

# 從國際人權規範檢視當前防疫措施

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## 大綱

- 壹、全球緊急公衛事件、防疫措施、與國際人權法
- 貳、科技防疫與隱私保護
- 參、弱勢群體保障
  - 一、禁止歧視
  - 二、資訊傳遞
  - 三、降低執法力道
  - 四、醫療資源分配
- 肆、結語

## 防疫的人權思考：

- 保障人權：生命權與健康權
- 限制人權：人身自由、行動自由、隱私權、資訊自主權
- 為了保障人權必須限制人權？
- 限制人權為了保障人權？

人權取向的防疫措施：是否更能受到有效遵循？

義大利北部、紐約、萬華？

## 緊急公衛事件、防疫措施、 與國際人權法

## 目前已經國內法化的國際人權公約

- ❖ 公民與政治權利國際公約及經濟社會文化權利國際公約 (International Covenant on Civil and Political Rights, ICCPR and International Covenant on Economic, Social and Cultural Rights, ICESCR) (合稱兩公約 Two Covenants)
- ❖ 消除對婦女一切形式歧視公約 (Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW)
- ❖ 兒童權利公約 (Convention on the Rights of the Child, CRC)
- ❖ 身心障礙者權利公約 (Convention on the Rights of Persons with Disabilities, CRPD)
- ❖ 消除一切種族歧視國際公約 (International Convention on the Elimination of All Forms of Racial Discrimination, CERD)

均為核心國際人權公約 (core international human rights documents)

## 兩公約

- 公民與政治權利國際公約及經濟社會文化權利國際公約 (International Covenant on Civil and Political Rights, ICCPR and International Covenant on Economic, Social and Cultural Rights, ICESCR) (Two Covenants)
  - 1967簽署兩公約
  - 2009 批准兩公約並通過兩公約施行法
  - 2009/12/10 兩公約施行法正式施行
  - 2013/2 初次國家報告的國際審查
  - 2017/1 第二次國家報告的國際審查
  - 2021 第三次國家報告的國際審查 (因為疫情延到2022年5月)



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兩公約第二次國際審查

## 兩公約的特殊性

- ▶ 公政公約
- ▶ 經社文公約

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## 第26號一般性意見

- ▶ 人權事務委員會在1997年曾作成第26號一般性意見，論及兩公約的規範地位。該件意見涉及前南斯拉夫共和國裂解之後，公約是否仍繼續適用於分裂各國的問題。
- ▶ 「從人權保障長期的規範實踐來看，一旦人民享有人權保障，即不再允許人權保障的中斷；也正是基於此一人權保障的特殊性，兩公約因此並未設有撤回或退出的規定。因此，不管政府輪替或國家繼承，均不影響兩公約對該土地上之人民的繼續適用，俾確保人權。」



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# 第26號一般性意見的影響

## ▶ 香港

- 公政公約
- 1999年首次國家報告
- 2005年第二次國家報告
- 2011年第三次國家報告
- 2019年第四次國家報告

## ▶ 澳門

- 公政公約
- 2011年首次國家報告
- 2019年第二次國家報告

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UNITED  
NATIONS



**International covenant  
on civil and  
political rights**

Distr.  
GENERAL

CCPR/C/HKSAR/99/1  
16 June 1999

Original: ENGLISH

**CCPR**

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT

HONG KONG SPECIAL ADMINISTRATIVE REGION  
OF THE PEOPLE'S REPUBLIC OF CHINA\*

[11 January 1999]

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\* The present report has been submitted by the Government of the People's Republic of China. Although China is not a State party to the International Covenant on Civil and Political Rights, the Government notified the Secretary-General of the United Nations of the continuing application of the Covenant in the Hong Kong Special Administrative Region by a letter dated 4 December 1997.

The first part of the original text (General profile) has been incorporated in the revised core document of China (HRI/CORE/1/Add.21/Rev.1). The annexes are available for consultation in the files of the secretariat in English, as received from the Government of China. The previous report relating to Hong Kong submitted by the then administering State, the United Kingdom of Great Britain and Northern Ireland, is available in document CCPR/C/95/Add.5; for its consideration by the Committee, see CCPR/C/SR.1469, CCPR/C/79/Add.57 and Official Records of the General Assembly, Fifty-first Session, Supplement No. 40 (A/51/40), paragraphs 47 to 72. In accordance with a request of the Committee, a special report was submitted subsequently (CCPR/C/117); for its consideration by the Committee, see CCPR/C/SR.1535 and 1536, CCPR/C/79/Add.69 and Official Records of the General Assembly, Fifty-second Session, Supplement No. 40 (A/52/40), paragraphs 78 to 85.

GE.99-44093 (E)

United Nations

CCPR/C/CHN-HKG/4



**International Covenant on  
Civil and Political Rights**

Distr.: General  
14 February 2020

Original: Chinese and English  
Chinese, English, French and  
Spanish only

Human Rights Committee

**Fourth periodic report submitted by Hong Kong,  
China under article 40 of the Covenant, due in  
2018\*, \*\***

[Date received: 19 September 2019]



**International Covenant on  
Civil and Political Rights**

Distr.: General  
30 May 2011

Original: Chinese and English

**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant**

**Initial reports of States parties**

**Macao, China\***



**International Covenant on  
Civil and Political Rights**

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[Date received: 19 September 2019]



