

**Taiwan's Laws Regulating Civil Society:
A Comparative and International Argument for Reform**

臺灣公民社會相關法律研究：從國際視角及比較論證探討改革

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Abstract

Taiwan's democratization has been accompanied by greater scrutiny of its laws to ensure they align with international human rights conventions and best practices. One area where this is taking place is in the legal framework for Taiwan's civil associations. This report provides an overview of this legal framework with a focus on social associations and foundations which have a public welfare purpose, as well as international NGOs which want to set up office in Taiwan. It discusses the problems with this legal framework from a comparative and international perspective, showing how the Civil Association Law, which was enacted during Taiwan's martial law period, places undue restrictions on the ability of people in Taiwan to form associations and offers recommendations for reforming the Law. Taiwan's civil society is diverse and vibrant and Taiwan leaders and officials actively uphold the idea of working together with domestic and international civil society to strengthen the island's democratic resilience. Reforming the Civil Association Law would mark an important milestone to achieving this vision.

摘要

隨著臺灣民主化的進程，法律受到更嚴謹的審查，以確保符合國際上保障人權的常規及最佳作法，人民團體相關法律架構便是其中一環。本報告簡述了人民團體相關的法律架構，重點聚焦在公益性質的社會團體和基金會，以及希望在臺灣設立辦公室的國際非政府組織，從國際視角及比較論證探討相關的法律架構，藉此凸顯戒嚴時期制定的《人民團體法》對臺灣人民團體的組成加諸了不必要的限制，並對該法提出改革建議。臺灣的公民社會多元且發展蓬勃，領導人和官員積極提倡國內外公民社會間的合作，以增強臺灣的民主韌性，而《人民團體法》的改革將會是實現此願景的重要里程碑。

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The rights to freedom of peaceful assembly and of association serve as a vehicle for the exercise of many other civil, cultural, economic, political and social rights.

– Maina Kiai, UN Special Rapporteur for the Rights to Freedom of Peaceful Assembly and Association

I. Background and Scope

The political environment has played an important role in shaping the development of civil society in Taiwan. Taiwan was ruled by Japan from 1895 to 1945, and by the Kuomintang (KMT) party, which lost the civil war to the Chinese Communist Party (CCP) in 1949 and fled to Taiwan, where it set up the Republic of China (ROC). Like the CCP, the KMT was a highly centralized Leninist party, which admitted no political competitors. From 1949 to 1987, the KMT ruled Taiwan, imposing martial law and strict controls on civil society, denying citizens the right to form independent associations or political parties.

During this period, the KMT formed many of its own party and government-led civic organizations and foundations. The earliest independent CSOs were international ones, such as the Red Cross, World Vision, Christian Children's Fund, Rotary Club, and Lion's Club, which came into Taiwan in the 1960s and 1970s. These international civil society organizations (CSOs) provided a foundation for the wave of civil society organizing that began in the late 1980s and 1990s as Taiwan began to democratize. A watershed event in the democratization process was the election of the opposition Democratic Progressive Party (DPP) candidate, Chen Shui-bian, as president in 2000. In 2016, the DPP again made history when it captured the majority in the Legislative Yuan and its candidate, Tsai Ing-wen, was elected president.

During the democratization period, Taiwanese CSOs and social movements working on environmental, religious, labor, women, indigenous, migrant, consumer, humanitarian relief, and other issues emerged to challenge and resist authoritarianism. They called for an independent public sphere and the formation of new political and social values. In 2014, the Sunflower Movement galvanized students and civic groups against a trade pact being negotiated between China and the KMT-led government in Taiwan. This gave new impetus to civil society, including the formation of a new political party, the New Power Party, which advocated for stronger civil and political liberties and Taiwanese independence.

Internationally, Taiwan's newly independent civil society began to collaborate with international CSOs on humanitarian assistance and international development in a number of countries around the world. However, Taiwan's unique international position as a territory not recognized by the United Nations and a large majority of the world's states has made it difficult for Taiwan's CSOs to work with the international community. This situation has intensified since the DPP came to power in 2016. Angered by the DPP's pro-independence position, the People's Republic of China (PRC) has waged an increasingly assertive diplomatic, political and military campaign to further isolate Taiwan. This campaign, however, has had the opposite effect of encouraging more international CSOs to come to Taiwan in recent years and use the island as a base for their regional work.

Overall, civil society in Taiwan is diverse and active, representing a broad range of organizational forms and social interests. They include registered non-profit

organizations such as associations and foundations, as well as unregistered organizations and groups which include many of the religious temples and groups dotting the Taiwan landscape. Civic freedoms are widely exercised with few restrictions. Civil society enjoys meaningful access to political decision-making; indeed, both major political parties – the DPP and KMT – coordinate closely with CSOs. The current DPP administration, in particular, is reportedly composed of a number of individuals who were active in civil society.

