covenants Watch also recommended potential candidates.

With suggestions coming in, the secretariat guidance group decided to have two expert panels, one for the ICCPR and the other for the ICESCR.⁵³ In the selection, factors of expertise, gender representation and geographic distribution were considered, with an intended focus on experts from the Asian region. In the end, the experts

⁴⁷ Presidential Human Rights Consultative Committee, 3rd Meeting (April 12, 2011), Meeting Minutes (in Chinese language).

⁴⁸ Interview with Mab Huang, Professor of Political Science, Soochow University, in Taipei (Aug. 7, 2012).

⁴⁹ Covenants Watch, *supra* note 40.

⁵⁰ Presidential Human Rights Consultative Committee, 7th Meeting (January 17, 2012), Meeting Minutes (in Chinese language).

⁵¹ Interview #18 (member of the HRCC), in Taipei (Aug. 8, 2012).

⁵² Professor Nowak visited Taiwan as early as 2003 as the Commissioner of the International Commission of Jurists to assess the feasibility of Taiwan's creating a legal and institutional framework in accordance with international human rights protections. International Commission of Jurists, *Report of the ICJ Assessment Mission to Taiwan*, August 4-10, 2003.

⁵³ Kuo, *supra* note 39, at 89.

empaneled for the ICCPR included Nisuke Ando (Japan), Jerome Cohen (US), Mary Shanthi Dairiam (Malaysia), Asma Jahangir (Pakistan) and Manfred Nowak (Austria). The panel to review the ICESCR included Philip Alston (Australia), Virginia Bonoan-Dandan (Philippines), Theodoor Cornelis van Boven (Holland), Eibe Riedel (Germany) and Heisoo Shin (South Korea). Of the ten members, female members took up four seats, and five experts were from the Asian region. Throughout the treaty review, the secretariat sought to guarantee the independence of the experts in accordance with UN practice.⁵⁴

The secretariat guidance group consulted the websites of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights and adopted their rules of procedure and working methods whenever possible.⁵⁵ Yet, the secretariat guidance group was also open to alterations that were considered to be improvements to the UN model. Covenants Watch had explicitly lobbied for a review that would be “superior to the UN system and procedures.”⁵⁶ For example, noting the UN Secretary-General’s proposals for reforming the treaty body system, Covenants Watch asked that Taiwan’s treaty review outperform the UN system by increasing time for the international experts to consider state reports and by giving NGOs the same amount of time as that allotted to government officials. These suggestions were accepted by the secretariat guidance group.⁵⁷

C. First Review

a. Writing State Reports and Shadow Reports

The decision to write state reports in accordance with UN rules initiated an exceptional process that demanded tremendous energy and time from the bureaucracy. Government agencies were assigned different issues under the purview of their work, and more complicated issues that involved multiple departments required frequent coordination. The MoJ, as secretariat, held a series of workshops to guide officials on how to write state reports based on UN guidelines and procedures. It also prepared Chinese-language educational materials and handed out many UN documents as the meetings went on, including the “General Comments” issued by the two treaty bodies that interpret the provisions of the two covenants as well as sample reports of other states and many soft law instruments of the UN

Following the UN guidelines on treaty reporting, the bureaucracy produced three documents: 1) a “Core Document Forming Part of the Reports,” 2) a “Report for the Implementation of the ICCPR (Initial Report Submitted under Article 40 of the

⁵⁴ Kuo, *supra* note 39, at 90.

⁵⁵ Song-li Huang (黃嵩立), *Cong Gongmin Shehui de Jiaodu GuanCha Chuci Guojia Renquan Baogao de Zhuanxie he Shencha* (從公民社會的角度觀察初次國家人權報告的撰寫和審查) [*Observation of the Drafting and Review of Taiwan’s Initial Human Rights Reports from the Perspective of Civil Society*], TAIWAN RENQUAN XUEKAN (台灣人權學刊) [TAIWAN HUMAN RIGHTS JOURNAL], Vol. 2, No. 1, 123, at 125-126, June 2013.

⁵⁶ Lianggongyue Shixing Jiandu Lianmeng (兩公約施行監督聯盟) [Covenants Watch], Lianggongyue Shixing Jiandu Lianmeng Baihui Zongtongfu Renquan Zixun Weiyuanhui Suqiu Jianyishu (兩公約施行監督聯盟拜會總統府人權諮詢委員會訴求建議書) [Proposal by Covenants Watch for the Presidential Human Rights Consultative Committee Members], March 27, 2012, available at <http://www.cahr.org.tw/eweb/uploadfile/2012042712011220.pdf>.

⁵⁷ Interview #15 (member of the secretariat guidance group), in Taipei (Jan. 11, 2012).

Covenant)” and 3) a “Report for the Implementation of the ICESCR (Initial Report Submitted under Articles 16 and 17 of the Covenant).” The Core Document laid out the profile of the country, general framework for the protection and promotion of human rights and information on non-discrimination, equality and effective relief measures. The treaty-specific reports discussed, article-by-article, the government’s practice with regard to Articles 1- 27 of the ICCPR and Articles 1-15 of the ICESCR.

To review and edit the reports drafted by the bureaucrats, the HRCC held four rounds of meetings, a total of eighty-two sessions. More than one hundred officials took part at various points, and meetings at the peak time were held on a daily basis. These meetings were open to local scholars and NGO activists who wanted to participate and comment on the drafts.⁵⁸ Each meeting saw piles of UN materials stacked on the desk. The flood of information was not easy to absorb for participants, including many officials, NGO activists and scholars who had no expertise or training in this field before,⁵⁹ but they were asked to familiarize themselves with this body of new knowledge, especially the ICESCR, which many thought was more difficult to grasp than the ICCPR.⁶⁰ These meetings were time-consuming and sometimes exhausting to both officials and NGO activists.⁶¹

The first draft of state reports was extremely unsatisfactory in the eyes of many HRCC members and human rights advocates. It was thought to be scant in meaningful information and limited in analysis. It also appeared more defensive than reflective. At this early stage, officials were still trying to figure out what human rights reporting was all about. A MoJ official who oversaw this task observed that this writing process was like “blind men feeling an elephant.”⁶² Many officials seemed inexperienced, overwhelmed and anxious about writing about human rights problems in their work. While some government agencies cooperated quickly and appeared open-minded, others were resistant to the increased workload,⁶³ defended the status quo,⁶⁴ and,

⁵⁸ Interview #33 (international law scholar), in Taipei (Jan. 4, 2013).

⁵⁹ Yo-ling Wang (王幼玲), *Canyu Guojia Renquan Baogao Zhuanxie de Qihuan zhi Lu* (參與國家人權報告撰寫的奇幻之旅) [*An Strange Journey of Participating the Drafting of National Human Rights Reports*], TAIWAN RENQUAN XUEKAN (台灣人權學刊) [TAIWAN HUMAN RIGHTS JOURNAL], Vol. 2, No. 1, at 108-109, June 2013.

⁶⁰ Interview #3 (activist, the Taiwan Association for Human Rights; participant in Covenants Watch), in Taipei (Jan. 4, 2012); interview #6 (lawyer; participant in Covenants Watch), in Taipei (Jan. 11, 2012); interview #34 (lawyer; former member of the Presidential Office Human Rights Consultative Committee), in Taipei (Jan. 9, 2013).

⁶¹ Interview #14 (lawyer; participant in Covenants Watch), in Taipei (Aug. 6, 2012); Interview #15 (member of the secretariat guidance group), in Taipei (Aug. 7, 2012).

⁶² Interview with prosecutor Kun-yeh Peng (Chief of the Department of the Legal System, Ministry of Justice), in Taipei (Aug. 08, 2012).

⁶³ For example, the Ministry of Foreign Affairs seemed the most resistant to taking on additional work, and the Ministry of Education repeatedly refused to make changes in the reports. By contrast, the Ministry of Transportation, which appeared more active in holding human rights trainings than other agencies, seemed quite prepared to cooperate. Interview #33 (international law scholar), in Taipei (Jan. 4, 2013).

⁶⁴ Mab Huang, *supra* note 37.

occasionally, showed outright hostility towards NGO advocates,⁶⁵ who were quite uninhibited in expressing their views and criticisms.

Perhaps the most difficult part was for government officials to stop seeing human rights treaty reporting as an obstacle to overcome.⁶⁶ Consultative Committee members and scholars would draw an analogy between a physical check-up and the treaty review to convince government officials that a good examination, despite how unpleasant it may be, was meant to safeguard wellness by spotting problems.⁶⁷

After the government wrote and rewrote three drafts, it held four public hearings to collect civil society opinions, many of which were incorporated by the HRCC and the secretariat into the final draft. The state reports were completed after a year's time and were released in a press conference hosted by the President and the Vice President in April 2012.⁶⁸ Their English translations were sent to the international review experts in September of that year.