## 兩公約的特殊性

- ▶ 公政公約
- ▶ 經社文公約

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## ICCPR第4條第2項

- ▶ 公民與政治權利公約第4條第2項規定，即便在國家面臨緊急狀態亦不得減免的權利 (non-derogatory or non-derogable rights)，包括第6條生命權、第7條禁止酷刑、殘忍或不人道之處罰、第8條第1項禁止奴隸及第2項禁止強迫勞動、第11條禁止因契約不履行而受監禁、第15條罪刑法定原則、第16條法律人格的承認、以及第18條思想自由、信仰及宗教自由的保障。



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#### 第四條

一 如經當局正式宣布緊急狀態，危及國本，本公約締約國得在此種危急情勢絕對必要之限度內，採取措施，減免履行其依本公約所負之義務，但此種措施不得牴觸其依國際法所負之其他義務，亦不得引起純粹以種族、膚色、性別、語言、宗教或社會階級為根據之歧視。

二 第六條、第七條、第八條(第一項及第二項)、第十一條、第十五條、第十六條及第十八條之規定，不得依本條規定減免履行。

三 本公約締約國行使其減免履行義務之權利者，應立即將其減免履行之條款，及減免履行之理由，經由聯合國秘書長轉知本公約其他締約國。其終止減免履行之日期，亦應另行移文秘書長轉知。

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## ICCPR 第4條 第2項



- ▶ 根據2001年人權事務委員會所作第29號一般性意見，公政公約第4條所規定這些不得扣減的權利，雖然不能直接認為等同於強行國際法的內容，但有助於這些權利被認定為是強行國際法或絕對法的內容，尤其是第6條關於生命權及死刑、第7條關於酷刑禁止的規定。
- ▶ 委員會甚至進一步闡述即使是公約並未列舉之不得扣減的權利，如構成強行國際法或絕對法之內涵，公約締約國亦不得因其並未於第4條中列舉而於緊急狀態中予以限制，包括：違反國際人道法之劫持人質罪行、禁止集體懲罰(collective punishments)、禁止人權之恣意侵害(arbitrary deprivations of liberty)、禁止違反受公平審判權利保障之核心內容（如無罪推定原則）(deviating from fundamental principles of fair trial)。

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## International Covenant on Civil and Political Rights

Distr.: General  
30 April 2020

Original: English

### Human Rights Committee

#### Statement on derogations from the Covenant in connection with the COVID-19 pandemic\*

1. A number of States parties to the International Covenant on Civil and Political Rights have in recent weeks notified the Secretary-General, pursuant to article 4 of the Covenant, of emergency measures that they have taken or are planning to take with a view to curb the spread of the coronavirus (COVID-19) pandemic, in derogation from their obligations under the Covenant. It has been brought to the attention of the Committee, however, that several other States parties have resorted to emergency measures in response to the COVID-19 pandemic in a manner seriously affecting the implementation of their obligations under the Covenant, without formally submitting any notification of derogation from the Covenant. The Committee calls upon all State parties that have taken emergency measures in connection with the COVID-19 pandemic that derogate from their obligations under the Covenant to comply without delay with their duty to notify the Secretary-General thereof immediately, if they have not already done so.

2. The Committee is of the view that, in the face of the COVID-19 pandemic, States parties must take effective measures to protect the right to life and health of all individuals within their territory and all those subject to their jurisdiction. It also recognizes that such measures may, in certain circumstances, result in restrictions on the enjoyment of individual rights guaranteed by the Covenant. Furthermore, the Committee acknowledges that States parties confronting the threat of widespread contagion may, on a temporary basis, resort to

2. The Committee is of the view that, in the face of the COVID-19 pandemic, States parties must take effective measures to protect the right to life and health of all individuals within their territory and all those subject to their jurisdiction. It also recognizes that such measures may, in certain circumstances, result in restrictions on the enjoyment of individual rights guaranteed by the Covenant. **Furthermore, the Committee acknowledges that States parties confronting the threat of widespread contagion may, on a temporary basis, resort to exceptional emergency powers and invoke their right of derogation from the Covenant under article 4 provided that it is required to protect the life of the nation.** The Committee wishes nonetheless to remind States parties of the requirements and conditions laid down in article 4 of the Covenant and explained by the Committee in its general comments, particularly in general comment No. 29 (2001) on states of emergency, in which it provided guidance on the following aspects of derogations: **the official proclamation of a state of emergency; formal notification to the Secretary-General; the strict necessity and proportionality of any derogating measure taken; the conformity of measures taken with other international obligations; non-discrimination; and the prohibition on derogating from certain nonderogable rights.** In particular, States parties must observe the following requirements and conditions when exercising emergency powers in connection with the COVID-19 pandemic:

(a) Where measures derogating from the obligations of States parties under the Covenant are taken, the provisions derogated from and the reasons for the derogation must be communicated immediately to the other States parties through the Secretary-General. **Notification by a State party must include full information about the derogating measures taken and a clear explanation of the reasons for taking them, with complete documentation of any laws adopted.** Further notification is required if the State party subsequently takes additional measures under article 4, for instance by extending the duration of a state of emergency. The requirement of immediate notification applies equally to the termination of \* Adopted by the Committee on 24 April 2020. United Nations CCPR/C/128/2 International Covenant on Civil and Political Rights Distr.: General 30 April 2020 Original: English CCPR/C/128/2 2 the derogation. The Committee considers the implementation of the obligation of immediate notification essential for the discharge of its functions, as well as for the monitoring of the situation by other States parties and other stakeholders;

