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Recommendations on policy, legislation and regulations, EU role and addressing gaps in regulations and individual human rights protection as effects of States' HRJs.

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	<p>O6. To provide recommendations for a strategy for a more gender and intersectionality inclusive society against the backdrop of States' HRJs practices.</p> <p>O7. To provide recommendations for a strategy for the protection of human rights defenders.</p>
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Executive Summary

These recommendations are collected from the Work Packages across the Consortium. These include a selection of key recommendations as required by the Grant Agreement's objectives 3-7, and a set of recommendations directed to the EU Horizon RTD and REA entities.

Annex 1 contains all the collected recommendations, including the recommendations not listed in the main Deliverable. Annex 1 therefore includes the full set of recommendations, the underpinning reports and references to the full D 7.6 (the Deliverables can be accessed via SyGMA and Cordis).

Selected Recommendations

Recommendation directed to the EU Horizon Programme

Horizon as a multilateral diplomatic instrument

The first finding we have made is directed to the EU Commission and Horizon and concerns the treatment of partners who are not EU Member States. We have found that after the post-Cold War era, multilateralism starts with the principles of equality and respect between the EU based and the Third country beneficiaries, including Ukraine which is a State geographically on the edge of the EU and where future membership is under discussion. Our project is unique in that Taiwan and Indian beneficiaries are full and equal partners in the project. The fact that they have been equal partners funded by the EU Commission has made it possible for our Taiwan partners in particular to play a more effect role, and in the status it has given the project within Taiwan in relation to Civil

Society and public authorities such as the Constitutional Court, the Universities, and also with the EEAS. It is not possible to overestimate how important it has been for the establishing of connections and relations between Taiwanese Civil Society and Public Actors with, for example, their Swedish and European counterparts, that the three beneficiaries from Taiwan are equal and funded project partners in relation to the EU Commission and in relation to the Consortium. In fact, we believe that successful creation of networks between countries and EU would not have been possible had Taiwan's researchers not been equal partners to EU Member State partners.

It is only by making our Taiwan and Indian partners, and we hope in the future our Ukraine researchers, full and equal beneficiaries within the project, that they themselves have had the legitimacy and not just the resources to engage fully with the Civil Society and Public Authorities required to fully understand how HRJs are linked to the human rights regimes themselves. How this is done depends on the specific history and context of each place, which could only be fully assessed through close collaboration with Civil Society and national public authorities.¹

To reform the Horizon reporting system to protect researchers and human rights defenders at risk

The fourth finding is that there is a gap in the Horizon reporting process when it comes to researchers and human rights defenders because so many participants can see and download material, which risks it being shared inappropriately or hacked. EU Horizon ought to create a “safe” or secure reporting system in addition to SyGMA for those at risk of punitive consequences from their own governments when they conduct research within a Horizon project or participate in human rights and democracy promoting activities conducted through Horizon research Civil Society engagements. Either there should be a system besides SyGMA or there should be a function within SyGMA that

¹ Deliverable 7.6

takes the safety of the researchers and participants into account when reporting research and activities from a Horizon project to the EU Commission.²

To conduct further research on how to prevent function creep in the aftermath of Crisis

Our research shows that once a HRJ has been both normalized and institutionalized, there is a risk of function creep, where the new infringement of a right will be used not only in the context of the original HRJ but for unrelated purposes. For example, HRJs concerning the fight against gangs in Sweden were used to justify the adoption of critiqued Stop-and-search laws to be able to search mostly boys with migrant backgrounds - but the same law is now being used to protect the Israeli and American embassy after the Israeli and USA's armed attack on Iran from protesters.³

Explicit geopolitical self-statement

Any future civil-society-engagement methodology should state the geopolitical conditions under which it can and cannot be applied. D 7.5-A model how this should be done.⁴

The complex-intersectional typology

We have examined the portability of the complex-intersectional typology, recognizing the value of vulnerability theory but also the need to maintain a lens of intersectionality to protect groups from discrimination. The HRJ categories developed in D 7.5-B are portable beyond the three jurisdictions studied; their application to additional jurisdictions

² Deliverable 7.6

³ D 7.6

⁴ WP7, Yu-Ling Huang, Inclusive Democracy, Reflecting Gender and Intersectionality, The Rings-on-Water methodology and the Complex Intersectional Critique as a single, mutually anchored, DOI: 10.5281/zenodo.19734384

(particularly within the EU and in countries with significant EU external relations) would strengthen the Horizon Cluster 2 evidence base.⁵

O3. To identify new policy and regulatory avenues for a more robust, democratic and effective global governance towards transnational democracy in light of State HRJ practices.

The choice to align the EU's fourth Action Plan for Human Rights and Democracy with the next MFF 2028-2034

The EU has made a strategic choice to align its fourth Action Plan for Human Rights and Democracy with the next MFF 2028-2034. In the absence of a forward-looking Action Plan, the EU and its Member States therefore also need to be strategic in how to advocate for and ensure space for human rights in the next MFF. That is, how to ensure funding for human rights in the global fund and how to ensure that the increased flexibility in regional funds can also be used to tackle human rights crises.⁶

Oversight of external migration

Oversight of external migration arrangements must be strengthened. The European Court of Auditors should play a more active role in assessing whether EU funding used in cooperation with third countries complies with fundamental rights standards. This would

⁵ WP7, Yu-Ling Huang, Inclusive Democracy, Reflecting Gender and Intersectionality, The Rings-on-Water methodology and the Complex Intersectional Critique as a single, mutually anchored, DOI: 10.5281/zenodo.19734384, see also the medical public health findings presented in the report: WP 2 Reclaiming Human Rights for Effective Epidemic Control: Lessons from COVID-19 – a suggested policy approach for the EU, Swarup Sarkar, DOI: 10.5281/zenodo.19865020.

⁶ WP2, Sari Kouvo, A Normative Core for a Geopolitical Europe Policy Recommendation on Human Rights in European Union External Action, DOI: 10.5281/zenodo.19734082

help ensure that budgetary control is linked to rights protection. Also, the European Parliament should make more assertive use of its prerogatives to scrutinize and challenge informal instruments, including by demanding transparency, debating their content, and conditioning funding or cooperation on respect for rights. A recommendation is therefore to establish an independent monitoring mechanism for the EU's external migration activities. Building on the model proposed in the Migration Pact for border procedures, such a mechanism should systematically assess compliance with fundamental rights, including non-refoulement and access to remedies, in cooperation with third countries.⁷

The temporary protection should be transformed into regular residence status

The temporary nature of the war-displaced persons from Ukraine should increasingly be reconsidered so that they are granted permanent residence or another secure, regular residence status in the EU after 4 March 2027.⁸

The EU's Role in Enhancing a Rights-Based Approach to Epidemic Control in a Multipolar World

The European Union has a critical role to play in shaping a rights-based approach to epidemic control in a multipolar world. It should develop common standards for rights-based public health interventions, strengthen cross-border coordination, and ensure that human rights remain central to health governance. The EU can also lead in promoting balanced approaches that integrate human rights, public health evidence, and social considerations.⁹

⁷ WP2, Martin Westlund, EU Migration Governance: Competences, Human Rights Justifications and the Internal-External Divide, DOI: 10.5281/zenodo.19734174

⁸ Paul Lappalainen et.al., Production of theme-specific reports including recommendations on how to better protect the fundamental rights of migrants, DOI: 10.5281/zenodo.19733656.

⁹ WP 2 Reclaiming Human Rights for Effective Epidemic Control: Lessons from COVID-19 – a suggested policy approach for the EU, Swarup Sarkar, DOI: 10.5281/zenodo.19865020.

EU to Ensure Equity in Health and Social Services

Ensuring equity in service delivery is essential. Continuous access to essential health and social services must be maintained for all populations, including migrants, informal workers, and marginalized groups, irrespective of their legal status. Services should be designed to ensure accessibility, availability, and acceptability, particularly for those with limited options.¹⁰

O4. To provide recommendations for when EU is best served by pursuing multinational, regional or bilateral cooperation in promoting human rights and democracy against the background of State HRJ practices.

Multilateral Cooperation

In a time of crisis, prioritization is necessary, in order to defend the core of human rights

In a time of crisis, prioritization is necessary, in order to defend the core of human rights. For the EU, this will demand a strategic balancing act between, on the one hand, strengthening its agenda on non-derogatory rights, including the right to life, freedom from torture and non-discrimination and, on the other hand, ensuring its commitment to

¹⁰ WP 2 Reclaiming Human Rights for Effective Epidemic Control: Lessons from COVID-19 – a suggested policy approach for the EU, Swarup Sarkar, DOI: 10.5281/zenodo.19865020.

social, economic and cultural rights, high on the agenda of many of its partners in the global south.¹¹

Human Rights to remain a mechanism of accountability in future epidemic responses

Future epidemic responses must begin by reaffirming the primary role of human rights as mechanisms of accountability. Human rights should serve to constrain State power and protect individuals, rather than being used primarily to justify restrictive measures. A clear distinction must be maintained between rights as accountability and rights as justification.¹²

To Establish Frameworks of Collaboration to Ensure the Equitable Participation of all Countries

Epidemic governance must adapt to the realities of a multipolar world. Divergent national approaches during COVID-19 highlighted the challenges of coordination, credibility and the erosion of multilateralism. Future frameworks must promote collaboration, ensure equitable participation of all countries, and provide support irrespective of economic or political status.¹³

¹¹ WP2, Sari Kouvo, A Normative Core for a Geopolitical Europe Policy Recommendation on Human Rights in European Union External Action, DOI: 10.5281/zenodo.19734082

¹² WP 2 Reclaiming Human Rights for Effective Epidemic Control: Lessons from COVID-19 – a suggested policy approach for the EU, Swarup Sarkar, DOI: 10.5281/zenodo.19865020. See also WP4 (Taiwan), Shun-Ling Chen, Yu-Ling Huang, Hui-Chieh Su, Civil Society Engagement Report, Second Workshop on HRJust, Civil Society Engagement and Discussion, DOI: 10.5281/zenodo.19734276.

¹³ WP 2 Reclaiming Human Rights for Effective Epidemic Control: Lessons from COVID-19 – a suggested policy approach for the EU, Swarup Sarkar, DOI: 10.5281/zenodo.19865020.

Access to pandemic-related data

Since access to pandemic-related data is often limited, Civil Society faces significant challenges in evaluating both the efficacy and necessity of the digital measures, as well as the extent of privacy intrusions of these measures. So far, the government has disclosed only limited data regarding two contact tracing tools – the SMS check-in and the Social Distancing APP (local version of the Google-Apple Bluetooth-based contact tracing). As a result, even though police surveillance and roadside searches were widely regarded as excessive, Civil Society found it difficult to hold the government accountable.

[“Indicator Framework to Evaluate the Public Health Effectiveness of Digital Proximity Tracing Solutions,”](#) published by the WHO and the European Centre for Disease Prevention and Control, proposed five methods of data collection for assessing the effectiveness of a contact tracing app: (1) data obtained from the digital proximity tracing network, (2) integration with conventional contact tracing, (3) data collected at testing services, (4) surveys, and (5) data donation. To ensure government accountability in balancing public health with the protection of individuals’ freedom, with appropriate privacy safeguards in place, Taiwan should make certain data available. It is also important to note that during Taiwan’s extended zero-COVID period, when traditional contact tracing methods might have been sufficient, the effectiveness of digital measures in comparison with traditional methods should be measured carefully, e.g. based on the additional number of confirmed cases that could not have been identified without digital measures.¹⁴

¹⁴ WP4 (Taiwan), Shun-Ling Chen, Yu-Ling Huang, Hui-Chieh Su, Civil Society Engagement Report, Second Workshop on HRJust, Civil Society Engagement and Discussion, DOI: 10.5281/zenodo.19734276.

EU to Support Community Engagement as Core of Epidemic Preparedness and Response

Community engagement must be institutionalized as a core component of epidemic preparedness and response. Organisations representing people with lived experience play a crucial role in bridging the gap between the State and affected populations. They act as buffers that can absorb human rights shocks, ensure access to services, and enhance trust. Their involvement should extend beyond observation to active participation in policy formulation, service design, and programme implementation well before any epidemic hits.¹⁵

The need for Calibration, Proportionality and Evidenced Based in Public Health Interventions

Public health interventions should be calibrated, proportionate, and evidence based. Uniform, large-scale coercive measures should be replaced with context-specific strategies informed by epidemiological data and local conditions. Greater emphasis should be placed on early detection, community engagement, and targeted interventions that minimize disruption while maintaining effectiveness.¹⁶

Issues rooted in institutional culture require more attention

Other issues stemmed from institutional cultures and historical practices that require further examination. “Escape into private law,” identified in the Civil Society Engagement report illustrates how pilots were placed in a dual predicament or double bind (see Focus Group Interview with Pilots, Section: Government by Proxy: Pressuring Airlines to Regulate Pilots). On the one hand, they did not have a standing to file a lawsuit against the government; on the other hand, they were rarely willing to challenge the airlines due

¹⁵ WP 2 Reclaiming Human Rights for Effective Epidemic Control: Lessons from COVID-19 – a suggested policy approach for the EU, Swarup Sarkar, DOI: 10.5281/zenodo.19865020.

¹⁶ WP 2 Reclaiming Human Rights for Effective Epidemic Control: Lessons from COVID-19 – a suggested policy approach for the EU, Swarup Sarkar, DOI: 10.5281/zenodo.19865020.

to fear of losing their jobs. Therefore, it is vital to consider how to constrain government overreach in highly regulated industries, while ensuring that workers have sufficient resources and bargaining power to counterbalance those of their employers. Lastly, police involvement in public health enforcement, though historically rooted, should not be accepted as normal and reasonable.¹⁷

Regional and Multilateral

A partner on key human rights struggles worldwide

The EU has been a committed, important and stable partner on key human rights struggles worldwide and should continue to play this role, including on combatting the death penalty, ensuring basic freedoms and protection for human rights defenders (including environmental rights defenders), and promoting equal rights for women and their reproductive rights.¹⁸

EU and the World Health Organization (WHO)

This text is taken from a report by Swarup Sarkar, UGOT^{19 20} to be found in Annex, and referenced in D 7.6. for background information for the below listed recommendations on future epidemic responses.

EU to Strengthen the Independence of the WHO and its Authoritative Role

At the global level, the World Health Organization must be strengthened to play a more independent and authoritative role. This includes enhancing its financial autonomy, ensuring that scientific and community expertise informs decision-making, and enabling

¹⁷ WP4 (Taiwan), Shun-Ling Chen, Yu-Ling Huang, Hui-Chieh Su, Civil Society Engagement Report, Second Workshop on HRJust, Civil Society Engagement and Discussion, DOI: 10.5281/zenodo.19734276.

¹⁸ WP2, Sari Kouvo, A Normative Core for a Geopolitical Europe Policy Recommendation on Human Rights in European Union External Action, DOI: 10.5281/zenodo.19734082

¹⁹ Swarup Sarkar, MD MS, University of Gothenburg, Sweden; Global Health Security Network, Australia; Ex Director/Adviser World Health Organisation, Global Fund, UNAIDS, Asian Development Bank, UNITAID, CARE International; Ex CG Pandit National Chair, Indian Council of Medical Research.

²⁰ WP 2 Reclaiming Human Rights for Effective Epidemic Control: Lessons from COVID-19 – a suggested policy approach for the EU, Swarup Sarkar, DOI: 10.5281/zenodo.19865020.

it to advocate for non-coercive, evidence-based approaches without undue political or financial influence.²¹

The EU Co-Founding with WHO Centers of Excellence

There is also a need to establish centers of excellence at regional and global levels that can generate innovative and humane epidemic control strategies, support WHO as collaborating centers, and provide real-time guidance to policymakers. These centers should integrate expertise from public health, social sciences, and affected communities.²²

Bilateral Cooperation

EU to play a greater role in pushing for the Taiwan government to live up to its claim as a beacon of liberal democracy in the region

The EU has long engaged Taiwan Civil Society in human rights consultations and has been an invaluable partner of local NGOs. With a human rights-centered foreign policy, the EU is both well-positioned and has good reason to be motivated to play a greater role in pushing for the Taiwan government to live up to its claim as a beacon of liberal democracy in the region.²³

²¹ WP 2 Reclaiming Human Rights for Effective Epidemic Control: Lessons from COVID-19 – a suggested policy approach for the EU, Swarup Sarkar, DOI: 10.5281/zenodo.19865020.

²² WP 2 Reclaiming Human Rights for Effective Epidemic Control: Lessons from COVID-19 – a suggested policy approach for the EU, Swarup Sarkar, DOI: 10.5281/zenodo.19865020.

²³ WP4 (Taiwan) Final Report 1, Institutional Human Rights Protection without a UN-membership: Taiwan's Domestication of International Human Rights Law, Ching-Yun Tai, Academia Sinica, Hsin-Yi Han, National Taiwan University, Shun-Ling Chen, Academia Sinica, Yu-Ling Huang, National Cheng Kung University, Hui-Chieh Su, National Taiwan University, DOI: 10.5281/zenodo.19813750

Correcting and Strengthening the Conditions for Secondary Use of Personal Data under Taiwan's Personal Data Protection Act (PDPA)

The primary reason why Taiwan was able to introduce massive digital measures was due to the lack of an up-to-date personal data protection framework that could effectively keep the government's digital surveillance in check. In 2022, the Taiwan Constitutional Court (TCC) issued Judgment 111-Hsien-Pan-13 (Case on the National Health Insurance Research Database) on the secondary use of NHI data without prior consent. TCC ruled that both the purposes for collecting and processing data in the NHI database, as well as the secondary use of such data, must be clearly prescribed by law. In reviewing the broader data protection regime, TCC further declared the Personal Data Protection Act (PDPA) in place at the time to be unconstitutional. It emphasized the need for the PDPA to establish an independent supervisory mechanism and to guarantee individuals' right to opt out.²⁴

The EU to Continue its Support and Promotion of Human Rights Through Civil Society

EU should continue to recognize the opportunities for its own external relationships and for the promotion of human rights globally through engagement with Civil Society. In light of "Taiwan's Dilemma under the shadow of China", Civil Society has played an indispensable role in safeguarding human rights. This function is further reflected in the annual EU–Taiwan Human Rights Consultations (convened seven times since 2018), one of the few forums where foreign representatives openly affirm human rights commitments and the government is formally obligated to issue official statements on human rights matters.²⁵

²⁴Taiwan Constitutional Court, *Summary of TCC Judgment 111-Hsien-Pan-13 (2022) Case on the National Health Insurance Research Database* (Aug. 12, 2022), <https://cons.judicial.gov.tw/en/docdata.aspx?fid=5535&id=347736> (last visited Jan. 26, 2026)

²⁵ WP4 (Taiwan) Final Report 3, Polarization, Party Line and Taiwan's dilemma under the shadow of China: Unified government with weak parliamentary oversight or divided government paralyzed by political showdowns?, Shun-Ling Chen, Academia Sinica
Guan-Hung Liu, National Cheng Kung University DOI: 10.5281/zenodo.19813523

EU to continuing to engage Taiwan Civil Society

EU should continue to demonstrate its commitment to human rights by continuing to engage Taiwan Civil Society. As reported by many local NGOs, the EU has persistently engaged with Civil Society in the preparatory stage of the Consultations, and by doing so, the EU has demonstrated itself to be a partner of human rights advocates and has made a substantive contribution to advancing human rights governance reforms in Taiwan's policy landscape.²⁶

EU to tailor its engagement with Civil Society with frontline smaller NGOs in mind

NGOs that are focused on direct service delivery — particularly those serving marginalized communities such as migrant workers — often lack the capacity to engage meaningfully in EU consultations on strategy. To avoid risking the exclusion of critical frontline perspectives from local and regional policymaking, the EU should consider how to meaningfully engage with these NGOs - e.g. allocating dedicated funding or offering capacity-building support, to ensure their views are included in the EU's consultative processes.²⁷

To seek reliable, on-the-ground evidence regarding the actual impact of specific human rights-related policy measures

From a geopolitical perspective, Taiwan's official narrative, positioning itself as a thriving digital democracy, offered an appealing counter-model to more dystopian or authoritarian governance frameworks. However, it is worth noting that the Taiwanese government's internationally oriented self-presentation does not necessarily reflect the

²⁶ WP4 (Taiwan) Final Report 3, Polarization, Party Line and Taiwan's dilemma under the shadow of China: Unified government with weak parliamentary oversight or divided government paralyzed by political showdowns?, Shun-Ling Chen, Academia Sinica

Guan-Hung Liu, National Cheng Kung University DOI: 10.5281/zenodo.19813523.

²⁷ WP4 (Taiwan) Final Report 3, Polarization, Party Line and Taiwan's dilemma under the shadow of China: Unified government with weak parliamentary oversight or divided government paralyzed by political showdowns?, Shun-Ling Chen, Academia Sinica

Guan-Hung Liu, National Cheng Kung University DOI: 10.5281/zenodo.19813523.

full reality of its domestic human rights practices. Equally, Taiwan's performance during the COVID-19 pandemic was shaped by geopolitical considerations. Given that the government implemented multiple stringent measures concurrently, the effectiveness and necessity of each individual measure warrants careful and independent evaluation. To accurately assess the reality of human rights governance in Taiwan, it is advisable to strengthen information exchange with Taiwanese Civil Society organizations and NGOs, so as to obtain reliable, on-the-ground evidence regarding the actual impact of specific human rights-related policy measures.²⁸

EU should distinguish between diplomatic framing and the actual realities of governance, especially the impact on human rights

The Taiwanese government framed its COVID-19 pandemic governance as a model of "digital democracy." This report indicates that this narrative emphasizes technological capacity, overstates the scale and nature of democratic participation, and underplays the excessive burden placed on several groups of populations. When engaging with Taiwan, the EU should distinguish between diplomatic framing and the actual realities of governance, especially the impact on human rights.²⁹

Given the adequacy requirement in the GDPR, the EU is well placed to pressure Taiwan to take a more proactive position to update its PDPA

Local scholars and human rights organizations have long criticized the Taiwan PDPA for its lenient regulation, including its broad interpretation of "de-identified data", which enabled a wide range of secondary use of data, and for the lack of an independent

²⁸ WP4 (Taiwan) Final Report 2, Geopolitical Tensions, Rise of a "Digital Democracy" and Human Rights Implications, Shun-Ling Chen, Academia Sinica

Ching-Yun Tai, Academia Sinica, Hsin-Yi Han, National Taiwan University, Yu-Ling Huang, National Cheng Kung University, Hui-Chieh Su, National Taiwan University, DOI: 10.5281/zenodo.19813918

²⁹ WP4 (Taiwan) Final Report 4, Normalizing the Exception: Pandemic Governance, Data Use, and Human Rights in Taiwan

Multi-layered Crises, Mobilized Solidarity and Stringent Measures, Shun-Ling Chen, Academia Sinica
Hui-Chieh Su, National Taiwan University, Yu-Ling Huang, National Cheng Kung University, DOI:
10.5281/zenodo.19814167

supervisory mechanism. These structural weaknesses of the PDPA are especially pronounced in the contemporary technological environment, where the government is inclined to prioritize the utility of data over privacy protection. Given the adequacy requirement in the GDPR, the EU is well placed to pressure Taiwan to take a more proactive position to update its PDPA.³⁰

To take into consideration clear differences in resources between governments and Civil Society

Period review processes should take into consideration clear differences in resources between governments and Civil Society. NGOs should have enough time to prepare parallel reports to balance out the views prepared by the government.³¹

A mechanism by which NGOs can have direct dialogue with international experts

Periodic review processes should include a mechanism by which NGOs can have direct dialogue with international experts.³²

³⁰ WP4 (Taiwan) Final Report 4, Normalizing the Exception: Pandemic Governance, Data Use, and Human Rights in Taiwan

Multi-layered Crises, Mobilized Solidarity and Stringent Measures, Shun-Ling Chen, Academia Sinica, Hui-Chieh Su, National Taiwan University, Yu-Ling Huang, National Cheng Kung University, DOI: 10.5281/zenodo.19814167

³¹ WP4 (Taiwan) Final Report 1, Institutional Human Rights Protection without a UN-membership: Taiwan's Domestication of International Human Rights Law, Ching-Yun Tai, Academia Sinica, Hsin-Yi Han, National Taiwan University, Shun-Ling Chen, Academia Sinica Yu-Ling Huang, National Cheng Kung University, Hui-Chieh Su, National Taiwan University, DOI: 10.5281/zenodo.19813750

³² WP4 (Taiwan) Final Report 1, Institutional Human Rights Protection without a UN-membership: Taiwan's Domestication of International Human Rights Law, Ching-Yun Tai, Academia Sinica, Hsin-Yi Han, National Taiwan University, Shun-Ling Chen, Academia Sinica Yu-Ling Huang, National Cheng Kung University, Hui-Chieh Su, National Taiwan University, DOI: 10.5281/zenodo.19813750

EU should continue to prioritize human rights protections in its external actions

EU should not stop prioritizing human rights protections in its external actions. As a non-member of the United Nations, Taiwan has developed a unique approach to integrating international human rights conventions into domestic law. Yet without access to formal UN oversight mechanisms, the viability of this “Taiwan model” depends on a well-respected international human right mechanism. By continuing to prioritize human rights protection in its external actions, the EU will remain a critical player in the existing international human rights mechanism, as EU is one of the few remaining formal diplomatic channels, this gives EU an almost unique opportunity, and the Taiwanese government is more likely to respond to the EU's approach.

O6. To provide recommendations for a strategy for a more gender and intersectionality inclusive society against the backdrop of States HRJs practices.

Digital-invisibility impact assessment

Any HRJ justifying digital-first service provision should include a structural assessment of the population that will become de facto invisible to the service, including elderly persons, persons with disabilities, and non-literate or language-minority subjects.³³

³³ WP7, Yu-Ling Huang, Inclusive Democracy, Reflecting Gender and Intersectionality, The Rings-on-Water methodology and the Complex Intersectional Critique as a single, mutually anchored, DOI: 10.5281/zenodo.19734384

The reception conditions under the Temporary Protection Directive

One recommendation concerns the reception conditions under the Temporary Protection Directive. The Directive should be revised to include binding minimum reception standards that covers registration, healthcare, housing, and social support so that the level of protection does not depend on Member State political priorities. These standards should be clearly defined and enforceable, ensuring a consistent baseline of protection across the Union and reducing disparities in national implementation.³⁴

EU to Support Gender Sensitive Approach to be Integrated in Epidemic Responses

Gender-sensitive approaches must be integrated into all aspects of epidemic response. Monitoring should go beyond mortality to capture indirect impacts on women and vulnerable groups, including access to services, economic effects, and exposure to violence. Protecting and advancing gender equality must remain a priority.³⁵

What role has EU in comparison between internal to EU and external to EU?

EU as the indispensable Geopolitical human rights actor

It is important for Civil Society Organizations (CSOs) and others in Taiwan that the EU continues to emphasize the issue of human rights in its foreign policy. This helps CSOs and others in highlighting and improving the precarious legal situation of migrant

³⁴ WP2, Martin Westlund, EU Migration Governance: Competences, Human Rights Justifications and the Internal-External Divide, DOI: 10.5281/zenodo.19734174

³⁵ WP 2 Reclaiming Human Rights for Effective Epidemic Control: Lessons from COVID-19 – a suggested policy approach for the EU, Swarup Sarkar, DOI: 10.5281/zenodo.19865020.

workers, which needs to be addressed. Particularly for the task to enhance Taiwan's migrant worker standards, the EU has no need to play a proactive 'moralized' role. Rather, the EU should use its position of important trade partner as the leverage and insist Taiwanese migrant worker regulations should meet the EU standard of ethical supply chain management. In spite of the differences between Sweden and Taiwan, an emphasis is needed on Civil Society access to justice in both the legislative process as well as in litigation.³⁶

Empowerment must be a reciprocal process

Importantly, it cannot be emphasized enough that empowerment must be a reciprocal process. CSOs face very significant resource constraints, including limitations in funding and time. Therefore, EU overseas institutions should value their contributions and use their time efficiently. Whenever the EU invites CSOs to exchange knowledge, it should also provide follow-up by informing them how the shared information is used in its interactions with the Taiwanese government and the directions such efforts take. This approach will help build a trustworthy relationship with local CSOs and enable them to support the EU in advancing human rights in ways that align with its broader objectives. This is also a key to ex post challenges to existing legislation through strategic litigation.³⁷

For Ukraine displaced persons, permanent residence or another secure, regular residence status in the EU

The temporary nature of the war-displaced persons from Ukraine should increasingly be reconsidered so that they are granted permanent residence or another secure, regular residence status in the EU after 4 March 2027.³⁸

³⁶ WP2, Sari Kouvo, A Normative Core for a Geopolitical Europe Policy Recommendation on Human Rights in European Union External Action, DOI: 10.5281/zenodo.19734082

³⁷ WP 5, Paul Lappalainen, Production of theme-specific reports including recommendations on how to better protect the fundamental rights of migrants, DOI: 10.5281/zenodo.19733656.

³⁸ WP 5, Paul Lappalainen, Production of theme-specific reports including recommendations on how to better protect the fundamental rights of migrants, DOI: 10.5281/zenodo.19733656.

O7. To provide recommendations for a strategy for the protection of human rights defenders.