The reports, however, were severely criticized by the NGOs for not reflecting policy failings and not considering improvements.⁶⁹ Activists slammed officials for being complacent and self-congratulating and failing to understand the meaning of reporting.⁷⁰ Other participants in the meetings, while acknowledging that the reports were not ideal, emphasized there was already progress.⁷¹ They contended that the finalized reports were significantly better than the first draft, and the capacity of government officials writing the reports seemed to have improved over time.⁷² The writing process was an important part of "education and training,"⁷³ and a change of thinking requires a long process.⁷⁴ A non-governmental member of the HRCC remarked that these meetings were "a process of internalization," producing dynamics that were probably unexpected when the government ratified the two covenants.⁷⁵

⁶⁵ The representatives of the Ministry of Environmental Protection, for example, were upset about having to attend meetings that also invited activist lawyers who were suing and criticizing their Ministry. Songli Huang, *supra* note 55, at 124.

⁶⁶ Interview #14 (lawyer; participant in Covenants Watch), in Taipei (Aug. 6, 2012); interview #15 (member of the secretariat guidance group), in Taipei (Aug. 7, 2012); interview #33 (international law scholar), in Taipei (Jan. 4, 2013).

⁶⁷ Interview #18 (member of the HRCC), in Taipei (Aug. 8, 2012); interview #33 (international law scholar), in Taipei (Jan. 4, 2013).

⁶⁸ These reports are available at the government's website: <http://www.humanrights.moj.gov.tw/ct.asp?xItem=283640&ctNode=32921&mp=200>.

⁶⁹ Songli Huang, *supra* note 55, at 124; Covenants Watch, Press Conference on the Government's Initial Human Rights Reports, April 20, 2012, available at http://covenants-watch.blogspot.com/2012/04/blog-post_20.html (in Chinese language).

⁷⁰ *Id.*

⁷¹ Interview #14 (lawyer; participant in Covenants Watch), in Taipei (Aug. 6, 2012).

⁷² Interview with Ming-li Kuo, prosecutor, Department of the Legal System, Ministry of Justice, in Taipei (Jan. 12, 2012); interview #18 (member of the HRCC), in Taipei (Aug. 8, 2012).

⁷³ Interview with prosecutor Kun-yeh Peng (Chief of the Department of the Legal System, Ministry of Justice), in Taipei (Aug. 08, 2012); interview #33 (international law scholar), in Taipei (Jan. 4, 2013).

⁷⁴ Interview #15 (member of the secretariat guidance group), in Taipei (Aug. 7, 2012).

⁷⁵ Interview #10 (member of the HRCC), in Taipei (Jan. 13, 2012).

After the state reports, NGOs sent in their shadow reports one after another.⁷⁶ Some of them did not know about shadow reports until this exercise,⁷⁷ and they had to learn fast.⁷⁸ Covenants Watch, headed by Peter Huang and his colleagues, coordinated member groups to divide up issue areas⁷⁹ for the shadow reports. These groups consulted UN guidelines and examples of shadow reports from international NGOs. Concerned that human rights treaty reporting was still foreign to the NGO community, Covenants Watch and other groups organized workshops to have local and foreign experts train local NGO workers, who also read UN materials and did research on their own.⁸⁰ Covenants Watch submitted its shadow report in November 2012 after its volunteers completed the translation of the Chinese original (it did not hire professional translators due to the lack of funding).⁸¹

While Covenants Watch was devoted and organized throughout the process, the broader NGO community did not seem particularly enthusiastic at the beginning.⁸² A scholar/advocate argued that this phenomenon reflected not only the limited resources of NGOs but also the government's ineffective work to widely publicize the treaty review in advance.⁸³ In addition, many groups, with limited resources and staff, were not familiar with writing reports based on human rights treaties to begin with.⁸⁴ Similar to government officials, some advocates also found it hard to think about their problems in terms of human rights treaty protections.⁸⁵ Many groups began writing shadow reports late in the process. Only as the date of the review approached did more and more NGOs realize the possibility of using the review to get traction on their work. In the end, the NGOs that submitted shadow reports included a wide range of groups, including generic human rights organizations as well as issue-specific groups working

⁷⁶ The secretariat received a total of 15 NGO reports by January 2013. The NGOs that submitted shadow reports included the League of Welfare Organization for the Disabled, Eden Social Welfare Foundation, Covenants Watch, Wild at Heart Legal Defense Association, Taiwan Alliance to Promote Civil Partnership Rights, Shaoxing Self-Help Association against Demolition, National Taiwan University Student Alliance for Shaoxing Community, Organization of Urban Re-s (OURs), Taiwan Fund for Children and Families, Taiwan International Medical Alliance, Chinese Association for Human Rights, Association of World Citizens Taiwan Branch, Research Center for Taxation and Public Finance Law of National Taiwan University Law School, Taiwan Association for the Study of Finance Criminal Law, Research Center for the Department of Financial and Economic Law of National Chung Cheng University.

⁷⁷ Interview #6 (lawyer; participant in Covenants Watch), in Taipei (Jan. 11, 2012).

⁷⁸ Interview #15 (member of the secretariat guidance group), in Taipei (Aug. 7, 2012).

⁷⁹ These areas included aboriginal groups, political participation, judiciary, environment, equality, anti-poverty, health, student's rights, anti-nuclear, foreigners with HIV, forced evictions, freedoms of assembly and demonstration, and privacy breaches. Yung-cheng Kao (高涌誠), *Taiwan Guojia Renquan Chuci Baogao yu Guoji Shencha* (台灣國家人權初次報告與國際審查) [*Taiwan's Initial Human Rights Reports and International review*], XINSHIJI ZHIKU LUNTAN (新世紀智庫論壇) [NEW CENTURY THINK TANK FORUM], No. 62, 30, at 31, June 30, 2013.

⁸⁰ Interview #15 (member of the secretariat guidance group), in Taipei (Aug. 7, 2012).

⁸¹ Songli Huang, *supra* note 55, at 126-127.

⁸² Interview with Peter W.S. Huang (former convener of Covenants Watch), in Taipei (Aug. 17, 2012); interview #20 (participant in Covenants Watch), in Taipei (August 9, 2012).

⁸³ Songli Huang, *supra* note 55, at 126-127.

⁸⁴ *Id.*

⁸⁵ Interview #14 (lawyer; participant in Covenants Watch), in Taipei (Aug. 6, 2012); interview #15 (member of the secretariat guidance group), in Taipei (Aug. 7, 2012).

on questions as diverse as disability, the environment, gay rights, forced demolition, children, migrant workers and tax prosecutions.

Despite overwork and a steep learning curve, activists found this writing process helpful. When the reporting was getting underway, NGOs began to focus on raising concrete demands under the two covenants.⁸⁶ The process, in which advocates were able to take part in meetings to comment on the state reports prepared by the bureaucracy, served as an “intersection” where NGOs and the government met face to face to discuss issues of common concern. The process of critiquing state reports and writing shadow reports also served as a platform for NGOs to work together and reach out to people outside of their usual circle, including local scholars they had had no cooperation with previously.⁸⁷

b. Death Penalty Controversy Before the Review

Upon receiving state reports and shadow reports, the international experts prepared the “List of Issues,” which is commonly used in UN treaty reviews to ask the government under examination for further information and to provide a framework for the treaty body’s dialogue with the state party’s delegation. The Taiwan government, also following the UN practice, submitted written replies to the “List of Issues” prior to the review session. Just as all this preparation was getting underway, however, a controversy relating to the death penalty broke out unexpectedly.

The Taiwan government resumed executions in 2010, after an almost five-year de facto moratorium.⁸⁸ Advocates for abolishing the death penalty, led by the outspoken Taiwan Alliance to End the Death Penalty, condemned the Ma Ying-jeou government for breaking the moratorium after ratifying the ICCPR, which, they argued, constituted a violation of the right to life (Art. 6 of the ICCPR).⁸⁹ The Ma government had not ratified the Second Optional Protocol to the ICCPR on the abolition of the death penalty, and in the state report for the ICCPR, it went to great lengths to defend the policy to continue executing death row inmates.⁹⁰

The government appeared to win a lot of public support in performing executions, which always made newspaper headlines.⁹¹ The public called for capital punishment when horrendous homicides happened, and the issue of the death penalty

⁸⁶ Interview #6 (lawyer; participant in Covenants Watch), in Taipei (Jan. 11, 2012).

⁸⁷ Interview #6 (lawyer; participant in Covenants Watch), in Taipei (Jan. 11, 2012); interview #33 (international law scholar), in Taipei (Jan. 4, 2013).

⁸⁸ Taiwan Alliance to End the Death Penalty, A blow to human rights: Taiwan resumes executions the Death Penalty in Taiwan, 2010 Annual report, Mar. 28, 2011, <http://www.taedp.org.tw/en/story/1915>.

⁸⁹ *Id.*

⁹⁰ Implementation of the International Covenant on Civil and Political Rights, Initial report submitted under article 40 of the Covenant, Republic of China (Taiwan), September 2012, at 38-40,

<http://www.humanrights.moj.gov.tw/HitCounter.asp?xItem=283640&ixCuAttach=81339>.