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(b) Derogating measures may deviate from the obligations set out by the Covenant only to the extent strictly required by the exigencies of the public health situation. Their predominant objective must be the restoration of a state of normalcy, where full respect for the Covenant can again be secured. **Derogations must, as far as possible, be limited in duration, geographical coverage and material scope, and any measures taken, including sanctions imposed in connection with them, must be proportional in nature.** Where possible, and in view of the need to protect the life and health of others, States parties should replace COVID-19-related measures that prohibit activities relevant to the enjoyment of rights under the Covenant **with less restrictive measures** that allow such activities to be conducted, while subjecting them as necessary to public health requirements, such as physical distancing;

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(c) **States parties should not derogate** from Covenant rights or rely on a derogation made when they are able to attain their public health or other public policy objectives by invoking the possibility to restrict certain rights, such as article 12 (freedom of movement), article 19 (freedom of expression) or article 21 (right to peaceful assembly), in conformity with the provisions for such restrictions set out in the Covenant, or by invoking the possibility of introducing reasonable limitations on certain rights, such as article 9 (right to personal liberty) and article 17 (right to privacy), in accordance with their provisions;

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(d) States parties may not resort to emergency powers or implement derogating measures in a manner that is discriminatory, or that violates other obligations that they have undertaken under international law, including under other international human rights treaties from which no derogation is allowed. Nor can States parties deviate from the non-derogable provisions of the Covenant – article 6 (right to life), article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment, or of medical or scientific experimentation without consent), article 8, paragraphs 1 and 2 (prohibition of slavery, the slave trade and servitude), article 11 (prohibition of imprisonment because of inability to fulfil a contractual obligation), article 15 (principle of legality in the field of criminal law), article 16 (recognition of everyone as a person before the law) and article 18 (freedom of thought, conscience and religion) – **or from other rights that are essential for upholding the nonderogable rights found in the aforementioned provisions** and for ensuring respect for the rule of law and the principle of legality even in times of public emergency, including the right of access to court, due process guarantees and the right of victims to obtain an effective remedy;

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(e) Furthermore, States parties may not derogate from their duty to treat all persons, including persons deprived of their liberty, with humanity and respect for their human dignity, and must pay special attention to the adequacy of health conditions and health services in places of incarceration, and also to the rights of individuals in situations of confinement, and to the aggravated threat of domestic violence arising in such situations. Nor can States parties tolerate, even in situations of emergency, the advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence, and they must take steps to ensure that public discourse in connection with the COVID-19 pandemic does not constitute advocacy or incitement against specific marginalized or vulnerable groups, including minorities and foreign nationals;



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(f) Freedom of expression and access to information and a civic space where a public debate can be held constitute important safeguards for ensuring that States parties resorting to emergency powers in connection with the COVID-19 pandemic comply with their obligations under the Covenant.



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表1：2020年公政公約（ICCPR）締約國通報COVID-19緊急應對措施減免人權保障義務的情形

	美洲 國家（通報時間）	歐洲 國家（通報時間）	亞洲 國家（通報時間）	非洲 國家（通報時間）
國 家	Guatemala (Mar.10)	Latvia (Mar. 16/May	Armenia (Mar. 20/Sept.	Ethiopia (June 17)
	Peru (Mar. 19)	21/June 18)	16)	Senegal (July 13)
	Ecuador (Mar. 24)	Estonia (Mar. 20)	Palestine (Mar. 30)	Namibia (July 15)
	Chile (Apr. 9)	Romania (Mar. 20/May	Kyrgyzstan (Apr. 14)	
	Colombia (Apr. 20)	27)	Thailand (June 15)	
	El Salvador (Apr. 22)	Georgia (Mar. 21/June 5)		
	Argentina (June 11)	San Marino (Apr.		
	Dominican Republic (July	29/July 9)		
	7)	Republic of Moldova		
Paraguay (July 24)	(May 15)			