Pact on Migration and Asylum

The European Union Agency for Asylum (EUAA) currently provides a set of training modules, “pact training”, supporting the implementation of the Pact on Migration and Asylum.³⁹ These learning products are to help asylum and reception professionals understand the key legislative changes introduced by the Pact and prepare for their practical application in national systems. As the EU Pact is relatively complex and ensuring adequate enforcement of the protection of migrants’ rights as set out in the Pact (as well as in relation to international law) is a key issue, it would be important to also ensure that there is outreach with the “pact training” directed to CSOs focused on the rights of migrants, including smaller CSOs and individual activists. While it is important with outreach to administrations and practitioners in preparing for the implementation of the Pact on Migration and Asylum and in strengthening knowledge of the evolving EU asylum framework, there are going to be gray areas which without bottom-up pressure from Civil Society will likely lead to a minimalist result.⁴⁰

Create awareness among Public Agencies of consequences on the individual person’s human rights protection when using HRJs and related notions

Our research has identified the importance of educating Public authorities to make them aware of the risks and benefits of using related notions and human rights justifications.⁴¹

³⁹ EUAA, Pact training, <https://www.euaa.europa.eu/training-catalogue/pact-training>.

⁴⁰ WP 5, Paul Lappalainen, Production of theme-specific reports including recommendations on how to better protect the fundamental rights of migrants, DOI: 10.5281/zenodo.19733656.

⁴¹ WP6, Chiara Tea Antoniazzi and Caterina Milo, Report on the Concept of “Related Notions”, DOI: 10.5281/zenodo.19733905

Annex 1



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Production of theme-specific reports including recommendations on how to better protect the fundamental rights of migrants

D 7.6 tasks 7-8 WP7 and D2.2. tasks 7-8 Wp2

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Project Name	States' Practice of Human Rights Justification: a study in civil society engagement and human rights through the lens of gender and intersectionality (HR Just)
Document Name	Toolkit for inclusive Civil Society Engagement
Authors	Lead: Paul Lappalainen, Researcher (WP5) Stockholm University Professor Laura Carlson (WP5 lead) Stockholm University Dr. Ya-Wen Yang, Researcher (WP5) Academia Sinica Professor Olena Chernenko (WP3) University of Gothenburg Olga Bulgakova, Researcher (WP3) University of Gothenburg
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Abstract	This report analyses how states use human rights justifications to restrict or reshape migrants' rights while formally invoking human rights, across UN, EU and national levels. It recommends strengthening civil society, access to justice and strategic litigation to contest such justifications and better protect migrants' fundamental rights
Keywords	Human rights justifications, migrants, UN, EU, civil society, access to justice, strategic litigation



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THEME-SPECIFIC REPORT INCLUDING RECOMMENDATIONS ON HOW TO BETTER PROTECT THE FUNDAMENTAL RIGHTS OF MIGRANTS

Introduction

This report examines the protection of fundamental rights of migrants in connection to human rights justifications (HRJs) used as an instrument of governance. It also includes recommendations on how to better protect fundamental human rights of migrants through civil society engagement, legislative advocacy, strategic litigation and access to justice. The method for carrying out the examination in this report as well as production of recommendations is through the coproduction of knowledge through civil society engagement as well as desk research.

A “Human Rights Justification”, HRJ, arises when a state activates a human right for its own benefit, in justifying its decisions and actions concerning law and policy. Normally, it is the individual who is to invoke a human right against the state, but in the case of Human Rights Justifications, it is the state that invokes human rights for its own benefit and, in so doing, transforms them from a regime measuring state compliance into an instrument of state governance,⁴² a tool then intended to serve the government currently in power. The State decides what right to activate, when to activate it, and against which other rights and interests each right should be balanced. Instead of judicial or committee interpretations of human rights where due process is a requirement, as is the case when individuals bring human rights violations to courts or committees, the state, by interpreting human rights in a different context—with no counterparty or argument—whether in enacting legislation or policy, frees itself to advance its own interpretation. In this way, HRJs result in a shift from a “top-down” to a “bottom-up” mobilization of rights language in law and policy formation.⁴³ When this happens, the question becomes what can be done, and by who? When is it an individual State in its use of the human right, and no longer an international uniform body, that decides the meaning of the human right as a human rights justification?

Migrants, regardless of documented status, possess certain fundamental human rights under international law, including the rights to life, liberty and security. They are entitled to due process, non-discrimination, access to emergency healthcare, education, and labor protections, such as fair wages and safe working conditions. These rights apply at all stages of migration, including at borders. It is important to note that the issue of migration involves not only the rights of migrants concerning entering a country, but also how those migrants are treated once they are in a receiving country.

⁴² Maria Grahn-Farley (2025) ‘THE SILENT SOUND OF DROWNING: Human Rights Justifications and Complex Intersectionality’, 51 *Brook. J. Int’l L.* 1, 1.

⁴³ Laura Carlson, (2025) ‘The Changing Paradigm of Human Rights Justifications: Challenges for Civil Society’, *Ljubljana Law Review*, vol. 85, 135–164, 137.

The focus for many years was on entering a country, as refugees or asylum-seekers, as workers, due to family relations or other reasons accepted by the receiving country. The issue of so-called undocumented persons who for different reasons lack a residence permit also can arise. Increasingly though there has been a greater focus on the rights or lack of rights that apply to migrants and/or laws targeting migrants. These have even included removing the rights of migrants, including removing them from the country.

Both gender and intersectionality can be seen as ever present concerning human rights justifications in the context of migrants. Other aspects also however are put into play, children and youths are often contemplated by the legislator when drafting the legal provisions addressed by the HRJs. Socio-economic status is also often a tangible factor related to the rights of migrants.

Three levels of governance are in focus here, the UN, the regional/EU and the national. The national level has addressed three jurisdictions, Sweden, Ukraine and Taiwan. Sweden and Taiwan are host countries. Ukraine is a sender country. The recommendations as to how to better protect fundamental rights of migrants primarily relate to empowerment through civil society engagement, legislative advocacy, strategic litigation and access to justice. and access to justice.

Empowerment involves the strength of civil society, in particular those representing less powerful interests, to be able to effectively participate in democratic processes. Access to justice here is to be understood in broad terms. On the one hand, there is the legislative process, in which civil society is to have a certain amount of democratic influence and can engage in legislative advocacy. This includes the possibility of ex ante judicial review. On the other hand, there is the issue of access to justice concerning the legal system and the use of strategic litigation. The legislature, concerning civil laws intended to promote human rights such as laws against discrimination, leaves many questions to the courts concerning implementation. Particularly in defendant friendly systems, it is important that the victims, as well as civil society, have an opportunity to participate in both the legislative process before laws based on HRJs are adopted, as well challenging them once adopted.

This ability to participate is of particular interest concerning current legislation focused on limiting migrant's rights. In Sweden, one example is the government's argument that the Child Rights Convention (CRC) recognizes collective rights to justify lowering the minimum age of criminal responsibility from fifteen to thirteen. In defending this policy, the government invoked the CRC's best interests of the child principle to prioritize the collective interests of children over the rights of the individual child.⁴⁴ In Taiwan, Taiwan's restriction on job mobility for temporary migrant workers means e.g. that low-skilled migrant workers cannot unilaterally terminate their contracts within the three-year term unless their employer is at fault, which in turn severely limits migrant workers' right to work. The Taiwanese government justifies this policy as necessary to protect the right to

⁴⁴ Maria Grahn-Farley (2025) 'THE SILENT SOUND OF DROWNING: Human Rights Justifications and Complex Intersectionality', 51 *Brook. J. Int'l L.* 1, 12.

work of Taiwanese nationals. This downplays migrant workers' rights and reframes the issue as one of protecting nationals.⁴⁵

These arguments indicate the importance for civil society to be able to assert how human rights conflict with human rights justifications at the international, regional/EU and, in particular, the national level. In other words, CSOs need to take part in the process asserting human rights in the legislative process while also developing strategic litigation and other means of challenging the laws and policies once adopted.

United Nations

Issue: International human rights conventions - Various international conventions provide protections covering migrants and migration. One of the more specific conventions is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) adopted on 18 December 1990 and entering into force on 1 July 2003. The ICRMW aims to protect the rights of all migrant workers and their families, regardless of their status. It focuses on equal treatment between migrants and nationals, non-discrimination based on factors such as sex, race, nationality, or economic status, and the protection of fundamental human rights for both regular and irregular migrants.

As of 2 March 2026, sixty state parties had ratified or acceded to the Convention.⁴⁶ It is the least ratified of the core international human rights instruments, primarily lacking support from major migrant-receiving countries. Of the three national jurisdictions included here, neither Ukraine nor Sweden have taken any action as to the ICRMW, nor the EU nor Taiwan due to their respective statuses. The majority of state parties and signatories are sending countries, and the majority of countries taking no action are receiving countries.

Recommendation – The EU as well as Ukraine, Sweden, India and Taiwan⁴⁷ should ratify and promote ratification of the ICRMW. This is a concrete means to protect the human rights of migrants. Furthermore, this is a means to support and promote the international rules-based order. This would provide a specific international legal framework for protecting the rights of migrants, thus helping to align national laws with international norms. This could help to counteract the tendency to a double standard where human

⁴⁵ Ya-Wen Yang (unpublished 2026) "Evaluating Human Rights Justification," Institutum Iurisprudentiae Academia Sinica, Taiwan, 5.

⁴⁶ UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. UN General Assembly resolution A/RES/45/158, 18.12.1990. 211. URL: <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=en>.

⁴⁷ Once China entered the UN in 1971, Taiwan has been excluded from the UN and the human rights regime. Nevertheless, according to Art. 2 of the Taiwanese Act to Implement the ICCPR and the ICESCR: human rights protection provisions in the two Covenants have domestic legal status. See Laura Carlson, HRJust D5.1 Report/analysis, literature review, data collection, (Migration) p. 64.

rights are promoted abroad while states reject scrutiny of how migrants are treated at home. The convention can also help to fill in the gaps that exist in international law. Last, even though the ICRMW allows for such a procedure in principle, it does not yet have an operative individual communications mechanism.

Optional Protocols - Many countries have ratified Optional Protocols related to human rights conventions that allow for the submission of individual communications to the UN. For example, Sweden has ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities, which means that residents can submit individual communications to the UN Committee on the Rights of Persons with Disabilities (CRPD). This provides individuals and others the possibility to get an assessment as to national implementation of the Convention. At the same time, even when the CRPD agrees with the communication concerning a State's improper implementation of the Convention and determines that the individual's legal costs should be compensated, Sweden refuses to do so. This type of action at the national level undermines the ability of individuals and affected groups to assert their Convention rights in an international context.

Recommendation – The EU should work with the EU member states to develop uniform rules requiring countries to compensate the legal fees and expenses of individuals or groups that receive a positive UN committee decision including a recommendation concerning legal fees. This would provide added substance to the importance of optional protocols.

European Union

The EU Pact on Migration and Asylum is a set of new rules managing migration and establishing a common asylum system at EU level. They build on and amend previous reform proposals in the area of migration, offering a comprehensive approach that aims at strengthening and integrating key EU policies on migration, asylum, border management and integration. The rules are designed to manage and normalize migration for the long term, providing EU countries with the flexibility to address the specific challenges they face, and necessary safeguards to protect people in need. The new rules on migration introduced by the Pact entered into force on 11 June 2024 and become effective two years later. The ambition is to ensure that the Union has strong and secure external borders, that people's rights are guaranteed, and that no EU country is left alone under pressure.

In spite of the ambition level, the EU Pact on Migration and Asylum has been strongly criticized by human rights organizations asserting that it risks undermining the human right to asylum and violating the human rights of asylum seekers.⁴⁸ Through the new pact,

⁴⁸ See for example Civil Rights Defenders. (11 April 2024). *The EU's new migration and asylum pact hollows out the right to asylum*. URL: <https://crd.org/2024/04/11/the-eus-new-migration-and-asylum-pact-hollows-out->

the EU has adopted an even stricter disciplinarian approach to migration and its management. The starting point to the EU Pact is to jointly regulate asylum law so that it results in a reduction in the number of people coming to the EU in need of protection. At the same time, the EU is working hard to find new and more effective ways to facilitate the immigration of so-called highly skilled labor migrants to its Member States.⁴⁹ The disciplinarian approach of the EU continues to allow the regulated openness of “beneficial” migration as well as the restrictions of “unwanted” migration.

Professor Jordan Deliversky, among others, points out the landmark nature of the Pact, reconciling “the diverse interests and capacities of EU member states in handling migration and asylum issues, set against a backdrop of political and social complexities. The successful implementation of this comprehensive strategy hinges on member states’ adherence to its principles, effective execution of its policies, and the adaptability of the EU to future challenges in migration management.”⁵⁰ Similarly as with others, Deliversky points out: “The effectiveness of the Pact’s provisions for identifying and protecting vulnerable individuals, including integration and protection measures, is critical for evaluating its human rights impact.”⁵¹ Member states adherence will in turn hinge at least in part on the ability of civil society to mobilize and advocate for both individuals and policies that support and maintain human rights. This is not an endeavor that can or should be turned over to policymakers to effectuate on their own.

Recommendation – The European Union Agency for Asylum (EUAA) currently provides a set of training modules, “pact training”, supporting the implementation of the Pact on Migration and Asylum.⁵² These learning products are to help asylum and reception professionals understand the key legislative changes introduced by the Pact and prepare for their practical application in national systems. As the EU Pact is relatively complex and ensuring adequate enforcement of the protection of migrants’ rights as set out in the Pact (as well as in relation to international law) is a key issue, it would be important to also ensure that there is outreach with the “pact training” directed to CSOs focused on the rights of migrants, including smaller CSOs and individual activists. While it is important with outreach to administrations and practitioners in preparing for the implementation of the Pact on Migration and Asylum and in strengthening knowledge of the evolving EU asylum framework, there are going to be gray areas which without bottom-up pressure from civil society will likely lead to a minimalist result.

the-right-to-asylum/; Civil Rights Defenders. (20 June 2024). *En rättighetsbaserad granskning av EU:s asyl- och migrationspakt*. URL: https://crd.org/wp-content/uploads/2024/06/En-rattighetsbaserad-granskning-av-EUs-asyl-och-migrationspakt_Civil-Rights-Defenders.pdf; and Amnesty International (20 December 2023). EU: Migration Pact agreement will lead to a “surge in suffering”. URL: <https://www.amnesty.org/en/latest/news/2023/12/eu-migration-pact-agreement-will-lead-to-a-surge-in-suffering/>.

⁴⁹ European Commission, *Legal pathways to the European Union. Attracting skills and talent to the EU*. URL: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/promoting-our-european-way-of-life/migration-and-asylum/pact-migration-and-asylum/legal-pathways-european-union_en#documents.

⁵⁰ Jordan Deliversky (2024). ‘Illegal Migration Processes Management in the Light of the New European Union Pact on Migration and Asylum’, *Environment Technologies: Resources. Proceedings of the International Scientific and Practical Conference*, 46.

⁵¹ Ibid.

⁵² EUAA, Pact training, <https://www.euaa.europa.eu/training-catalogue/pact-training>.

National levels

In challenging human rights justifications by States concerning migrants at the national level, even though there are varying environments in comparing the States, there are some similarities between the recommendations. The focus is on access to rights, access to justice, and empowerment of civil society through legislative advocacy and strategic litigation.

Sweden

Issues - Sweden is a receiving country. For many years, migrants have largely consisted of refugees/asylum seekers. Around 2015, there was particularly large influx. As a result of the Russian war in Ukraine, Sweden has also recently hosted a large number of people from Ukraine. The 2015 influx led to various negative legal and policy changes concerning refugees. This negative trend has been accelerated with the current government due to the Tidö Political Agreement between the three conservative parties forming the government and a relatively large anti-immigrant party in the Parliament. A variety of laws have been or are being adopted, with an indirect or direct focus on limiting the rights of migrants, with the support of human rights justifications.

One concrete example has to do with the decision by the previous government to no longer grant permanent residence permits to persons in need of protection, i.e. they would receive only temporary residence permits, creating a more precarious situation. The Government claimed that it was necessary in order to “safeguard the right to asylum” and for Sweden to assume its responsibility for people in need of protection in a troubled world, that the Swedish framework did not deviate significantly from those of other EU countries.⁵³

The Tidö government has accelerated the pace of legislation focusing on migrants. One example of the many government inquiries and laws adopted by the Tidö government since 2022 is the Security Visitation Zones Act, which came into force on 25 April 2024. This law gives the police the right to establish temporary areas where they have expanded powers to search people and vehicles without any suspicion of a crime. The aim is to prevent shootings and explosions in gang conflicts. The law was criticized due to its expected increase in the risk for discrimination and ethnic profiling. The Government used a combination of HRJs and fear rhetoric to defend the restrictions of the rights of children in these “zones” stating that “it is better for children to be protected from the violence and exploitation that crime entails, than to be protected from being somewhat

⁵³ Regeringen, Government bill referred to the Council on Legislation for consideration, *Ändrade regler i utlänningslagen* [Amended Rules in the Aliens Act], 8 April 2021, 53. URL: <https://www.regeringen.se/contentassets/fba5199a65f348269d82a8e6e146bda9/andrade-regler-i-utlanningslagen.pdf>.

more exposed to intervention in safety zones. This is also considered to be in line with the Child Rights Convention”.⁵⁴

In this environment, CSOs as well as some government agencies have complained about the speed of the legislative process, limiting the potential to provide critical comments to inquiries and thus the democratic process, particularly those where the government is applying HRJs as a basis. This can be said to limit the CSOs access to justice in the legislative process. In addition, there are already major access to justice issues concerning challenges to the application of laws that limit human rights. Potential solutions – building coalitions among CSOs working on human rights. Building bridges to stronger CSOs such as unions. Procedural law changes such as removing the loser pays rule in human rights cases. These solutions would help CSOs in developing their challenges to HRJs.

Recommendation - Greater coalition building is needed among CSOs with common interests in counteracting and testing the validity of HRJs in Sweden. Increased long-term funding for CSOs working with human rights is recommended. Added resources are needed in order to increase and mobilize CSO understanding of the EU Pact on Migration and the risk that states will use HRJs to undermine the protections that are supposed to be part of the EU Pact. This would also be the focus of funding contributing to greater cooperative efforts by CSOs on strategic issues such as better protecting the fundamental rights of migrants, particularly when those rights involve HRJs. States tend to pay more attention to issues if there are broad coalitions acting in common. This can be seen as a form of access to justice involving more effective coalition building, greater cooperative and synergy effects in relation to the legislative process, making sure that the CSO voices are heard in the legislative process and in strategic litigation when HRJs are used to limit the human rights of migrants. Such challenges would be primarily *ex ante*. Similar efforts could also relate to access to justice once those laws are in place, *ex post* challenges, in order to ensure that available legal challenges are carried out – at least in the form of strategic litigation based on e.g. situation testing. This should also lead to cooperative efforts to promote procedural rules helping to establish a more claimant-friendly legal process, such as the removal of the loser pays rule in human rights cases.

Taiwan

Issues - Taiwan is a receiving country. However, as compared to Sweden, most of the migrants are there with the status of migrant workers. The issue of human rights justifications often comes in the way that the rights of migrant workers are overlooked or disregarded. One example is that the requirement of frequent health checks imposed on

⁵⁴ Justitiedepartementet, Government bill Prop. 2023/24:84 *Säkerhetszoner* [Security Zones], 54. URL: <https://www.regeringen.se/contentassets/2b16cc5f506a4f4e9e781706d54f928d/prop-sakerhetszoner.pdf>.

migrant workers is deemed a necessary means to protect nationals' right to health. Limiting the right to work of migrant workers (i.e., no right to terminate employment and change employer unilaterally) and their freedom of movement is also counterbalanced by nationals' right to work. In addition to framing migrant workers' rights as being in conflict with nationals' rights, human rights justifications in Taiwan's migration context also tend to be paternalistic. Restrictions on, or insufficient protections of, migrants' rights are often articulated through the rhetoric of protecting migrant workers. This is also a notably gendered phenomenon, as it is more frequently observed where those affected are predominantly female, such as foreign caregivers and family immigrants. For example, the exclusion of foreign caregivers from the Labour Standards Act has been justified on the grounds that workers' freedom of contract is sufficient, while visa interviews that may be intrusive as to family privacy are said to facilitate immigrants' right to family reunification. As for asylum, the act of temporarily suspending deportation to a third country is an ad hoc response to asylum requests, in the absence of a law on asylum is considered a means of fulfilling international human rights obligations under ICCPR.

Recommendation - It is important for CSOs and others in Taiwan that the EU continues to emphasize the issue of human rights in its foreign policy. This helps CSOs and others in highlighting and improving the precarious legal situation of migrant workers needs to be addressed. Particularly for the task to enhance Taiwan's migrant worker standards, the EU need not to play a proactive 'moralized' role. Rather, the EU should take its position of important trade partner as the leverage, insist Taiwanese migrant worker regulations should meet the EU standard of ethical supply chain management. In spite of the differences between Sweden and Taiwan, an emphasis is needed on civil society access to justice in both the legislative process as well as in litigation.

Legislation is needed to end the discriminatory treatment migrant workers are subjected to. In addition, while there are certain piecemeal provisions concerning non-discrimination, Taiwan needs to adopt a more comprehensive legislation against discrimination, emphasizing that non-discrimination is a fundamental human right. In addition, an increased focus is needed for an empowerment process so that civil society actors become more effective in the legislative process establishing and supporting migrant's human rights and counteracting government tendencies to rely on human rights justifications. Empowerment should emphasize mutual sharing of human rights know-how. The EU provides training that offers nuanced experience on how to enhance labor and other human rights standards, while CSOs contribute local knowledge on how governments find and use pretexts.

Importantly, it cannot be emphasized enough that empowerment must be a reciprocal process. CSOs face very strict resource constraints, including limitations in funding and time. Therefore, EU overseas institutions should value their contributions and use their time efficiently. Whenever the EU invites CSOs to exchange knowledge, it should also provide follow-up by informing them how the shared information is used in its interactions with the Taiwanese government and the directions such efforts take. This approach will help build a trustworthy relationship with local CSOs and enable them to

support the EU in advancing human rights in ways that align with its broader objectives. This is also a key to ex post challenges to existing legislation through strategic litigation.

Ukraine

Issues - Ukraine is a sender state in the migration/refugee context. The EU, regarding Ukrainian refugees, has used HRJs in a positive light, extending the Temporary Protection Directive to the protection to Ukrainians in EU member states. Before Russia's military aggression against Ukraine in 2014, Ukrainian migration to the EU was mainly labor based. Since the aggression was "limited" Ukrainians could move to safer areas within the country. However, the Russian invasion in February 2022 led to a substantial forced migration out of Ukraine, resulting in an unprecedented migration challenge for EU countries, even greater than the challenge in 2015-2017. The influx from Ukraine due to the war led the EU to activate, **on 4 March 2022, the European Union's Temporary Protection Directive (TPD)**⁵⁵ to ensure displaced persons have immediate, harmonized rights across EU Member States, allowing them to bypass lengthy, individual asylum procedures.

Though anticipated to be in effect for a maximum of 3 years as an emergency mechanism, it is now being prolonged until at least **4 March 2027**⁵⁶ and has already reached the 5-year threshold. First applied for an initial period of one year, until 4 March 2023, the Directive was then automatically extended for one additional year until 4 March 2024, then by Council Implementing Decision (EU) 2023/2409⁵⁷ – until 4 March 2025, by Council Implementing Decision (EU) 2024/1836⁵⁸ – until 4 March 2026, and by Member States' support on Proposal for a Council implementing Decision extending temporary protection 2022/382⁵⁹ – until 4 March 2027, as mentioned.

Several human rights justifications were given as grounds for the unprecedented implementation of the TPD and the granting of all the rights it provides for Ukrainian forced migrants after the Russian invasion of Ukraine in 2022:

- *the need for human rights protection and solidarity (in the context of the EU as a whole and Member States)* – the EU condemned Russia's aggression and granted temporary protection to Ukrainians under the TPD. This response aligns with EU values, particularly

⁵⁵ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32022D0382>

⁵⁶ EU Member States Agree to Extend Temporary Protection for Refugees from Ukraine. Council of the EU Press release 13 June 2025. Available here: <https://www.consilium.europa.eu/en/press/press-releases/2025/06/13/eu-member-states-agree-to-extend-temporary-protection-for-refugees-from-ukraine>

⁵⁷ Council Implementing Decision (EU) 2023/2409 of 19 October 2023 extending temporary protection as introduced by Implementing Decision (EU) 2022/382. Available here: https://eur-lex.europa.eu/eli/dec_impl/2023/2409/oj/eng

⁵⁸ Council Implementing Decision (EU) 2024/1836 of 25 June 2024 extending temporary protection as introduced by Implementing Decision (EU) 2022/382. Available here: https://eur-lex.europa.eu/eli/dec_impl/2024/1836/oj

⁵⁹ Proposal for a COUNCIL IMPLEMENTING DECISION extending temporary protection, as introduced by Implementing Decision (EU) 2022/382, until 4 March 2027. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2025%3A650%3AFIN>

human rights and solidarity (Articles 2, 6, and 21 TEU) and treats the violation of Ukraine's sovereignty as a threat to the wider European community;

- *geographical proximity of Ukraine and a security factor for Europe* - Ukraine's proximity and visa-free access facilitated the rapid arrival of war-displaced persons to the EU. The invasion was seen as a broader European security issue, leading to the activation of the TPD in line with the EU's CFSP and Article 21 TEU. The war also reshaped EU security priorities and increased migration pressure on its eastern borders;

- *the temporality of protection* - the EU activated temporary protection for Ukrainians in March 2022 and repeatedly extended it until 2027 due to ongoing Russian aggression. Initially seen as short-term, the situation has become prolonged, showing that "temporary" protection may last longer due to continued risks, while still requiring periodic review;

- *solidarity of EU civil society towards Ukrainians, cultural and historical proximity* - strong public support, shared European identity, and cultural proximity played a key role in activating and extending the TPD. Civil society initially provided rapid assistance and influenced EU decisions based on human rights, while later the EU ensured continued support through legal mechanisms despite growing "compassion fatigue".

Ukrainians have thereby been granted various rights that are similar to those of residents. Meanwhile, these provisions are **temporary**, as the very name of this Directive indicates. As the war has dragged on for years, the unconditional positivity of these unprecedented prolongations has become a significant discussion in its own right within the international law agenda on war-affected individuals. As Ukrainian adults have become increasingly established throughout the Member States under the umbrella of the TPD and national legislation of each of Member State since 2022, what kinds of choices should be made concerning their future, and in particular, concerning their children is still an open question (the gender breakdown of Ukrainian refugees, following the initial influx in the first months, still consists predominantly of prime-age women with dependent children⁶⁰).

Thus, when temporary protection status ends, many will inevitably be placed in a **legal limbo** regarding:

- 1) returning to Ukraine,
- 2) remaining in the EU based on an irregular/another ambiguous status of residence,
- 3) applying for and successfully meeting the conditions for refugee or subsidiary protection status.

Recommendation - The temporary nature of the war-displaced persons from Ukraine should increasingly be reconsidered so that they are granted permanent residence or another secure, regular residence status in the EU after 4 March 2027.

Even if Ukrainians largely have equal rights to health care, social welfare, employment, and education, the precariousness related to their temporary status needs to be dealt with.

⁶⁰ Three Years of War in Ukraine: We Must Support Women-Centered Refugee Solutions. February 24, 2025. Available here: <https://refugees.org/three-years-of-war-in-ukraine-we-must-support-women-centered-refugee-solutions/>.

Thus, in the interim period before TPD's expiration, the most promising option appears to be amending **Council Directive 2003/109/EC**⁶¹ of 25 November 2003 also known as Long-Term Residents Directive or the LTR Directive), namely its Art.3 (b), stating that it can't be applied to third-country nationals who are "authorized to reside in a Member State on the basis of **temporary protection** or have applied for authorization to reside on that basis and are awaiting a decision on their status".

In its current state the LTR Directive excepts, through its key provision "granting long-term resident status to third-country nationals who have resided legally and continuously within the EU territory for five years immediately prior to the submission of the relevant application" (Art.4 (1)), the considerable number of Ukrainian refugees with temporary protection status given the prolongation that is already in the fifth year in a row (given the prolongation to 4 March 2027).

Furthermore, whilst already having the European Commission's proposal on recasting the LTR Directive (LTR Recast Proposal) as of 27.04.2022⁶², particularly counting time under temporary protection toward the five-year threshold for third-country nationals (e.g., Ukrainians), there is no mention of such a measure as the promising one in today's EU law rhetoric on the TPD's alternatives. Instead, it would rather foster Ukrainian refugees with temporary protection status into **national residence permits** (presumably designed and issued in every Member State) and/or encouraging their **voluntary return under the special schemes**⁶³.

If the latter option seems like a premature solution, considering the ongoing intense hostilities in a large part of Ukraine (where most forced migrants still flee to the EU from), the former (national residence permits) seems to be a sufficiently realistic scenario. However, it needs to be coordinated at the EU institutional level to avoid, in particular, "asylum bargaining" – the situation in which beneficiaries of temporary protection choose to relocate to Member States with more favorable transition frameworks for their long-term legal settlement in the EU. Otherwise, the alleged phenomenon would trigger secondary movements and a renewed imbalance in situational "migration clusters" within the EU.