⁹¹ J. Michael Cole, *Taiwan Executes 5 Death Row Inmates as Political Crisis Deepens*, THE DIPLOMAT, Apr. 30, 2014, <https://thediplomat.com/2014/04/taiwan-executes-5-death-row-inmates-as-political-crisis-deepens/>.

was heatedly debated from time to time in political forums, on TV talk shows and social media.⁹²

Three months before the scheduled treaty review, a local news report revealed that the MoJ was quietly planning further executions.⁹³ The international experts consequently tried to intervene by writing President Ma Ying-jeou with a request to stay all executions until the review was completed.⁹⁴

Unexpectedly, that letter to the President was leaked on social media and triggered a torrent of public attacks. A Facebook campaign launched to ask “foreigners” to stop “interfering with Taiwan’s domestic affairs” gained great media attention.⁹⁵ Some argued that inviting foreign experts to Taiwan offered no benefit for its UN participation and, rather, was actually harmful to Taiwan’s sovereignty.⁹⁶ Others dismissed the upcoming review as simply a waste of taxpayer’s money.⁹⁷ Political commentators and talk show hosts went so far as to draw an analogy between the international experts and the “Eight Power Allied Forces” (*baguo lianjun*), which referred to the eight nations that sent forces into China during the Boxer Rebellion when their foreign embassies were attacked in Beijing in 1899.⁹⁸ This comparison was meant to summon the sentiment of China’s “century of humiliation” during the era of Western imperial invasion. Some TV shows displayed information about each of the ten international experts and accused them of taking Taiwan government money for the review.⁹⁹

The incident brought to the forefront a strong sense of nationalism and a different, resistant attitude towards outside scrutiny. In the end, with the backing of

⁹² *Taiwan Activists Battle in Death Penalty-triggered Political Crisis*, World Coalition Against the Death Penalty, Mar. 19, 2010, available at <http://www.worldcoalition.org/Taiwan-activists-battle-in-death-penalty-triggered-political-crisis.html>; Margaret K Lewis, *Taiwan’s Enduring Death Penalty*, EAST ASIA FORUM, Nov. 1, 2017, available at <http://www.eastasiaforum.org/2017/11/01/taiwans-enduring-death-penalty/>; Wang Chun-chung and Huang Hsin-po, *Murder of Child Sparks Outrage*, TAIPEI TIMES, Mar. 29, 2016, available at <http://www.taipeitimes.com/News/taiwan/archives/2016/03/29/2003642703>.

⁹³ *Fawubu Jinqi Zai Zhixing Zuiduo Bu Chaoguo Jiu Ren* (法務部近期再執行 最多不超過九人) [Planned Executions of No More than Nine Death Row Inmates by the Ministry of Justice], ZIYOU SHIBAO (自由時報) [LIBERTY TIMES], Nov. 14, 2012, available at <http://news.ltn.com.tw/news/society/paper/630436>.

⁹⁴ *Rights scholars demand halt to executions*, CHINA POST, Dec. 9, 2012, available at <https://chinapost.nownews.com/20121209-113267>.

⁹⁵ Lucifer Chu (朱學恆), Facebook post, December 6, 2012, available at <https://www.facebook.com/Geekfirm/photos/a.380102896459.159638.264295946459/10151275384321460/> (last visited July 30, 2017).

⁹⁶ The views that opposed the international review were summarized in the article, Wen-wei Chen (陳文葳), *Weisheme Taiwan Xuyao Guoji Renquan Shencha?* (為什麼台灣需要國際人權審查?) [Why Does Taiwan Need An International Human Rights Review?], December 28, 2012, available at the website of the Taiwan Human Rights Journal, <http://www.taiwanhrj.org/news/95> (last visited July 30, 2017).

⁹⁷ *Id.*

⁹⁸ *Id.*; Yang-huan Li (李仰桓), *Guoji Renquan Shencha Weiyuan Shi Pengyou · Bushi Diren* (國際人權審查委員是朋友，不是敵人) [International Human Rights Review Experts Are Friends, Not Foes], available at <http://www.taiwanhrj.org/news/94>, originally published in ZIYOU SHIBAO (自由時報) [LIBERTY TIMES], December 28, 2012.

⁹⁹ Interview #32 (member of the Presidential Human Rights Consultative Committee), in Taipei (Jan. 4, 2013).

public support, the MoJ executed six death row inmates in December 2012, just over a month before the treaty review.

While local and international human rights groups, including Taiwan's Alliance to End the Death Penalty, Amnesty International, and the European Union condemned the executions,¹⁰⁰ there were different voices. For example, the head of the Control Yuan ("Yuan" refers to a branch of the government), Taiwan's national ombudsman, applauded the executions and called on international human rights activists to stop advocating the abolition of the death penalty in Taiwan and elsewhere.¹⁰¹ A local civic group, the Taiwan Children's Rights, praised the executions and asked foreign groups to "mind their own business" instead of meddling in Taiwan's affairs.¹⁰² The executions were said to be a posture of government "defiance" against international pressure.¹⁰³

c. Conducting the Review Meetings

The executions were considered a "provocation" by the international experts, who almost canceled their trips to Taiwan.¹⁰⁴ But in the end, all of them came to Taiwan as scheduled, hoping to engage the Taiwan government on the death penalty as well as other issues.¹⁰⁵ The experts were welcomed by President Ma Ying-jeou in a press conference. The review hearings were held from February 25–27, 2013. On the morning of the first day, the international experts held a closed-door meeting among themselves, followed by a public meeting with a small number of lawmakers and NGO representatives, arranged mainly at the request of the attending lawmakers supportive of the review. In the afternoon, the ICCPR and ICESCR panels kicked off their meetings with the government by holding a joint review of the Core Document, which touched upon issues common to the two covenants.¹⁰⁶ The first day ended with a meeting with NGOs. On the second and third days, the two panels held their own review hearings separately and simultaneously, starting with a one-hour meeting with the NGOs each morning before conducting dialogues with government representatives. The hearings followed the practice of UN treaty bodies as much as possible. Government representatives presented their oral reports, followed by comments from

¹⁰⁰ *Death Penalty Discussion Limited by Too Little Depth*, CHINA POST, December 25, 2012, available at

<http://www.chinapost.com.tw/editorial/taiwanissues/2012/12/25/365082/p1/Death-penalty.htm> (last visited July 30, 2017).

¹⁰¹ Hsiu-chuan Shih, *Control Yuan President Defends Death Penalty*, TAIPEI TIMES, December 25, 2012, available at

<http://www.taipetimes.com/News/front/archives/2012/12/25/2003550936> (last visited July 30, 2017).

¹⁰² *Supra* note 101.

¹⁰³ *When Death Penalty Abolitionism Meets Protectionism*, CHINA POST, December 26, 2012, available at

<http://www.chinapost.com.tw/taiwan/analysis/2012/12/26/365302/Whendeath.htm> (last visited July 30, 2017).

¹⁰⁴ Manfred Nowak, written interview, *Discussion on Taiwan's Reviews for the ICCPR and ICESCR*, TAIWAN HUMAN RIGHTS JOURNAL (upcoming, December 2017).

¹⁰⁵ Manfred Nowak, *Personal Reflections on the Taiwan Human Rights Review Process*, in TAIWAN AND INTERNATIONAL HUMAN RIGHTS: TURNING ISOLATION TO ADVANTAGE (Jerome A. Cohen, William P. Alford and Chang-fa Lo eds., upcoming 2017).

¹⁰⁶ These included issues of a national human rights institution, government plans to ratify other human rights treaties, review of inconsistent laws and regulations, and corporate responsibility relating to human rights and transitional justice.

the experts seeking further information, raising their concerns and sometimes pressing the government to promise policy changes.

The review took place in a government conference and education center in the capital, Taipei. The convenient location was conducive to both government participation and local mobilization. The rooms where the hearings were held were able to fit around 50 people each. As not all of the officials and NGO representatives could be seated in the rooms, the hearings were webcast and televised live in larger classrooms in the same venue that could accommodate hundreds of NGO people as well as the supporting staff of government delegates. There was simultaneous English and Chinese interpretation. Sign language was offered as well.

More than eighty official representatives from various government ministries, commissions or departments attended the meetings.¹⁰⁷ As there was often more than one representative from each relevant department present at the dialogue, the international experts were able to get answers immediately from the government delegation in response to their questions.¹⁰⁸ This exercise also had the benefit of raising the sensitivity of a large number of government officials to human rights issues.¹⁰⁹ The international experts recognized the Taiwan government's efforts to self-organize the review and engage in the discussion seriously. However, the dialogue sometimes turned frustrating. Officials tended to cite laws on the books and appeared much less experienced in offering analytical and evaluative data to explain the impact of government policies over a period of time or the lack thereof, as often requested by the experts. Many of the responses of officials seemed oblivious to the experts' inquiries, reflecting a traditional technocrat-centered perspective that was inclined to defend existing practice and to report government performance irrelevant to questions at hand.¹¹⁰ According to a review expert, there was a level of resistance and self-denial by the Taiwan government, as is the cases of many countries.¹¹¹

¹⁰⁷ These agencies included the Ministry of Interior Matters, Ministry of Economic Affairs, Ministry of Education, Ministry of Culture, Ministry of Health, Ministry of Environmental Protection, Ministry of Justice, Ministry of National Defense, Ministry of Transportation, Ministry of Foreign Affairs, Gender Equality Committee, Council of Labor Affairs, Council of Indigenous Peoples, Council for Economic Planning And Development, Council of Agriculture, Commission of National Communications, Council of Hakka Affairs, Commission of Mongolian and Tibetan Affairs, Council of Mainland Affairs, National Palace Museum, Examination Yuan, Control Yuan and Judicial Yuan.