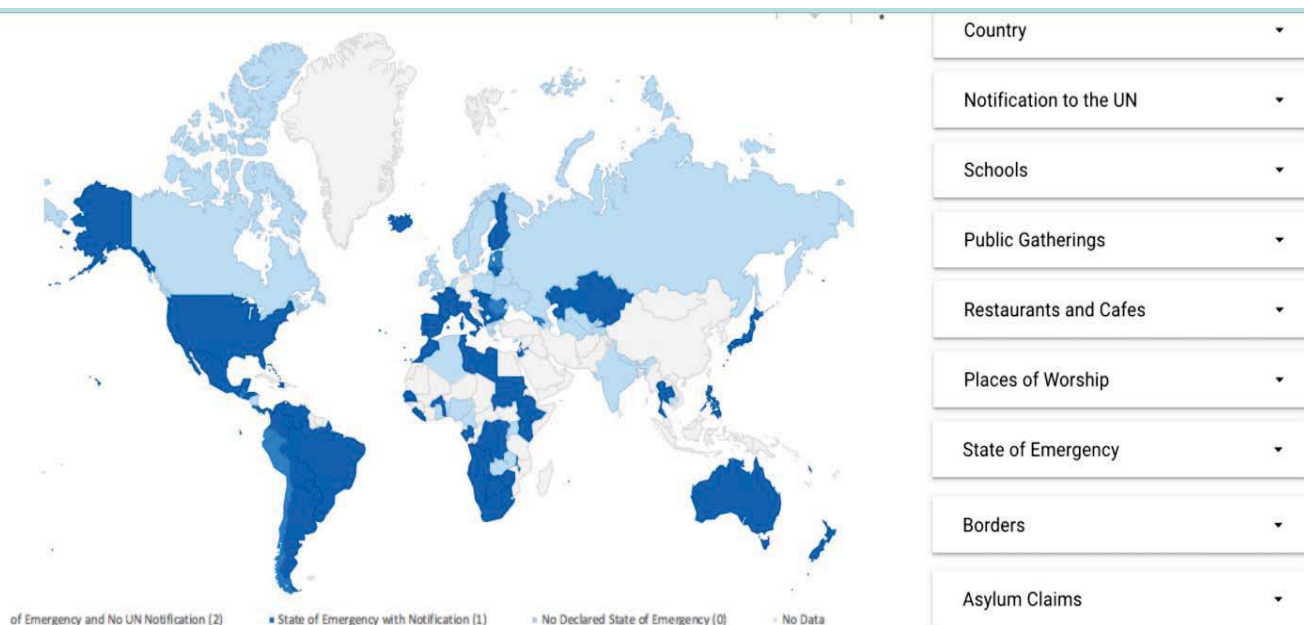
表2：2020年公政公約（ICCPR）締約國通報減免相關人權保障的情形

減免履行義務之權利	國家
第9條 人身自由和安全	Armenia, Estonia, Georgia, Paraguay, Peru, State of Palestine
第12條 遷徙自由	Argentina, Armenia, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, Georgia, Guatemala, Kyrgyzstan, Latvia, Namibia, Paraguay, Peru, Republic of Moldova, Romania, San Marino, Senegal, State of Palestine, Thailand
第13條 外國人境內合法居留權	Colombia
第14條 正當程序	Estonia, Georgia
第17條 隱私權	Estonia, Georgia, Latvia, Peru, Romania
第18條 宗教自由	Ethiopia
第19條 言論自由	Colombia
第21條 和平集會	Armenia, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, Georgia, Guatemala, Kyrgyzstan, Latvia, Namibia, Paraguay, Peru, Republic of Moldova, Romania, San Marino, Senegal, State of Palestine
第22條 自由結社	Dominican Republic, Ecuador, Estonia, San Marino

表3：2020年各國應對COVID-19疫情所採進行措施的規範層級與類型

	宣告進入緊急狀態 或發布緊急命令 *有依ICCPR規定通報	仰賴既有緊急或公共衛生 治理相關法制	制定緊急或公共衛生治 理 特別法制
國家	France, Hungary, Chile*, Estonia, Ecuador*, Guatemala*, Honduras, Armenia*, Namibia*, Moldova*, Jordan	America, Australia, Austria, Belgium, Burkina Faso, Czech, Denmark, Canada, <b>Germany</b> , India, Norway, the Netherlands, Taiwan, Japan, Switzerland.	U.K. Taiwan Hungary Norway Ghana <b>Germany(2021)</b>

<https://ccprcentre.org/ccprpages/tracking-tool-impact-of-states-of-emergencies-on-civil-and-political-rights>



Due to the COVID-19 pandemic, many states across the world are declaring states of emergencies. Many other states are not declaring states of emergencies, but have a de facto one in place. To track how those states of emergencies have an impact on civil and political rights, and whether the Human Rights Committee has been notified of the derogations to the ICCPR, the Centre for Civil and Political Rights has developed a [tracking tool](#).



# 消除對婦女一切形式歧視公約

- ◆ 消除對婦女一切形式歧視公約(Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW)
- ◆ 2007/1 立法院以條約案正式通過加入公約
- ◆ 2009/3 初次國家報告正式發表及國際審查
- ◆ 2011/6/8 消除對婦女一切形式歧視公約施行法通過
- ◆ 2012/1/1 施行法正式施行
- ◆ 2014/8 第二次國家報告的國際審查
- ◆ 2017/12 第三次國家報告正式發表

The screenshot shows the website for the Executive Yuan Gender Equality Commission. The page title is "行政院 性別平等會" (Executive Yuan Gender Equality Commission). The main navigation bar includes "關於我們", "政策與法令", "性別平等政策綱領", "性別主流化", "CEDAW", "宣導及研究", and "各主題網站". The current page is "政策與法令" (Policy and Legislation) and specifically "消除對婦女一切形式歧視公約" (Convention on the Elimination of All Forms of Discrimination Against Women). The content includes a list of related policies on the left and a main text area on the right. The main text area contains the following information:

1979 (民國68)年聯合國大會通過「消除對婦女一切形式歧視公約」(以下簡稱CEDAW),並在1981(民國70)年正式生效,其內容闡明男女平等享有一切經濟、社會、文化、公民和政治權利,締約國應採取立法及一切適當措施,消除對婦女之歧視,確保男女在教育、就業、保健、家庭、政治、法律、社會、經濟等各方面享有平等權利。此一公約可稱之為「婦女人權法典」,開放給所有國家(state)簽署加入,不限於聯合國會員國,全世界已有189個國家簽署加入。

CEDAW內容詳列各項性別平等權利,包含參與政治及公共事務權、參與國際組織權、國籍權、教育權、就業權、農村婦女權、健康權、社會及經濟權、法律權、婚姻及家庭權等。

鑑於保障婦女權益已成國際人權主流價值,我國為提升我國之性別人權標準,落實性別平等,行政院委於2006(民國95)年7月8日函送公約由立法院審議,經立法院於2007(民國96)年1月5日議決,2月9日總統批准並頒發加入書,為明定CEDAW與國內法效力,行政院於2010(民國99)年5月18日函送「消除對婦女一切形式歧視公約施行法」草案,經立法院2011(民國100)年5月20日三讀通過,總統6月8日公布,自2012(民國101)年1月1日起施行。