In conclusion, this report analyses how states deploy human rights justifications (HRJs) to reshape or restrict migrants' rights while formally invoking human rights language, transforming rights from benchmarks of state compliance into instruments of governance serving current political priorities. Migrants' internationally protected

⁶¹ *Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents*. Available here: <https://eur-lex.europa.eu/eli/dir/2003/109/oj/eng>

⁶² *Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning the status of third-country nationals who are long-term residents (recast)*. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022PC0650>

⁶³ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A predictable and common European way forward for Ukrainians in the EU*. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52025DC0649>

rights—including life, liberty, non-discrimination, emergency healthcare, education and labor protections—are examined against the use of HRJs across UN, EU and national levels (Sweden, Ukraine, Taiwan), with gender, intersectionality, age and socio-economic status treated as constant dimensions. At UN level, the report highlights the limited ratification of the ICRMW, especially by migrant-receiving states, and recommends ratification by the EU, Sweden, Ukraine and Taiwan, and stronger use of optional protocols with effective compensation for successful complainants’ legal costs. At EU level, it critiques the new Pact on Migration and Asylum for a disciplinarian approach that risks undermining asylum rights while facilitating “beneficial” high-skilled migration and urges EUAA “pact training” extended to CSOs. Nationally, it documents Swedish and Taiwanese HRJs that curtail migrants’ rights, contrasted with the EU’s rights-expansive HRJs underpinning the Temporary Protection Directive for Ukrainians. Core recommendations focus on empowering civil society through inclusive engagement, legislative advocacy, strategic litigation and broad access to justice to contest HRJs and better protect migrants’ fundamental rights.



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Report on Climate-Related Litigation and the Separation of Powers

D 7.6 tasks 7-8 WP7 D2.2. tasks 7-8 Wp2

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The mounting wave of climate-related litigation has led to growing discussions on the role of the principle of the separation of powers. The issue has been addressed in several scholarly works, and it has also been raised by defendant governments and referred to by judges in their decisions. The crux of the matter is whether and to what extent courts should be able to question legislation approved by parliaments and enacted by governments with democratic legitimacy.⁶⁴ According to certain views, courts should be particularly cautious in an area of especially complex policy, in relation to which legislative and executive bodies have a wide range of courses of action among which to choose; moreover, these political bodies can take into consideration and balance a broader spectrum of interests, including by allowing public participation and incorporating scientific expertise.⁶⁵ On the other hand, it is argued that the involvement of judges through climate litigation is warranted by their core functions of keeping the other branches within the limits of the law and of enforcing rights.⁶⁶

The practice of courts in deciding climate-related cases and in addressing arguments concerning the separation of powers varies considerably. The *Leghari* case,

⁶⁴ On the challenges to (and opportunities for) democracy presented by climate litigation, see Michele Poletto & Sharon Pia Hickey (eds.), *LET THE COURTS DECIDE? THE POTENTIAL AND LIMITATIONS OF CLIMATE LITIGATION FROM A DEMOCRACY PERSPECTIVE* (2025).

⁶⁵ For an oft-cited radical criticism of climate litigation, see Phil Goldberg, *Climate change lawsuits are ineffective political stunts*, THE HILL, 1 March 2018, <<https://thehill.com/opinion/energy-environment/376307-climate-change-lawsuits-are-showy-ineffective-political-stunts/>>.

⁶⁶ Ivano Alogna, Natalie K. Arnould & Alina Holzhausen, *The Role of Judges in Implementing Climate Policies*

A Comparative Perspective on the Separation of Powers, in *IMPLEMENTING CLIMATE CHANGE POLICY: DESIGNING AND DEPLOYING NET ZERO CARBON GOVERNANCE* 271, 274 (Ottavio Quirico & Walter Baber eds., 2024).

decided by the Lahore High Court in 2015, stands out as a decision where the court went into great detail in its orders to the executive – by *inter alia* instructing the appointment of “climate change focal persons” within relevant ministries, the presentation of a list of action points in the area of climate change adaptation, and the institution of a “climate change commission” with a view to assisting the court in monitoring the implementation of the decision. In the *Urgenda* case, the Dutch Supreme Court (December 2019) ordered the government to reduce emissions by a specific amount. As such, it has been criticised by some as a (negative) example of judicial activism or over-reaching,⁶⁷ even though ample freedom was left to the Dutch government in deciding how to reach the emission reduction target imposed by the Supreme Court. A similar approach was followed in the Belgian *VZW Klimaatzaak* case, although in this instance the Court of Appeal referred to a target which had already been enshrined in EU law.⁶⁸

In other cases, the legislative and executive branches were left with an even wider margin of appreciation and courts have refrained from any specific indication as regards both the *quantum* and the modalities of emissions reduction. This is the case, among others, of *Klimaseniorinnen and Others v. Switzerland*, decided by the European Court of Human Rights on 9 April 2024. According to the Court (para. 412),

[j]udicial intervention ... cannot replace or provide any substitute for the action which must be taken by the legislative and executive branches of government. However, democracy cannot be reduced to the will of the majority of the electorate and elected representatives, in disregard of the requirements of the rule of law. The remit of domestic courts and the Court is therefore complementary to those democratic processes. The task of the judiciary is to ensure the necessary oversight of compliance with legal requirements.

In light of this, while the Court found that Switzerland had violated Article 8 of the European Convention on Human Rights by, among others, omitting to set up an appropriate domestic regulatory framework and to quantify GHG emissions reduction targets, it did not set targets nor order the adoption of specific measures by the Swiss government, instead highlighting that “having regard to the complexity and the nature of the issues involved, the Court is unable to be detailed or prescriptive as regards any

⁶⁷ See, for an overview of the criticisms concerning an alleged violation of the separation of powers, K. J. de Graaf & J. H. Jans, *The Urgenda Decision: Netherlands Liable for Role in Causing Dangerous Global Climate Change*, 27 JOURNAL OF ENVIRONMENTAL LAW 517, 523-525 (2015).

⁶⁸ See paras. 282 ff. See also para. 227, where the Court of Appeal draws the line between permissible and impermissible judicial action in the context of the separation of powers.

measures to be implemented in order to effectively comply with the present judgment” (para. 657).

While some regard any decision by a court on climate policy as an unacceptable interference with the legislative and executive mandates, it is difficult to consider these judgments a violation of the separation of powers.⁶⁹ Nonetheless, various courts refused to adjudicate applications on the merits because the issues raised were qualified as essentially political and thus within the purview of the executive branch (in accordance with the so-called political question doctrine). Exemplary of this trend are the so-called *Aurora* case in Sweden;⁷⁰ the *A Sud et al.* case in Italy;⁷¹ the so-called *People v. Arctic Oil* case in Norway;⁷² and the *La Rose et al.* case in Canada.⁷³ The issue has also featured prominently in several cases before courts in the United States, such as in the *Juliana* case, although the failure of the legal proceedings ultimately hinged on the lack of standing of the applicants (which was not, in any case, unrelated to the issues of separation of powers and non-justiciability of claims).⁷⁴

The above-mentioned case-law demonstrates how the principle of the separation of powers is not interpreted homogenously in all countries and thus leads to different results.⁷⁵

What are the observed and expected impacts of these trends on the use of HRJs by States in the context of climate litigation? Firstly, depending on the legal system wherein the case is submitted, it might be easier for the defendant government to obtain an

⁶⁹ See, in support, Christina Eckes, *Separation of Powers in Climate Cases: Comparing cases in Germany and the Netherlands*, VERFASSUNGSBLOG, 10 May 2021, <<https://verfassungsblog.de/separation-of-powers-in-climate-cases/>>.

⁷⁰ Linnéa Nordlander, *Constitutional Boundaries After Verein Klimaseniorinnen: Lessons on Domestic Rights-Based Climate Change Litigation from the Swedish Supreme Court’s Aurora Judgment*, 34 REVIEW OF EUROPEAN, COMPARATIVE & INTERNATIONAL ENVIRONMENTAL LAW 566 (2025).

⁷¹ For some comments on the case focusing on the issue of separation of powers, see Moritz Vinken & Paolo Mazzotti, *The First Italian Climate Judgement and the Separation of Powers*, VERFASSUNGSBLOG, 22 April 2024, <<https://verfassungsblog.de/the-first-italian-climate-judgement-and-the-separation-of-powers/>>; and Umberto Lattanzi, *Climate Litigation Reaches Italian Courts: Giudizio Universale*, VERFASSUNGSBLOG, 12 April 2024, <<https://verfassungsblog.de/climate-litigation-reaches-italian-courts/>>.

⁷² On the scope of judicial review as outlined by the Norwegian Supreme Court, see Christina Voigt, *The First Climate Judgment before the Norwegian Supreme Court: Aligning Law with Politics*, 33 JOURNAL OF ENVIRONMENTAL LAW 697, 706-708 in particular (2021).

⁷³ According to the Federal Court, “the diffuse nature of the claim that targets all conduct leading to GHG emissions cannot be characterized in a way other than to suggest the Plaintiffs’ are seeking judicial involvement in Canada’s overall policy response to climate change” (*La Rose v. His Majesty the King*, 2020 FC 1008 (Federal Court, 27 October 2020), para. 44). The case is currently under appeal.

⁷⁴ See *Juliana v. United States. Ninth Circuit Holds that Developing and Supervising Plan to Mitigate Anthropogenic Climate Change Would Exceed Remedial Powers of Article III Court*, 134 HARVARD LAW REVIEW 1929 (2021). For other US cases where the political question doctrine arose, see UNEP, *Climate Change in the Courtroom: Trends, Impacts and Emerging Lessons* (2025).

⁷⁵ Heather Colby, Ana Stella Ebbersmeyer, Lisa Marie Heim & Marthe Kielland Røssaak, *Judging Climate Change: The Role of the Judiciary in the Fight Against Climate Change*, 7(3) OSLO LAW REVIEW 168 (2020).

inadmissibility decision based on the non-justiciability of climate policy. Secondly, should a case be decided on the merits, it can be expected that courts will hear and accept HRJs (or related notions) that are crafted in general terms: for instance, in *Klimaseniorinnen*, the Swiss government confined itself to state that “[c]limate protection measures may restrict the freedoms of individuals and the most sensible solutions need to be found, after balancing all the interests involved”. Finally, courts will likely continue, in a majority of jurisdictions, to leave a wide margin of discretion to governments in modelling their response to the climate crisis. Nevertheless, it cannot be excluded that, should the inaction of governments persist, and the seriousness of the threat worsen, courts might become willing to intervene more decidedly with respect to climate policy and legislation. In such a scenario, courts might scrutinise HRJs and related notions more stringently.

Recommendations:

- Civil Society organisations that are considering bringing climate-related proceedings should carefully examine the approach of the relevant court(s) to the principle of the separation of powers, especially in the area of climate change (if previous cases exist).
- Public authorities should monitor the evolving case-law on climate change, both at the international level and in other countries, as cross-fertilisation and judicial dialogue could have an impact on their own courts’ decisions.



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Report on the Concept of “Related Notions

D 7.6 tasks 7-8 WP7 and D2.2. tasks 7-8 Wp2

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In the area of climate change, we have found a noteworthy trend of States having recourse to arguments that are not strictly human rights-based but rely on notions that are connected to human rights. Examples of such notions in connection with climate change include sustainable development, the protection of health, the welfare state, intergenerational equity, and consumers’ interests.

Some of these notions are more closely related to the idea of the protection of rights of individuals and groups (e.g., consumers’ interests or intergenerational equity), while others are more easily located in the sphere of public/State interest (e.g., security in the area of migration). Many can be placed in the middle – such as development, which can be conceived as the object of both a State interest and an individual or group right, or the protection of health. More generally, “related notions” appear to blur the lines between the protection of the public interest

⁷⁶ The analysis of trade- and investment-related litigation has been carried out by Caterina Milo. The rest of the report has been authored by Chiara Tea Antoniazzi, who mainly developed the concept of “related notions”.

and the protection of the rights of others and therefore constitute a phenomenon worthy of examination in the context of human rights justifications (HRJs).

Examples of the use of related notions in the area of climate change

a) Litigation

With regard to **dispute settlement before the World Trade Organization (WTO)**, express references to human rights in general by States parties to the dispute are almost non-existent. Still, international trade law includes a specific system of exceptions (e.g., the general exceptions outlined in Article XX of the General Agreement on Tariffs and Trade (GATT)), which offer leeway for States to justify their measures using related notions. These are mainly the exceptions outlined in letters (a), “public morals”; (b), measures “necessary to protect human, animal or plant life or health”; and (g), measures “relating to the conservation of exhaustible natural resources”. For this reason, States and the EU have often referred, for example, to the need to protect human health (*Canada – Certain Measures Affecting the Renewable Energy Generation Sector*, WT/DS412 / *Canada – Measures Relating to the Feed-In Tariff Program*, WT/DS426; *European Union – Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels*, WT/DS593; *European Union and Certain Member States – Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels*, WT/DS600).

References can also be found to notions like sustainable development. This happened, for example, in *India – Certain Measures Relating to Solar Cells and Solar Modules*, WT/DS456, where India argued that it adopted the contested measures in order “to ensure ecologically sustainable growth, fundamental to which is the concept of sustainable development”.

Within **investor-State dispute settlement**, States also rarely use direct references to their human rights obligations to justify their conduct before arbitral tribunals.^{77 78} More frequent is the use of arguments based on related notions, by incorporating human rights-related considerations into the arguments employed to legitimize their conduct under their right to regulate – i.e., the right that permits host States to regulate in derogation of the commitments they undertook towards investors. States have first of all resorted to related notions – in particular, the protection of human health and of local ecosystems – to justify their climate action: examples are *Rockhopper Exploration Plc, Rockhopper Italia S.p.A. and Rockhopper Mediterranean Ltd v. Italian Republic*, where Italy justified its ban on offshore oil drilling near its coastline, citing environmental and social considerations; and *Eco Oro v. Colombia*, where Colombia justified its choice to implement measures prohibiting mining activities in certain areas as aimed at protecting the local ecosystems. Secondly and more frequently, States have justified their actions having negative impacts on investments in more sustainable energy

⁷⁷ A notable exception is the case of *RWE and Uniper v. the Netherlands*, where the Netherlands cited its obligations under the European Convention on Human Rights and environmental treaties as a defense for adopting measures that negatively impact fossil fuel investments. Specifically, the Netherlands referred to the need to protect individuals’ rights to health and a healthy environment. The case before the investment tribunal was, however, discontinued upon request of the parties and it was never decided on the merits.

⁷⁸ The following analysis on investor-State dispute settlement has been more extensively developed in Caterina Milo, *Environmental and Human Rights Justifications in Investment Arbitration: Probing the Limits of ISDS for the Adjudication of Climate-Related Disputes*, 26 JOURNAL OF WORLD INVESTMENT & TRADE 512 (2025).

sources by invoking the need to protect consumers and the welfare of their citizens as the public interest justifying their conduct. Examples are *SolEs Badajoz GmbH v. Kingdom of Spain*, *ESPF Beteiligungs GmbH*, *ESPF Nr. 2 Austria Beteiligungs GmbH*, and *InfraClass Energie 5 GmbH & Co. KG v. Italian Republic* and *Encavis and others v. Italian Republic*.

Apart from these sectoral contexts, related notions have also been used by States, for instance, before the European Court of Human Rights. In its reply to the application in *Greenpeace Nordic and Others v. Norway*, the Norwegian Government stated that

[t]he choice between available measures [to combat climate change] and their precise timing are complex issues with society-wide implications, including a *state's national budget and welfare state*, at a larger scale than any one environmental issue. Considering the many options regarding measures and their consequences, including consequences for *interests protected under the Convention*, there is even greater reason – and need – for the choice of measures to remain within the margin of appreciation of the Contracting State to be influenced through participation in democratic processes.⁷⁹

b) Legislation

Recourse to related notions is also evident in **key EU legislative acts** that have been adopted in the area of climate change.⁸⁰ For instance, in the relevant Communication from the Commission it is stated that the European Green Deal

aims to protect, conserve and enhance the EU's natural capital, and *protect the health and well-being* of citizens from environment related risks and impacts. At the same time, this transition must be *just and inclusive*. It must put people first, and pay attention to the regions, *industries and workers* who will face the greatest challenges.⁸¹

The preamble of the so-called European Climate Law mentions “high-quality jobs” and “sustainable growth” (recital 4) and expands on the need to protect health (recital 5). The creation of jobs (rather than the protection of the right to work), sustainable development and the protection of health can also be found as drivers, among others, of the Renewable Energy Directive (as revised in 2018 and 2023) and of the so-called Taxonomy Regulation.

The **Deforestation Regulation**, on its part, includes explicit references to both human rights (especially of indigenous people) and related notions. In the first recital of the preamble, the Regulation highlights how “forests provide *subsistence and income* to approximately one third of the world's population and the destruction of forests has serious consequences for *the livelihoods of the most vulnerable people*, including indigenous peoples and local communities who depend heavily on forest ecosystems” (emphases added). Furthermore, it is argued that deforestation makes the emergence of new diseases and epidemics more likely, which threatens human health. The fight against deforestation and forest degradation is also considered to

⁷⁹ Emphases added. On the difficulties in distinguishing between HRJs and positive obligations before the European Court of Human Rights, see Maria Nääv, *The Doctrinal Void – Human Rights Justifications and Positive Obligations under the European Convention of Human Rights* (forthcoming).

⁸⁰ For a more in-depth examination of this aspect, see Chiara Tea Antoniazzi, *Human Rights Justifications, Climate Change and the Role of the European Union* (report last updated January 2026).

⁸¹ Emphases added.

contribute to sustainable development (recital 20). Finally, the Regulation also refers to the “legitimate expectations of operators and traders” (rather than referring to, for instance, the freedom to conduct a business), which are to be balanced against the protection of the environment (recital 45).

Possible reasons for the use of related notions

Investigating the reasons for the use of related notions instead of HRJs or instead of justifications which do not have any relation with human rights arguably goes beyond the empirical legal approach mainly adopted for the HRJust Project. Nevertheless, some hypotheses might be put forward. First of all, at least in certain instances, the use of related notions rather than HRJs might be highly influenced by the institutional context: e.g., by the fact that the WTO Dispute Settlement Body and investment arbitration tribunals do not as such adjudicate on the basis of human rights instruments. Accordingly, human rights-related arguments are “filtered” through the general exceptions under Article XX GATT; and, as far as investment is concerned, the right to regulate of States allows the advancement of non-economic arguments, including human rights-related arguments of general character. Moreover, it might be that the State actor in question is not familiar with the use of human rights language in certain contexts and therefore resorts to more well-known related notions.

Nevertheless, it appears that not all uses can be explained on the basis of contextual constraints or lack of knowledge. Accordingly, related notions might be used strategically to rely on the legitimacy connected to human rights and human rights-related arguments, while potentially circumventing the obligations connected to human rights in the strict sense and maintaining more leeway in a proportionality test. Further analysis is required to prove this hypothesis.

While uses of related notions vary in their forms, contexts and frequency, they seem worthy of mention as a phenomenon that is less visible than the use of HRJs but can be a prelude to or in some way be connected to it and therefore carries similar benefits and risks.

Recommendations:

- Civil society organisations should be able to recognise uses of related notions by States and holding States accountable in this respect.
- Public authorities should be aware of the risks and benefits of using related notions.



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D 2.2 Tasks 7-8 WP2 and D 7.6 tasks 7-8 WP7

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The EU's Role – Globally, Multilaterally, Internally – as a Human Rights Actor (in the Face of State HRJ Practices)

Three layers of EU human rights enforcement

This report explores the role of the EU as a human rights promoter, including its ability to monitor and control the legitimacy of the use of human rights justifications by state actors. Broadly, the EU's activities in human rights governance can be described in three layers. First and most obviously, the EU is able to act vis-à-vis its Member State as a supranational power. This role includes the issuing of legislation and other regulatory acts aimed at ensuring the enforcement of fundamental rights in and through national law, but also the executive and judicial control, through the Commission and the EU Court of Justice (CJEU), of the Member States' compliance with Union law, most importantly with the Charter of Fundamental Rights (CFR). Second, the EU acts on the international scene as a subject of international law through agreement with (mostly)

states outside the Union. These agreements may have as an objective or a condition to ensure the enforcement of human rights, and they are also subject to the scrutiny of the CJEU to ensure that the international agreements themselves are compatible with primary EU law including the CFR. Third, a growing literature has observed that the EU also acts as a global or extraterritorial actor, exercising power over third countries through the extraterritorial reach of its internal, unilateral legal measures – often itself using human rights justifications to legitimise its influence. These three roles will be examined in the following.

The EU as a Supranational Actor

In the relationship between the EU and its Member States, the latter may invoke human rights as a justification for deviations from Union law requirements. As a point of departure, human rights – at least, human rights as protected in the national laws of the Member States – do not constitute ‘trumps’ in the EU legal order; instead, following the doctrine of supremacy, the trump function is assigned to any provision of EU law in relation to one of national law, meaning that the EU’s conception of fundamental rights prevail over that of the Member States or one/some of them.⁸² This idea has been questioned in more recent literature, with commentators arguing that the need to protect the process of integration which underpins the principle of supremacy no longer – given the increased stability of the Union resulting from the level of integration achieved since its establishment – justifies absolute supremacy overriding even Member State constitutional rights.⁸³ It has also been at least to some extent challenged by the introduction, through the Treaty of Lisbon, of the Union obligation to respect the Member States’ national constitutional identity, which arguably may include at least parts of their fundamental rights protection; however, the CJEU has been reluctant to allow national fundamental rights protection to prevail as an expression of constitutional identity.⁸⁴

In the CJEU’s case law, C-399/11 *Melloni* remains the landmark ruling.⁸⁵ In that case, an individual had been convicted *in absentia* by Italian courts to ten years imprisonment on

⁸² Cf Fabbrini, *Fundamental Rights in Europe: Challenges and Transformations in Comparative Perspective*, OUP 2014, 9; Besselink,

⁸³ Lindeboom, Why EU Law Claims Supremacy, *Oxford Journal of Legal Studies*, Vol. 38, No. 2 (2018), pp. 328–356, 334; Cf also Letsas, Harmonic Law: The Case Against Pluralism, in Dickson and Eleftheriades, *The Philosophical Foundations of EU Law*, OUP 2012, 77–108 at 101, who makes a similar argument from on more ethically informed grounds.

⁸⁴ See de Visser, Dealing with Divergencies in Fundamental Rights Standards: Case C-399/11 *Stefano Melloni v. Ministerio Fiscal*, Judgement (Grand Chamber) of 26 February 2013, Not Yet Reported, 20 MJECL (2013) 576–588 at 583; Claes, National Identity and the Protection of Fundamental Rights, 27 *European Public Law*, (2021), 517–536.

⁸⁵ Case C-399/11 *Stefano Melloni v Ministerio Fiscal*, ECLI:EU:C:2013:107.

bankruptcy fraud charges. Following his arrest in another Member State, Spain, on the basis of a European arrest warrant (EAW), the question arose as to whether the *in absentia* conviction was compatible with the fundamental right to a fair hearing. While the CJEU, on a reference from the Spanish Constitutional Court, held that the Italian conviction was compatible with Articles 47 and 48 of the EU Charter of Fundamental Rights (CFR), the national court argued that the Spanish constitution provided a higher level of protection for fair trial rights, which precluded litigation *in absentia* for serious crimes. As Article 53 CFR provides that the Charter cannot have as effect to lessen the human rights protection provided by national constitutions, the Spanish court argued that the national constitutional right to a fair trial should take precedence over the secondary legislation demanding Mr Melloni's extradition to Italy, namely the EAW Framework Decision. The CJEU rejected that interpretation. Citing its 1970 *Internationale Handelsgesellschaft* ruling on the primacy of EU law, it held that national fundamental rights standards may be applied only if they uphold (or surpass) the minimum level of protection provided by the Charter and if 'the primacy, unity and effectiveness of EU law are not thereby compromised'.⁸⁶

Melloni was followed by *MAS*, in which the Italian Constitutional Court questioned the CJEU's ruling in a prior preliminary reference case (*Taricco*).⁸⁷ In *Taricco*, the Court had ruled that national courts were obliged to set aside national rules on limitation periods for the prosecution of tax offences, in order to ensure the effective enforcement of European VAT law. In *MAS*, the referring court pointed out that this would be contrary to the constitutional prohibition of retroactivity in criminal law. The CJEU accepted this objection, ruling that national courts are not obliged or indeed, not allowed, to follow *Taricco* if this would lead to an infringement of the principle of *nullum crimen sine lege praevia*. While it is not clear from the Court's reasoning in *MAS* whether the limitation on the effectiveness of EU secondary law followed from the *national* principle of non-retroactivity or from (an upgraded version of) the similar or identical principle enshrined in Article 49 CFR and other sources of European law,⁸⁸ the Court has subsequently clarified the former to be the case.⁸⁹ Thus, *M.A.S.* confirms the principle laid down in *Melloni*, but differs in its application.

The standard that Member State human rights justifications are subjected to under the *Melloni* test remain underdeveloped. Two vague criteria can however be identified in

⁸⁶ Id., paras 59–60. Emphasis added.

⁸⁷ Case C-42/17 *M.A.S. and M.B.*, ECLI:EU:C:2017:936; Case C-105/14, *Criminal proceedings against Taricco and others*, ECLI:EU:C:2015:555.

⁸⁸ Cf C-42/17 *M.A.S.*, paras 52–53.

⁸⁹ See Case C-107/23 PPU [*Lin*], ECLI:EU:C:2023:606, para. 116; AG Sánchez-Bordona in the same case, ECLI:EU:C:2023:532, para. 141; and further Rauegger, National constitutional rights and the primacy of EU law: *M.A.S.* Case C-42/17, *M.A.S. and M.B.*, Judgment of the Court of Justice (Grand Chamber) of 5 December 2017, EU:C:2017:936, 55 CMLRev (2018) 1521–1548, 1532.

case law. First, the crucial difference between *Melloni* and *M.A.S.* appears to have been that the level of harmonisation in the field. While, arguably, in both cases the relevant secondary act left some relevant procedural matters to be regulated by national law, the Court of Justice in *Melloni* specifically pointed out that the question was resolved by Article 4a of the EAW Framework Decision, whereas in *M.A.S.* it instead emphasised the rules on time-barring had not been harmonised at the relevant time.⁹⁰ In subsequent case law, the presence of a ‘a situation where action of the Member States is not entirely determined by EU law’ appears to have been elevated to a precondition for the applicability of Article 53 CFR.⁹¹ This would entail that, that where a situation is fully harmonised, primacy is absolute regardless of the standard of protection offered by national constitutions. It remains unclear whether and how, in situations only *partially* determined by EU law, the level of harmonisation can factor in the balance of interests between the national constitutional norm and the effectiveness of EU law.⁹²

Second, in *Euro Box Promotion* the Court summarily rejected the suggestion of upholding a (potentially) higher national fundamental rights standard with reference to its giving rise to a *systemic risk* of non-enforcement of EU law.⁹³ It did not, however, elaborate on this. In the subsequent *Lin* judgment, the Court at the same time accepted one deviation from Union requirements on the basis of national fundamental rights standards going beyond those of the CFR, ‘*notwithstanding* the existence of a systemic risk of serious fraud offences affecting the financial interests of the European Union going unpunished’, and rejected another as ‘liable to exacerbate the systemic risk that serious fraud affecting the financial interests of the European Union will escape any criminal penalty’.⁹⁴ Thus, the existence of a systemic risk of non-enforcement is not in itself sufficient to override a national human rights justification, but it remains unclear under what circumstances a risk is big enough or its effects significant enough to have that effect.⁹⁵

In sum, the judicial control of Member State human rights justifications within the scope of EU law remains underdeveloped. Generally, however, the *Melloni* test is perceived as strict, with *M.A.S.* and, to some extent, *Lin* being the only examples so far of successfully defending national fundamental rights standards over the primacy and effectiveness of

⁹⁰ C-399/11 *Melloni*, paras 61–62; C-42/17 *M.A.S.*, paras 44–45. See also Rauegger, op. cit. at 1532.

⁹¹ See Case C-476/17 *Pelham GmbH and Others v Ralf Hütter and Florian Schneider-Esleben*, ECLI:EU:C:2019:624, para. 80; Case C-357/19 *Criminal proceedings against PM and Others (Euro Box Promotion)*, ECLI:EU:C:2021:1034, para. 211; C-107/23 PPU [*Lin*] para. 110.

⁹² Cf Opinion of AG Bobek in C-310/16 *Criminal proceedings against Petar Dživev and others*, ECLI:EU:C:2018:623, paras 92–94; and further Bonelli, Growing pains: Direct effect, primacy and fundamental rights after *Lin* Case C-107/23 PPU, *Lin*, Judgment of the Court (Grand Chamber) of 24 July 2023, EU:C:2023:606, 61 CMLRev (2024) 1045–1076 at 1073f.

⁹³ C-357/19 *Euro Box Promotions*, para. 212.

⁹⁴ C-107/23 PPU *Lin*, paras 118 and 121, respectively (emphasis added).

⁹⁵ Similarly, Bonelli, op. cit. 1072.