¹⁰⁸ Eibe Riedel, written interview, *Discussion on Taiwan's Reviews for the ICCPR and ICESCR*, TAIWAN HUMAN RIGHTS JOURNAL (upcoming, December 2017).

¹⁰⁹ *Id.*

¹¹⁰ For example, when asked about the content of Taiwan's human rights education, and in particular gender equality and lesbian, gay, bisexual and transgender (LGBT) education, the representatives from the Ministry of Education could only answer that, essentially, Taiwan's nine years of compulsory education incorporated health education, which took up 15~20% of the curriculum, and that the Ministry and its experts had already published relevant teaching materials about human rights and gender equality for the reference of teachers. But when pressed by an international expert who repeatedly asked about the content of human rights education, the officials were not able to provide specifics.

¹¹¹ Press conference to release the Concluding Observations and Recommendations, in Taipei, March 1, 2013.

Many civil society groups also took part. Holding the review in Taiwan was convenient to local groups, which, with limited funding, would probably have lacked the resources to attend meetings held outside Taiwan.

The HRCC had agreed originally to the civil society groups' suggestion to give NGOs and government representatives "equal time" with the international review experts.¹¹² This innovative proposal was intended to improve upon the UN model, which has often left NGOs unsatisfied with the limited time they have to make their case. The original planning was to have the three-day meetings equally allocated to NGOs (for three mornings) and government delegates (three afternoons). Later, however, the international review experts disagreed with such an arrangement because, in their view, the purpose of the human rights treaty review should be to examine state reports and to have dialogues with government delegates (while allowing NGO input and participation, but only to some extent).

NGOs were disappointed at not being given "equal time," and this last-minute change in the schedule created some chaos in terms of who should speak, given the little time they had.¹¹³ In the end, however, after negotiation with the international experts, they were given more time than they usually would have had in a UN treaty review. They had a total of four hours of formal meetings with the international experts during the three-day session and some additional opportunities for informal lobbying at lunch and other breaks.¹¹⁴ In the end, dozens of civic groups took part in the formal meetings and each group that wanted to speak was given two to five minutes in each meeting to make a presentation to the review experts.¹¹⁵

Some activists held pictures and protest signs behind their colleagues who were making the presentation. A number of NGO representatives used English to communicate with the international experts. Those who spoke in Chinese had to rely on the interpreters, who were only available during the formal meetings. Outside the venue, housing rights activists and victims of forced demolition from various development projects staged a play about government evictions to attract local press.¹¹⁶ Although it was the first time for the local NGOs to conduct an exercise like this, their vibrancy was on full display.¹¹⁷

¹¹² Huang, *supra* note 55, at 128.

¹¹³ Eeling Chiu (邱伊翎), *Guoji Shencha Jieshu Shen Guo Shui Wu Hen? (國際審查結束 審過水無痕?) [No Traces Left After the Human Rights Review Ends?]*, GONGSHI XINWEN YITI ZHONGXIN (公視新聞議題中心) [PUBLIC TELEVISION SERVICE NEWS NETWORK], Mar. 7, 2013, available at <https://pnn.pts.org.tw/main/2013/03/07/%E3%80%90%E5%85%A9%E5%85%AC%E7%B4%84%E4%BA%BA%E6%AC%8A%E5%A0%B1%E5%91%8A%E5%AF%A9%E6%9F%A5%E3%80%91%E5%85%A9%E5%85%AC%E7%B4%84%E4%BA%BA%E6%AC%8A%E5%A0%B1%E5%91%8A-%E5%AF%A9%E9%81%8E%E6%B0%B4%E7%84%A1/>.

¹¹⁴ Huang, *supra* note 55, at 129.

¹¹⁵ Guo, *supra* note 39, at 98.

¹¹⁶ Yu-Jie Chen, *A new experiment for international human rights treaty review: Taiwan's experience*, U.S.-Asia Law Institute, Mar. 11, 2013, available at <https://usali.org/publications/a-new-experiment-for-international-human-rights-treaty-review-taiwans-experience>.

¹¹⁷ In the ICCPR meetings for NGOs, a wide range of issues were raised, such as truth and reconciliation, discrimination against LGBT people, the death penalty, judicial competence, fair trials, detention of foreigners and mainland Chinese people, overcrowded prisons,

Rarely had there been an event in Taiwan that attracted and united a wide range of NGOs like the review, which coordinated what otherwise would have been unorganized efforts of domestic groups, and helped them sharpen their focus in demanding a response from the government. The review expanded NGO collaboration across different areas, leading to the formation of networks among different groups that otherwise would not have worked together. Activists commented that the process was a great contribution to the Taiwan NGO community's solidarity and capacity building.¹¹⁸ Through this process, NGOs were urged to document the government's human rights violations more precisely, relate international human rights law to domestic laws and policies, and make concrete, constructive suggestions.

The review also deepened collaboration among some NGOs within certain areas. The most successful mobilizers were probably aboriginal groups.¹¹⁹ They coordinated the division of labor among themselves and had nine groups apply for formal presentation to the experts.¹²⁰ Each group took on different issues relating to self-determination, equality, minority rights, health issues, education and cultural rights. Prior to their presentations, they prepared a brief Chinese- and English-language handout for the experts and the interpreters. When there was an unexpected change in the NGOs' time to speak at the meeting, these groups adjusted immediately to combine their presentations.¹²¹ In the end, they made 12 presentations in total and were able to cover all of the issues they prepared.¹²²

During the review, the international review experts adhered to the UN treaty body practice, noting in their post-review report that they had "followed established international monitoring procedures in all relevant respects and applied the accepted international legal interpretations of the relevant rights."¹²³ They used the language of

restrictions on demonstrations, discrimination against migrants, tax prosecutions, indigenous lands, media monopoly, forced demolitions, lack of citizen participation in government decision-making processes, congress reforms and labor conditions for student apprentices. In the ICESCR meetings for NGOs, the issues raised covered cases of forced eviction and demolition, social exclusion of persons with disabilities, especially female populations, lack of protections for foreign workers, including illegal migrant workers, minimum wage, rights of teachers to form unions and strike, homeless populations, abuse of children, discrimination against foreign spouses, development projects in violation of environment protection, access to medical care of remote villages and aboriginal communities, discrimination against LGBT persons, health care of HIV-positive patients, operation of religious groups, illegal development of aboriginal lands and marginalization of aboriginal communities.

¹¹⁸ Songli Huang, *supra* note 55, at 130; NGO statement released for joint press conference by local and international NGOs, March 2, 2013, available at <http://covenants-watch.blogspot.com/2013/03/blog-post.html> (in Chinese language) (last visited July 30, 2017).

¹¹⁹ Chiu, *supra* note 114. Ping-han Li (李品涵) and Jun-dah Ruan (阮俊達), *Lianggongyue yu Yuanzhumín (兩公約與原住民) [NGO Comment: The Two Covenants and Aboriginal Peoples]*, GONGSHI XINWEN YITI ZHONGXIN (公視新聞議題中心) [PUBLIC TELEVISION SERVICE NEWS NETWORK], March 8, 2013, available at <https://pnn.pts.org.tw/main/2013/03/08/%E3%80%90%E5%85%A9%E5%85%AC%E7%B4%84%E4%BA%BA%E6%AC%8A%E5%A0%B1%E5%91%8A%E5%AF%A9%E6%9F%A5%E3%80%91%E5%85%A9%E5%85%AC%E7%B4%84%E8%88%87%E5%8E%9F%E4%BD%8F%E6%B0%91/>.

¹²⁰ Li and Ruan, *supra* note 120.

¹²¹ *Id.*

¹²² *Id.*

¹²³ Review of the Initial Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants, Concluding Observations and Recommendations

international human rights to structure and phrase their comments and questions. Throughout the review session, the experts underlined the importance of having “constructive dialogues” with government representatives, a mantra often articulated in UN treaty reviews. They expressed appreciation for the participation of NGOs, which were urged to not only report problems but also make concrete recommendations.

After the three-day review session, the international experts deliberated for a day and then released the “Concluding Observations and Recommendations” (“Concluding Observations”)¹²⁴ in a press conference on March 1. This seventeen-page document with eighty-one paragraphs, similar to the Concluding Observations of treaty bodies in method and language, covered a wide range of issues, including establishment of a national human rights commission; adoption of core human rights treaties; review of all domestic laws, regulations, directives and administrative measures; judicial implementation of the covenants; human rights education and training; transparency and participation in decision-making; corporate responsibility; transitional justice; equality and non-discrimination based on gender; rights of indigenous peoples and specific protections under the ICESCR and ICCPR.¹²⁵

The experts (who called themselves “the International Group of Independent Experts” in the Concluding Observations) pulled no punches, raising some very controversial issues in the report, such as retention of the death penalty and the treatment in prison of former president Chen Shui-bian, who had been convicted of corruption.¹²⁶ Other issues that were otherwise often underemphasized in Taiwan were also included, such as unjust economic and social conditions and the treatment of marginalized groups including populations of indigenous peoples, prisoners, migrant workers and new immigrants.¹²⁷ The experts pointed out that due to time constraints, their Concluding Observations could not address the large number of issues presented in the review. They emphasized that the value of the process should go beyond what was contained in the Concluding Observations.¹²⁸ The most important contribution of the review, they said, would be for the process that had been initiated in this event to continue to seek solutions.¹²⁹

Adopted by the International Group of Independent Experts, Taipei, March 1, 2013, available at <http://www.humanrights.moj.gov.tw/ct.asp?xItem=298633&ctNode=33698&mp=200> (last visited July 30, 2017).