消除對婦女一切形式歧視公約施行法,要求各級政府機關必需採取立法或行政措施,消除性別歧視,並積極促進性別平等各級政府行使職權,應符合公約有關性別人權保障之規定,並應籌劃、推動及執行公約規定事項,同時需依照CEDAW規定,每4年提出我國消除對婦女歧視國家報告,並邀請相關學者專家及民間團

# 消除對婦女一切形式歧視公約

Recalling the [joint declaration of the ten United Nations human rights treaty bodies](#) (24 March 2020) and the Committee's [call for joint action in the times of the COVID-19 pandemic](#), and taking note of the [OHCHR Guidance Note on COVID-19 and Women's Human Rights](#), the Committee further urges States parties to uphold women's rights in their responses to the public health threat posed by the COVID-19 pandemic.

# 消除對婦女一切形式歧視公約

## 消除對婦女歧視委員會 *Guidance Note on CEDAW and COVID-19* (April 21, 2020)

- ❖ 解決COVID-19對婦女健康的重大影響
- ❖ 確保基本生活需求
- ❖ 保護婦女和女童免受基於性別的暴力
- ❖ 確保婦女平等參與決策
- ❖ 確保受教權
- ❖ 為婦女提供社會經濟支持
- ❖ 針對對弱勢婦女訂定措施
- ❖ 採取特殊措施保護難民和國內流離失所的婦女和女童

## Statement of the Committee on the Elimination of Discrimination against Women on Virtual Sessions

Adopted on 14 January 2021

In spite of significant challenges faced by its members, the Committee demonstrated its determination to carry out its mandate and held its 76<sup>th</sup> and 77<sup>th</sup> Sessions remotely with a view to ensuring that there is no protection gap as a result of the pandemic. The Committee thus adopted 10 final decisions on individual communications and an Inquiry Report under its Optional Protocol as well as General Recommendation No. 38 on Trafficking in Women and Girls in the context of global migration, during these online sessions. It remains committed to continue to discharge its mandate as effectively as possible this year and to hold, on an exceptional basis, an online constructive dialogue to consider the periodic report of one State party during its forthcoming 78<sup>th</sup> session in February 2021.

The Committee wishes to stress that online sessions are the singular viable means by which to address the protection gap at this time. The travel restrictions and health safety measures in force around the world including Switzerland make it impossible to hold live in-person sessions.

The Committee nevertheless underscores that online sessions cannot and must not replace live in-person sessions which provide the Committee, States parties and stakeholders, including civil society organisations, with the vital opportunity of interacting together robustly and effectively and on a confidential basis where necessary. The Committee has always valued and continues to give utmost importance to its personal engagement and partnership with civil society organisations in a safe environment. This interaction is key to allowing the Committee to discharge successfully its mandate under the Convention and to maintaining the effectiveness, integrity and credibility of the international human rights treaty body system.

## 兒童權利公約

- ◆ 兒童權利公約 (Convention on the Rights of the Child, CRC)
- ◆ 2014/6/4 通過兒童權利公約施行法
- ◆ 2014/11/20 施行法正式施行
- ◆ 2016/5/2 立法院以條約案通過加入兒童權利公約; 5/16總統簽署加入書
- ◆ 2017/5/17 總統依條約締結法公布兒童權利公約，依兒童權利公約施行法第10條規定，溯及於2014年11月20日生效。
- ◆ 2016/11 初次國家報告的正式發表
- ◆ 2017/11 初次國家報告的國際審查