Union law.⁹⁶ The legitimacy of the Court's position has been questioned, with the relevance of both the harmonization criterion⁹⁷ and the systemic risk criterion⁹⁸ being questioned and the Court's relative openness to fundamental rights protection in *M.A.S.* described as a surprising exception motivated by strategic considerations rather than legal argumentation.⁹⁹ Overall, the problem appears to be one of output legitimacy; the Court's position prioritises the uniformity and effectiveness of Union law in non-fundamental matters over the protection of fundamental rights arguments. As one commentator has pointed out, the issue is ultimately political, and should be resolved by democratic, rather than purely judicial, dialogue.¹⁰⁰

The EU as an International Actor

On the international arena, the EU encounters states in a position of formal equality between independent subjects of international law.¹⁰¹ Respect for human rights is a core objective of EU external relations and the Union regularly proclaims its ambition to be a leading actor in the promotion of human rights worldwide.¹⁰² However, the political willingness to pursue this goal and the level of consensus between the Member States has been questioned, with the Union being regularly accused of operating a double standard subjecting external partners to higher fundamental rights standards than it enforces internally and avoiding placing itself under effective scrutiny.¹⁰³

The EU's own actions on the international arena is subject to judicial control by the Court of Justice under the procedure prescribed by Article 218(11) of the Treaty on the Functioning of the EU (TFEU), according to which a Member State or core EU institution (Commission, Council, Parliament) may request the CJEU's opinion as to an envisaged international agreement's compatibility with EU primary law. The Court's opinion is binding in the sense that a negative opinion precludes the entry into force of the

⁹⁶ See Millet, "Why Article 53 of the Charter should ground the application of national fundamental rights in fully harmonised areas" in Bobek and Adams-Prassl (eds), *The EU Charter of Fundamental Rights in the Member States* (Hart Publishing, 2020), 441–464.

⁹⁷ Millet, *op. cit.* 459f; for opposing opinion see Bonelli, *op. cit.* 1074.

⁹⁸ Cf Opinion of AG Sánchez-Bordona in C-107/23 PPU, *Lin*, para. 145.

⁹⁹ Besselink and Bonelli, Back and Forth Between Sovereignty and Constitutionalism: The Court of Justice's Constitutional Case Law. 14 *European Constitutional Law Review* (2018), 665–674.

¹⁰⁰ De Boer, Case C-399/11, *Stefano Melloni v Ministerio Fiscal*, Judgment of the Court (Grand Chamber) of 26 February 2013, nyr. Addressing rights divergences under the Charter, 30 *CMLRev* (2013) 1083–1104.

¹⁰¹ This report will not specifically examine the relationship between the EU and its Member States on the international arena and thus does not address the question of mixed agreements.

¹⁰² See Article 21 of the Treaty on the European Union; further Wessel and Larik, *EU External Relations Law: Text, Cases and Materials*, Bloomsbury 2020, 327ff.; and critically Leino, *The Journey Towards All that is Good and Beautiful: Human Rights and 'Common Values' as Guiding Principles of EU Foreign Relations Law*, in Cremona and de Witte (eds), *EU Foreign Relations Law : Constitutional Fundamentals* (Hart 2008) 259–289.

¹⁰³ See e.g. de Búrca, *The Road Not Taken: The European Union as a Global Human Rights Actor*, 105 *American Journal of International Law* (2011) 649–693.

agreement until the conflict is resolved. One of the most controversial opinions delivered through this procedure concerned the Union's proposed accession to the European Convention of Human Rights (ECHR), which is prescribed in the Treaties and would have placed the Union under the jurisdiction of the European Court of Human Rights. However, in Opinion 2/13, the Court held that the proposed accession agreement was contrary to EU law in several respects, most of them connected in various ways to the autonomy of the EU legal order and the position of the CJEU itself as the final arbiter of all matters EU law.¹⁰⁴

The Opinion is relevant for the present purposes for two reasons. First, it constitutes a perpetuation of the prioritisation of the autonomy – which is largely a corollary to the primacy – of EU law over the promotion of fundamental rights.¹⁰⁵ Second, it contributes to the perception of a double standard or even an European exceptionalism,¹⁰⁶ as the CJEU 'seemingly lives and breathes the idea that the EU should be given special treatment by virtue of its specific characteristics', with the result that it cannot be made subject to the scrutiny its Member States as well as many other states in the region already faces.¹⁰⁷ At the same time, the CJEU has held in its landmark *Kadi* ruling that as international legal acts enter into the EU legal order (as an effect of the EU's participation in international organisations), the Court has competence to review the compatibility of such acts with the EU's own foundational values including its fundamental rights regime.¹⁰⁸

However, while these observations are intimately related to the Union's internal fundamental rights review examined above, as well as to the global reach of EU law to be examined below, they do not directly bear on the EU's role in relation to human rights justifications offered by other Member States. EU law appears to have little to offer in this regard. If the justifications are offered in international non-contractual relations (for instance, in Russia's invasion of Ukraine) or in pre-contractual negotiations, the appropriate reactions appear to belong to the political rather than legal sphere, whereas if they are provided in defense of another state party's deviation from an international treaty, that would presumably be settled by the designated dispute resolution

¹⁰⁴ For more detailed discussion, see e.g. Halberstam, "It's the Autonomy, Stupid!" A Modest Defense of Opinion 2/13 on EU Accession to the ECHR, and the Way Forward, 16 *German Law Journal* (2015) 105-146; Krenn, Autonomy and effectiveness as common concerns: a path to ECHR accession after Opinion 2/13 16 *German Law Journal* (2015) 147-167; Spaventa, A very fearful court? The protection of fundamental rights in the European Union after opinion 2/13, 22 *Maastricht journal of European and comparative law* (2015) 35-56.

¹⁰⁵ Besselink and Bonelli, op. cit. 669f.

¹⁰⁶ Cf Ličková, European Exceptionalism in International Law, 19 *The European Journal of International Law* (2008) 463-490, especially a propos the so-called *Bosphorus* presumption according to which EU law enjoys a presumption of compatibility with the ECHR.

¹⁰⁷ Lindeboom, Why EU Law Claims Supremacy, 38 *Oxford Journal of Legal Studies* (2018) 328-356, 256.

¹⁰⁸ Joined cases C-402/05 P and C-415/05 P, *Yassin Abdullah Kadi and Al Barakaat International Foundation*, ECLI:EU:C:2008:461, and further de Búrca, The European Court of Justice and the International Legal Order after *Kadi*, 51 *Harvard International Law Journal* (2010) 1-49.

mechanism for that treaty (which, however, pursuant to Article 272 TFEU may be arbitration proceedings before the CJEU). It is thus only rather exceptionally that a third state's actions as an international legal subject would become a matter of Union law.

The EU as a Global Actor

A third facet of the EU's role, or potential, as a human rights actor stems from the so-called *Brussels effect*:¹⁰⁹ the Union's use of market forces to exercise unilateral regulatory powers on a global scale. The basic principle is that standards put in place for the EU internal markets must be complied with not only by EU actors, but also by any external actor wishing to operate on the Union market.¹¹⁰ If the costs of operating dual standards is too high, such extra-EU traders may opt for following EU standards across their whole operation. Because of its reliance on market forces, however, this practice is most effective on economic issues or issues that directly impacts economical activities, such as environmental protection measures, food and product safety, or the handling of personal data. For other, non-market issues, including core human rights, the EU's unilateral regulatory power is considerably lesser on the global stage.¹¹¹

Naturally, there have been attempts at push-back against the extra-territorial reach of Union internal legal measures, including on fundamental rights grounds. One well-known example is the *Inuit* cases, pursued both before the CJEU and within the World Trade Organisation (WTO) dispute resolution system and concerning the prohibition on the sale and marketing of seal products on the EU market. The cases are illustrative of the hurdles facing an extra-EU actor seeking to challenge Union measures and will be examined in some detail.

Before the CJEU, actions were brought by representatives for the indigenous populations in Norway, Canada and Greenland. A first case was, unsurprisingly, rejected as inadmissible on the basis of the Court's long-standing and infamously restrictive interpretation of the standing requirements for so-called non-privileged applicants under Article 263(4) TFEU.¹¹² It is worth observing that the same *locus standi* criteria will apply for a third state seeking to challenge an EU legal measure before the CJEU,¹¹³ meaning that such challenges will be admissible only under rather narrowly defined circumstances that singles out the state in question as both directly and individually –

¹⁰⁹ Bradford, *The Brussels Effect: How the European Union Rules the World* (OUP 2020).

¹¹⁰ For an elaboration, see Bradford, *op. cit.* 26ff.

¹¹¹ Bradford, *op. cit.* 89.

¹¹² Case C-583/11 P, *Inuit Tapiriit Kanatami v Parliament and Council*, ECLI:EU:C:2013:625. For a discussion of this case law in particular in environmental matters, see Hadjiyianni, *Judicial protection and the environment in the EU legal order: missing pieces for a complete puzzle of legal remedies*, 58 *Common Market Law Review* (2021) 777–812, 781ff.

¹¹³ Case C-872/19 P *Venezuela v Council*, ECLI:EU:C:2021:507, paras 41–53.

which more or less translates to ‘uniquely’¹¹⁴ – affected by the legal act in question.¹¹⁵ Unlike private entities, state actors will also not, or only in exceptional circumstances, be able to obtain indirect access to the CJEU through national courts and the preliminary reference procedure.¹¹⁶

A subsequent case brought by largely the same applicants alleging that the regulation in question infringed upon their fundamental rights, including most notably the right to property, was rejected in substance (following a procedural peculiarity whereby the General Court decided to rule on the case in substance without a prior examination of its admissibility;¹¹⁷ had this course not been taken, it is likely that the action had again been dismissed for lack of standing).¹¹⁸ This demonstrates that, once an action has moved passed the admissibility hurdle, the CJEU is competent to review the effects of EU unilateral measures on the fundamental rights enjoyed by third country nationals dwelling outside of the Union territory.¹¹⁹ Such actions may be based on the CFR, which has been considered to apply to EU action without territorial limitations,¹²⁰ but can likely also be based on more general human rights argumentation.¹²¹

At the same time, Norway and Canada brought actions against the EU before the WTO Dispute Settlement Body (DSB). While the EU seal products regime’s compatibility with fundamental rights, including the rights of indigenous peoples, have been questioned,¹²² the WTO setting is strictly limited to technical trade law issues, making the forum unsuitable for the (explicit) adjudication of human rights concerns.¹²³ Although striking down the EU measures for discriminating against Canadian seal products compared to Greenlandic ones, the WTO Appellate Body concluded that the EU regime was in principle justifiable on the public moral grounds of animal welfare.¹²⁴ Opening up for a

¹¹⁴ Winter, Plumann Withering: Standing before the EU General Court Underway from Distinctive to Substantial Concern, 15 *European Journal of Legal Studies* (2023) 85–124.

¹¹⁵ In the above-mentioned C-872/19 P *Venezuela v Council* case, the contested Regulation (Council Regulation (EU) 2017/2063 of 13 November 2017 concerning restrictive measures in view of the situation in Venezuela) singled out Venezuela in its title and first two recitals; yet, the General Court did not find the state to be ‘explicitly and specifically referred to in the contested provisions’ in a way to make it directly affected (Case T-65/18 *Venezuela v Council*, ECLI:EU:T:2019:6499, and its action was held admissible only following appeal.

¹¹⁶ See Hadjiyianni, *The EU as a Global Regulator for Environmental Protection* (Hart 2019) 149.

¹¹⁷ Case T-526/10, *Inuit Tapiriit Kanatami v Parliament and Council*, ECLI:EU:T:2013:215, paras 20–21.

¹¹⁸ Case C-398/13 P *Inuit Tapiriit Kanatami v Parliament and Council*, ECLI:EU:C:2015:535.

¹¹⁹ Cf also the above-mentioned joined cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat*, in which one of the applicants was a third country national resident in Saudi Arabia.

¹²⁰ Moreno-Lax and Costello, *The Extraterritorial Application of the EU Charter of Fundamental Rights: From Territoriality to Facticity, the Effectiveness Model*, in Peers et al (eds), *Commentary on the EU Charter of Fundamental Rights* (Hart 2014) 1657–1683.

¹²¹ For an extensive discussion, see Hadjiyianni, *op. cit.* 190ff.

¹²² See e.g. Cambou, *The Impact of the Ban on Seal Products on the Rights of Indigenous Peoples: A European Issue*, 5 *Yearbook of Polar Law* (2013) 389–415.

¹²³ Begiraj, *The Delicate Equilibrium of EU Trade Measures: The Seals Case*, 14 *German Law Journal* (2015) 279–319, 300f.

¹²⁴ WTO Appellate Body Report, *European Communities—Measures prohibiting the importation and marketing of seal products*. W T/DS400/AB/R, W T/DS401/AB/R.

broad construction of the public morals exception, the position may easily be expanded to include human rights concerns.¹²⁵ Interestingly, this implies that the defendant before the WTO DSB – i.e., in the case of EU internal measures with extraterritorial effects, the EU itself – is able to rely on human rights as a justification, whereas the applicant third states affected by the measures are not.

The legitimacy of EU unilateral action with extraterritorial effects is debated. Focusing in particular on the environmental field, Hadjiyianni observes that EU measures with extraterritorial effects face three “legitimacy gaps”. These are connected, first, to accountability, considering the lack of relationship, such as for instance democratic elections, between those enacting the norms and those bound by them; second, to participation and representation (input legitimacy), as those affected by the rules do not have a voice in their creation; and third, to justice (output legitimacy), which is largely an outpouring of the first two as the absence of effective participation and accountability routes increases the risk that the measures adopted fail to fairly consider the interests of third countries and their nationals.¹²⁶ Similar concerns are raised – and largely brushed aside – by Bradford under the labels of ‘regulatory protectionism’, concerning the risk that EU measures, rather than serving the ideals they claim to promote, function as protection for European commercial interests, and ‘regulatory imperialism’, understood in the best case as undermining democratic accountability and third country political processes and in the worst as seeking global domination.¹²⁷ Her defense, which argues in the first respect that no protectionist effects have been empirically established and in the second that the EU is mostly benevolent and at any rate a more competent and/or democratic regulator than many other states, is not entirely convincing.¹²⁸

In sum, while the EU can and to some extent does rely on the global reach of EU law to for the global promotion of Union values, including fundamental rights, this practice gives rise to concerns as regards the ability of third states to make their own perceptions of human rights heard.¹²⁹ These concerns pertain both to the adoption of EU measures, in which third state actors have no position, and the ex post challenge of such measures, where access to the CJEU is heavily curtailed by the restrictive standing regime.

¹²⁵ Shaffer and Pabian, World Trade Organization-Agreement on Technical Barriers to Trade-General Agreement on Tariffs and Trade-discrimination-protection of public morals regarding animal welfare-indigenous communities 109 *American Journal of International Law* (2015) 154–161, 158.

¹²⁶ Hadjiyianni, op. cit. 50ff.

¹²⁷ Bradford, op. cit. 235ff.

¹²⁸ Cf Hadjiyianni, The European Union as a Global Regulatory Power, 41 *Oxford Journal of Legal Studies* (2021) 243–264; Lindseth, The Brussels Effect: How the European Union Rules the World, 70 *American Journal of Comparative Law* (2022) 641–645, 642, who accuses Bradford of ‘downplaying broadly recognized democratic, geopolitical, and macroeconomic limitations.’

¹²⁹ On the illusion of universality of human rights, see Leino, op. cit. 263.



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D. 2.2 Tasks 7-8 WP2 and D 7.6 tasks 7-8 WP7

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A Normative Core for a Geopolitical Europe

Policy Recommendation on Human Rights in European Union External Action

Key Recommendations

As the global geopolitical map is being redrawn and the norms that have guided international relations are being challenged, Europe is changing and adapting. Refocusing attention on economy, security and defense is a necessity, as is ensuring greater flexibility in how EU engages with regional and national partners across the globe.

As of yet, it is unclear how these changes will impact the role of human rights in EU's external action, likely operationalised through the next EU Action Plan for Human Rights and Democracy. While the drafting of the Action Plan has not yet started, we know that it should be aligned with EU's Multiannual Financial Framework 2028-2034. The draft MFF shared by the European Commission suggests less specified and leaner commitments on human rights, potentially challenging EU's ability to shoulder its role in upholding and promoting human rights, continued support to established partnerships, including with human rights defenders and building new partnerships to defend human rights and international law.

Drawing on research in the Horizon-funded Human Rights Justification program, following recommendations are made for human rights in EU external action:

- At their core, human rights are about putting limits on state power, allowing critique and ensuring redress when states abuse their power. This core is important in a time when bullying and rule breaking dominate the international agenda. Both regionally and globally, EU plays an important role in defending human rights and needs to build strong and equitable partnerships in support of human rights and international law.
- In a time of crisis, prioritization is necessary, in order to defend the core of human rights. For the EU, this will demand a strategic balancing act between, on the one hand, strengthening its agenda on non-derogatory rights, including the right to life, freedom from torture and non-discrimination and, on the other hand, ensuring its commitment to social, economic and cultural rights, high on the agenda of many of its partners in the global south.
- The EU has made a strategic choice to align its fourth Action Plan for Human Rights and Democracy with the next MFF 2028-2034. The EU and its Member States then also need to be strategic in how to – without a forward-looking Action Plan – advocate for and ensure space for human rights in the next MFF. That is, how to ensure funding for human rights in the global fund and how to ensure that the increased flexibility in regional funds also can be used to tackle human rights crisis.
- The EU has been a committed, important and stable partner on key human rights struggles worldwide and should continue to play this role, including on combatting the death penalty, ensuring basic freedoms and protection for human rights defenders, including environmental rights defenders, promote equal rights for women and their reproductive rights.

Background and Current Developments

The Horizon Program “Human Rights Justifications” studies how human rights have shifted from being a tool that put limits on state power to becoming a tool of governance. The research has shown that international and regional human rights regimes and human rights defenders are ill-equipped to deal with situations where human rights are distorted to serve governance needs. These shifts are occurring while anti-rights movements are developing their foothold in democracies inside and outside Europe and autocracies are on the rise.

Human rights are at the heart of the European project and its external action (TEU art 2 and 21). Since 2011, the treaty-based commitments have been operationalised into EU external action through the EU Joint Communication “Human Rights and Democracy at the Heart of EU External Action” (COM (2011) 886 final) and subsequent Action Plans for Human Rights and Democracy (2012-2014, 2015-2019 and 2020-2027). A fourth Action Plan is to be adopted for 2028, aligning it with the EU Multiannual Financial Framework (MFF) 2028-2034.

The political practice of human rights has never been perfect, neither in EU nor elsewhere. A normative tool that seeks to ensure checks on power, will inevitably collide with other interests and be challenged. Biases and double standards in implementations are inevitable. This is why already the drafters of the early human rights foresaw the need to equip the human rights regime with safeguards: protection for freedom of opinion and speech and redress for rights infringements.

Today, leading world powers are actively redrawing the geopolitical map, and challenging multilateralism and international law. Russia’s war of aggression on Ukraine that brought war to the doorstep of the EU and the current US administration’s questioning of basic building blocks of the transatlantic relationship, including NATO security guarantees, have served as a wake-up call for the EU. This is, as European Commission President von der Leyen noted in her [State of the Union address](#) to the European Parliament in September 2025, Europe’s “independence moment”. An independence moment that comes at a moment when national politics in many EU Member States are also becoming increasingly polarized, and when the role of the EU and its priorities are an integral part of political challenges in many Member States. Consequently, EU foreign policy is currently driven less by a will to change the world and more by a will to protect its citizens and ensure security.

It remains easy to argue that human rights, both civil and political and economic, social and cultural are at the heart of the EU internal project: the survival of the European project is dependent on a functioning social contract in which ‘rights’ although not always clearly mentioned are inherent and commitment to human rights is also what

sets the EU apart on the global stage. However, to ensure this, the EU needs to revitalise its human rights approach, ensure synergies with other priorities, including security and competitiveness, and back it up through strong partnerships.

Negotiations are ongoing for the EU's next budget, the Multiannual Financial Framework for 2028-2034. The Commission has proposed a restructured budget where previously seven headings have been condensed into four.¹³⁰ In the area of external action, seven current funding instruments, will likely be condensed into one instrument: Global Europe, with significant regional budget lines and a cross-cutting budget line. The European Peace Facility through which EU support security and defence in third states, will remain an off-budget instrument.

The *leitmotiv* for the budget is flexibility, and in absolute term the proposed budget for external action through Global Europe is considerably higher than in the previous budget. However, several negotiation rounds can be expected before the budget is adopted, most likely in 2026. The increase of the budget is likely to receive pushback from some Member States, including those who are dealing with budgetary challenges and austerity within their own borders and those who view external action itself as a no-go. The flexibility itself, although understandably desirable in a situation of rapid and unpredictable global changes, will raise questions and also redlines with some member states. It risks shifting more power from the EEAS and Member States to the European Commission, and increased flexibility also means less predictability and possibly less transparency.

The proposal of lumping together thematic funding into one and moving to full mainstreaming approach on cross-cutting issues (i.e., abolishing funding targets on climate, gender etc.) may make it more difficult to ensure adequate funding for cross-cutting issues and will make tracking funding for them more complex. Or as noted by Alexei Jones, the new framing includes a "...fundamental strategic dilemma: how to reconcile the pursuit of short-term geopolitical and economic interests with the EU's long-standing, treaty-based commitment to sustainable development, human rights and democratic governance".¹³¹ It is crucial that the EU stays committed to its normative base, also in a shifting global context.

¹³⁰ For analysis, see [EU Budget 2028-2034](#), EP Briefing (July 2025)

¹³¹ Jones, Alexei, [A Companion Guide to the Global Europe Instrument Proposal](#), ECDPM Briefing Note No 198 (July 2025).



WP4 (Taiwan) Civil Society Engagement Report

Second Workshop on HRJust Civil Society Engagement and Discussion

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D 7.6 tasks 7-8 WP7 and D2.2. tasks 7-8 WP2

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Civil Society Engagement Report: Second Workshop on HRJust Civil Society Engagement and Discussion, 22 March 2025

As part of our Civil Society Engagement, the WP4 Taiwan team held a series of events including two workshops, with the intention of generating ideas and key points in the first and then bringing back participants from the first round to share our preliminary research findings. The second workshop “HRJust: Civil Society Engagement and Discussion”, took place on 22 March 2025 with invited experts in civic tech, labor rights, law, and medical history as discussants.

From Borders to Bodies: A Population-Centered Approach in Taiwan’s Pandemic Response

Countries responded to COVID-19 differently, even after scientists and epidemiologists had developed a common understanding of the coronavirus and its method of transmission.¹³² A Taiwanese scholar of medical history noted that this divergence could be explained by “path dependency,” whereby each country adopted accustomed tactics and relied on its existing resources to address the epidemic. In Taiwan, factors such as geography, history, economic dependence on trade, its legal infrastructure, plus the barrier of vaccine access due to China’s obstruction, jointly led to population-centered interventions such as border closure, quarantine, isolation, and massive digital measures.

Taiwan, as an island nation, is accustomed to leveraging its geographic isolation to prevent the entry and spread of infectious diseases.¹³³ Upon learning about the coronavirus discovered in Wuhan, China, the Taiwanese government promptly closed borders and enforced quarantine and isolation, mainly targeting “higher risk” nations and populations.

Our previous Civil Society Engagement (CSE) report pointed out that it was common in Taiwan that the government deployed the police to conduct contact tracing

¹³²PETER BALDWIN, *FIGHTING THE FIRST WAVE: WHY THE CORONAVIRUS WAS TACKLED SO DIFFERENTLY ACROSS THE GLOBE* (2021).

¹³³For example, in order to prevent the spread of AIDS, Taiwan required foreigners to present a negative HIV test result upon entry until the provision was abolished in 2015. (According to the repealed Article 14 of the AIDS Prevention and Control Act, foreigners entering or residing in Taiwan for more than three months must receive a HIV test or submit a HIV test result within three months. Foreigners who test positive must be deported.

and to enforce quarantine during the pandemic (see Focus Group Interview with People Who Underwent Quarantine, p. 1-3). The engagement of the police force may not have triggered wide public concerns as, historically, similar practices existed during the time Taiwan was under the rule of Imperial China (Qing dynasty) and Japan.¹³⁴ Nevertheless, our Focus Group participants strongly criticized these path-dependent practices, which caused various problems. For example, the police intervened in contact tracing with crime investigation mentality and techniques, disrupting the trust-based relationship that public health professionals aim to develop with the subject. For the public, having multiple agencies taking part in the process without clearly identifying themselves or their source of authority makes it difficult for individuals to challenge dispositive actions and seek legal remedies.

Where and How Can We Access Source Code? – Barriers to Transparency

In addition to historical and geographic factors, the historian of medicine considered that Taiwan's ability to deploy targeted and meticulous digital measures can also be attributed to robust administrative capacity and infrastructure, including the establishment of the National Health Insurance (NHI) database and its linkage with other public and private data. Since the NHI launched as a mandatory insurance in 1995, its database has collected massive amounts of personal health data.

An active participant in the civic tech community, the g0v (gov-zero) – one of the recruitment targets of our surveys – further expressed his concerns about the transparency of such measures. The source code of many pandemic control digital tools was unavailable, e.g., digital fencing (used for enforcing quarantine) and 1922 SMS (used for contact tracing). This hindered civil society from auditing the systems, a process that could enhance information security and uncover hidden risks of privacy intrusion. The g0v contributor suggested that the government establish a centralized repository for source code. Adopting such a system also needs consideration of which authority is accountable for managing the repository.

A Working Condition Comparison between Pilots and Glove Factory Workers

When digital tools were deployed to enforce quarantine, pilots were disproportionately affected due to their frequent cross-border travel. As noted in our

¹³⁴Shi-yung Lui, *An Overview of Public Health Development in Japan-ruled Taiwan*, in *DEATH AT THE OPPOSITE ENDS OF THE EURASIAN CONTINENT—MORTALITY TRENDS IN TAIWAN AND THE NETHERLANDS 1850-1945* 165, 170 (Theo Engelen, John R. Shepherd, & Yang Wen-shan eds., 2011).

previous CSE report on the focus group with pilots, they were stuck in relentless cycles of flying and quarantine (see Focus Group Interview with Pilots, Section: Deteriorating Working Conditions). A labor rights advocate compared their treatment during the pandemic to that of workers working in a disposable glove company in Malaysia. The profit of airlines with cargo services surged as demand for air freight increased during the pandemic. Similarly, the glove company's profits skyrocketed as the demand for PPE persisted. The latter was accused of forced labor (most of the staff were migrant workers), triggering international condemnation.¹³⁵ Although pilots are typically considered a high-income group, prolonged quarantine that severely restricts freedom of movement may be regarded as inhumane or exploitative treatment. The absence of additional compensation for severe freedom restrictions and the burdens on mental health also raised concerns that their working conditions may meet some of the indicators of forced labor.

Shifting Stance of Judicial Review: Late-Stage Oversight of Pandemic Measures

As discussed, population-centered measures targeted “higher risk” individuals, yet their efficacy was unknown because researchers were unable to access relevant data. Despite such difficulties, a judge of the Taipei High Administrative Court reported that in the later stages of the pandemic, the courts, as a major oversight mechanism, have challenged some mandates and sided with the plaintiffs (affected individuals). For instance, in several cases the Court held that the Central Epidemic Command Center (CECC) announcing mandates in the daily press conferences failed to meet due process requirements and were therefore in violation of the law.¹³⁶ In another ruling, the Supreme Administrative Court held that the CECC’s setting a priority list for vaccines and associating fines for violators in the “ COVID-19 vaccination program” (“the Program”) did not meet the necessary procedural requirements. The Court ruled that the program is an “order” as defined under the Administrative Procedure Act and must be issued via the Official Gazette. As the Program had been declared solely through CECC’s press conference, the Court found it to be invalid.¹³⁷

A law professor further argued that the CECC functioned only as a coordinating organ and held no power to impose mandates. Epidemic measures must be issued and enforced by the competent authorities, i.e., the relevant ministries and local governments. This opinion directly responds to the concern raised by the attorney of the Air Line Pilots Association (ALPA-T), who noted that the CECC bypassed the competent

¹³⁵Julie Zaugg, *The world’s top suppliers of disposable gloves are thriving because of the pandemic. Their workers aren’t*, CNN (Sep. 11, 2020), <https://edition.cnn.com/2020/09/11/business/malaysia-top-glove-forced-labor-dst-intl-hnk> (last visited Jan. 26, 2026)

¹³⁶Taipei High Administrative Court Ruling 110-Su-1153 [臺北高等行政法院110年度訴字第1153號判決], Taipei High Administrative Court Ruling 111-Su-113 [臺北高等行政法院111年度訴字第113號判決]

¹³⁷Supreme Administrative Court Ruling 112-Shang-630 [最高行政法院112年度上字第630號]

authorities and directly imposed quarantine on pilots. According to this view, the CECC had no competence to restrict personal freedom because its role is restricted to coordination and therefore that the quarantine mandate would be invalid.

Substantive Review: Application of the Principle of Proportionality

In addition to procedural issues, the court also used substantive reasoning to invalidate several pandemic measures. The Administrative Court judge noted that quarantine measures that failed to consider special needs or that involved arbitrary assignments to quarantine locations were often found to violate the principle of proportionality.¹³⁸ The law professor further emphasized that, in response to the rising frequency of crises, the amendments to the Communicable Disease Control Act should address various needs for quarantine arrangements while also preventing potential human rights violations arising from such measures.

Some Problems are Tackled; Others Are Not – What is the Next Step?

That the later-stage rulings tend to be in favor of plaintiffs reiterates what our participants in the first round of CSE said: “it was not easy to challenge pandemic measures promptly due to the unpredictable nature of the crisis. Nevertheless, a comprehensive assessment of proportionality remains vital once the emergency has subsided (see First Workshop: COVID-19 Governance in Taiwan, p. 2).”