¹²⁴ *Id.*

¹²⁵ These included, for the ICESCR, the right to work (Art. 6), migrant workers and their labor conditions (Arts. 6 and 7), minimum wages and poverty gap (Arts. 7 and 11), access by persons with disabilities to appropriate employment, trade union system (Art. 8), protection and assistance to family (Art. 10), right to housing (Art. 11) and right to health and education (Arts. 12 and 13) and, for the ICCPR, the right to life (Art. 6), prohibition of torture (Art. 7), administration of justice (Arts. 9, 10, and 14), freedom of movement (Art. 12), right to privacy (Art. 17), freedom of expression (Art. 19 and 20), freedom of assembly (Art. 21), and right to marriage and family life (Arts. 23 and 24).

¹²⁶ *Supra* note 124.

¹²⁷ *Id.*

¹²⁸ *Id.* at para. 6

¹²⁹ *Id.*

The Concluding Observations and the treaty review, however, did not receive much media attention in Taiwan.¹³⁰ Nor was the issue about “foreign interference” raised again in the media during the review period, even with regard to the experts’ recommendation that “the Government of Taiwan intensify its efforts towards abolition of capital punishment and, as a first and decisive step, immediately introduce a moratorium on executions in accordance with the respective resolutions of the UN General Assembly.”¹³¹ Only a small number of journalists attended the press conference for the Concluding Observations. Overall, the local media coverage was inadequate and virtually no notice of these important proceedings was registered outside Taiwan.¹³²

d. Domestic Follow-up Meetings to the Review

Immediately after the review, NGOs called for monitoring mechanisms for implementing the Concluding Observations. The HRCC agreed, authorizing the MoJ to hold a series of follow-up meetings to go over the Concluding Observations, point by point, with relevant government agencies to decide who should be responsible for what and by when.¹³³ For issues that required further research and higher-level coordination—such as those regarding the establishment of a national human rights institution, human rights education and training, human rights indicators and review of inconsistent legislation—the HRCC organized several small groups consisting of its members to take charge. Public hearings were held to hear out civic groups.

In the follow-up meetings,¹³⁴ government officials were asked to respond to the Concluding Observations with promises of change and proposals for concrete measures. The MoJ, as secretariat of the HRCC, compiled a chart based on the eighty-one paragraphs of the Concluding Observations in order to track the progress of each item every three months. The scope of issues involved and the scale of coordination required among government agencies seemed even larger than what was seen in the treaty review.

These follow-up meetings also invited the participation of NGO representatives, who through this platform, were able to obtain information on the government’s human rights policy planning or the lack thereof and to continue to exert pressure on officials. NGOs insisted on their rights to participate in the government’s decision-making process. They stressed the importance for the government to have the civil society as a “partner” in drafting national human rights policies, rather than to simply “consult” the

¹³⁰ Yu-Jie Chen and Jerome A. Cohen, *Taiwan Quietly Forging Ahead in Human Rights Protection*, SOUTH CHINA MORNING POST, Mar. 29, 2013, available at <http://www.scmp.com/comment/insight-opinion/article/1202004/taiwan-quietly-forging-ahead-human-rights-protection>.

¹³¹ *Supra* note 124 at 56.

¹³² Chen and Cohen, *supra* note 131.

¹³³ Presidential Human Rights Consultative Committee, 11th Meeting (Apr. 9, 2013), Meeting Minutes (in Chinese language).

¹³⁴ The first round of follow-up meetings among government officials took place from May to August 2013, followed by a second round from August to October. The minutes of these meetings are available on the government’s website: <http://www.humanrights.moj.gov.tw> (in Chinese language).

civil society, assigning it a role as a mere passive responder.¹³⁵ Realizing that the review hearings by the international experts could only last for a few days at most, NGOs highlighted the importance of a sustained post-review process. They cited the experts' recommendation that the government should continue the process demonstrated in the review with the civil society, and urged the government to have "constructive dialogues" with NGOs.¹³⁶

Officials resisted changes generally but were hard-pressed to make concessions.¹³⁷ Some modest, yet significant, progress was achieved. For example, the officials at the Commission of Labor admitted that, until the review, they had not known of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.¹³⁸ They were asked by the HRCC to examine inconsistent domestic laws and to work towards ratification of this Convention.¹³⁹ Similar requests were directed to ministries responsible for the Convention on the Rights of Persons with Disabilities (CRPD), Convention on the Rights of the Child (CRC), Convention for the Protection of All Persons from Enforced Disappearance, and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁴⁰ Since the treaty review, Taiwan has further incorporated the CRC (in November 2014) and the CRPD (in December 2014) into domestic law following the implementation law model established for the two covenants. Also following the review model for the two covenants, the government is now required to submit state reports for the CRC and CRPD within two years of their effective dates, and report periodically after that (every five years for the CRC and every four years for the CRPD).¹⁴¹

D. Second Review

¹³⁵ Lianggongyue Shixing Jiandu Lianmeng (兩公約施行監督聯盟) [Covenants Watch], Taiwan Zhengfu yu Gongminshehui Xuyao Tongpan de "Guojia Renquan Jihua" (台灣政府與公民社會需要通盤的「國家人權行動計畫」) [Policy Proposal: the Taiwan Government and the Civil Society Need a Comprehensive National Human Rights Action Plan], April 9, 2013, available at <http://covenants-watch.blogspot.com/2013/04/blog-post.html>.

¹³⁶ *Id.*

¹³⁷ Take, for example, the issue of adopting other core human rights treaties, which was recommended by the international experts. Various government ministries were assigned to be in charge of planning for their adoption, but almost all of the agencies either responded that there was no need to ratify more human rights treaties since "the relevant domestic laws are consistent with international standards," or they promised that the government would "study the issues carefully" without giving any timeframe. There seemed to be a serious concern among officials that, after ratifying these additional treaties, their workload would be unbearable, in particular, writing treaty reports. Interview with prosecutor Kun-yeh Peng (Chief of the Department of the Legal System, Ministry of Justice), in Taipei (Aug. 08, 2012).

¹³⁸ Shencha Ge Jiguan Dui Jielunxingyijianyujianyi de Chubu Huiying Huiyi, Dierlun Diyici Huiyi Jilu (審查各機關對結論性意見與建議的初步回應會議 第 2 輪第 1 次會議紀錄) [Meeting Minutes, 2nd Round, 1st Meeting, Meeting to Review the Preliminary Response of Government Agencies to Concluding Observations and Recommendations], at 15, Aug. 27, 2013, available at

<http://www.humanrights.moj.gov.tw/HitCounter.asp?xItem=323999&ixCuAttach=96922http://www.humanrights.moj.gov.tw/ct.asp?xItem=323999&ctNode=37011&mp=200>.

¹³⁹ *Id.* at 2.

¹⁴⁰ *Id.* at 1-3.

¹⁴¹ The government submitted the report for the CRC in November 2016 and the CRPD in December 2016. The first reviews for the two treaties will take place in October-November 2017.

a. Preparation

Taiwan's second treaty review four years later avoided having to reinvent the wheel. All procedures basically followed what had been established the first time around, with a number of important changes intended as improvements, including increasing meeting time between NGOs and international experts, inviting more international NGOs to observe and take part, and writing a separate report in response to the first Concluding Observations. The review process was still as time-consuming and labor-intensive as the last. Many of the officials in charge of drafting the initial reports had moved on to other positions, and the task of writing the second periodic reports fell on bureaucrats who had to learn from scratch.¹⁴²

As in the first review, a series of meetings were held to prepare the state reports. To begin with, the MoJ, again serving as the secretariat, had more than forty information meetings from June to August 2015 to explain to various government agencies the purpose and content of the reporting.¹⁴³ Then the HRCC members held twenty-two review meetings from September to October with government representatives as well as NGO activists and scholars to plow through the massive amount of information provided by the bureaucracy, and discuss what should be included and deleted in the draft reports. Later, the HRCC members made a decision that an additional report should be prepared to detail progress (and the lack thereof) for each and every recommendation in the 2013 Concluding Observations in order to make the review more focused and effective. This practice was intended to follow that of other countries such as the U.K., France, Germany, Belgium and Switzerland.¹⁴⁴ As a result, the second round of state reports consisted of four documents: a Common Core Document, an ICCPR report, an ICESCR report, and a response to the first Concluding Observations and Recommendations.¹⁴⁵

After this decision, dozens more meetings ensued in November and December for the HRCC members and local scholars to edit the drafts prepared by government agencies.¹⁴⁶ The final product was approved by the HRCC in January 2016. Its English translation was published and submitted to the international experts in April that same year.¹⁴⁷

In contrast to the first review, NGOs, which were by then equipped with experience from the last time, were highly mobilized early on. The alliance of Covenants Watch this time attracted more than eighty civic groups to work on the

¹⁴² Email interview with Wen-hsiang Chao, prosecutor, Department of the Legal System, Ministry of Justice (May 15, 2017).

¹⁴³ Email interview with Wen-hsiang Chao, prosecutor, Department of the Legal System, Ministry of Justice (May 11, 2017).