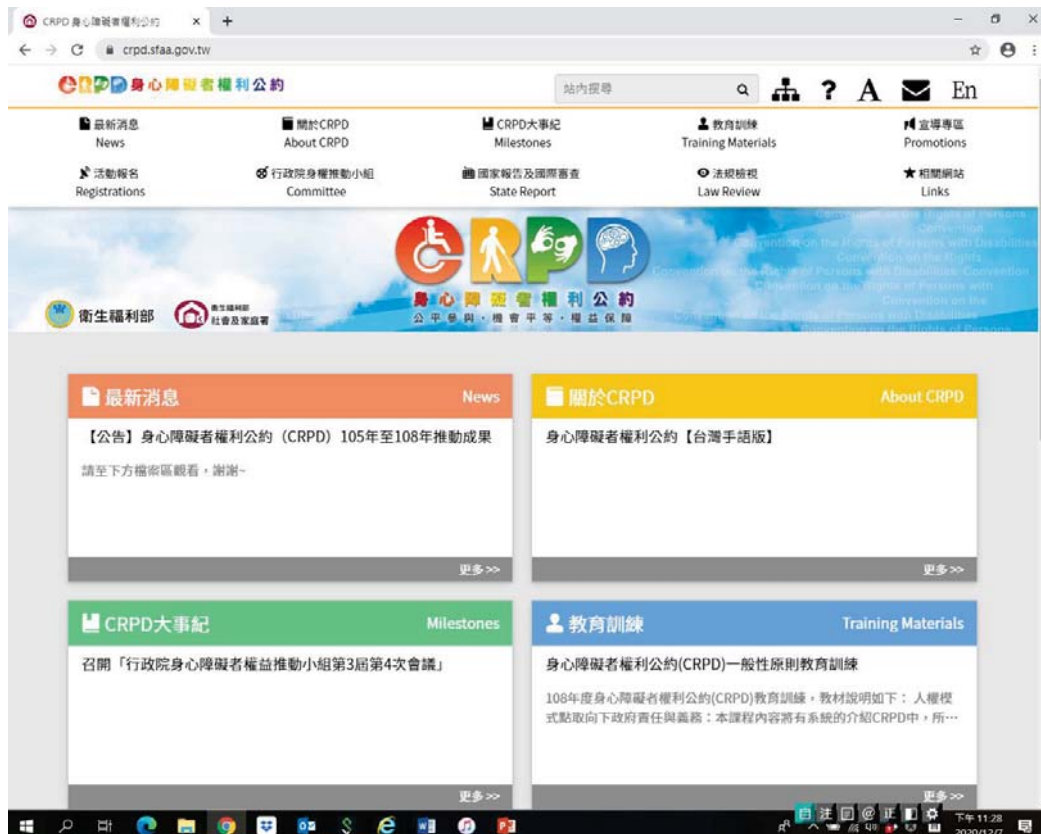
## 兒童權利公約

### 兒童權利委員會 *CRC COVID-19 Statement: 8 April 2020*

- ◆ 基本生活所需
- ◆ 心理健康照護
- ◆ 提供弱勢兒童必要照護 ( 愛滋兒童、少數族群 )
- ◆ 可行情況下釋放受監禁兒童，或使其能保持與家庭之聯繫。
- ◆ 確保兒童可取得兒童友善的防疫資訊
- ◆ 提供兒童參與防疫決策與表達意見

# 身心障礙者權利公約

- ◆ 身心障礙者權利公約 (Convention on the Rights of Persons with Disabilities, CRPD)
- ◆ 2014/8/20 通過身心障礙者權利公約施行法
- ◆ 2014/12/3 施行法正式施行
- ◆ 2017/5/17 總統依條約締結法公布身心障礙者權利公約，依身心障礙者權利公約施行法第12條規定，溯及於2014年12月3日生效。
- ◆ 2016/12 初次國家報告的正式發表
- ◆ 2017/11 初次國家報告的國際審查



**Joint Statement: Persons with Disabilities and COVID-19 by the Chair of the United Nations Committee on the Rights of Persons with Disabilities, on behalf of the Committee on the Rights of Persons with Disabilities and the Special Envoy of the United Nations Secretary-General on Disability and Accessibility (April 29, 2020)**

**Statement on COVID-19 and the human rights of persons with disabilities (June 9, 2020)**

- ❖ 健康權實踐：確保優先檢測priority testing
- ❖ 受教權影響
- ❖ 避免遭受暴力待遇
- ❖ 住宿與容納議題
- ❖ 使身心障礙者之組織機構能夠有意義並積極參與防疫政策之規劃
- ❖ 透過問責機制確保身心障礙者權益

## 禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約

- ❖ 禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約  
The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ( CAT )
- ❖ 1984年於聯合國通過，1987年正式生效。
- ❖ 防範酷刑小組委員會 ( SPT ) 執行公約於締約國之落實與訪視。
- ❖ 行政院曾於2018年12月6日在行政院院會通過內政部擬具的「禁止酷刑及其他殘忍不人道或有辱人格之待遇或處罰公約施行法」草案，並將此一草案併同公約及其任擇議定書送請立法院審議。很可惜的是，第9屆立法院並未於2020年1月底任期結束前完成審議，使得此一草案、公約及任擇議定書的國內法化，因立法院屆期不連續，而未竟全功。
- ❖ 2020年12月10日，行政院會再次通過內政部重行函送「禁止酷刑及其他殘忍不人道或有辱人格之待遇或處罰公約及其任擇議定書施行法」草案暨「禁止酷刑及其他殘忍不人道或有辱人格之待遇或處罰公約」及其任擇議定書，將函請立法院審議。目前等待立法院審議中。

## 禁止酷刑和其他殘忍、不人道或有辱 人格的待遇或處罰公約

Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

*Advice of the Subcommittee to States Parties and National Preventive Mechanisms Relating to the Coronavirus Disease (COVID-19) Pandemic:*

- ❖ 關注拘留中心、難民營、精神病院或醫院等限制人民自由的場所
- ❖ 對羈押人口進行緊急評估
- ❖ 盡可能減少監獄中或拘留的人口
- ❖ 盡可能減少移民拘留中心或難民營中的人口
- ❖ 確保拘留中提供醫療援助及生活用品
- ❖ 確保拘留設施中的工作人員有適當的裝備以確保人員的健康
- ❖ 確保現有的申訴機制可正常運作
- ❖ 暫時被隔離者仍應確保其自由，並且確保他們有獲得醫療資源或法律援助的權利。
- ❖ 締約國有義務在符合防疫考量之下提供有效的預防性的措施，避免被剝奪自由者免於受到酷刑或不人道之對待

## 保護所有移徙工人及其家庭成員權利國際公約

### ◆ 保護所有移徙工人及其家庭成員權利國際公約

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)

◆ 1990年於聯合國通過，2003年正式生效

◆ 我國目前尚未通過施行法，但在2020年國家人權行動計畫討論中，已被提出討論，作為近期國家人權行動計畫的一環，預計加以國內法化並落實執行。

# 保護所有移徙工人及其家庭成員權利國際公約

## Committee on Migrant Workers

### *Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants:*

- ❖ 針對移民者之保護，締約國應不分身分提供保護措施
- ❖ 應嚴格限制緊急狀態之發布，若需發布，應公開為之，並向委員會通報
- ❖ 將移工納入國內COVID-19預防與對應的政策中
- ❖ 確保對移民及其家庭之社會服務不中斷
- ❖ 保證移工之勞權，特別是在重要產業中工作的移民
- ❖ 促進在醫療相關機構服務之移工加入COVID-19防疫工作
- ❖ 協助移民子女有管道接受線上教學
- ❖ 建立並確保移工住宿條件完善，並適合作為移工住宿的空間
- ❖ 保障應受國際保護（in need of international protection）之人的權利
- ❖ 避免採取移民相關控制政策或具有壓迫性的手段，且應保護移民之個人資料。