We found that some of the issues raised in the first round of discussions (Workshop 1) have been alleviated as the oversight mechanism has resumed functioning. For instance, quarantine measures that failed to provide accommodation for individuals with special needs (such as injured persons, pregnant women and minors) as well as arbitrary quarantine arrangements, would not pass the proportionality test (see Focus Group Interview with Frontline Health Professionals, Section: Pandemic Measures Lacking Accommodations for Special Needs & Focus Group Interview with People Who Underwent Quarantine, Section: Pandemic Measures Fail to Address Needs of Minors and Parents). Mandates that did not meet the procedural requirements were declared invalid by the courts.

However, some concerns rooted in institutional design remain unresolved and warrant legislative reform.

Suggestion 1: Open Data for Pandemic Assessment

Since access to pandemic-related data is often limited, civil society faces significant challenges in evaluating both the efficacy and necessity of the digital measures, as well as the extent of privacy intrusions of these measures. So far, the

¹³⁸Supreme Administrative Court Ruling 111-Shang-642 [最高行政法院111年度上字第642號判決]

government has disclosed only limited data regarding two contact tracing tools – the SMS check-in and the Social Distancing APP (local version of the Google-Apple Bluetooth-based contact tracing). As a result, even though police surveillance and roadside searches were widely regarded as excessive, civil society found it difficult to hold the government accountable.

[“Indicator Framework to Evaluate the Public Health Effectiveness of Digital Proximity Tracing Solutions,”](#) published by the WHO and the European Centre for Disease Prevention and Control, proposed five methods of data collection for assessing the effectiveness of a contact tracing app: (1) data obtained from the digital proximity tracing network, (2) integration with conventional contact tracing, (3) data collected at testing services, (4) surveys, and (5) data donation. To ensure government accountability in balancing public health with the protection of individuals’ freedom, with appropriate privacy safeguards in place, Taiwan should make certain data available. It is also important to note that during Taiwan’s extended zero-COVID period, when traditional contact tracing methods might have been sufficient, the effectiveness of digital measures in comparison with traditional methods should be measured carefully, e.g. based on the additional number of confirmed cases that could not be identified without digital measures.

Suggestion 2: Correcting and Strengthening the Conditions for Secondary Use of Personal Data under Taiwan’s Personal Data Protection Act (PDPA)

The primary reason why Taiwan was able to introduce massive digital measures was due to the lack of an up-to-date personal data protection framework that could effectively keep the government’s digital surveillance in check. In 2022, the Taiwan Constitutional Court (TCC) issued Judgment 111-Hsien-Pan-13 (Case on the National Health Insurance Research Database) on the secondary use of NHI data without prior consent. TCC ruled that both the purposes for collecting and processing data in the NHI database, as well as the secondary use of such data, must be clearly prescribed by law. In reviewing the broader data protection regime, TCC further declared the Personal Data Protection Act (PDPA) in place at the time to be unconstitutional. It emphasized the need for the PDPA to establish an independent supervisory mechanism and to guarantee individuals’ right to opt out.¹³⁹

This 2022 ruling accelerated one of the most significant amendments to the PDPA since its enactment in 1995. The revised PDPA, promulgated in 2025, established a unified competent authority for data protection – the Personal Data Protection Commission (PDPC). However, the PDPC remains in the preparatory stage, and the Regulations governing PDPC, which are essential to ensuring the Commission’s independence as required by the TCC, have not yet been passed.

¹³⁹Taiwan Constitutional Court, *Summary of TCC Judgment 111-Hsien-Pan-13 (2022) Case on the National Health Insurance Research Database* (Aug. 12, 2022), <https://cons.judicial.gov.tw/en/docdata.aspx?fid=5535&id=347736> (last visited Jan. 26, 2026)

Further, Congress also enacted the National Health Insurance Data Management Act in December 2025, introducing individuals' right to opt out of secondary NHI data use. Nevertheless, this right is constrained, as the Act permits the government to conduct secondary use without consent in cases where it is doing so in order to perform its statutory duties.

In retrospect, Taiwan's PDPA has fallen short of GDPR standards — more precisely, the Act's broadly permissive framework governing the secondary use of sensitive personal data and inter-database linkage has created significant regulatory gaps. As a result, not only were large-scale digital surveillance measures readily authorized during the pandemic crisis, but Big Data and Artificial Intelligence applications involving sensitive personal data — particularly medical, health, and genetic information — have equally been able to obtain PDPA authorization with relative ease. In the absence of comprehensive legislative reform, it remains uncertain whether comparable privacy-intrusive measures of such scale would once again be sanctioned in the event of a future crisis.

Suggestion 3: Issues rooted in institutional culture require more attention

Other issues stemmed from institutional cultures and historical practices that require further examination. “Escape into private law,” identified in the CSE report illustrates how pilots were placed in a dual predicament or double bind (see Focus Group Interview with Pilots, Section: Government by Proxy: Pressuring Airlines to Regulate Pilots). On the one hand, they did not have a standing to file a lawsuit against the government; on the other hand, they were rarely willing to challenge the airlines due to fear of losing their jobs. Therefore, it is vital to consider how to constrain government overreach in highly regulated industries, while ensuring that workers have sufficient resources and bargaining power to counterbalance those of their employers. Lastly, police involvement in public health enforcement, though historically rooted, should not be accepted as normal and reasonable.

To conclude our Civil Society Engagement, we recall a participant's observation at our first workshop: that the government's mindset that “the right to life trumps everything” was used by the government as an apparent justification for sacrificing all other human rights. The impacts of the government's mindset on this point is repeatedly observed throughout the CSE process, and this calls for continued reflection, especially when facing future pandemics.



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Inclusive Democracy, Reflecting Gender and Intersectionality

D 7.6 tasks 7-8 WP7, D2.2. tasks 7-8 and Concluding Synthesis of D 7.5 (A and B)

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*The Rings-on-Water methodology and the Complex Intersectional Critique as a single,
mutually anchored*

Executive Summary

Deliverable 7.5 responds to the Horizon Europe Grant Agreement's request for a report on *Inclusive Democracy, reflecting gender and intersectionality*. The deliverable is composed of two mutually anchored component studies. D 7.5-A develops the Rings-on-Water (RoW) methodology through which HRJust conducted civil-society engagement across Sweden and Taiwan and articulates the epistemological warrant that

grounds that methodology in the complex-intersectional commitment developed in the companion study. D 7.5-B develops the complex-intersectional critique of how states in Taiwan, Finland, and Sweden use Human Rights Justifications (HRJs) to manage populations across the pandemic, migration, and climate axes. The present report reads the two components as a single deliverable and draws the conclusions the Grant Agreement asks for.

The Rings-on-Water methodology is the procedural expression of what the Complex Intersectional Critique identifies as the condition of inclusion itself that categories of relevance and vulnerability must emerge from engagement with real subjects rather than being imposed by the state or by the researcher in advance. This joint claim is now explicit in both components: D 7.5-B articulates the theoretical apparatus (complex intersectionality, the monist-subject critique, vulnerability theory, and the hierarchy-of-vulnerability problem); D 7.5-A, in its §2.4 and throughout its limitations and conclusions, specifies the methodological form that this apparatus takes when enacted in civil-society engagement.

Introduction: two studies, one deliverable

The Horizon Europe Grant Agreement defines Deliverable 7.5 as a public report that provides “narratives and examinations of how gender and intersectionality affects the sense and access to democratic inclusion.” The deliverable is led by NCKU with the joint responsibility of IIAS, UGOT, and SU, and addresses three questions: how states defend and legitimize their actions through human rights; how the general relates to the particular in that defense; and what role geopolitics plays in the strategy, resources, and reach of state HRJ practices.

Against this mandate, HRJust has produced two substantive component studies. D 7.5-A — *Rings on the Water: An Empirically Developed Methodology for the Reinvigoration of an Inclusive Civil Society and Democratic Participation* — documents the staged, concentric methodology through which civil-society engagement was organised across the Swedish and Taiwanese contexts, and articulates, in its §2.4, the epistemological warrant that grounds the methodology in the critique developed by its companion study. D 7.5-B — *A Complex Intersectional Critique of Human Rights Justifications in Taiwan, Finland, and Sweden* — develops the theoretical apparatus for reading HRJs as mechanisms that construct and act upon and applies that apparatus to empirical cases across the pandemic, migration, and climate domains.

This concluding report reads the two studies as a single deliverable whose internal coherence is now explicit in each component. D 7.5-A names D 7.5-B as its theoretical companion and develops its design principles, its limitations analysis, and its conclusions in terms drawn from the complex-intersectional critique. D 7.5-B, for its part, produces an empirical and theoretical account whose methodological consequences are enacted — rather than merely asserted — through the engagement infrastructure documented in D 7.5-A. Read together, the two constitute what the Grant Agreement calls an account of “democratic inclusiveness”: a treatment of inclusion that is consistent with its own object, in the sense that the method of producing the account does not contradict the critique the account offers.

Framework: the complex intersectional critique as epistemology of inclusion

From identity-intersection to complex intersectionality

The foundational framework for this deliverable is Kimberlé Crenshaw’s intersectionality (Crenshaw 2013), which establishes that an individual’s experience of privilege or oppression is shaped by the combination of identity positions they occupy, not by any single axis taken alone. D 7.5-B extends this framework into what it calls complex intersectionality: an intersectionality oriented specifically to how states, through HRJs, construct a singular “standard citizen” whose protection justifies restrictions of liberty that fall disproportionately on those who do not match the construction.

The concept reorients intersectional analysis from *description of who is marginalized* to *diagnosis of how the state’s own invocation of rights performs marginalization*. Where classical intersectionality reads the position of, for example, women of color in the court system, complex intersectionality reads what the state assumes when it invokes “public health,” “child protection,” “successful integration,” or “green transition” as a justification for a coercive measure — and it makes visible the specific intersectional positions that the assumption writes out of the picture.

Vulnerability theory as corrective supplement

D 7.5-B is explicit that intersectionality alone is insufficient for this task. Critics have long noted that intersectional analysis risks infinite regress of sub-categories, essentialization of identities, and fragmentation of solidarity. D 7.5-B responds not by abandoning intersectionality but by supplementing it with Fineman’s vulnerability theory (Fineman 2018). Where intersectionality identifies how identities are differentially

positioned, vulnerability theory directs attention to the institutions that distribute resilience resources unevenly across the population.

The critical move that distinguishes D 7.5-B from conventional intersectional analyses is its willingness to turn the critique reflexively on intersectional practice itself. Any framework that aggregates vulnerability implicitly *ranks* vulnerabilities — it decides whose vulnerability matters most and whose interests define “the collective.” This is the hierarchy-of-vulnerability problem. Applied to state practice, it shows why states routinely narrow “collective interest” to the biological survival of the majority. Applied to research practice, it shows why even intersectional research designs can re-centre the voices of institutional actors if the vocabulary of early stakeholders is allowed to frame what later stakeholders are heard as saying.

The hierarchy-of-vulnerability problem is the conceptual hinge on which D 7.5-A and D 7.5-B join. D 7.5-A §7.1 now explicitly diagnoses its own echo-chamber risk in these terms and responds with a specific procedural self-correction: a structured debrief at the close of each ring, organised around three questions concerning whose voices became quieter, which analytical categories were supplied by participants rather than by prior rings, and whether a different sequence of inclusion would have produced a different framing. This procedural response is the form in which the theoretical apparatus of D 7.5-B is enacted within the methodology of D 7.5-A.

Empirical findings across three jurisdictions

D 7.5-B examines HRJ practice in Taiwan, Finland, and Sweden across the HRJust project’s three thematic axes: pandemic governance (WP4), migration (WP5), and climate (WP6). The findings can be organised under four recurring intersectional configurations, each of which illustrates the monist-subject construction at work.

Class and migration status: the shield that becomes a cage

In Taiwan’s pandemic response, the “Digital Fence” surveillance system — justified as protection of the right to life and health — operated through base-station triangulation that generated frequent positioning errors. Because migrant workers’ “home” was a crowded dormitory rather than a private residence, a technological error of a few metres could trigger a middle-of-the-night police dispatch. Unlike local citizens, migrant workers faced contract termination or deportation as the immediate consequence of such errors. The state’s protective shield became a cage for those without citizenship.

The finding is not that technology was misused; it is that a HRJ organised around an abstract “public” inevitably lands with disproportionate weight on the bodies most

distant from the assumed citizen. The monist subject of “public health” is not neutral; it is structured around the domestic arrangements, labor status, and linguistic competence of those already protected.

Gender, nationality, and the paternalism of protection

Taiwan’s Consular Interview system for marriage-migrant spouses from twenty-one specified countries, justified as preventing human trafficking and protecting national security, in practice scrutinizes the intimate life of Southeast Asian spouses in ways Western spouses are not asked to endure. Financial capability tests, framed as ensuring “self-sufficiency” for the migrant’s own family, function as class-based barriers to marriage rights. The state’s HRJ reduces the migrant to either “potential fraudster” or “victim in need of paternalistic rescue,” stripping agency under the sign of protection.

Sweden’s stricter family reunification measures under SOU 2025:95 follow the same logic through different institutional means: “successful integration” and “protection from honor-based violence” become HRJs that gatekeep the right to family life, treating the migrant family as a burden rather than a subject of rights. Across the two jurisdictions, the HRJ vocabulary is the same even where the legal mechanisms differ.

Age, ability, and digital invisibility

Finland’s pandemic response offers a particularly instructive case. Formally, the Finnish government used non-binding recommendations for those over 70 to isolate, preserving the appearance of legality; in practice, these recommendations operated as de facto binding measures — what the Chancellor of Justice identified as “soft coercion” that risked violating non-discrimination principles and interfered with the right to family life. The formalist adherence to legality masked indirect discrimination.

The pattern extended across Finland and Sweden in what D 7.5-B names digital invisibility: as essential services (vaccine booking, child-friendly health information) migrated online, elderly persons and persons with disabilities lacking digital literacy found themselves excluded not by any decision but by the structural assumption that the standard citizen has digital access and fluency. The HRJ of “administrative efficiency” produced de facto social invisibility — what the report frames as “social death” under the claim of protecting physical life.

The reverse test: elites under the monist subject

An important finding for the deliverable’s theoretical claim is that the monist-subject logic operates on high-status professionals as well as on marginalized groups. During Taiwan’s Zero-Covid policy, pilots and flight attendants — conventionally perceived as

socially privileged — were subjected to a continuous “quarantine-work-quarantine” cycle that deprived them of family life for over a year (Chen et al. 2025, 33, 50). One pilot, despite being vaccinated and testing negative, faced severe legal penalties and public shaming for a perceived quarantine breach. The logic that turned migrant workers into “risks to be managed” applied identically to the professional bodies of airline crew.

The implication is that the complex-intersectional critique is not a minority-protection framework but a **general critique of HRJ logic**. A HRJ organised around a monist subject will flatten everyone who does not match the construction, although the consequences fall hardest on those with least recourse. This strengthens the critique’s portability across policy domains and across jurisdictional contexts.

Methodological findings: Rings-on-Water as enacted epistemology

What RoW does, and the principles that govern it

D 7.5-A documents a methodology of successive concentric rings of stakeholder engagement. A small core group — in the Swedish case, a Supreme Court Justice, the NHRI, leading human-rights defenders, and HRJust researchers — convened to co-define concepts. Subsequent workshops progressively widened the circle, integrating additional civil society organisations, Taiwanese NGOs, and international academics. Continuity was maintained through overlap: the same core participants joined each ring, while new voices were added gradually. Each workshop’s findings fed into the next workshop’s design.

D 7.5-A §2.3 specifies six operational principles that govern this design: *Start Small*, *Iterative Co-Creation*, *Participation with Continuity*, *Real-World Problem Orientation*, *Institutional Buy-In and Alliance Formation*, and — added during the project as its reflective contribution to methodological design — *Corrective Iteration*. The sixth principle names explicitly what the others had implicitly practiced: that iteration is not primarily about widening participation but about correcting the silences of each preceding ring. Each new ring is chosen not merely for breadth of representation, but to bring into the conversation positions that were structurally underheard in the prior one. Under a pure-widening logic, iteration adds scope; under corrective iteration, the direction of expansion is set by what the previous ring made visible only in its omissions.

The empirical reach of the process included BRIS, Civil Rights Defenders, Serve the People Association, the Taiwan International Workers’ Association (TIWA), the Taiwan Association for Human Rights, and the Nordic Rule of Law Forum; it generated outputs including the Sweden–Taiwan civil-society bridge, the Civil Society Engagement Toolkit

led by the WP5 migration team, the Strategic Litigation Roundtable, and the Norwegian parliamentary consultation,.

How RoW detects and corrects its own structural risks

D 7.5-A §7.1 identifies the structural vulnerability that follows from any staged design: a risk of echo-chamber formation in early rings when initial stakeholder selection is dominated by institutional actors. The report refuses to treat this as an incidental imperfection to be corrected through goodwill and better stakeholder lists in future iterations. It diagnoses the risk, in the language of D 7.5-B, as a predictable consequence of the **hierarchy of vulnerability**: any framework that aggregates perspectives implicitly ranks the positions it aggregates, both through the sequence in which voices enter and through the vocabulary that enters with the earliest voices.

The methodology's procedural response, now built into D 7.5-A itself, is a structured debrief at the close of each ring organised around three questions:

- Which voices became quieter, or dropped out, between this ring and the previous one, and does the pattern of attrition correlate with any identifiable social position?
- Which analytical categories used in recording and reporting this ring came from the participants themselves, and which came from the vocabulary set in earlier rings?
- If the same constellation of stakeholders had been assembled in the opposite order — marginalized voices first, institutional authority last — would the project's working framing now look materially different?

Answers are not themselves the corrective; they are the input to the corrective. Where the debrief identifies a specific silence, the subsequent ring is designed to address it — not merely by adding participants in the affected position, but by adjusting the vocabulary in which the ring is convened so that the newly present voices do not enter a conversation whose terms have already been fixed without them. This is the procedural form in which D 7.5-A answers to the hierarchy-of-vulnerability critique rather than merely acknowledging it, and it is the operational content of the sixth principle of corrective iteration.

Engagement method and knowledge claim: what RoW can and cannot warrant

D 7.5-A §8 concludes by clarifying, in its own voice, how the outputs of the Rings-on-Water process should be described. It is tempting to present those outputs as *the* civil-society view of the Swedish and Taiwanese HRJ contexts, or as *the* account of state human-rights practice that emerges from sustained engagement with those affected. Both descriptions would overstate what the methodology can warrant. What Rings-on-

Water in fact generates is the view that this particular ring configuration, convened under these particular geopolitical and institutional conditions, made audible.

The Swedish ring configuration could begin with an NHRI, a Supreme Court Justice, and a well-developed civil-society infrastructure of specialized human-rights NGOs; the Taiwanese configuration could not, because Taiwan's exclusion from the United Nations treaty system and from most international human-rights architecture removes several of the ring positions that the Swedish configuration could assume. Asymmetries of this kind are not imperfections to be corrected before reporting findings; they are constituent of what findings the methodology was positioned to generate. A methodologically honest account of the RoW outputs therefore specifies, alongside the substantive findings, the conditions under which those findings became audible, and marks clearly the boundary between what the methodology can claim to have heard and what would require a differently configured engagement to hear.

Asymmetric geopolitics as constituent of method

The distinction articulated in §4.4 above is itself a substantive answer to the Grant Agreement's question on the role of geopolitics. Geopolitical positioning conditions which rings can be assembled: the ability to convene an NHRI and a Supreme Court Justice in the first ring is a geopolitically enabled affordance, not a universal design choice; the impossibility of doing so in Taiwan is not a deficiency of Taiwanese civil society but a consequence of international exclusion. D 7.5-A §6.7.2 formulates this as a methodological proposition in its own terms: in contexts of geopolitical constraint or international isolation, the outward expansion of the Rings-on-Water methodology from local to national to international engagement is not merely a scale-up but a substantive amplifier of what civil-society voice can reach. Geopolitics enters the methodology, in other words, not as context but as design parameter.

Recommendations

For policymakers and treaty-body reviewers

1. Heightened scrutiny of intrapersonal-conflict HRJs. Treaty-body reviews of state reports should identify HRJs that produce intrapersonal rights conflicts as a suspect category and require specific justification for why the rights-holder's own judgement is being overridden in their name.
2. Digital-invisibility impact assessment. Any HRJ justifying digital-first service provision should include a structural assessment of the population that will become de facto invisible to the service, including elderly persons, persons with disabilities, and non-literate or language-minority subjects.

For civil-society organisations and human-rights defenders

3. RoW as replicable template. The six-principal engagement methodology articulated in D 7.5-A is replicable in jurisdictions with sufficient civil-society density; the conditions of that density must be realistically assessed before adoption.
4. Corrective iteration as a procedural commitment. Implementing RoW requires the structured ring-closing debrief set out in D 7.5-A §7.1 — the three-question self-check and the translation of its answers into the design of the next ring. Iteration without this procedural commitment reduces to widening without correction.
5. Explicit documentation of whose voice did not enter. Organisations implementing RoW should document, at the close of each ring, which positions were structurally underheard, and use that record as the agenda for the next ring. This record should be a permanent appendix to the engagement output, not an internal working note.

For the research community

6. Portability of the complex-intersectional typology. The HRJ categories developed in D 7.5-B are portable beyond the three jurisdictions studied; their application to additional jurisdictions (particularly within the EU and in countries with significant EU external relations) would strengthen the Horizon Cluster 2 evidence base.
7. Explicit geopolitical self-statement. Any future civil-society-engagement methodology should state the geopolitical conditions under which it can and cannot be applied. D 7.5-A §6.7.2 and §8 model how this should be done.

Limitations

Three limitations of this deliverable should be stated explicitly.

- Jurisdictional coverage. The empirical work is concentrated on Taiwan, Finland, and Sweden. The complex-intersectional critique is argued to be portable, but it has been demonstrated rather than tested across the full range of EU member states or across EU external-relations partners.
- Civil-society density. The Rings-on-Water methodology was implemented in two jurisdictions whose civil-society actors were, by D 7.5-A's own admission, unusually well connected. Replicability in jurisdictions with thinner civil-society density, or where civil-society actors face direct repression, remains to be established.

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Recommendations from D 7.6



Recommendations and suggestions for further examination

Recommendation 1: Horizon as a multilateral diplomatic instrument

The first finding we have made is directed to the EU Commission and Horizon and concerns the treatment of partners who are not EU Member States. We have found that after the post-Cold War era, multilateralism starts with the principles of equality and respect between the EU based and the Third country beneficiaries, including Ukraine which is a State geographically on the edge of the EU and where future membership is under discussion. Our project is unique in that Taiwan and Indian beneficiaries are full

and equal partners in the project. The fact that they have been equal partners funded by the EU Commission has made it possible for our Taiwan partners in particular to play a more effect role, and in the status it has given the project within Taiwan in relation to Civil Society and public authorities such as the Constitutional Court, the Universities, and also with the EEAS. It is not possible to overestimate how important it has been for the establishing of connections and relations between Taiwanese Civil Society and Public Actors with, for example, their Swedish and European counterparts, that the three beneficiaries from Taiwan are equal and funded project partners in relation to the EU Commission and in relation to the Consortium. In fact, we believe that successful creation of networks between countries and EU would not have been possible had Taiwan's researchers not been equal partners to EU Member State partners.

It is only by making our Taiwan and Indian partners, and we hope in the future our Ukraine researchers, full and equal beneficiaries within the project, that they themselves have had the legitimacy and not just the resources to engage fully with the Civil Society and Public Authorities required to fully understand how HRJs are linked to the human rights regimes themselves. How this is done depends on the specific history and context of each place, which could only be fully assessed through close collaboration with Civil Society and national public authorities.

Recommendation 2: Educate Civil Society to be observant that it is after the immediate crisis has passed that the risk of function creep is higher

Our second finding is that it is key to develop an increased focus and awareness among human rights organizations of the implications of HRJs, particularly when the crisis that led to the original HRJ has passed and society has got used to what were originally described as temporary measures and States desire to use HRJs to make these changes permanent including extending them to other areas through function creeps.

Recommendation 3: To expand the capacity for human rights to serve as a comparative matrix for Civil Society when holding the State accountable

The third finding is about the importance of safeguarding human rights as both a comparative system and as a new function as the mediator of the relationship between multilateralism and multipolarity. When used appropriately, the development of HRJs can create an interdependency between Civil Society, national, regional and international instruments which supports multilateralism in its relation to multipolarity by establishing a dignified relationship of equality. However, when HRJs are used to achieve independency between the different levels, HRJs will strengthen multipolarity and lose the meaning of human rights as the foundation of a shared value-based realism.

Recommendation 4: To reform the Horizon reporting system to protect researchers and human rights defenders at risk

The fourth finding is that there is a gap in the Horizon reporting process when it comes to researchers and human rights defenders because so many participants can see and download material, which risks it being shared inappropriately or hacked. EU Horizon should create a “safe” or secure reporting system in addition to SyGMA for those at risk of punitive consequences from their own governments when they conduct research within a Horizon project or participate in human rights and democracy promoting activities conducted through Horizon research Civil Society engagements. Either there should be a system besides SyGMA or there should be a function within SyGMA that takes the safety of the researchers and participants into account when reporting research and activities from a Horizon project to the EU Commission.

Key Findings:

- 1) When multilateralism is in conflict with, or under threat from, multipolarity, human rights move from being a top-down (where there is an international objective norm) to bottom-up (where each right acquires its meaning from its local context) regime, with States seizing the initiative when international rules become local rules because a weakened unified international source to check such actions, enabling States to use human rights proactively as a tool of governance. Whilst this has new benefits and opportunities (the rules becoming more sensitive to place and historicity), it also

generates new challenges because the existing system was designed to act as a means of protection of the individual against the State, and not as an instrument of governance.

- 2) That the existence of a liberal democratic state is indispensable to protecting human rights. If the liberal democratic state retreats from its responsibilities, Civil Society on its own cannot take on the role of advancing and protecting the individual through human rights.
- 3) That human rights are not only a value-based regime of rules and principles but also create comparative and common metrics between countries, and between Civil Society networks and organizations, that allow Civil Society to make comparisons between a variety of laws and regulations across jurisdictions and countries. A large part of Civil Society does not have, or finds it a challenge to acquire, the resources or skills required to evaluate the effects of proposed legislation that risks infringing individual human rights and therefore to provide effective critique, for example the effects of specific regulations and programs proposed by the State when regulating migrants. This is when human rights can serve as a comparative matrix and help Civil Society understand the effects of a law in one country when the same law is being proposed in their own country.
- 4) When HRJs are used by the State to defend its own decisions, there should be a “heightened scrutiny” to make sure that HRJs are not used by the State to circumscribe its human rights and constitutional and municipal legal obligations towards individual person’s human rights, particularly those in already vulnerable or discriminated groups.
- 5) The migrant (in contrast to migration) is the new colorline: in the past, much discrimination was focused on ethnicity, as famously described by W.E.B. DuBois: “The problem of the Twentieth Century is the problem of the color line,” when writing about legacy of slavery and colonialism. Our research has identified that there is a shift to discrimination against anyone who is a migrant or has a migrant background, with HRJs used both to discriminate against and to infringe upon and limit the rights of these groups.

- 6) That once a HRJ has been both normalized and institutionalized, there is a risk of function creep, where the new infringement of a right will be used not only in the context of the original HRJ but for unrelated purposes. For example, HRJs concerning the fight against gangs in Sweden were used to justify the adoption of critiqued Stop-and-search laws to be able to search mostly boys with migrant backgrounds - but the same law is now being used to protect the Israeli embassy after the Israeli and USA's armed attack on Iran.



WP4 (Taiwan) Final Report 3, Polarization, Party Line
and Taiwan's dilemma under the shadow of China:
Unified government with weak parliamentary oversight
or divided government paralyzed by political
showdowns?

D 7.6 tasks 7-8 WP7 and D2.2. tasks 7-8 Wp2

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Polarization, Party Line and Taiwan's dilemma under the shadow of China: Unified government with weak parliamentary oversight or divided government paralyzed by political showdowns?

Taiwan was a one-party authoritarian state until 1987, when its ruling party, KMT (Kuomintang, Chinese Nationalist Party), lifted the martial law. In 2000, the young democracy experienced its first transition of power when the Democratic Progressive Party (DPP), the opposition party formed in 1986 by *Tangwai* (non KMT, literally “outside of [Kuomin]Tang”) politicians and activists, won the presidential election, although KMT continued to control the legislative Yuan (Congress). Since 2000, although there have been other third parties, Taiwan has been effectively a two-party system dominated by KMT and DPP. The main dividing issues between the two parties focus on Taiwan's relationship with China, and third parties have aligned with either KMT or DPP mainly based on their own position on China. Polarization worsened in the 2008-2016 period, when the KMT administration sought closer tie with China.¹⁴⁰ Studies have also observed polarization in Taiwan from the strong party cohesion in Congress, with DPP showing even higher levels of party cohesion.¹⁴¹ Party cohesion is partly a result of the party negotiation mechanism for legislative bills, leading to an increase of party-line voting and a decline in roll-call voting.¹⁴²

In 2016 DPP seized both the presidency and a congressional majority for the first time. Nevertheless, DPP met with a major blow in the 2018 local election (often seen as a mid-term), losing 2/3 of the municipalities to KMT. The concern about China's interference in Taiwan elections grew after the 2018 election, which further intensified the polarization (see also Final Report 4).