¹⁴⁴ Email interview with Wen-hsiang Chao, prosecutor, Department of the Legal System, Ministry of Justice (May 15, 2017).

¹⁴⁵ These reports are available at the government website, <http://www.humanrights.moj.gov.tw/ct.asp?xItem=431257&ctNode=43060&mp=200> (last visited July 30, 2017).

¹⁴⁶ Email interview with Wen-hsiang Chao, prosecutor, Department of the Legal System, Ministry of Justice (May 11, 2017).

¹⁴⁷ Office of the President, Republic of China (Taiwan), *President Ma Holds Press Conference on the Release of Taiwan's Second Human Rights Report*, April 25, 2016, available at <http://english.president.gov.tw/NEWS/4887>.

shadow report and submit the joint report in a timely fashion. The report criticized the lack of significant progress after the first review, emphasizing that the Taiwan government had only implemented a small number of the recommendations in the first Concluding Observations, including adopting the CRC and the CRPD (Concluding Observations, Paragraph 11), granting former President Chen Shui-bian medical parole (Paragraph 60), expanding the scope of the Habeas Corpus Act (Paragraph 61) and lifting various restrictions on aliens with HIV (Paragraph 69). Despite this disheartening assessment, the convener of Covenants Watch nevertheless sounded enthusiastic with regard to how NGOs can appropriate international human rights norms effectively. He urged civil society to push for progress before the second review.¹⁴⁸ Other than Covenants Watch, the largest alliance of NGOs for the human rights review, a number of organizations that did not join the alliance also submitted their shadow reports individually. Like in the first review, the NGO input was the source of many questions raised by international experts in the “List of Issues” addressed to the government.

As had happened last time, a “secretariat guidance group” was formed to take charge of the review planning and to ensure the neutrality of the MoJ as secretariat for the review.¹⁴⁹ The secretariat guidance group again was composed of four of HRCC’s non-governmental members and four representatives from NGOs. One of the group’s most important tasks was to select international experts to conduct the review. The HRCC had instructed that all the independent experts from the first review should again be retained. For those who could not participate this time, the secretariat guidance group was tasked with inviting new members based on suggestions from NGOs. In the end, ten experts agreed to come, six of whom were from the first review: Virginia Bonoan-Dandan (Philippines), Jerome Cohen (U.S.), Shanthi Dairiam (Malaysia), Manfred Nowak (Austria), Eibe Riedel (Germany) and Heisoo Shin (South Korea); with four new members: Miloon Kothari (India), Jannie Lasimbang (Malaysia), Peer Lorenzen (Denmark) and Sima Samar (Afghanistan). Again, expertise and gender representation were considered, and a heavy representation was given to experts from the Asian region.

During this period, Taiwan’s society was absorbed by an issue that would continue to make headlines throughout and after the review, namely, whether to legalize same-sex marriage. Initiatives of legalization were proposed by DPP legislators as early as 2005, without success. But the year 2016 rekindled the hope for advocates. For the first time, there was a legislature dominated by the DPP, which was considered generally sympathetic to issues of human rights and equality.¹⁵⁰ In 2016, a number of legalization proposals began to gather momentum in the legislature. Gay rights

¹⁴⁸ Renquan Gongyue Shixing Jiandu Lianmeng Gongbu 2015 Niandu Jiandu Baogao “Minjian Yingzi Baogao: Huiying Lianggongyue 81 Dian Zongjie Yijian” (人權公約施行監督聯盟公佈 2015 年度監督報告《民間影子報告：回應兩公約 81 點總結意見》) [Covenants Watch Released the 2015 Monitoring Report – Civil Society Shadow Report in Response to the 81 paragraphs of the Concluding Observations and Recommendations for the ICCPR and ICESCR], December 25, 2015, available at <http://covenants-watch.blogspot.tw/2015/12/201581.html> (last visited July 30, 2017).

¹⁴⁹ Secretariat Guidance Group, 1st Meeting for the Second International Human Rights Review under the Two Covenants (Jan. 29, 2016), Meeting Minutes (in Chinese language).

¹⁵⁰ Chris Horton, *Taiwan May Be First in Asia to Legalize Same-Sex Marriage*, N.Y. TIMES, Nov. 18, 2016, available at https://www.nytimes.com/2016/11/19/world/asia/taiwan-gay-marriage-legalize.html?ref=world&_r=0 (last visited July 30, 2017).

advocates held major rallies to show support for legalization, while opponents also took to the street to air out their opposition.

In addition to the streets, the two camps saw the upcoming treaty review as another platform to make their case. Convents Watch and its partnering groups in the shadow report urged the government to protect marriage equality and the rights of diverse families and same-sex partners. Opposing groups also handed in their own shadow reports, claiming that education about diversified sexual desires and diversified genders confuse young students and that parents should have the right to participate in deciding school curriculums and reviewing the content of textbooks.¹⁵¹ Both sides expected the international experts to intervene in the upcoming review.

b. Conducting the Review Meetings

The review meetings were held on January 16–18, 2017. The first day began with a closed-door meeting among the ten international experts (who this time called themselves in the second Concluding Observations, the “International Review Committee”), followed by an opening ceremony hosted by Taiwan’s vice president. Then the experts met with a few legislative representatives and more than one hundred NGO representatives. The first meeting with government officials was held in the afternoon to discuss common issues. The day closed with a one-hour meeting with NGOs. On the second and third days, the International Review Committee broke into the ICCPR and ICESCR panels. Each morning and afternoon, both panels had a three-hour government meeting followed by a one-hour NGO meeting.¹⁵² The meetings were held in a major conference center this time, with bigger rooms to accommodate more participants. They were also webcast live.¹⁵³ Simultaneous interpretation and sign language were offered.

As mentioned, one improvement made in the second review was to give NGOs more time to speak with the International Review Committee. Each day, NGOs had a one-hour morning and afternoon meeting with the Committee members right after the Committee’s dialogues with the government. This allowed NGOs to react with a timely response to the remarks of officials in the preceding session.

Another improvement was the greater participation of international NGOs. This time, the secretariat guidance group issued rules that encouraged international NGOs to attend the review session and suggested a list of international groups for Taiwan’s Ministry of Foreign Affairs to invite to Taiwan.¹⁵⁴ Among them, Green Peace sent a

¹⁵¹ Taiwan Mothers Shield Alliance, R.O.C Association of HIV/AIDS and Child Care and Taiwan Association of Gender/Sexuality Rights Protection, Parallel Report on the Implementation of the ICCPR and ICESCR, June 30, 2016, available at <https://drive.google.com/drive/folders/0Bz8pffaVlrQ0a3RnaXJGMEh1eG8> (last visited July 30, 2017).

¹⁵² Agenda of the Second International Human Rights Review (in Chinese language), available at <http://www.humanrights.moj.gov.tw/lp.asp?ctNode=44714&CtUnit=18042&BaseDSD=7&mp=200>.

¹⁵³ The videos are available at <http://www.2017twccprcescr.tw/videos.html> (last visited July 30, 2017).

¹⁵⁴ Email interview with Wen-hsiang Chao, prosecutor, Department of the Legal System, Ministry of Justice (May 15, 2017).

shadow report. Other international NGOs that did not submit reports also sent their members to observe the review process, including the Open Society Foundations, Human Rights Now, Amnesty International, Asia Pacific Refugee Rights Network, Japan Association for Refugees and Southeast Asia Sexual Orientation, Gender Identity and Expression Caucus.¹⁵⁵

Similar to the first time, the administration dispatched delegates from each government branch and ministry to attend the dialogue. In the first meeting on common issues, for example, more than one hundred government representatives turned up. The highest-level officials in attendance were the deputy Minister of Justice and the deputy Minister of Interior, both coordinating the responses among government agencies during the dialogue. The tendency of officials to cite laws and regulations in response to the International Review Committee's questions still persisted.¹⁵⁶ The Review Committee members kept emphasizing that they would like to know more about how the laws on paper were actually translated into practice and what challenges existed. They also appeared more critical in the dialogue, and expressed regrets over the limited implementation of the first Concluding Observations.¹⁵⁷

The International Review Committee deliberated on day four and issued their Concluding Observations and Recommendations the following day.¹⁵⁸ The Concluding Observations for the second review repeated many recommendations found in the first Concluding Observations that had not been implemented by the government, including, most notably, the recommendations to establish a national human rights institution in accordance with the Paris Principles; to accept the core human rights treaties that the Taiwan government had not accepted; to ensure the direct and equal applicability and justiciability of all rights—including the rights of the ICESCR; to implement appropriate and effective human rights education and training; to enact binding legislation regarding corporate social responsibility; to initiate an inclusive truth and reconciliation process; to enact comprehensive anti-discrimination legislation and to provide effective enforcement of the rights of indigenous peoples.¹⁵⁹ While some of the issues in the first Concluding Observations were not mentioned (despite the government's failure to implement them), additional issues were raised, such as income inequality, personal freedom of the allegedly mentally ill, full participation of persons

¹⁵⁵ Lianggongyue dierci Guojia Baogao Guoji Shenchu Huiyi NGO Gechangci de Ruchang Qingce (兩公約第二次國家報告國際審查會議 NGO 各場次得入場清冊) [List of NGOs Permitted to Attend Meetings in the Second International Review for the ICCPR and ICESCR], January 13, 2017, available at <http://www.humanrights.moj.gov.tw/ct.asp?xItem=459100&ctNode=45395&mp=200> (last visited July 30, 2017).