# 以國際人權法來檢視我國防疫措施



## 隱私保障相關條文

### 傳染病防治法

#### 第10條

政府機關、醫事機構、醫事人員及其他因業務知悉傳染病或疑似傳染病病人之姓名、病歷及病史等有關資料者，不得洩漏。

#### 第11條

對於傳染病病人、施予照顧之醫事人員、接受隔離治療者、居家檢疫者、集中檢疫者及其家屬之人格、合法權益，應予尊重及保障，不得予以歧視。

非經前項之人同意，不得對其錄音、錄影或攝影。

### 嚴重特殊傳染性肺炎防治及紓困振興特別條例 (民國 109 年 04 月 21 日)

#### 第7條

中央流行疫情指揮中心指揮官為防治控制疫情需要，得實施必要之應變處置或措施。

#### 第8條

於防疫期間，受隔離或檢疫而有違反隔離或檢疫命令或有違反之虞者，中央流行疫情指揮中心指揮官得指示對其實施錄影、攝影、公布其個人資料或為其他必要之防治控制措施或處置。

為避免疫情擴散，對確診罹患嚴重特殊傳染性肺炎病人，亦同。

前二項個人資料，於疫情結束應依個人資料保護相關法規處理。

## 禁止歧視相關條文

### 傳染病防治法第11條

對於傳染病病人、施予照顧之醫事人員、接受隔離治療者、居家檢疫者、集中檢疫者及其家屬之人格、合法權益，應予尊重及保障，不得予以歧視。

非經前項之人同意，不得對其錄音、錄影或攝影。

### 傳染病防治法第12條

政府機關（構）、民間團體、事業或個人不得拒絕傳染病病人就學、工作、安養、居住或予其他不公平之待遇。但經主管機關基於傳染病防治需要限制者，不在此限。

## 資訊傳遞

### 身心障礙者權利公約第9條第2項(e)款

「締約國亦應採取適當措施，以便：... 提供各種形式之現場協助及中介，包括提供嚮導、報讀員及專業手語翻譯員，以利無障礙使用向公眾開放之建築與其他設施；...」

### 國家語言發展法第11條第2項

「政府機關（構）應於必要時提供各國家語言間之通譯服務，並積極培育各國家語言通譯人才。」

## 防疫新生活運動 實聯制措施指引



明確告知



僅存28天



禁止目的外  
利用



配合疫調



安全維護



資安防護

紙本 或 電子

詳情請見 疾管署全球資訊網 <http://at.cdc.tw/8QI4h>  
嚴重特殊傳染性肺炎專區重要指引及教材



指揮中心說明，為確保個資保護，各場域所蒐集的民眾個人資料，均要指定專人辦理並善盡資料保護責任，最多存放28天，之後必須刪除或銷毀。

## 電子圍籬2.0流程

於2020/12/31 啟用



※所有蒐集資料保存28天(兩倍最長潛伏期)後銷毀

## 降低執法力道

擴大自行到案2.0今起上路 移民署鼓勵逾期外來人口主動投案



期間：109年4月1日至6月30日

適用對象：至各治安機關自行到案的逾期外來人口

優惠：免予收容、免除禁止入國或不予許可期間、處法定最低額度逾期罰鍰新臺幣2,000元

未自行到案者：專案結束後，加重逾期的相關罰則

## 醫療資源分配

口罩實名制2/6上路 國人及外籍人士購買相關規定

### 一、本國人具健保加保資格：

已有健保卡者，請持健保卡至健保特約藥局購買。

無健保卡者，請儘速辦理加保手續或補換發健保卡後，持健保卡購買。

尚未加保者，請持身分證或戶口名簿購買。

### 二、外籍人士

具有健保加保身分者，請持健保卡至健保特約藥局購買。

未具健保加保資格者：外國人、外籍(大陸)配偶、陸生等，請持居留證或入出境許可證購買。

不分國籍均應受分配醫療資源！

## 國際人權治理與COVID-19

議題	措施與改革
電子圍籬	措施簡介：使用基地台手機訊號定位法，居家檢疫隔離的對象離開一定範圍或消失，通知警政與民政單位前往處理
	人權影響：資料皆去識別化，防疫目的結束後自動刪除，但宜設例如資料保護官等監督機制
國人返鄉	措施簡介：針對自外國入境之我國籍人士採取限制措施，且對武漢台商身分註記
	人權影響：增加入境條件屬於公民政治國際公約第12條4項的合理例外，但身分註記的做法有檢討空間
外國人入境	爭議措施：我國防疫政策多是基於國籍為考量，且中國籍人士與外國籍人士規定經常不一樣
	人權影響：我國人士之中國籍子女被迫與父母分離，可能與公民政治權利國際公約第17條（家庭生活）及第23條（家庭權）相違背
移工政策	爭議措施：擴大自行到案專案「不收寄、不管制、恆開線」
	人權影響：與相關國際人權公約一致，但應特別確保移工熟悉防疫措施，並避免歧視發生