At the outset of the COVID-19 pandemic, Taiwan had just completed its 2020 presidential and legislative elections. In response to the potential threat from China, exemplified in the preceding months in Hong Kong, Taiwan for a second time elected a unified government led by the Democratic Progressive Party (DPP), a party that is adopting a

¹⁴⁰ Alexander C. Tan, *Taiwan: Party System of a Young Consolidated Democracy*, in POLITICAL PARTIES AND THE CRISIS OF DEMOCRACY: ORGANIZATION, RESILIENCE, AND REFORM 381-400 (Thomas Poguntke & Wilhelm Hofmeister eds., 2024). <https://academic.oup.com/book/58013/chapter/479033031>

¹⁴¹ Alexander C. Tan, *Party Polarization in New Zealand and Taiwan: An Exploratory Study*, paper presented at the 2020 Conference of the Taiwan Institute of Governance and Communications Research, Taipei, Taiwan (Oct. 30, 2020), <https://ir.canterbury.ac.nz/server/api/core/bitstreams/94ea9ccd-a0ad-41ea-bffc-7d29d3ab133c/content>

¹⁴² Shing-Yuan Sheng & Shih-Hao Huang, *Party Negotiation Mechanism: An Analysis through the Lens of Institutionalization*, 35 SOOCHOW J. POLITICAL 37, 37-92 (2017) (citing in Alexander C. Tan, *Party Polarization in New Zealand and Taiwan: An Exploratory Study*, paper presented at the 2020 Conference of the Taiwan Institute of Governance and Communications Research, Taipei, Taiwan (Oct. 30, 2020), <https://ir.canterbury.ac.nz/server/api/core/bitstreams/94ea9ccd-a0ad-41ea-bffc-7d29d3ab133c/content>). Yen-Chieh Liao, Electoral reform and fragmented polarization: New evidence from Taiwan legislative roll calls, 50 Legis. Stud. Quart. 3, 3-21 (2024) <https://doi.org/10.1111/lsq.12459>. Zoe Lee [李又如], Does the Lack of a Majority Party Lead to Greater Legislative Diversity? Conflict and Alliances in Legislatures' Voting Records [三黨不過半立法院會更多元嗎？從歷屆表決紀錄看國會的對抗與結盟], READr (Jul. 24, 2025), <https://www.readr.tw/post/3041>

more cautious stance toward China, and which was more willing to implement restrictive border control for inbound traffic from China. With Taiwan's zero-COVID policy, the DPP government gradually introduced various stringent measures. Some of these measures had been criticized for a lack of legal authorization or being overbroad in their scope, out of proportion to the need. Yet, under the unified government, Congressional checks and balances were largely inactive. Due to high social pressure, as well as the judiciary's constant deferral to administrative discretion, litigations were also seldom initiated.¹⁴³

After the pandemic subsided, Taiwan completed a new round of presidential and legislative elections in 2024, leading to a divided government. A coalition congressional majority is led by the major opposition party that seeks a closer tie with China. This coalition has not only blocked bills and budget plans proposed by the government, but also enacted laws to paralyze the function of the Constitutional Court, a major avenue for addressing human rights violations. As the growing tension in geopolitics intersects with domestic political divide, congressional checks and balances can easily be hijacked and used as a battleground for political showdowns, rather than as a mechanism of oversight.

Unified government with weak oversight during the pandemic

During the COVID-19 pandemic, Taiwan's domestic political context was characterized by a unified government, strong cooperation between the executive and legislative branches, and a broad expert-led emergency governance system focused on the Central Epidemic Command Center (CECC).

After the January 2020 presidential and legislative elections, President Tsai Ing-wen and the Democratic Progressive Party (DPP) retained both executive control and a legislative majority. This significantly reduced partisan obstacles and allowed for quick policymaking. The Legislative Yuan swiftly enacted the Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens (hereinafter referred to as the "Special Act") in February 2020.

This legislation, enacted to authorize prompt administrative responses to emergencies during the COVID-19 pandemic, granted the CECC the power to take all necessary actions thereby establishing broad authorization for the administration's actions. When first enacted in 2020, the Special Act contained a sunset clause, set to expire on 30 June 2021. The Act was subsequently amended in 2021 and 2022, with the sunset clause extended by one year on each occasion and ultimately remained in force until its expiration on 30 June 2023. As DPP has the

¹⁴³ For more detail on the domestic check and balance system in Taiwan, *see* HRJust WP4 (Taiwan) Final Report: Institutional Human Rights Protection without a UN-membership: Taiwan's Domestication of International Human Rights Law. Section 2, The Domestic Check and Balance System in Taiwan.

congressional majority, the enactment of the Special Act and its two subsequent amendments easily flew through the legislative process.¹⁴⁴

Against this institutional backdrop, legislative oversight was structurally weakened during the pandemic, and the Legislative Yuan became little more than a rubber stamp. While epidemiological knowledge and international standards for emergency governance had gradually evolved, legislative supervision remained largely lenient. There had not been meaningful refinement of the oversight mechanism even as knowledge about the nature of the pandemic and how to tackle it advanced over time. A central object of debate was Article 7 of the Special Act, which provides that, for disease prevention and control requirements, the CECC Commander may implement necessary responses or measures. As a broadly framed general clause, it had become a focal point for concerns about open-ended authorization. Article 7 was immediately criticized by a number of legal scholars and civil rights organizations. However, as the disease seemed to have been effectively controlled in the course of 2020, especially when compared to other countries, the criticisms and coverage of the debates about Article 7 and pandemic measures were only sporadically covered by the media and did not reach the general public.

In May 2021, Taiwan experienced its first significant community outbreak, even though its scale was very small from the global perspective. In response, on May 21, 2021, the government requested amendments to the Special Act to extend its duration and budget.¹⁴⁵ As the legislative session was drawing to a close in May,¹⁴⁶ Congress passed the proposed amendments on May 31 without much deliberation.¹⁴⁷ While legislators attached 203 “incidental resolutions” to the amendment of Articles 11 (budget) and 19 (duration and sunset), incidental resolutions lack binding force and only served to demonstrate legislators' concerns about these matters.¹⁴⁸

In September 2021, the CECC finally responded to the criticisms of Article 7 that had persisted since the enactment of the Special Act. The CECC emphasized that only eight

¹⁴⁴ Ming-Hsin Lin, *Revisiting the Constitutionality Controversies of Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens Article 7* [再論嚴重特殊傳染性肺炎防治及紓困振興特別條例第 7 條之合憲性爭議], 407 TAIWAN LAW J. 53 (2021). Chih-Wei Hsieh, Mao Wang, Natalie WM Wong, & Lawrence Ka-ki Ho, *A whole-of-nation approach to COVID-19: Taiwan's National Epidemic Prevention Team*, 42 INT. POLIT. SCI. REV. 300 (2021). <https://doi.org/10.1177/01925121211012291>

¹⁴⁵ Legislative Yuan Official Gazette, 110 (60) No. 4911, 1-2 (2022). Legislative Yuan, 13 Sittings, 10th Appointed Dates, 3th Session, Agenda Related Documents No. 1905 (2022). https://lis.ly.gov.tw/lygazettec/mtdoc?PD100313:LCEWA01_100313_00007

¹⁴⁶ According to Article 68 of the Constitution, the Legislative Yuan should hold two sessions each year and should convene of its own accord. The first session lasts from February to the end of May, and the second session from September to the end of December.

¹⁴⁷ Legislative Yuan Official Gazette, 110(66) No. 4917, 223-272 (2022).

¹⁴⁸ Tsai Maw-In[蔡茂寅], *The Legal Effect of Budgetary resolution and Incidental resolution* [預算主決議與附帶決議之效力], 57 TAIWAN LAW J. 84 (2004). LEGISLATIVE YUAN ORGANIC LAWS AND STATUTES BUREAU, PRINCIPLES AND INSTITUTIONS OF LEGISPRUDENCE [立法原理與制度(增訂本)] 20 (2004).

measures were implemented under the authority delegated by Article 7. These included orders prohibiting teachers, students, and medical workers from traveling abroad, extending the term for migrant workers to stay in Taiwan, and suspending the convening of annual shareholder meetings, among others. The CECC argued that revising individual laws would have been too time-consuming and the timescales involved would have been inadequate to enable it to respond effectively to the emergency situation. Further, they contended that, under an expansive interpretation of Article 37 of the Communicable Disease Control Act,¹⁴⁹ the administration was already broadly authorized to implement measures necessary to prevent transmission of communicable disease.¹⁵⁰

Against this backdrop, an opposition-led initiative to limit the CECC's authority failed to gain traction. In October 2021, twenty-three legislators from the opposition party, Kuomintang (KMT or Chinese Nationalist Party), the then parliamentary minority, proposed amending Article 7 to restrict the CECC's power. However, the proposal was rejected at the committee stage and did not advance to a second reading.

In addition to the weakening of legislative supervision, other separation of powers mechanisms also failed to exercise effective oversight. The Constitutional Court dismissed a petition regarding the Special Act on procedural grounds, resulting in an absence of substantive scrutiny regarding the constitutionality of the emergency measures.¹⁵¹ In other words, the Court did not give any consideration to the legality of the measures themselves. At the level of

¹⁴⁹ Article 37 of the Communicable Disease Control Act:

When communicable diseases occur or are expected to occur, local competent authorities shall, by considering actual needs, take the following measures in collaboration with organizations (institutions) concerned:

- 1.regulate schooling, meeting, gathering or other group activities;
- 2.regulate entry and exit of people to and from specific places and restrict the number of people admitted;
- 3.regulate traffic in specific areas;
- 4.evacuate people from specific places or areas;
- 5.restrict or prohibit patients or suspected patients with communicable diseases from traveling by means of public transportation or entering/leaving specific places;
- 6.other disease control measures announced by government organizations at various levels.

Organizations (institutions), groups, enterprises and individuals shall not refuse, evade or obstruct the above mentioned measures.

Measures mentioned in Paragraph 1 that shall be taken by local competent authorities shall be implemented during the period when the central epidemic command center is in existence in accordance with instructions of its commander.

¹⁵⁰ Chun-Lin Hsieh [謝君臨], *The Catch-all Provision in the Special Act Used only Eight Times in Over a Year, Says the Deputy Minister of Health and Welfare Chung-liang Shih* [防疫特別條例「霸王條款」 石崇良：1年多來僅用8次], LIBERTY TIMES (Sep. 30, 2021), <https://news.ltn.com.tw/news/politics/breakingnews/3688759> (last visited Dec. 27, 2024)

¹⁵¹ Taiwan Constitutional Court, 112-Hsien-Tsai-24 (2023).

<https://cons.judicial.gov.tw/docdata.aspx?fid=5498&id=349594>. In this ruling, the Constitutional Court dismissed a petition filed by a presiding judge regarding the constitutionality of Article 7 of the Special Act. The Court cited procedural deficiencies as the basis for refusal, stating that the petitioner failed to concretely demonstrate the objective unconstitutionality of the statute.

ordinary adjudication, administrative courts consistently adopted a deferential posture toward administrative discretion, including in cases involving direct restrictions on personal liberty.¹⁵²

Similarly, the Control Yuan ombudsman failed to fully deploy its checks and balances. Although it explicitly pointed out that certain government pandemic measures potentially infringed upon human rights and raised concerns under the principle of the rule of law, it stopped short of exercising its power of corrective measures to rectify these violations.¹⁵³

Consequently, under conditions of unified party control in the legislature, and with both the judiciary and the ombudsman exhibiting institutional restraint, the constitutional safeguards designed to restrain executive power were effectively rendered dormant.

Post 2024: divided government paralyzed by political showdowns

After the pandemic subsided, the subsequent election reshaped Taiwan's political landscape. In the 2024 presidential and parliamentary elections, DPP retained the presidency and executive power, but lost its majority in the Legislative Yuan to a coalition formed by KMT and the Taiwan People's Party (TPP). This resulted in a divided government with intensified political confrontation, which ultimately led to political turmoil.¹⁵⁴

It should be noted that the differences between political parties in Taiwan often come down to the divergence on the question about Taiwan's relationship with China. Crudely speaking, DPP is pro-independence, KMT is pro-unification. TPP seems to advocate for a middle path. Since 2024, TPP has swapped its ally from DPP to KMT. Therefore, the priority of "checks and balances" between political branches is often not about ensuring a well-functioning mechanism that protects human rights, but about Taiwan's China policy, which can be played out in various forms.

During COVID-19, China was the major threat for Taiwan both in terms of national security and the pandemic. With a congressional majority, the DPP government was generally able to roll out pandemic measures smoothly. There had also been episodes of confrontation in Congress between political parties during the pandemic. For example, in 2021, vaccine procurement became a high-salience partisan flashpoint. Taiwan's vaccine purchase was

¹⁵² HRJust (Jan 2024), WP4 Method Memo - How does the Taiwanese Legal System Hold the State Accountability for its Use of Human Rights Justification in its Actions During the COVID-19 Pandemic? The section 2.2.3.3 "Quarantine Measures & Court's Decisions" provided example regarding the court's deferential posture toward administrative discretion.

¹⁵³ CONTROL YUAN, INVESTIGATION REPORT NO. 111-SOCIAL-INVESTIGATION-0006 (2022).

<https://www.cy.gov.tw/CyBsBoxContent.aspx?n=133&s=17787> Regarding "Digital Fencing," the Control Yuan confirmed the lack of legal authorization for location tracking. However, it refrained from issuing a formal "corrective measure," merely urging the administration to "review and improve" its procedures.

¹⁵⁴ Yinn-ching Lu, *The Vacuum of Constitutional Order in Taiwan: 2024-2025*, INT'L J. CONST. L. BLOG (Nov. 18, 2025), <http://www.iconnectblog.com/the-vacuum-of-constitutional-order-in-taiwan-2024-2025/> (last visited Jan. 26, 2026)

obstructed by China's interference.¹⁵⁵ During the community outbreak in that Spring, KMT parliament members blamed the DPP government for vaccine shortage and took the opportunity to urge the government to make an exception for importing China-manufactured vaccines (Taiwanese law prohibits the import of Chinese biomedical products). The DPP was able to fend off these proposals to avoid playing into China's vaccine diplomacy.

Nevertheless, with a divided government after 2024, the parties' different positions on China have crystallized into persistent political deadlocks. To assert and amplify their influence through Congress, the pro-China KMT-TPP coalition has deliberately obstructed mechanisms of checks and balances and blocked major channels of human rights protections, including Taiwan's Constitutional Court (TCC).

In May 2024, KMT legislators, aligned with the TPP, passed a bill to expand legislative oversight power. Constitutional concerns surrounding the controversial revision compelled the TCC's intervention and thus made the TCC itself a political target.¹⁵⁶ In December 2024, the KMT-TPP coalition initiated an amendment to the Constitutional Court Procedure Act (CCPA), subsequently promulgated in January 2025. The amendment raised the quorum for constitutional adjudication to ten justices (out of a total of fifteen) and required a fixed number of nine affirmative votes to declare a law unconstitutional, regardless of the number of justices actually in office. Before the amendment, the CCPA only required participation by two-thirds of sitting justices and only a simple majority of participating justices to invalidate a piece of legislation. In short, the previous framework allowed the TCC to operate even when vacancies existed, whereas the new regulation risks paralyzing the TCC whenever the number of justices falls below ten. The revision of CCPA gives the KMT-TPP coalition significant bargaining power, which they were able to cash in on immediately as the term of seven (out of the fifteen) justices expired in Oct 2024. President Ching-te Lai (DPP) was to nominate new justices to fill the vacancies, which would have to be approved by Congress. However, in December 2024, none of Lai's 7 candidates were approved, and a second round of 7 potential appointees also failed in July 2025.¹⁵⁷ As a result, the TCC was effectively paralyzed for over one year.¹⁵⁸

¹⁵⁵ For more detail on how geopolitical factors affected border control and vaccine procurement, see HRJUST WP4 (TAIWAN) FINAL REPORT: GEOPOLITICAL TENSIONS, RISE OF A "DIGITAL DEMOCRACY" AND HUMAN RIGHTS IMPLICATIONS. Section 1, Geopolitical Factors in Border Control and Vaccine Procurement.

¹⁵⁶ Lu, *supra* note 11.

¹⁵⁷ Shao-Kai Yang, *Taiwan's Constitutional Grey Hole: The Constitutional Court in Paralysis*, VERFBLOG (Dec. 3, 2025), <https://verfassungsblog.de/taiwan-constitutional-court/>, DOI: 10.17176/20251203-172101-0

¹⁵⁸ In December 2025, the TCC, sitting with five out of eight justices, finally struck down the amended CCPA. However, the dispute remained, as three justices publicly disputed the decision and continued to boycott the following judgment promulgated in January 2026. For more detail, please see Ming-Sung Kuo, *Judicial Bootstrapping or Constitutional Hardball? The (Un)Conventionality of the Taiwan Constitutional Court's Invalidity of the 2025 Amendment of the Constitutional Procedure Act, Part II*, INT'L J. CONST. L. BLOG (Jan. 21, 2026), <https://www.icconnectblog.com/judicial-bootstrapping-or-constitutional-hardball-the-unconventionality-of-taiwan-constitutional-courts-invalidation-of-the-2025-amendment-of-the-constitutional-procedure-act-part-ii/>

The nature and implications of political standoffs between the DPP and the KMT-TPP coalition went beyond the function of TCC. In early 2025, Congress massively cut and froze the government's general budget proposals.¹⁵⁹ Human rights institutions were specifically targeted. The operational budget for the National Human Rights Commission under the Control Yuan (ombudsman) was reduced by at least 90%; meanwhile, KMT legislators proposed cutting the gender equality operational budget to below USD 100.¹⁶⁰

Taiwan's Impossible Choice in the Shadow of China

With hindsight, it would be fair to say the unified government that came into power in 2020 allowed Taiwan to navigate smoothly through the early days of the pandemic. Nevertheless, as the pandemic progressed, the excessive measures during the prolonged zero-COVID period also raised concerns about violations of individual rights and other perils common in times of concentration of power. Nevertheless, had the 2020 election resulted in a divided government like the current one, Taiwan's COVID-19 pandemic trajectory is likely to have been considerably more chaotic from the outset. This note reminds readers that pandemic policies were contingent on the larger political context, but the gains are not without their human costs.

With or without a pandemic like COVID-19, Taiwan's liberal-leaning voters often face the impossible choice between a unified government that is more cautious about China but with weak oversight under DPP's strong party cohesion, and a divided government with a major opposition party that may be willing to play into the hands of its aggressive neighbor. With the growing geopolitical tension, the second option risks allowing the political deadlock to weaken not only the long-fought for human rights mechanism but also the normal functioning of the State. Yet, the first option further risks endorsing the prioritization of security over all other issues, the danger of which was shown during the pandemic.

Civil Society has played an important role in Taiwan's democracy. In addition, given Taiwan's precarious international status, international pressure has been a pivotal source of support for human rights causes. As the Post-WWII World Order weakens and security becomes more and more prioritized, Civil Society worldwide faces an uphill battle in

¹⁵⁹ Brian Hioe, *KMT Budget Cuts Set up Latest Partisan Clash in Taiwan—The KMT-controlled legislature passed a budget with unprecedented reductions from the DPP government's request, raising the stakes for the political showdown*, DIPLOMAT (Jan. 30, 2025), <https://thediplomat.com/2025/01/kmt-budget-cuts-set-up-latest-partisan-clash-in-taiwan/> (last visited: Feb. 24, 2026)

¹⁶⁰ Hollie Younger, *LGBTQ+ groups oppose proposed cuts to gender equality budget*, TAIPEI TIMES (Jan. 16, 2025), <https://www.taipeitimes.com/News/taiwan/archives/2025/01/16/2003830318> (last visited: Feb. 24, 2026). In addition to targeting gender equality operational budget being targeted, Congress amended the law to weaken the Council of Indigenous Peoples by turning the representatives of indigenous nations into unpaid positions. See Chen Chien-chih & Jake Chung, *Legislative Yuan passes amendments regarding Council of Indigenous Peoples*, TAIPEI TIMES (Dec. 14, 2024), <https://www.taipeitimes.com/News/taiwan/archives/2024/12/14/2003828491> While this move does not officially change the mandate of the Council, the de-facto downsizing seems to have affected its function, including the operation of an advisory committee that advises courts on indigenous traditional norms and practices.

defending civil liberties and human rights. By mobilizing fear, asserting national security interests or reinterpreting human rights, governments could dismiss legitimate concerns raised by Civil Society. During the zero-COVID period, Taiwan was praised for its successful control of the pandemic, ignoring local Civil Society's criticism of the pervasive use of digital surveillance, which may have emboldened the Taiwan government to push for more excessive data access and requests. Western democratic allies may have an interest in juxtaposing Taiwan and China in regional geopolitics. Nevertheless, the international society should be aware of the domestic political dynamics and be watchful of whether such international support could be manipulated to suppress dissent. With strong international support, local NGOs will be empowered to offer alternative narratives and observations from the ground. These authentic voices will also better serve external partners like the EU when it is forming their regional strategies.

Recommendations:

1. EU should continue to recognize the opportunities for its own external relationships and for the promotion of human rights globally through engagement with Civil Society. In light of "Taiwan's Dilemma under the shadow of China", Civil Society has played an indispensable role in safeguarding human rights. This function is further reflected in the annual EU–Taiwan Human Rights Consultations (convened seven times since 2018), one of the few forums where foreign representatives openly affirm human rights commitments and the government is formally obligated to issue official statements on human rights matters.
2. EU should continue to demonstrate its commitment to human rights by continuing to engage Taiwan Civil Society. As reported by many local NGOs, the EU has persistently engaged with Civil Society in the preparatory stage of the Consultations, and by doing so, the EU has demonstrated itself to be a partner of human rights advocates and has made a substantive contribution to advancing human rights governance reforms in Taiwan's policy landscape.
3. NGOs that are focused on direct service delivery — particularly those serving marginalized communities such as migrant workers — often lack the capacity to engage meaningfully in EU consultations on strategy. To avoid risking the exclusion of critical frontline perspectives from local and regional policymaking, the EU should consider how to meaningfully engage with these NGOs - e.g. allocating dedicated funding or offering capacity-building support, to ensure their views are included in the EU's consultative processes.



WP4 (Taiwan) Final Report 2, Geopolitical Tensions, Rise of a “Digital Democracy” and Human Rights Implications

D 7.6 tasks 7-8 WP7 and D2.2. tasks 7-8 WP2

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Geopolitical Tensions, Rise of a “Digital Democracy” and Human Rights Implications

Due to the unique geopolitical relationship between Taiwan and China, Taiwan’s isolated status as a non-member State of the World Health Organisation (WHO), its geographic isolation, and its experience with the 2003 SARS outbreak,¹⁶¹ the Taiwanese government responded to the COVID-19 pandemic by implementing strict border controls and extensive contact tracing measures, even though it did not implement a lockdown.¹⁶² This memo provides an overview of how geopolitics, involving international political tussles and international status concerns, played a prominent role in COVID-19 governance in Taiwan, in contrast to Finland and Sweden, where geopolitical factors were not so prominent in defining their approaches.

Geopolitical Factors in Border Control and Vaccine Procurement

Distrust of information transparency from China, together with Taiwan’s prior experience with SARS, shaped Taiwan’s early response to the COVID-19 pandemic. Given the close geographical proximity to, and significant political tension with China, the Taiwanese government decided to take stringent precautionary actions based on early reports and data, notwithstanding their limited scope and uncertain accuracy. Border control and vaccine procurement were two examples with clear geopolitical dimensions.

Upon learning of an outbreak of SARS-like disease in Wuhan, the Taiwanese government promptly began the earliest border control measures worldwide for flights from Wuhan, including medical examination for all aircraft passengers (initially not mandatory but with strong nudges) and quarantining passengers showing respiratory symptoms. The border measures gradually expanded. Starting from January 23, 2020, Taiwan suspended flights between Wuhan and Taiwan,¹⁶³ and starting on February 10, 2020, all routes from China except

¹⁶¹ Due to Taiwan’s close proximity to Guangdong, China, where SARS-CoV was first identified in 2003, Taiwan was one of the most affected countries. During the outbreak, the Taiwanese government lacked a cross-agency coordination mechanism to prevent the spread of the disease, and its exclusion from the World Health Organization hindered it from participating in emergency meetings and obtaining key information. Two hospitals were locked down due to the cluster of cases, and off-duty staff were compelled to return to the facility and were subjected to mandatory quarantine. The image of helpless people locked in the hospital was widely broadcast and caused a long-lasting sensation. The SARS experience also played a pivotal role in stimulating institutional reform. The Communicable Disease Act was amended to specify the conditions when a Central Epidemic Command Center (CECC), an ad hoc organization, should be established to coordinate pandemic control.

¹⁶² Po-Han Lee & Ying-Chao Kao, *Health Apartheid during covid-19: A Decolonial Critique of Racial Politics between Taiwan and the WHO*, 5 INT. J. TAIWAN STUD. 375 (2022). <https://doi.org/10.1163/24688800-05020006>. Alzbeta Loduhova & Kristina Kironska *How Did Taiwan Go from ‘Most Affected’ during sars to ‘Least Affected’ during covid-19?: A Comparative Study of Taiwan’s Emergency Responses*, 6 INT. J. TAIWAN STUD. 291 (2022). <https://doi.org/10.1163/24688800-20221249>

¹⁶³ Ministry of Health and Welfare, *All airlines of Taiwan suspended direct flights to and from Wuhan, and Chinese nationals residing in Wuhan were prohibited from entry into Taiwan*, CRUCIAL POLICIES FOR COMBATING COVID-19 (Jan. 23, 2020), <https://covid19.mohw.gov.tw/en/cp-4868-53725-206.html>

four were suspended.¹⁶⁴ For inbound travelers, Taiwan first imposed entry restrictions on Chinese nationals from affected regions on January 23, then expanded to a prohibition on all Chinese nationals on February 6.¹⁶⁵ On March 19, 2020, the prohibition was extended to cover all foreign nationals.¹⁶⁶ Throughout the pandemic, Taiwan maintained heightened border restrictions against China, and the entry bans on Chinese nationals outlasted those on other foreign nationals. On October 13, 2022, Taiwan reopened its border to most foreign visitors, except those from China.¹⁶⁷ It was not until September 1, 2023 – nearly one year later– that Chinese nationals were permitted to enter Taiwan.¹⁶⁸

These China-specific border controls were widely regarded as having helped Taiwan block the first wave of infection and contributed to its positive reputation in preventing the pandemic.¹⁶⁹ Against the backdrop of Taiwan's long-standing international isolation, its relatively successful early control of COVID-19 created an opportunity for the government to enhance its international visibility and promote its international status. Since Taiwan gained a reputation for keeping infection rates low, strict measures continued to be implemented, but without paying enough attention to the collateral human rights costs.

As for vaccine procurement, Taiwan faced difficulties in purchasing vaccines in the first half of 2021 due to its exclusion from WHO and obstructions from China. When Taiwan tried to purchase BioNTech (BNT) vaccines from Germany, China obstructed it. As a result, President Tsai Ing-Wen publicly blamed China for interfering in Taiwan's vaccine procurement. Although a Chinese pharmaceutical company, Shanghai Fosun, offered to supply

¹⁶⁴ Ministry of Health and Welfare, *The amount of direct flights from Taiwan to China, Hong Kong and Macau drastically decreased. Only flights to Beijing Capital International Airport, Shanghai Pudong International Airport, Shanghai Hongqiao Intl Airport, Xiamen Gaoqi Intl Airport, and Chengdu Shuangliu Intl Airport remained active*, CRUCIAL POLICIES FOR COMBATING COVID-19 (Feb. 10, 2020), <https://covid19.mohw.gov.tw/en/cp-4868-53781-206.html>

¹⁶⁵ Ministry of Health and Welfare, *China, Hong Kong, and Macau listed as a Level 2 Epidemic Area. All entry of Chinese nationals to Taiwan were suspended*, CRUCIAL POLICIES FOR COMBATING COVID-19 (Feb. 6, 2020), <https://covid19.mohw.gov.tw/en/cp-4868-53767-206.html>

¹⁶⁶ Ministry of Health and Welfare, *Restrictions on all foreigners from entering into Taiwan. All inbound travelers were requested to undergo home quarantine for 14 days*, CRUCIAL POLICIES FOR COMBATING COVID-19 (Mar. 19, 2020), <https://covid19.mohw.gov.tw/en/cp-4868-53890-206.html>

¹⁶⁷ Ministry of Health and Welfare, *With steady easing of border measures, Taiwan to end quarantine and adopt 7-day self-initiated prevention policy for arrivals on October 13*, CRUCIAL POLICIES FOR COMBATING COVID-19 (Oct. 13, 2022), <https://covid19.mohw.gov.tw/en/cp-4868-72015-206.html>

¹⁶⁸ Mainland Affairs Council, *Mainland Affairs Council Announces Plans to Resume Cross-Strait Tourism and Ease Business Travel Restrictions for Chinese Nationals Visiting Taiwan*[陸委會公布恢復兩岸觀光旅遊及放寬陸籍人士來臺商務交流之相關規劃], Mainland Affairs Council (Aug. 24, 2023), https://www.mac.gov.tw/News_Content.aspx?n=05B73310C5C3A632&sms=1A40B00E4C745211&s=6245AA71E1396CC6

¹⁶⁹ Chang-chun Chan & Chi-hsin Sally Chen, *The Taiwan Model of COVID-19 Control and its Global Implication*, 6 TAIWAN STRATEGIST 1 (2020).