¹⁵⁶ Yi-Hsiang Shih (施逸翔), Lianggongyue Shenchu: Guanliao yu Renquan de Ningjing Duijue (兩公約審查，官僚與人權的寧靜對決) [Review of the ICCPR and ICESCR: Silent Confrontation between Bureaucracy and Human Rights], Duan Chuanmei (端傳媒) [Initium Media], Jan. 21, 2017, available at <https://theinitium.com/article/20170121-opinion-shihyihsiang-humanright/> (last visited July 30, 2017).

¹⁵⁷ Mab Huang, *supra* note 37.

¹⁵⁸ Review of the Second Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants, Concluding Observations and Recommendations adopted by the International Review Committee, Taipei, 20 January 2017, available at <http://www.humanrights.moj.gov.tw/ct.asp?xItem=464124&ctNode=45414&mp=200> (last visited July 30, 2017).

¹⁵⁹ *Id.*

with disabilities in social life, working conditions for foreign fishers in Taiwanese fishing vessels, child labor and same-sex marriage.¹⁶⁰

As in the first review, the government held a press conference for the international experts to announce the Concluding Observations and discuss their major recommendations. In the press conference, the international experts again encouraged the Taiwan government to continue this exercise, praising it as an example for UN human rights treaty monitoring, while also criticizing the government's unsatisfactory attempts at implementation. There seemed to be more media coverage for the Concluding Observations this time, although reporting remained generally insufficient.¹⁶¹

The press conference was attended by officials, foreign diplomats, journalists and civic groups, including notably those who opposed same-sex marriage. When the international experts praised Taiwan's efforts to legalize same-sex marriage,¹⁶² opponents—who were only a small number but quite fervent—cried out their objections, disrupting the proceeding. A fiery shouting match followed between them and NGO representatives who supported gay marriage. Fortunately, the two camps were largely restrained and remained in their seats. Opponents held up protest signs and used props, including theatrical-type masks of leading political figures such as Donald Trump, Vladimir Putin, Angela Merkel and Shinzo Abe. Their signs read “UN: Homosexual Marriage Not Basic Human Rights”, and “No Sexual Indecency in Lieu of Education for Children.” The language obviously showed their attempt to communicate with the international experts. Meanwhile, supporters of same-sex marriage unfurled their rainbow flags and held them high behind their opponents. Fortunately, the press conference was able to proceed and be completed.

The task of overseeing the implementation of the second Concluding Observations again falls on the HRCC. Given that the domestic follow-up processes after the first review did not turn out to be successful in ensuring better implementation, the HRCC has decided to change its strategy. The plan this time is to have government agencies write up their own action plans in response to the second Concluding Observations and specify their respective short, medium and long-term goals in implementation. The HRCC has also decided that in drafting the action plans, the government must involve participation of NGOs. The members of the HRCC have divided themselves into three groups that will review these action plans that relate to: (1) common issues and other human rights treaties; (2) ICCPR-related recommendations; and (3) ICESCR-related recommendations.¹⁶³ At the time of writing this paper, it was still unclear how this new follow-up process would work out.

¹⁶⁰ *Id.*

¹⁶¹ Mab Huang, *supra* note 37.

¹⁶² On the controversial issue of same-sex marriage, the expert stated in the Concluding Observations, “The Review Committee notes with appreciation the initiatives taken by the Government of Taiwan aimed at introducing same-sex marriage into Taiwanese law. The full realisation of these legislative changes would be a manifestation of Taiwan as a pioneer in the Asia-Pacific region, in combating discrimination on the basis of sexual orientation and gender identity.” *Supra* note 159, at para. 77.

¹⁶³ Presidential Human Rights Consultative Committee, 26th Meeting (April 6, 2017), Meeting Minutes (in Chinese language).

IV. Assessment: Local-Global Co-ownership of International Human Rights Projects

Taiwan has turned a vice into a virtue by creating an unprecedented model for monitoring the implementation of human rights treaty provisions. This is not at all to say that Taiwan's implementation is ideal. As made clear by the international experts' Concluding Observations in the past two reviews as well as the domestic civil society's persistent advocacy, Taiwan's human rights record has much to improve, and this work will never be finished, as in other countries. What this paper focuses on are the lessons that can be drawn from the case study of Taiwan, in terms of how to think about the local-global relationship in their joint efforts to promote human rights. The principle lesson here is that human rights treaty monitoring should be understood as a project co-owned by the local and the global actors, both of whom are core to its success. That is, this monitoring exercise can and should be strengthened by extensive, meaningful engagement of local stakeholders, who should be assisted and empowered by global resources and necessary interventions. The current UN human rights treaty system — a centralist model favoring participation of global actors and well-resourced state parties and NGOs — can benefit from genuine, effective localization efforts that seek to honor the local ownership in the monitoring processes and endow local actors with support from the outside. Taiwan's experience demonstrates a new framework that features this type of local-global co-ownership and provides details on how to put it into practice.

Compared with the practice in the UN human rights treaty bodies, Taiwan's innovation — a localization experience — places decision-making powers mostly in the hands of local actors, including civil society as well as the government, throughout the process of designing relevant institutions and implementing them. In this model, local actors enjoy the discretion to make improvements — such as increasing meeting time and enhancing the role of civil society. Indeed, these local improvements should be celebrated, rather than discouraged, so long as they seek to champion the purpose of the treaty review, namely, holding the government accountable for fulfilling their treaty obligations. In other words, while we should be careful about preserving the integrity of international human rights institutions, the local efforts should not be presumed to be contaminating forces. Acknowledging the local actors as a co-owner of international human rights projects means to encourage them to accept, adapt, contribute to and follow through with the ideas and practices promoted by the international human rights system. This model can inspire in the local level a sense of ownership, responsibility and honor. This is demonstrated by the kind of rhetoric and efforts in Taiwan's case that seek to make Taiwan's review “the world's first time” and to “outperform the UN system.”¹⁶⁴

Localization also has the benefit of greatly expanding local engagement. In this locally-focused framework, access to the monitoring processes and the dialogue is much easier than if the meetings were to be conducted in remote places such as Geneva and New York. In particular, the local venue enables small, under-resourced groups to present their voices, and to have increased opportunities to interact with independent experts, officials and other NGOs. In addition, an event held in a locally convenient place can attract more local media attention than it would have if it had been held far

¹⁶⁴ See *infra* III. B.

away. Although the domestic and international press coverage of the reviews in Taiwan has generally been considered inadequate, the second review saw modest, encouraging progress in this respect as more actors, including journalists, recognized the significance of the event. More effort must be further extended to promoting public awareness.

On the other hand, localization of international scrutiny can intensify and even inflame local debates. The controversy regarding the death penalty prior to the first review in Taiwan is one such example.¹⁶⁵ Depictions of the international experts as representing the imperial, invasive “Eight Power Allied Forces” and “foreign interference” were intended to incite hot-blooded reaction to outside scrutiny of an emotionally-charged issue. While it is true that not all debates stimulated by local efforts are constructive, they nevertheless initiate a process of exchanging different views and promoting public discussion, introducing a possibility of persuasion and internalization of new norms. Without this process, which takes time, deep-level societal changes are unlikely. Normative conflicts between the local and the global cultural spheres are a window of opportunity for the two sides to engage with each other, thereby starting a conversation that is needed to reconcile conflicts and to ensure sustainable change.

Localization does not mean isolation from global norms, institutions and other resources. In fact, the new framework calls for honoring global co-ownership as well by recognizing the need to draw upon resources and interventions at the international level. Under this framework, local actors must consistently call upon global assistance for preserving and enhancing the integrity and legitimacy of their human rights enterprise. In the Taiwan experience, they do so by resorting to procedures commonly used in the UN human rights treaty bodies and inviting renowned, independent foreign experts who specialize in international human rights law and the region’s human rights practices. Notably, in the context of Taiwan’s political situation, the benefit of connecting with the outside world is a potent, favorable argument to persuade the government, keen to improve its standing in the world, to adopt global norms and ideals.

This is not unique to Taiwan. In a study of Hong Kong’s female inheritance movement, for example, Rachel Stern notes that before Hong Kong reverted to Chinese sovereignty in 1997, “rights arguments derived political currency from their association with an international community.”¹⁶⁶ Obviously, this “currency” is not universal. Its influence varies from place to place depending on the political and social context, and is sometimes resisted and viewed with suspicion. Even in a place that is as eager as Taiwan to increase international associations, such associations with what may be labeled as “foreign forces” can sometimes backfire and, accordingly, human rights norms may be thought of as a foreign import that does not fit local conditions. As we see in the contentious debate about the death penalty in Taiwan, the intervention of international experts was purposefully turned into “foreign interference” in the public discourse to discredit human rights ideals. Such a dilemma between the positive influence of international associations and potential backlash is inherent in local-global interactions in the process of introducing international human rights norms.

¹⁶⁵ See *infra* III. C. b.

¹⁶⁶ Rachel E. Stern, *Unpacking Adaptation: The Female Inheritance Movement in Hong Kong*, 10 MOBILIZATION 421, 421 (2005).