3

## 結語

由於臺灣無法參與聯合國及相關國際人權規範機制，在過去這一段受疫情嚴重影響期間的相關政策措施討論，幾乎完全沒有注意到聯合國及相關國際人權機制的規範與作為。本文從國際人權法相關機制衡平防疫與人權間的規範內涵出發，檢討台灣相關的防疫作為。

整體而言，雖然台灣在COVID-19防疫各項措施採行的決策過程中，並未真正參考聯合國相關人權機制的規範與作法，但因為建立在過去國內相當時間的民主法治發展與人權保障深化的基礎上，加上民間強而有力的監督，以及指揮中心在政策調整及檢討的彈性，我國的防疫作為基本上與國際人權內涵一致，但對移工、外國人及身心障礙者等弱勢族群的相關權益，還有強化空間。

## 學術出版

### 月旦法學雜誌 專題 \_ 202105 ( 312期 )

月旦法學雜誌為我國法律政策領域最具權威與影響力的法學期刊，本團隊將以人權取向的防疫整備與政策革新為主題，於今年五月在月旦法學雜誌312期刊出三篇研究文章。

本次COVID-19專題企劃由楊秀儀副教授擔任客座編輯，以「防疫共同體的法治整備」為主題，分別從國際人權法、資源配置與美國比較法制等三個角度觀察，作為臺灣建立並強化以人權和法治為中心防疫共同體的依據。

- 張文貞教授

COVID與國際人權

- 雷文攻副教授

防疫共同體的物資整備——從我國口罩光榮動員經驗看下一波超前部署所需要的法制整備

- 施明遠助理教授

從公共衛生危機到國家安全意識——美國醫療對應措施立法之演進與分析



訂閱雜誌

202105 (312期)期所有篇

■ 防疫共同體的法制整備企劃引言

■ COVID-19與國際人權

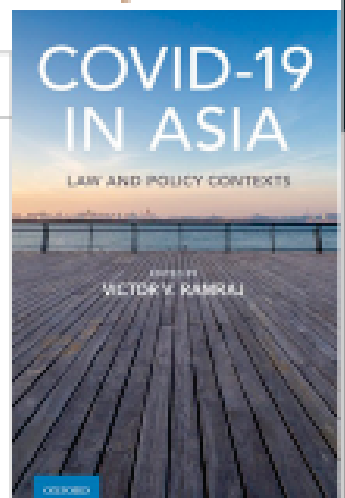
■ 防疫共同體的物資整備——從我國口罩光榮動員經驗看下一波超前部署所需要的法制整備

■ 從公共衛生危機到國家安全意識——美國醫療對應措施立法之演進與分析

## COVID 19 in Taiwan: Democracy, Technology and Civil Society

(Wen-Chen Chang & Chun-Yuan Lin, Book chapter in COVID 19 in Asia, Victor V. Ramraj ed. Oxford University Press, 2020)

法律政策因素	制度與社會因素
<ul style="list-style-type: none"> <li>● 2003年SARS後，傳染病防治法修正，確立我國現在的傳染病防治法制架構</li> <li>● 2011年司法院大法官釋字第690號解釋，確立我國隔離、檢疫等強制公共衛生措施的合憲性</li> <li>● 2020年通過COVID-19特別法</li> <li>● 指揮中心隨疫情發展動態調整政策               <ol style="list-style-type: none"> <li>1) 快速有效邊境措施，以及隔離檢疫政策，減少境外输入個案，並避免社區感染發生；</li> <li>2) 快速有效的醫療通報系統，以及緊急生產我國醫療用品；</li> <li>3) 各式補償措施與紓困政策迅速到位</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>● 全民健康保險制度以及資料庫涵蓋99%以上民眾，提供低價高品質醫療，並將資料庫連結病患足跡，讓醫事人員迅速掌握個案狀況</li> <li>● 科技監理 推出電子圍觀，基地台定位掌握回家檢疫者行蹤；透過細胞履歷，虛發通知提醒民眾確診者足跡。以上措施皆適用我國個人資料保護法，避免隱私受侵害</li> <li>● 公民社會參與 我國人民自願配合防疫措施；動員地方衛生單位發放防疫物資；透過鄰里長推行社區防疫；公民團體發揮監督功能</li> <li>● 透明決策機制 指揮中心透過每日記者會以及社群媒體，公開決策內容與過程，修正錯誤資訊，透過對話增進政府信任度</li> </ul>



- Wen-Chen Chang & Chun-Yuan Lin, 2021, Taiwan's Effective Pandemic Control with Dialogic Constitutionalism, in ROUTLEDGE HANDBOOK ON LAW AND THE COVID-19 PANDEMIC (Joelle Grogan & Alice Donald eds.), Routledge Publishing.
- Wen-Chen Chang & Chun-Yuan Lin, 2020.12, *COVID-19 in Taiwan: Democracy, Technology, and Civil Society*, in COVID-19 IN ASIA (Victor V. Ramaj ed.), Oxford University Press. DOI:10.1093/oso/9780197553831.003.0003
- Wen-Chen Chang & Chun-Yuan Lin, 2021.04, Legislative/Judicial Deference versus NGOs/Citizens Activism: Taiwan's Successful Fight Against Covid-19, (Verfassungsblog)
- Wen-Chen Chang & Chun-Yuan Lin, 2020.03 Taiwan's Fight against COVID-19: Constitutionalism, Laws, and the Global Pandemic (Verfassungsblog)