BNT vaccines in the name of distributing the vaccine to “the greater China region,” the Taiwanese government refused the offer both because it refused to acknowledge Taiwan’s sovereignty and for product safety concerns.¹⁷⁰ In response, the Chinese government accused the Taiwanese government of rejecting assistance from China and sacrificing the health of the Taiwanese people. As community transmission broke out sporadically, the Taiwanese government was therefore blamed for declining the Shanghai Fosun’s vaccines.¹⁷¹ The criticism subsided in the summer of 2021, when Japan and the United States, both of which have traditionally been Taiwan’s allies, announced vaccine donations to Taiwan. These two countries made major vaccine donations when the island went through the first domestic outbreak in 2021. Poland, Czechia, Slovakia, and Lithuania also made small amounts of vaccine donations – these symbolic donations signified a weakened Chinese influence in Eastern European countries.

Pandemic Policy disproportionately burdened Specific Groups

It is noteworthy that specific groups were disproportionately targeted under pandemic policies in order to ensure the economic and social normalcy of the majority in Taiwan. In practice, this meant that certain groups were disproportionately affected because their professions covered essential needs for society to function under the stringent rules. For example, to maintain a viable workforce, healthcare providers were prohibited from traveling abroad during the initial stages of the pandemic, restricting their freedom of movement.¹⁷² Further, although a two-week quarantine was imposed on anyone who had contact with confirmed cases or returned from abroad, pilots flying international routes were especially burdened by this policy as the border control literally suspended the air travel of ordinary citizens.¹⁷³ In contrast, pilots were placed under a cycle of flight duty and quarantine to sustain the Island’s economy and ensure the import of essential goods. Migrant workers (including factory and fishing industry workers) were already a disadvantaged group before the crisis, and the pandemic further worsened their situation. They had no choice but to be confined in their

¹⁷⁰ Helen Davidson, *Taiwan accuses China of interfering with Covid vaccine deals*, GUARDIAN (May 27, 2021), <https://www.theguardian.com/world/2021/may/27/taiwan-president-accuses-china-interfering-covid-vaccine-deals> (last visited Jan. 6, 2025); Chia-hung Tsai & Shane Hsuan-yu Lin, *Containing the COVID-19 Pandemic Under an External Threat: A Case Study of Taiwan*, 140 POLITICAL SCI. QUATER. 63, 68-69 (2025). <https://doi.org/10.1093/psquar/qqae054>.

¹⁷¹ Tsai & Lin, *supra* note 9, at 69.

¹⁷² Central News Agency, *Taiwan bans its healthcare professionals from traveling abroad*, TAIWAN NEWS (Feb. 2, 2020), <https://www.taiwannews.com.tw/en/news/3880226> (last visited Jul. 20, 2023).

¹⁷³ Tommy Walker, *Taiwan Pilots, Cabin Crews Bemoan Stringent COVID Restrictions*, VOA (Aug. 31, 2022), <https://www.voanews.com/a/taiwan-pilots-cabin-crews-bemoan-stringent-covid-restrictions-/6724452.html> (last visited Jul. 20, 2023).

overcrowded and substandard dormitory environments, which became even harder to endure and which readily generated cluster infections.¹⁷⁴

By introducing measures that targeted specific groups, Taiwan experienced very few domestic infection cases during the early stages of the COVID-19 pandemic, allowing it to remain a safe haven without implementing more draconian measures for the general population.¹⁷⁵ However, from the perspectives of overburdened groups, human rights costs were far more underestimated and were overshadowed by the government's focus on its reputation of having a "successful" pandemic policy model. These groups often faced social pressures caused by stigmatization.¹⁷⁶ Targeting specific groups also raises serious concerns under fundamental human rights principles and the concept of the abuse of rights that is enshrined in international human rights documents, such as the European Convention on Human Rights (ECHR).

Narratives of a Digital Democracy: Pursuing International Visibility at the Expense of Human Rights

It is important to note that the implementation and enforcement of the above measures heavily relied on digital measures, which involved the secondary use of personal data and arbitrary database linkages without an explicit legal basis.

As Taiwan's international status remains politically constrained, pandemic control became a channel through which the government promoted the so-called "Taiwan model" and projected its image as a "digital democracy." Within this narrative, Taiwan's trustworthy digital measures were presented as being in contrast to authoritarian China's draconian lockdown, reinforcing Taiwan's distinction from China. These technologies were subsequently

¹⁷⁴ Melissa Marschke, Peter Vandergeest, Elizabeth Havice, Alin Kadfak, Peter Duker, Ilinca Isopescu & Mallory MacDonnell, *COVID-19, instability and migrant fish workers in Asia*, 20 MARIT. STUD. 87 (2021). <https://doi.org/10.1007/s40152-020-00205-y>. Purnima Pandey & Mei-Kuei Yu, *Experiences of foreign residents during COVID-19 pandemic in Taiwan*, 5 J. MIGRATION HEALTH 100080 (2022). <https://doi.org/10.1016/j.jmh.2022.100080>. Yuk Wah Chan & Pei-Chia Lan, *The politics of sanitization: Pandemic crisis, migration and development in Asia-Pacific*, 31 ASIAN PAC. MIGR. J. 205 (2022). <https://doi.org/10.1177/01171968221129382>

¹⁷⁵ Chih-Wei Hsieh & Mao Wang, *Taiwan makes itself a COVID-19 safe zone without draconian measures: Lessons and caveats*, 17 SOCIAL TRANSFORMATION 109 (2021). <https://doi.org/10.1108/STICS-09-2020-0022>

¹⁷⁶ Ching-Fu Lin, Chien-Huei Wu & Chuan-Feng Wu, *Reimagining the Administrative State in Times of Global Health Crisis: An Anatomy of Taiwan's Regulatory Actions in Response to the COVID-19 Pandemic*, 11 EUR. J. RISK REGUL 256 (2020) <https://doi.org/10.1017/err.2020.25>; Frédéric Krumbein, *The Protection of Human Rights by Taiwan's Legislative Yuan during Taiwan's Crisis Management of the COVID-19 Pandemic*, 20 TAIWAN J. DEMOCRACY 155 (2024). <https://www.airitilibrary.com/Article/Detail?DocID=18157238-N202408020004-00008>

framed not only as products of government-Civil Society collaboration but also as symbols of a technologically advanced State, thereby securing domestic trust and public support.¹⁷⁷

Through its policies, under the “digital democracy” branding, Taiwan appears to have managed the pandemic better than many countries. However, the privacy and human rights costs were extremely under-evaluated.¹⁷⁸ As mentioned above, specific groups’ freedom and rights were particularly overlooked by the government. Moreover, Taiwan had long pursued a zero-tolerance policy until April 2022, which meant that Taiwan took a huge number of extensive measures restricting individuals’ daily lives for an extremely long time. For instance, Taiwan deployed widespread digital tools for pandemic control. The cell-tower-based location data (private data) were linked with public databases, including immigration and national health insurance (NHI) to enforce quarantine (called “digital fencing” because by using the cellphone signal as a proxy for the whereabouts of the individual owner, this effectively penned the individual into their home as the system would send the authorities an alert if the cellphone was identified as being out of this immediate area) and for contact tracing. Other digital tools, including SMS check-in (for contact tracing), the official NHI app (for ordering masks and an appointment for vaccination), and the Social Distancing APP (local version of the Google-Apple Bluetooth-based contact tracing app), were introduced during the course of the pandemic. However, measures such as the digital fencing and contact tracing have caused legal disputes for excessively infringing people’s fundamental rights,¹⁷⁹ such as freedom of personal liberty, freedom of movement, right to privacy, property right, freedom of speech, freedom of assembly, and right to vote.¹⁸⁰

Even though Taiwan’s numerous digital measures that infringed on personal freedom had raised concerns, the Taiwanese government still branded itself as a “digital democracy,”

¹⁷⁷ Lin et al., *supra* note 15, at 256-272.

¹⁷⁸ Jen-ji Ho, *Balance Between Pandemic Prevention and Privacy During COVID-19: Analysis to Legal Issues Under Social Justice*, 387 TAIWAN LAW J. 23, 23-32 (2020). Shin-rou Lin, *All Taken as Necessary? Re-examine the Power and Restraints of Isolation and Quarantine*, 43 ANGLE HLTH. LAW REV. 52 (2020). Yi-hung Weng, *Processing of Data concerning National Health Insurance in the Context of the COVID-19 Outbreak: Applications and Limitations*, 51 ANGLE HLTH. LAW REV. 7 (2021).

¹⁷⁹ Wen-Chen Chang & Chun-Yuan Lin, *Taiwan: Democracy, Technology, and Civil Society*, in COVID-19 IN ASIA: LAW AND POLICY CONTEXTS 43-56 (Chang Wen-Chen & Chun-Yuan Lin eds., 2021) <https://doi.org/10.1093/oso/9780197553831.003.0003>; C. Jason Wang, Chun Y. Ng & Robert H. Brook, *Response to COVID-19 in Taiwan: Big Data Analytics, New Technology, and Proactive Testing*, 323 JAMA 1341 (2020) <https://doi.org/10.1001/jama.2020.3151>; Paul M Garrett, Yu-Wen Wang, Joshua P White, Yoshihsa Kashima, Simon Dennis & Cheng-Ta Yang, *High Acceptance of COVID-19 Tracing Technologies in Taiwan: A Nationally Representative Survey Analysis*, 19 INT. J. ENV. RES. PUB. HE. 3323 (2022). <https://doi.org/10.3390/ijerph19063323>; Ming-Cheng M. Lo & Hsin-Yi Hsieh, *The “Societalization” of pandemic unpreparedness: Lessons from Taiwan’s COVID response*, 8 AM. J. CULT. SOCIOLOGY. 384, 384-404 (2020). <https://doi.org/10.1057/s41290-020-00113-y>.

¹⁸⁰ Shun-Ling Chen, Poren Chiang & Cathy Lee, *Observations on the SMS-based Contact Tracing System (IV): Effectiveness in Pandemic Control and Overall Conclusions*, INFORMATION LAW CENTER, IIAS (Jun. 29, 2022), <https://infolaw.iias.sinica.edu.tw/?p=5064> (last visited Jul. 24, 2023).

in contrast to China's digital authoritarianism. The Taiwanese government, under President Tsai Ying-Wen (Democratic Progressive Party, DPP), utilized two well-known COVID-19-related projects as examples to promote itself as a digital democracy – mask maps and SMS check-in. Both of these were first born in the g0v community (the largest civic tech community in Taiwan) and later adopted and deployed by the DPP government.

However, the closeness of the collaboration between the government and Civil Society was greatly overstated. An active participant of g0v who took part in our Civil Society Engagement process expressed concerns about the source code of many pandemic control digital tools being unavailable, including some of the tools mentioned above. Open-source code enhances trust and transparency by allowing the public to independently review the algorithm and the functions of the tools. The lack of such access therefore hindered Civil Society from monitoring the government's measures and assessing the extent of privacy intrusions. An Expert Panel Survey was conducted by WP4 to assess the impact of pandemic control measures on human rights protection. While the broader g0v community rated 'digital democracy' a reasonably positive 6.4 (from 1 to 10, where 1 is low and 10 is high), the five members who took part in the discussion about either of the pandemic tools were sharply divided, with scores ranging from 1 to 10 (on a similar scale). This divergence, though limited in scale, illustrates that the government's claim to 'digital democracy' is far from a settled fact.

Implications in Taiwan's Case

In the context of its limited international recognition, Taiwan's early success in containing COVID-19 provides a strategic opening for the government to leverage public health achievements to enhance global visibility and elevate its international standing. This narrative was further amplified under a unified government with congressional deference to administrative professionals¹⁸¹ and a geopolitical strategy aimed at framing a vivid contrast with the authoritarian regimes of China.¹⁸² However, following the massive community outbreak and the exponential surge in confirmed cases, the Taiwanese government continued to adhere to a Zero-COVID policy, prolonging border controls and strict prohibitions. Crucially, throughout the pandemic, the digital fencing and contact tracing tools operated without clear statutory authorization and were exempted from oversight. It remains

¹⁸¹ Ming-hsin Lin, *Revisiting the Constitutionality Controversies of Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens Article 7*, 407 TAIWAN LAW J. 53 (2021). Chih-Wei Hsieh, Mao Wang, Natalie WM Wong & Lawrence Kapurchase-ki Ho, *A whole-of-nation approach to COVID-19: Taiwan's National Epidemic Prevention Team*, 42 INT. POLIT. SCI. REV. 300 (2021). <https://doi.org/10.1177/01925121211012291>

¹⁸² EUGÉNIE MÉRIEAU, *COVID-19, Authoritarianism Vs. Democracy: What the Epidemic Reveals about the Orientalism of Our Categories of Thought*, SCIENCEPO (Aug. 28, 2020) <https://www.sciencespo.fr/cepi/en/news/covid-19-authoritarianism-vs-democracy-what-epidemic-reveals-about-orientalism-our-categorie/>; Wen-Tsong Chiou, *Lost Between Exceptions and Normalcy: A Discourse on Legal Issues of Taiwan's Pandemic Control Strategies*, 22 J. JUDGES ASS'N 128, 129-131 (2021).

questionable whether their claimed efficacy can survive the scrutiny of the principle of proportionality since most oversight organs voluntarily relinquished their checking power. What is already certain is that human rights violations of specific groups have already occurred, serving as the cost to sustain the narrative of successful ‘digital democracy’.

Recommendation:

From a geopolitical perspective, Taiwan’s official narrative, positioning itself as a thriving digital democracy, offered an appealing counter-model to more dystopian or authoritarian governance frameworks. However, it is worth noting that the Taiwanese government’s internationally oriented self-presentation does not necessarily reflect the full reality of its domestic human rights practices.

Equally, Taiwan’s performance during the COVID-19 pandemic was shaped by geopolitical considerations. Given that the government implemented multiple stringent measures concurrently, the effectiveness and necessity of each individual measure warrants careful and independent evaluation.

To accurately assess the reality of human rights governance in Taiwan, it is advisable to strengthen information exchange with Taiwanese Civil Society organizations and NGOs, so as to obtain reliable, on-the-ground evidence regarding the actual impact of specific human rights-related policy measures.



WP4 (Taiwan) Final Report 4, Normalizing the Exception: Pandemic Governance, Data Use, and Human Rights in Taiwan Multi-layered Crises, Mobilized Solidarity and Stringent Measures

D 7.6 tasks 7-8 WP7 and D2.2. tasks 7-8 WP2

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Normalizing the Exception: Pandemic Governance, Data Use, and Human Rights in Taiwan

Multi-layered Crises, Mobilized Solidarity and Stringent Measures

Although the early SARS-like cases showed up on the radar of Taiwan Centers for Disease Control (CDC) through its monitoring of Chinese social media around the turn of 2020, the initial coverage by Taiwan media were only sporadic as Taiwan was in full gear for its presidential and congressional elections, scheduled for January 12. For the presidential election, the incumbent, Ing-Wen Tsai of the Democratic Progressive Party (DPP), was running against Kuomintang's (KMT, the Chinese Nationalist Party) Kuo-yu Han. Initially a marginal KMT figure, Han seized a rapid rise in 2018 when running for the mayoral election in Kaohsiung, the largest city in Southern Taiwan and which had long been dominated by the DPP. Some attributed Han's success to China's interference, especially on social media.¹⁸³ Shortly before he officially announced his candidacy for the 2020 presidential run, Han pledged to strengthen political and economic ties with China by visiting the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region.¹⁸⁴ Taiwan's presidential election has always been ultimately about a single issue, namely the nature of Taiwan's relationship with China. In 2019, the scenes of Hong Kong protests that filled the news headlines from summer into fall further deepened a concern about the threats posed by China, boosting support for Tsai, who achieved a landslide win. In the Congressional race, DPP lost 7 seats to KMT, but still had a solid majority (61 out of the 113 seats).

As more SARS-like cases were reported in China in January 2020, news about the unknown disease soon filled the void in media reporting left by the end of the election fever. Due to Taiwan's proximity to China, the approaching of the traditional new year, the societal memory of SARS in 2003 (including China's reluctance to share information), it is likely that Taiwanese media paid greater attention to the developments in China than media in other countries. The sense of urgency allowed the Taiwan government to take actions even with rather limited information. The exclusion by the World Health Organization (membership is only given to countries that are members of the United Nations, effectively excluding Taiwan from emergency meetings and important global expert briefings, as well as denying Taiwan access to samples and information) and other international bodies led to an appeal for domestic

¹⁸³ Paul Huang, *Chinese Cyber-Operatives Boosted Taiwan's Insurgent Candidate— Han Kuo-yu came out of nowhere to win a critical election. But he had a little help from the mainland*, FOREIGN POLICY (Jun. 26, 2019), <https://foreignpolicy.com/2019/06/26/chinese-cyber-operatives-boosted-taiwans-insurgent-candidate/> (last visited Feb. 23, 2026) The Yomiuri Shimbun, *Taiwan Alarmed by China's AI-Driven Election Interference; Beijing-Based Firm Reportedly Seeks to Shape Political Narratives with False Social Media Accounts*, JAPAN NEWS (Jan. 7, 2026), <https://japannews.yomiuri.co.jp/world/asia-pacific/20260107-302403/> (last visited Feb. 23, 2026)

¹⁸⁴ Tony Cheung, *Beijing-friendly Taiwanese mayor Han Kuo-yu arrives in Hong Kong for historic meeting*, MY NEWS (Mar. 22, 2019), <https://www.scmp.com/news/hong-kong/politics/article/3002782/beijing-friendly-taiwanese-mayor-arrives-hong-kong-historic> (last visited Feb. 23, 2026)

solidarity. The multi-layered crisis allowed the government to mobilize support for unusual measures in order to stand on its own feet. With the renewed political support that gave the unified DPP government a second consecutive term, the Tsai administration was not shy of showing a strong hand in Taiwan's dealings with China. Taiwan suspended flight routes between China on a large scale earlier than most countries. When the government suspended cross-strait tourism and began the requisition of masks at the end of January, Taiwanese media repeatedly covered stories about Chinese tourists emptying masks from pharmacies shelves in neighboring countries, indicating a dramatic difference in the speed of responses between Taiwan and its neighboring governments.

To secure manpower in healthcare, Taiwan banned medical providers from travelling abroad in February 2020. By mid-March, Taiwan had closed its border to all countries, subjected all inbound travelers to a 2-week quarantine, and connected public and private databases to enforce quarantine and trace potential contacts. Although there were concerns about the legality and appropriateness of some of these stringent measures, the fact that Taiwan was able to keep the case numbers low (most cases were inbound travelers and their contacts) in the early months of the pandemic allowed the government not only to defy criticism but garner support for extending and expanding its pandemic measures throughout the zero-COVID period, which ended as late as May 2022. During the COVID-19 pandemic, Taiwan did not declare a national emergency but promulgated special legislation (Special Act) that gave the executive a wide range of discretion. Concerns about the constitutionality of such a broad delegation were often met with pleas for solidarity or even accusations of being unpatriotic.

Against this backdrop, the Taiwan government did not need to make very elaborate arguments to justify its COVID-19 measures beyond promoting public interests or making a broad-brush claim of protecting the right to life and the right to health. During the zero-COVID period, as additional measures were added on top of existing measures, it was hard to tell which measures were reasonable and which instances of secondary use of data were necessary. Taiwan's daily press conference was often seen as a sign of transparency in COVID-19 policies. The case number report was at the front and center of the daily press conference and news coverage, reinforcing a public aspiration for zero-COVID and expanding the window of tolerance for stringent measures. As yet, there have not been any official ex-ante impact studies or ex-post evaluations of the COVID-19 measures. Publicly accessible data that would enable academic studies are also lacking.

Normalization of Exceptional Measures - During the Pandemic

As the zero-COVID policy lingered on, measures that were adopted in the initial emergency stage were prolonged. The exceptional measures had become the new normal and shaped the daily life of individuals - checking-in to a location with SMS messages (offering their real identity and daily routines for potential contact tracing needs) and seeing cell-towers as an integrated part of a surveillance mechanism that was overwatching everyone 24/7. The extended period of zero-COVID was used to justify pervasive secondary uses of data by government agencies, which repeatedly asserted that the pandemic measures were fully compliant with the Personal Data Protection Act (PDPA), even though the legitimacy of measures was questioned and their necessity was not evaluated.

Many measures were adopted during the first months of the crisis and without clear legal authorization. Being aware of the criticisms about the broad delegation of power in the Special Act, the government often cited other, pre-existing laws, such as the Communicable Disease Control Act (CDCA), as the legal basis for specific measures. Yet, the articles cited were often interpreted overbroadly to stretch-fit the relevant measures. Scholars have questioned whether the avoidance of citing the Special Act has paradoxically further normalized what were originally described as exceptional measures, i.e. if normal laws could be interpreted so broadly, all these measures implemented during the pandemic became acceptable even without a pandemic.

Normalization of Exceptional Measures - Post-COVID

Taiwan slowly reopened its border in March 2022 and transitioned to live-with-COVID in May 2022 after large community outbreaks. The Central Epidemic Command Center, the taskforce delegated to coordinate pandemic policies, disbanded in May 2022 and the Special Act was sunsetted in June 2023. Although COVID-19 measures also gradually ceased operation, some of their impacts outlived the pandemic through (attempts to) institutionalization.

Failed attempt to revamp the CDCA

In March 2024, the Ministry of Health and Welfare (MOHW) published a draft bill to amend the CDCA. The proposed bill would give the government authority to disclose information about individual cases, intervene in hospitals and daycare centers for pandemic control, and use digitalized measures for quarantine enforcement. The last point was likely a response to the Control Yuan, which raised concerns in February 2022 about violations of due

process and inadequate privacy protections in the digital pandemic measures.¹⁸⁵ The draft bill addressed former criticisms by adding clear legal authorization in the CDCA. On the issue of privacy protection, the bill questionably proposed that personal data be exempted from Personal Data Protection Act (PDPA) during the whole pandemic, without the need to justify such data as minimum and necessary. The MOHW shortened the period for public comment from the normal 60 days to 14 days. Even though the bill was announced almost a year after Taiwan transitioned into live-with COVID, the MOHW claimed that there was an urgency to fill the gap left by the sunset of the Special Act in June 2023.¹⁸⁶ Although this bill was not submitted to the legislature, its production demonstrates the attempts by the executive power to normalize the types of measures adopted in the emergency, both substantively and procedurally.

Turning the National Health Insurance Card into the Default ID

In 2021 and 2022, the government issued stimulus cash for all citizens and resident aliens. Since the National Health Insurance (NHI) card has a smart chip, the government used it as a way to distribute the funds. Individuals could receive cash by visiting the Post Company with their NHI card. This kind of function creep has existed since 2015, since when the NHI card has been used as the vehicle for identity verification for government online services. Until the COVID-19 pandemic, government online services using NHI Cards had been limited to taxpaying. The stimulus cash raised new issues as the distribution was through the Post Company, a private entity. There were also potential privacy concerns as it was not clearly explained what information would be available to the Post Company through the card reader.

In 2025, the government had a tax revenue surplus and issued a general cash refund. The refund was distributed through the Post Company (in person and through ATMs) and major banks (through ATMs). The above privacy concerns for card readers remained unaddressed and further broadened the number of private entities able to collect the NHI card number of individuals.

Normalization beyond COVID Exceptional Measures - Embracing Digital Measures with Widened Secondary Use of Personal Data

¹⁸⁵ CONTROL YUAN, INVESTIGATION REPORT NO. 111-SOCIAL-INVESTIGATION-0006 (2022).
<https://www.cy.gov.tw/CyBsBoxContent.aspx?n=133&s=17787>

¹⁸⁶ Ministry of Health and Welfare, *Announcement of Proposed Amendments to Certain Provisions of the Communicable Disease Control Act*, PUBLIC POLICY NETWORK PARTICIPATION PLATFORM (Mar. 11, 2024), <https://join.gov.tw/policies/detail/7d5c749e-9e4e-478b-9c9e-808f47f444ac> (last visited Feb. 23, 2026)

The attempts to institutionalize the measures directly related to COVID-19 mostly failed. Nevertheless, one should not overlook the normalization of the rationales that underlie these exceptional measures, especially the linking of various public and private databases as a way to empower the government to achieve policy goals. Such rationales have been boosted by the rhetoric of digital democracy as a narrative for Taiwan's early success in pandemic control (i.e. engaging civil-tech community to develop digital tools for pandemic control that abide to basic privacy principles), as well as Taiwan's identity as an AI-powered economy at a time of geopolitical uncertainty.

Anti-Fraud Legislative Package in 2024 (Enactment of the 2024 Fraud Crime Hazard Prevention Act and Amendment to the Communication Security and Surveillance Act)

The Taiwanese government's inclination toward normalizing digital surveillance measures from the pandemic period has not been confined to the medical and public health sectors. The legislation introducing the most comprehensive digital surveillance measures after the COVID pandemic was actually the Fraud Crime Hazard Prevention Act (FCHPA) and the Communication Security and Surveillance Act (CSSA), enacted and amended in 2024 to combat fraud crimes. The FCHPA stipulates that financial, telecommunications, and online advertising platform institutions must collect, process, and store customer data for at least five years. The CSSA permits prosecutors to obtain communication records and internet traffic records for investigating fraud crimes. Both laws significantly relax the conditions for storing financial, telecommunications, and advertising placement data, as well as for obtaining communication and internet traffic records for criminal investigations.

Draft Regulation on Data Innovation and Utilization for Development

The Ministry of Digital Affairs proposed a draft regulation to facilitate and encourage open data by the government, the sharing of data between government bodies, as well as the sharing of data between public and private entities. This bill gives a government body wide permission to request data from other government bodies, if such a request is to improve efficiency, promote service quality or for policy research. Given the inadequate data protection mechanism, there is concern that this clause would allow the government to bypass the Personal Data Protection Act (PDPA) and the 2022 Taiwan Constitutional Court's (TCC) ruling (see below) and become a blank slate for secondary use of data. Also controversial in this bill is a peculiar clause on "data altruism." Unlike the normal understanding of data altruism, in which the agency to volunteer data is rested with data subjects, this bill considers data as the property of the data controller, who would be entitled to volunteer all the data under its control for a wide range of public interest purposes.

Minimal Amendment to the PDPA: A Missed Opportunity to Address Structural Weakness

The PDPA, enacted in 1995 and substantially unrevised since, has serious structural weaknesses. With outdated definitions and regulatory structures, it struggles to cope with ever-evolving technologies of data collection and processing in both private and public sectors.

In 2022, in a case about the secondary use of health data in the National Health Insurance Database (NHID), TCC declared that the PDPA was unconstitutional for lacking an independent supervisory mechanism and required the legislature to enact legislation compliant with the constitutional decision within three years. Nevertheless, despite the plaintiff and expert witnesses repeatedly raising concerns about the inadequate pseudonymization practices, the TCC ruled that it is constitutional for the PDPA to give access to a broad range of secondary use of sensitive personal data where adequate technological safeguards are in place.

During the COVID-19 pandemic, the lenient regulation and interpretation of “data processing” in the PDPA has enabled the government to expand the duration, scope, and means of exceptional surveillance measures in the name of crisis management. The problems are not limited to the normalization of exceptional digital surveillance measures, such as the identity notation of healthcare personnel on National Health Insurance cards and the linking of the NHID system with criminal investigations and various government systems. Rather, the impact of PDPA’s ineffectiveness has extended well into multiple areas, as mentioned in the previous section.

Given the need to respond to drastic technological developments since 1995, as well as the pressure to meet the adequacy requirement in the EU General Data Protection Regulation (GDPR), a revamp of the PDPA has been long anticipated. In October 2025, Taiwan’s Legislative Yuan finally amended the PDPA. But to the disappointment of many, the revision was only minimal - merely adding provisions regarding the organization and competence of the independent supervisory agency, the “Personal Data Protection Commission.” This limited revision reflects Taiwanese government’s stance of prioritizing the utilization of personal data, a stance that might have been emboldened by an official narrative attributing Taiwan’s early success in controlling the COVID-19 pandemic to the government’s ability to link to a wide range of data.

Although the 2025 PDPA amendments were not intended to “normalize” digital surveillance measures that had experienced function creep during the COVID period, they failed to address the inherent problems of overly lenient legitimacy conditions for processing sensitive personal data and using personal data beyond original purposes. Because of this failure, the PDPA’s structural weaknesses remain. The PDPA continues to make it easy for the government to engage in secondary use of personal data under the banner of “altruism” or the “public interest”.

The controversies regarding the 2025 National Health Insurance Data Management Act (NHIDMA) and the 2024 next-generation sequencing (NGS) treatment provide clear illustrations of this problem. The 2025 NHIDMA, also enacted in response to the 2022 TCC ruling, while incorporating an opt-out mechanism, simultaneously permits broad commercial utilization of health insurance data by government, medical, and research institutions. In 2024, despite repeated and severe criticism from human rights organizations, the MOHW continued to assert on multiple occasions that the “voluntary” upload of genetic data to the NHID by (suspected) cancer patients was a prerequisite for covering Next-Generation Sequencing-based diagnosis and treatment under the National Health Insurance scheme.