Overall, Taiwan's experience is an excellent experiment for considering how to strengthen current UN human rights treaty monitoring. That said, Taiwan's situation is not without weaknesses. Being excluded from the UN and its institutions, Taiwan's review relies on local initiatives that have yet to be fully institutionalized. Several challenges lie ahead.

First, the secretariat for Taiwan's treaty review is the MoJ, which is part of the government under review, whereas the secretariat for the UN human rights treaty bodies is the Office of the UN High Commissioner for Human Rights. In an attempt to keep the secretariat separate from the government, Covenants Watch, at a very early stage, proposed that the secretariat function be undertaken by an independent group, preferably a foundation that was sponsored with government funding, but acted independently of the government, or credible international groups such as the International Commission of Jurists or the International Federation of Human Rights. If these two options were not available, domestic bar associations or university human rights research centers were also a possibility.¹⁶⁷ Yet this proposal was turned down because it was difficult for the HRCC to agree on an organization that would have the capacity to carry out the secretariat function.¹⁶⁸ While Taiwan's MoJ — more specifically, a team within the MoJ in charge of this function — has been able to stay neutral as secretariat, the potential for political interference deservedly worries many rights advocates and scholars in Taiwan.¹⁶⁹

Second, the international experts invited to review Taiwan's performance have been very supportive of this exercise, but their attendance of Taiwan's review is not mandated by UN human rights treaties. There is no permanent monitoring body in Taiwan's case. This means that for every review, the Taiwan government must re-invite previous international experts to serve on the review committee and also invite new members to fill vacant spots. Taiwan has been fortunate to have positive responses from many experts who conducted the reviews, but the process to re-compose the review committee continues to be clouded by the uncertainty of who will accept the invitation and who will not.

Third, there is no legal basis for the mandate calling for international experts or for an "International Review Committee" (as the experts called themselves in the second review), and it is also unclear how the government should treat their Concluding Observations. The HRCC's early discussions illustrate this problem well. The HRCC, while designing the initial review, made a resolution early on that the government should "consult with and respect opinions of international experts on national human rights reports," but added, "however, this is not our international obligation, and our nation is not responsible to international human rights experts."¹⁷⁰ The HRCC later appeared more receptive to the experts' Concluding Observations, which it has urged

¹⁶⁷ *Supra* note 56.

¹⁶⁸ Mab Huang, *supra* note 37.

¹⁶⁹ Wen-chen Chang (張文貞), *Lianggongyue Guoji Shencha de Kunju: Fawubu Zuowei Mishuchu de Dingwei Shidang* (兩公約國際審查的困局：法務部作為秘書處的定位失當) [*Predicament in the International Review for the ICCPR and ICESCR: Inadequacy of the Ministry of Justice as Secretariat*], TAIWAN RENQUAN XUEKAN (台灣人權學刊) [TAIWAN HUMAN RIGHTS JOURNAL], Vol. 2, No. 1, 141, June 2013.

¹⁷⁰ Presidential Human Rights Consultative Committee, 2nd Meeting (January 14, 2011), Meeting Minutes (in Chinese language).

the government to fully implement and has played a critical role in overseeing that process, but it remains a fact that the mandate of the international experts or the “International Review Committee” cannot find any legal basis in Taiwan’s legislation. ~~is not legally protected.~~

Fourth, as there is no permanent treaty body in Taiwan’s review, there are no follow-up procedures conducted by the international experts in the interim before the next review cycle takes place. Several UN treaty bodies have now established written follow-up procedures that request state parties to report back to the respective treaty body within one year (two years in the case of CEDAW) on measures taken to implement “follow-up recommendations” that are considered urgent and serious. In such a case, a “Follow-up Rapporteur” is assigned to examine whether the response of the state party is satisfactory.¹⁷¹ In Taiwan, such a mechanism is impossible unless Taiwan organizes, by law, a review committee that continues to function and carry out the mandated follow-up tasks in between the reviews.

Fifth, the UN treaty bodies are encouraged to systematically cooperate and exchange information with other UN human rights mechanisms, including other treaty bodies, the Special Procedures of the Human Rights Council and the Universal Periodic Review, in order to strengthen the impact of their work. However, the review committee in Taiwan has no institutional channels to interact with other UN human rights bodies in this capacity, and other UN bodies cannot, for example, cite in their work the Concluding Observations issued by the international experts in Taiwan’s review.¹⁷² At most, Taiwan’s review committee can cite the views and interpretations of other UN human rights mechanism in its Concluding Observations.

All these weaknesses do not originate through Taiwan’s own choice. They are a constant reminder that Taiwan’s exclusion from the UN human rights system has practical consequences for how Taiwan sustains domestic human rights institutions. Unfortunately, Taiwan remains shut out of an institution that is supposed to be committed to protecting the rights of “all members of the human family.”¹⁷³

Is it practical to think that the framework proposed by this paper and the illustrative Taiwan case can be useful in thinking about the UN human rights treaty body practices? It is difficult to imagine that the UN will implement a reform as radical as Taiwan’s model, which would dramatically transform the modus operandi of the current treaty body system. However, any reform begins with recognizing and prioritizing significant challenges. This paper contributes to the scholarly and policy discussion by drawing attention to the continuing problem of local alienation in the monitoring processes of the UN human rights treaty bodies and by suggesting a new possibility to address this problem.

¹⁷¹ For an introduction of the follow-up procedures for the implementation of human rights treaties, see UN Human Rights Office of the High Commissioner, Follow-Up to Concluding Observations, available at <http://www.ohchr.org/EN/HRBodies/Pages/FollowUpProcedure.aspx> (last visited July 30, 2017).

¹⁷² Nowak, *supra* note 86.

¹⁷³ Universal Declaration of Human Rights, G.A. Res. 217A (III), UN Doc. A/810 at 71, Preamble (1948).

Small steps can be taken first; there are precedents in which treaty bodies take up reform measures on a trial basis.¹⁷⁴ What can be done initially is to employ a number of pilot projects in countries that are considered suitable, and as the practices mature there, they will form a body of experience and knowledge from which a more expansive reform can then be based and refined. The pilot projects should live up to the spirit of local-global co-ownership by extensively involving local stakeholders, government and civil society in everything from designing the project to addressing practical challenges such as how to seek funding. Efforts must be made to avoid implementing a “reform” that would result in undermining the purpose of the monitoring exercise, especially in regimes that have a record of serious human rights violations or have the tendency of abusing human rights. Indeed, this paper does not deny the possibility that, under the new framework, a locally-established monitoring project might be corrupted by practices that weaken its effect. This is why the paper equally emphasizes global co-ownership and the need for global resources and interventions throughout the process. Such a concern, of course, should not mean that local stakeholders be deprived of ownership of a project that is supposed to have an impact on their lives. It simply means that the global actors should work harder to prevent this from happening.

V. Conclusion

This paper calls attention to a fundamental challenge that has been downplayed in current efforts to strengthen the UN human rights treaty body system, namely, the system’s insulation and alienation from local stakeholders who are supposed to take part in the processes of monitoring State implementation of treaty obligations. To address this problem, the paper proposes a new framework that defines human rights treaty monitoring as a joint project co-owned by the local as well as the global actors. This new framework requires honoring local ownership by empowering local actors with the ability to make decisions about the design and the implementation of the project and by encouraging them to make further improvements as long as they do not undermine the integrity of international human rights norms and institutions. It also requires honoring the global ownership by drawing upon global resources and interventions to enhance the efficacy and legitimacy of the project.

To illustrate how the framework can be carried out, this paper presents the empirical study of Taiwan’s self-created, on-site, UN-type treaty review for monitoring the government’s implementation of the ICCPR and ICESCR. Taiwan’s experience, although fraught with several institutional weaknesses arising from its isolation from the UN, featured innovative efforts to localize treaty monitoring and expand local engagement, including holding review meetings in Taipei and increasing meeting time for not only officials but also NGOs. More importantly, the decision-making powers for the design and the implementation of the review mostly rested in the hands of local

¹⁷⁴ An example is the implementation of a simplified reporting procedure, namely, an optional procedure of a list of issues prior to reporting (LOIPR), in which the treaty body sends a list of issues to a state party and considers the state’s written replies in lieu of a periodic report. See UN Human Rights Office of the High Commissioner, Simplified Reporting Procedure, available at <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/SimplifiedReportingProcedure.aspx>; Michael O’Flaherty and Pei-Lun Tsai, *Periodic reporting: the backbone of the UN treaty body review procedures*, in *NEW CHALLENGES FOR THE UN HUMAN RIGHTS MACHINERY: WHAT FUTURE FOR THE UN TREATY BODY SYSTEM AND THE HUMAN RIGHTS COUNCIL PROCEDURES?* 37, 41-42 (M. Cherif Bassiouni & William A. Schabas eds., 2011).

actors, including civil society as well as the government. This stimulated a sense of ownership, and accordingly pride and responsibility. Meanwhile, throughout the process, local actors constantly resorted to international norms and expertise, networking with the outside world and other global resources to ensure the success of the review. The case study and the framework that it embodies offer a new possibility for future reforms of UN human rights treaty monitoring and offer useful guidance for how it can be strengthened.