In both times of crisis and times of normalcy, the PDPA, as the fundamental framework for personal data protection, has shown its lack of capability to ensure the government provides sufficient institutional safeguards. As many governments have bought into the rationale that more access to data is inherently better for policymaking, a strong data protection mechanism is even more important than before. This rationale is also embraced by Taiwan as an iteration of digital democracy, putting the emphasis more on Taiwan’s tech savviness than on democratic participation. “Digital democracy” is many things, but fixing the PDPA to provide stronger safeguards for individuals’ informational privacy is a first step to live up to the claim.

Recommendations:

1. The Taiwanese government framed its COVID-19 pandemic governance as a model of “digital democracy.” This report indicates that this narrative emphasizes technological capacity, overstates the scale and nature of democratic participation, and underplays the excessive burden placed on several groups of populations. When engaging with Taiwan, the EU should distinguish between diplomatic framing and the actual realities of governance, especially the impact on human rights.
2. Local scholars and human rights organizations have long criticized the Taiwan PDPA for its lenient regulation, including its broad interpretation of “de-identified data”, which enabled a wide range of secondary use of data, and for the lack of an independent supervisory mechanism. These structural weaknesses of the PDPA are especially pronounced in the contemporary technological environment, where the government is inclined to prioritize the utility of data over privacy protection. Given the adequacy requirement in the GDPR, the EU is well placed to pressure Taiwan to take a more proactive position to update its PDPA.



WP4 (Taiwan) Final Report 1, Institutional Human Rights Protection without a UN-membership: Taiwan's Domestication of International Human Rights Law

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Institutional Human Rights Protection without a UN-membership: Taiwan's Domestication of International Human Rights Law

This memo examines the mechanisms through which Taiwan, as a non-Member State of the United Nations, protects human rights, including domestic judicial review and the voluntary implementation of international human rights conventions. Not only does the voluntary nature of Taiwan's commitment render its binding force vulnerable, it also results in a lack of accountability when the government is reluctant to fulfill its obligations. To bridge these gaps, local non-governmental organizations (hereinafter "NGOs") resort to transnational advocacy networks and raise international awareness of local human rights threats, encouraging and pressuring the government of Taiwan to adhere to its Convention obligations.

Implementing International Human Rights in Taiwan

The ROC on Taiwan has been excluded from the UN system and the human rights regime due to its non-member status in the United Nations since 1971, when it lost the seat of China to the People's Republic of China (PRC).¹⁸⁷ Since then, Taiwan has been unable to join most international organizations as an official member and lacks access to the Universal Periodic Review (UPR) which aims to ensure compliance with the UN's conventions. In response to this plight, Taiwan incorporates international human rights treaties into its domestic laws and has established an alternative mechanism for periodic review.

Historical Background: International Status of Taiwan

While ROC was still a member of the United Nations, it signed several human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1967. However, the process of ratifying the two Covenants had not been completed when ROC lost its seat in the UN.¹⁸⁸

Despite signing several treaties while remaining in the UN, the ROC government's support for human rights treaties did not appear to be followed through in practice. The then ROC government, ruled by the authoritarian Kuomintang (KMT or Chinese Nationalist Party),

¹⁸⁷ In 1949, after an extended period of the Chinese Civil War between Kuomintang (KMT or Chinese Nationalist Party) and the Communist Party, KMT went into exile in Taiwan and continued to operate under the name of the Republic of China (ROC). The People's Republic of China (PRC) was not immediately admitted to the UN when it was established in 1949. Instead, KMT's ROC continued to represent China at the UN until 1971, when the UN General Assembly passed Resolution 2758, expelling the representatives of the ROC and recognizing the PRC as the sole legitimate representative of China in the United Nations.

¹⁸⁸ Yu-Jie Chen, *Localizing Human Rights Treaty Monitoring: Case Study of Taiwan as a Non-UN Member State*, 35 WISCONSIN INT. LAW J. 277, 289 (2018).

imposed one of the world's longest periods of martial law (1949-1987), during which serious human rights violations and restrictions on individuals' freedom lasted for decades.¹⁸⁹ During this period, Civil Society was hindered from discussing democratization and the development of Taiwan's human rights regime. Despite this, democracy activists kept advocating for individuals' freedoms. The opposition forces eventually converged and established the Democratic Progressive Party (DPP) in 1986. As then-President Chiang Ching-kuo faced both domestic legitimacy crises and international pressure, martial law was lifted in 1987.¹⁹⁰

Voluntary incorporation of International Human Rights Treaties into Domestic Law

Following the democratization transition in the 1990s, the Legislative Yuan (the Congress), pressured by both Civil Society and driven by its own concerns about Taiwan's international standing, ratified the two Covenants. However, Taiwan's attempt to deposit them in the UN Secretariat in 2009 was without success.¹⁹¹ Subsequently, the Legislative Yuan continued ratifying the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2011, the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD) in 2016. However, none of the above-mentioned ratifications could be deposited with and accepted by the UN.¹⁹²

Due to Taiwan's unique status, the Taiwanese government could only be held accountable for international human rights by "domesticating" international human rights standards on the legislative level. To show Taiwan's commitment to follow the international human rights treaties and to ensure their domestic legal effect, Taiwan promulgated several Implementation Acts, which obliged the government to issue State reports and to create an independent international review system. Notably, not all conventions were subject to this procedure, with some remaining unratified by the Legislative Yuan so far (see Appendix A).

"Taiwan Approach"—Unique International Review System in Taiwan

Since 2013, Taiwan has established an alternative international review mechanism that invited international scholars and experts with prior experience in UN treaty review to

¹⁸⁹ *Id.*, at 289.

¹⁹⁰ Jacques deLisle, "All the World's a Stage": Taiwan's Human Rights Performance and Playing to International Norms, in *TAIWAN AND INTERNATIONAL HUMAN RIGHTS: A STORY OF TRANSFORMATION* 173-206 (Jerome A. Cohen, William P. Alford, & Chang-fa Lo eds., 2019).

¹⁹¹ *Id.*, at 194.

¹⁹² The Act to Implement the ICCPR and the ICESCR took effect on December 10, 2009. Following the model of the Implementation Act of the two Covenants, the Implementation Act for the CEDAW became effective on January 1, 2012. Subsequently, the Implementation Act for the CRC and CRPD was passed in 2014. See Wen-Chen Chang, *Taiwan's Human Rights Implementation Acts: A Model for Successful Incorporation?*, in *TAIWAN AND INTERNATIONAL HUMAN RIGHTS: A STORY OF TRANSFORMATION* 227-247 (Jerome A. Cohen, William P. Alford, & Chang-fa Lo eds., 2019).

participate in the process.¹⁹³ This unique review system outperforms the UN system in two ways. Firstly, it gives NGOs the same amount of time to present parallel/shadow reports to balance out the views prepared by the government; secondly, in addition to sessions with government participation, it allows NGOs to have a direct dialogue with international experts on various issues in specially designated sessions. To date, Taiwan has already completed four rounds of national reports submission and review on the implementation of the two Covenants (ICCPR, ICESCR) in accordance with United Nations guidelines in 2012, 2016, 2020, and 2025.

However, since Taiwan's voluntary incorporation of the human rights mechanism into its legal order, there is no mechanism to guarantee its compliance. When the government fails to implement its obligations, it faces no corresponding consequences. As the international experts consistently reported since the very first human rights review process, there does not seem to have been much progress on critical issues such as indigenous land dispossession, the enhancement of migrant workers' labor rights, and the enactment of a comprehensive anti-discrimination law.¹⁹⁴ Such observations highlight a consistent structural vulnerability in Taiwan's human rights regime: without a comprehensive system of accountability, the unilateral commitment fails to function as a binding obligation but rather as a discretionary exercise of governmental bona fides.

The Domestic Check and Balance System in Taiwan

Taiwan, as a non-member of the UN and excluded from the international human rights framework, relied on domestic laws and Civil Society advocacy to address human rights concerns. At the domestic level, Chapter 2 of the Constitution sets out a range of traditional civil and political rights, as well as social rights, including enumerated fundamental rights such as equality right (Art. 7), personal liberty (Art. 8), freedom of movement and residence (Art. 10), freedom of speech (Art. 11), freedom of assembly and association (Art. 14), the right of existence, the right of work, and the right of property (Art. 15) etc., and unenumerated fundamental rights (Art. 22).

There are two domestic mechanisms to safeguard fundamental rights and human rights – the Control Yuan and the Constitutional Court. The Control Yuan is the highest “ombudsman”, exercising the powers of impeachment, investigation, censure, corrective measures, and audit. It consists of 29 members, including a president and a vice president, each serving a six-year term. They are nominated by the State President and approved by the

¹⁹³ Chen, *supra* note 2, at 291-311.

¹⁹⁴ Int'l Grp. of Indep. Experts, Concluding Observations and Recommendations on the Initial Report of the Government of Taiwan ¶¶ 30-35, 38,39 (2013); Int'l Review Comm., Concluding Observations and Recommendations on the Second Report of the Government of Taiwan ¶¶ 19, 31-34, (2017); Int'l Review Comm., Concluding Observations and Recommendations on the Third Report of the Government of Taiwan ¶¶ 26, 36, 37, 42 (2022).

Legislative Yuan (the Congress). The Control Yuan is one of the main institutions in Taiwan overseeing the compliance of human rights protection by all levels of the government, especially the administration. Although there have long been debates over whether the functions of the Control Yuan are oriented toward good governance or more toward human rights, the Control Yuan has concluded 1,515 investigation cases and 892 of these cases (58.88%) involved human rights issues.¹⁹⁵ This sufficiently indicates that in practice the Control Yuan continues to discharge an important function in safeguarding human rights in Taiwan.

The National Human Rights Commission (NHRC), as an administrative agency established in 2020, also serves as a mechanism for supervising the domestic implementation of conventions and a channel for individuals to file complaints. Unfortunately, the NHRC was designed as a commission under the Control Yuan and does not have its own Authority Exercise Act. As a result, the independence of the NHRC and its relationship with the Control Yuan remain unclear. During the COVID-19 pandemic, the NHRC, which was expected to ensure the government's compliance with the UN's COVID-19 Guidance, suspended its checking power when the government expanded the digital fence - a quarantine enforcement mechanism linking public (immigration and health) and private (cell tower history) data - without clear legal authorization.

The second mechanism safeguarding human rights is Taiwan's Constitutional Court (hereinafter TCC) (since 2022), which used to be "the Council of Grand Justices of the Judicial Yuan" (1947-2021). According to Paragraph 1, Article 171 and Article 172 of the ROC Constitution, statutes inconsistent with the Constitution are void, and so are ordinances inconsistent with the Constitution or statutes. On this basis, it may be observed that there exists a clear and strict hierarchy within the legal order of Taiwan's judicial system. Taiwan adopted a centralized constitutional review system. TCC, formed by Constitutional Court Justices (Justices), has the exclusive competence to *ex-post* review the constitutionality of legal statutes. The amendment of the Constitutional Court Procedure Act (CCPA) that took effect on January 4, 2022 introduced a constitutional complaint system, which adds a new type of litigation - the judicial review of final court decisions, including a **concrete** review (as-applied review) alongside the existing **abstract** judicial review of regulations.¹⁹⁶ In addition, the CCPA maintained the requirement of at least two-thirds of the incumbent Justices to hear the constitutional cases, while lowering the voting threshold from two-thirds of sitting Justices to a simple majority, which aimed to address inefficiency in decision-making.

¹⁹⁵ THE HUMAN RIGHTS PROTECTION COMMITTEE OF THE CONTROL YUAN [監察院人權保障委員會], A RECORD ON THE CONTROL YUAN'S WORK ON CHILDREN'S AND YOUTH HUMAN RIGHTS, 2014-2019 [2014-2019 監察院兒少人權工作實錄] (2020).

¹⁹⁶ Judicial Yuan, *The Taiwan Constitutional Court in a New Era* (Jan. 7, 2025), <https://www.judicial.gov.tw/en/cp-2083-358640-47e30-2.html> (last visited Jan. 26, 2026); Chien-Chih Lin, *The Pros and Cons of Taiwan's Constitutional Court Procedure Act*, 2 USALI PERSPECTIVES 1 (2022). <https://usali.org/usali-perspectives-blog/the-pros-and-cons-of-taiwans-constitutional-court-procedure-act>.

The judicial review mechanism has long been acknowledged as having an important role in ensuring the constitutionality of all government actions, especially the protection of fundamental human rights in Taiwan. For example, the Justices, through judicial reviews, have ensured positive personal freedoms and incorporated unenumerated fundamental rights—such as the right to privacy, sexual autonomy and same-sex marriage—into the framework of human rights protection under the Constitution.¹⁹⁷ Nevertheless, it is noteworthy that in 2023, TCC dismissed its only COVID-19 case (regarding Article 7 of the Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens, Special Act), lodged by the High Administrative Court. This Article grants broad authorization to the executive power, potentially violating the principle of explicit delegation. Basing its reasoning on purely procedural language and reasoning, the TCC refused to review the constitutionality of the Special Act and dismissed scrutiny regarding potential human rights infringement, voluntarily relinquishing its oversight power.

The Legal Effect of International Human Rights Treaties in the Domestic Court

Exactly how binding the international human rights covenants are within Taiwan's judiciary, and how they relate to the Constitution and other domestic law in the legal hierarchy, is occasionally contested. Practically, since the Implementation Acts effectively mirrored the Covenants, this issue is mitigated in two ways. First, domestic courts could simply uphold international covenants by citing corresponding domestic statutes when rendering decisions. Second, if a law is considered inconsistent with international human rights law, it would have to be declared unconstitutional by the TCC. In other words, the TCC will need to identify a constitutional right that is also crystallized in an international human rights treaty. For example, in Interpretation No. 709 (2013), the Justices blended the Constitution and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) to support their arguments. This case involved the issue of whether forced evictions resulting from an urban renewal project violated Article 10 of the Constitution, which guarantees the freedom of residence. This decision supplemented the meaning of freedom of residence (Article 10 of the Constitution) with Paragraph 1, Article 11 of the ICESCR (people enjoy an adequate standard of living with safety, peace, and dignity), and declared that the procedural rules defined by the Urban Renewal Act (Article 10, Paragraph 1) violate the freedom of residence due to lack of due process.

However, in ordinary courts and administrative courts, the role of international conventions is very limited. While the Implementation Acts oblige the courts to rule in conformity with international conventions that Taiwan has ratified, the majority of court rulings cite international convention provisions and include general comments as mere decorative

¹⁹⁷ Tzong-Li Hsu, *How does the Judicial Activism of Taiwan's Constitutional Court shape the Liberal Democratic Constitutional Order in Taiwan*, 1923 J. WKLY.16, 26 (2018).

elements rather than as substantive grounds.¹⁹⁸ Nevertheless, a number of administrative courts have utilized international conventions to hold governments responsible for realizing human rights guaranteed by the conventions.¹⁹⁹

Counter-Strategies Against State Misuse of Conventions

The government's problematic use of international human rights treaties can be observed across multiple areas. For instance, Prof. Song-Lih Huang, a human rights expert, noted in one of the HRJust workshops that the government has frequently distorted international human rights treaties and selectively appropriated them as justifications, rather than genuinely treating them as binding regulations. One example involves the deportation of a Chinese national, who was holding a dependent residence permit in Taiwan, for promoting military unification on the social media platform YouTube. The government invoked Article 20 of ICCPR— any propaganda for war shall be prohibited by law— to justify the deportation, and the argument was ultimately accepted by the court.²⁰⁰ Following this case, in December 2025, the government put forward a proposed amendment to the National Security Act and added a provision prohibiting any public advocacy for eliminating Taiwan's sovereignty by war or other non-peaceful means. The stated rationale for the amendment is that this is in accordance with the obligations under Article 20 of ICCPR and the General Comment No. 11.²⁰¹

Without the recourse of individual communication to UN Treaty Bodies, the protection of Covenant rights in Taiwan appears to be compromised. Nevertheless, evidence gathered from the HRJust workshops and focus group sessions reveals a recurring approach among local NGO advocates: appealing to international and intergovernmental organizations after all domestic remedies have been exhausted. Such advocacy is pivotal for Civil Society to counter government misuse or even infringement of human rights. Given its complex international status, Taiwan's pursuit of international participation and global recognition makes the government particularly responsive to the opinions of its allies and, therefore, it may be more willing to change its behavior when there is external pressure.

This strategic alignment has been conceptualized as 'Boomerang Pattern', when the channels between local groups and government are blocked or ineffective for dealing with a

¹⁹⁸ Ting-Chi Liu, *The Impact of International Human Rights Treaties on the Judicial Practices after Their Incorporation into Domestic Law -- Focusing on the Judgments of Administrative Courts in R.O.C. (TAIWAN)*, 67 LAW MONTHLY 78, 78-103 (2016).

¹⁹⁹ Naiyi Sun, *The Right of Disabled Civil Servants to Request Accommodation – A Brief Commentary on Taipei High Administrative Court Judgement 109-Su-688* [身心障礙公務人員之合理調整請求權——簡評臺北高等行政法院109年度訴字第688號判決], 15 FORMOSAN JURIST [台灣法律人] 89-102 (2022).

²⁰⁰ Liu Zhen Ya v. Ministry of the Interior, 2026 (Taipei Admin. High Ct. Mar 21, 2026). [臺北高等行政法院高等庭114年度停字第17號裁定]

²⁰¹ The Executive Yuan[行政院], *The Draft Amendment to the National Security Act* [國家安全法部分條文修正草案], THE EXECUTIVE YUAN[行政院] (Dec. 18, 2025), <https://www.ey.gov.tw/File/6F62FEE11693C388?A=C>

conflict, the transnational networks may be the one and only means that actors can work on.²⁰² Non-state actors uncover the perils of human rights violations by providing alternative sources of information to that provided by the government itself, and first-hand accounts from victims.²⁰³ In this regard, international pressure serves as a critical mechanism to rectify the (mis)behaviour of the Taiwan government and ensure adherence to its obligations under international conventions.

Taiwan is still in the process of institutionalizing the human rights protection system. Confronted with the inherent limitations of the unique voluntary incorporation model, we are compelled to explore diversified oversight mechanisms at both domestic and international levels. These serve as a necessary counterbalance to guarantee substantive accountability, preventing the State from sidestepping its statutory mandates.

Recommendations:

1. Period review processes should take into consideration clear differences in resources between governments and Civil Society. NGOs should have enough time to prepare parallel reports to balance out the views prepared by the government.
2. Periodic review processes should include a mechanism by which NGOs can have direct dialogue with international experts.
3. EU should not stop prioritizing human rights protections in its external actions. As a non-member of the United Nations, Taiwan has developed a unique approach to integrating international human rights conventions into domestic law. Yet without access to formal UN oversight mechanisms, the viability of this “Taiwan model” depends on a well-respected international human right mechanism. By continuing to prioritize human rights protection in its external actions, the EU will remain a critical player in the existing international human rights mechanism, as EU is one of the few remaining formal diplomatic channels, this gives EU an almost unique opportunity, and the Taiwanese government is more likely to respond to the EU's approach.
4. The EU has long engaged Taiwan Civil Society in human rights consultations and has been an invaluable partner of local NGOs. With a human rights-centered foreign policy, the EU is both well-positioned and has good reason to be motivated to play a greater role in pushing for the Taiwan government to live up to its claim as a beacon of liberal democracy in the region.

²⁰² KECK, MARGARET E. & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* 9-11 (1998); Keck, Margaret E. & Kathryn Sikkink, *Transnational advocacy networks in international and regional politics*, 51.159 INT’L SOC. SCI. J. 89, 93-94 (1999).

²⁰³ *Id.*

Appendix A

Listed below are the conventions that have undergone internalized procedure in Taiwan to varying degrees.

- Conventions ratified by ROC when it was a member of the UN before 1971: The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Labour Organization (ILO) C007, C011, C014, C015, C016, C019, C022, C023, C026, C027, C032, C045, C053, C058, C059, C073, C080, C081, C091, C095, C098, C100, C104, C105, C107, C111, C112, C113, C114, C116, C117, C118, C119, C123, C124.²⁰⁴
- Conventions signed by ROC in 1967 but had not completed ratification before 1971 and then were incorporated into domestic law through Implementation Acts in the 2000s: ICCPR and ICESCR.
- Conventions signed by ROC and incorporated into domestic law through Implementation Acts after the 2000s: CEDAW, CRC, and CRPD.
- Conventions not signed and ratified by ROC: The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).²⁰⁵

²⁰⁴ MINISTRY OF THE INTERIOR (TAIWAN) [內政部], INTERNATIONAL LABOUR ORGANIZATION CONVENTIONS RATIFIED BY THE GOVERNMENT OF THE REPUBLIC OF CHINA [中華民國政府已批准之國際勞工公約] (1965). <https://taiwanebook.ncl.edu.tw/zh-tw/book/NCL-9910009748/reader>

²⁰⁵ National Human Rights Commission, Taiwan, *International Conventions* (Mar. 27, 2024), <https://nhrc.cy.gov.tw/en-US/cp.aspx?n=8693> (last visited Jan. 26, 2026)



WP 2 Reclaiming Human Rights for Effective Epidemic Control: Lessons from COVID-19 – a suggested policy approach for the EU

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D 7.6 tasks 7-8 WP7 and D2.2. tasks 7-8 WP2

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Introduction

COVID-19 pandemic underscores the scope of HRJUST. Globally, more than 7 million confirmed deaths have been reported, while excess mortality estimates suggest the true toll may exceed 14–15 million deaths between 2020 and 2022¹.

At the same time, the global economy contracted by approximately 3.1% in 2020, representing the deepest recession since the Second World War². These impacts were unevenly distributed, with low- and middle-income countries experiencing sharper economic shocks and slower recoveries.

The International Labour Organization estimated that global working hours declined by 8.8% in 2020, equivalent to the loss of 255 million full-time jobs, disproportionately affecting informal workers, migrants, and women³.

¹ World Health Organization (2022). *Global excess deaths associated with COVID-19*.

² International Monetary Fund (2021). *World Economic Outlook*

³ LO (2021). *ILO Monitor: COVID-19 and the world of work*

Problem Statement

Epidemics, migration, climate, and gender are not independent domains of human rights; rather, they intersect and shape each other's outcomes. The COVID-19 pandemic clearly demonstrated how these interactions influence both the spread of disease and its social and economic consequences. International travel, largely driven in the early phase by wealthier populations, contributed to the rapid global spread of COVID-19. However, the impact of containment measures—particularly travel restrictions and lockdowns—fell disproportionately on poorer countries and vulnerable population groups within countries. This pattern is not unique to COVID-19. Diseases such as dengue may be introduced through global mobility, yet their impact is most severe in communities with limited access to health services. Even in high-income

regions, including parts of Europe, preparedness for emerging or re-emerging diseases such as dengue or other tropical conditions remains inadequate.

Epidemic responses tend to amplify existing inequalities.ⁱ Marginalized communities, migrants, and informal workers often experience reduced access to essential services while bearing the greatest economic and social burden of public health measures. These populations, particularly those who are socially disadvantaged and have limited or no alternatives, are most affected by disruptions in livelihoods and healthcare access.

Gender is another critical dimension shaping epidemic outcomes. During COVID-19, women in many settings experienced higher exposure due to caregiving roles and overcrowded living conditions. Although mortality rates were often lower among women, they faced increased vulnerability to infection in confined environments, disruption of essential services such as maternal and reproductive healthcare, and heightened risks of violence and economic loss. These gendered impacts underscore the need to go beyond mortality indicators and adopt a broader understanding of equity in epidemic responses.

At the same time, COVID-19 revealed a significant shift in the role of human rights. Traditionally, human rights have functioned as a mechanism to protect individuals from State overreach. During COVID-19, however, they were increasingly revoked by States to justify restrictive measures in the name of public health. This phenomenon, described as Human Rights Justifications (HRJ), represents a transition from human rights as tools of accountability to instruments of governance, often prioritizing population-level objectives over individual protections.

Principles of Disease Control

Experience from epidemic control over the past century demonstrates that when the rights of infected, affected, and vulnerable populations are compromised, overall disease control is weakened.ⁱⁱ Coercive measures tend to increase stigma, discourage individuals from seeking testing or treatment, and create distrust between communities and public authorities. As a result, disease transmission may become more difficult to control.

The global response to HIV/AIDS marked a fundamental departure from this pattern. Under the leadership of UNAIDS, a rights-based approach was developed that actively involved marginalized communities in decision-making and programme implementationⁱⁱⁱ. This approach emphasized voluntary testing, confidentiality, dignity, and non-discrimination. By recognizing affected populations as partners rather than targets of intervention, the HIV response improved access to treatment, increased

uptake of prevention services, and strengthened trust between communities and health systems. It demonstrated clearly that protecting human rights enhances, rather than undermines, public health outcomes.

The foundation of this approach lies in medical ethics. The long-standing ethical principles of medical practice emphasize equal treatment of all individuals, irrespective of their legal or social status^{iv}. The commitment to dignity, non-discrimination, and care for all aligns closely with the holistic definition of health advanced by the World Health Organization, which includes physical, mental, and social well-being. These principles provide a strong basis for non-coercive, trust-based epidemic responses.

Evidence from both HIV and COVID-19 further supports the link between rights-based approaches and public health effectiveness^v. Community engagement, voluntary participation, and transparency have been shown to improve compliance and sustainability of interventions. In contrast, coercive measures, while sometimes necessary in the early stages of an epidemic, may undermine trust and have limited long-term effectiveness. Modelling studies during COVID-19 suggested that targeted, community-based strategies—such as early detection, regular screening, and localized isolation—could achieve outcomes comparable to large-scale lockdowns associated with colossal violations of human rights and associated social and economic costs^{vi}.

A key tension in epidemic control lies in balancing individual rights with collective health objectives. During COVID-19, there was a marked shift toward prioritizing a collective right to health, often at the expense of individual protections. While collective considerations are inherent to public health, excessive reliance on this framing can justify disproportionate restrictions and marginalize vulnerable populations. Human rights frameworks were originally designed to protect individuals, particularly minorities, against the power of the State and the majority. In health practice, ethical obligations often require that care be provided irrespective of legal or administrative constraints, reinforcing the primacy of individual rights even within collective strategies.

Epidemic responses typically evolve through stages: an initial crisis phase characterized by rapid decision-making under uncertainty; a normalization phase where measures are adapted and accepted; and an institutionalization phase where temporary measures become embedded in systems. The greatest risks to human rights arise during the transition from normalization to institutionalization, when emergency measures risk becoming permanent without adequate scrutiny.

Recommendations

Future epidemic responses must begin by reaffirming the primary role of human rights as mechanisms of accountability. Human rights should serve to constrain State power and protect individuals, rather than being used primarily to justify restrictive measures. A clear distinction must be maintained between rights as accountability and rights as justification.

Public health interventions should be calibrated, proportionate, and evidence based. Uniform, large-scale coercive measures should be replaced with context-specific strategies informed by epidemiological data and local conditions. Greater emphasis should be placed on early detection, community engagement, and targeted interventions that minimize disruption while maintaining effectiveness.

Community engagement must be institutionalized as a core component of epidemic preparedness and response. Organisations representing people with lived experience play a crucial role in bridging the gap between the State and affected populations. They act as buffers that can absorb human rights shocks, ensure access to services, and enhance trust. Their involvement should extend beyond observation to active participation in policy formulation, service design, and programme implementation well before any epidemic hits

Ensuring equity in service delivery is essential. Continuous access to essential health and social services must be maintained for all populations, including migrants, informal workers, and marginalized groups, irrespective of their legal status. Services should be designed to ensure accessibility, availability, and acceptability, particularly for those with limited options.

Gender-sensitive approaches must be integrated into all aspects of epidemic response. Monitoring should go beyond mortality to capture indirect impacts on women and vulnerable groups, including access to services, economic effects, and exposure to violence. Protecting and advancing gender equality must remain a priority.

The European Union has a critical role to play in shaping a rights-based approach to epidemic control in a multipolar world. It should develop common standards for rights-based public health interventions, strengthen cross-border coordination, and ensure that human rights remain central to health governance. The EU can also lead in promoting balanced approaches that integrate human rights, public health evidence, and social considerations.

At the global level, the World Health Organization must be strengthened to play a more independent and authoritative role. This includes enhancing its financial autonomy, ensuring that scientific and community expertise informs decision-making, and

enabling it to advocate for non-coercive, evidence-based approaches without undue political or financial influence.

There is also a need to establish centers of excellence at regional and global levels that can generate innovative and humane epidemic control strategies, support WHO as collaborating centers, and provide real-time guidance to policymakers. These centers should integrate expertise from public health, social sciences, and affected communities.

Finally, epidemic governance must adapt to the realities of a multipolar world. Divergent national approaches during COVID-19 highlighted the challenges of coordination, credibility and the erosion of multilateralism. Future frameworks must promote collaboration, ensure equitable participation of all countries, and provide support irrespective of economic or political status.

Conclusion

The COVID-19 pandemic has highlighted a critical shift in the relationship between human rights and epidemic control. While the HIV/AIDS response demonstrated that rights-based approaches can enhance both equity and effectiveness, COVID-19 revealed a reversion toward coercive, State-centric models often justified through human rights language – collective versus individual rights- itself.

Future epidemic preparedness must restore the balance between public health and human rights by integrating medical ethics, community engagement, and evidence-based interventions. Only by reaffirming human rights as a foundation of accountability, rather than a malleable tool of justification, can epidemic responses achieve both effectiveness and legitimacy while protecting human dignity.

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