Taiwan ranks high on many international indicators and is given high marks on its human rights record by international observers. For example, in 2019, it became the first Asian country to recognize same-sex marriages. In 2020, it set up a National Human Rights Commission. Taiwan received the highest ranking in the Economist Intelligence Unit (EIU)’s [Democracy Index](#) among Asian countries and is rated by Freedom House as “free” with a score of 94 out of 100. There are, however, still outstanding issues that have not been addressed, such as the rights of migrant laborers and the lack of a refugee or asylum law.

Taiwan follows a civil law tradition. In 1992, the Taiwan government revised the restrictive laws governing CSOs from the martial law period and promulgated a new Civil Association Act that created three legal categories of associations: occupational associations, such as unions and trade associations; social associations; and political parties. As Taiwan democratized, this Act came to be viewed as overly constraining and simplistic and minor revisions were carried out to align the Act with Taiwan’s democratic evolution (ACFA 2023: 28). In the mid-2010s, several bills were proposed to improve the legal framework for CSOs. A separate Religious Associations bill was drafted in 2015, and separate bills were drafted in 2017 for two of the three types of Civil Associations: political parties and social associations. The Political Parties Act was passed in 2017, but no progress was made on the Religious Associations and Social Associations bills. In 2018, a Foundation Act was promulgated to create another category of public benefit organization alongside social associations.

II. Methodology

The research for this report relied on a desk review of relevant laws and regulations, as well as the literature on civil society organizations (CSOs) in Taiwan, with a focus on associations and foundations. This report also benefited from research on international and comparative best practices carried out by international organizations such as the UN Special Rapporteur’s Office, OESC and international NGOs such as the International Center for Not-for-Profit Law (ICNL)¹. In addition, interviews were carried out with Taiwan CSOs, international NGOs which have established offices in Taiwan, scholars and international experts from ICNL.

¹ Sections III to VIII of this report are an updated version of the Taiwan note I wrote for ICNL’s Civic Freedom Monitor, <https://www.icnl.org/resources/civic-freedom-monitor/taiwan>.

III. Taiwan's CSO laws and pending laws/regulations

The main laws/regulations regulating Taiwan's civil society sector are the [Civil Associations Act](#) and the 2018 [Foundations Act](#). The Civil Associations Act has a long history going back to 1942. In 1992, as Taiwan began to democratize, it went through a significant amendment, changing its name from "Civil Associations Act for the Period of Communist Rebellion" to its present name.

There are also more detailed implementing regulations such as the [Implementation Regulations for Supervising Civil Organizations at All Levels](#) (December 19, 1981, amended Jan 22, 2015), [Regulations on Management of the Staff in Social Associations](#) (June 30, 1989, amended Aug 11, 2021), [Regulations on Permit and Registration of Social Organizations](#) (February 1, 1989, amended May 22, 2020) and [Charity Donations Destined For Social Welfare Funds Implementation Regulations](#) (May 17, 2006, amended Jan 15, 2020).

In addition to these laws/regulations, there are pending bills that have yet to be passed:

1. Since 2015, a bill for Religious Associations has been under review but has not yet passed (see [Religious Associations Law \(draft, Chinese only\)](#)).
2. In 2017, there was an initiative to revise the Civil Associations Act. The revision of the Civil Associations Act would have been the most significant legislative change in Taiwan's recent history. The Civil Associations Act was regarded as overly simplistic and restrictive because it regulated three very different types of associations under one law: political associations (e.g. political parties), occupational associations (e.g., trade unions), and social associations. The revision sought to draft separate bill for social associations and political parties but only the [Political Parties Act](#) was promulgated in 2017. The Social Associations bill proposed by the Ministry of Interior in 2017 made it to the second reading, as did a similar Social Associations bill (院總第 1434 號、政府提案第 15998 號) proposed separately by the Legislative Yuan in 2020 (院總第 1434 號 _ 委員提案第 24651 號), indicating support within the ruling and opposition parties for the bills, but not enough for the laws to pass (ACFA 2023: 31).
3. In 2021, an amendment of the Foundations Act was drafted but like the earlier Social Associations Act is still pending (see [Foundations Act \(draft, Chinese only\)](#); [Social Associations Act \(draft, Chinese only\)](#)).

Taxonomy of CSOs in Taiwan

Taiwan's laws distinguish between several types of CSOs in Taiwan.

1. The **civil association** is regulated under the Civil Associations Act by the Ministry of Interior. The Act differentiates between three different kinds of associations:
 - a. ***occupational association***, which refers to “an association organized by the institutions and associations in the same trade or the job-holders of the same occupation with a view to associate the relationship between colleagues, enhance common benefits, and promote social economic construction.”
 - b. ***social association***, which refers to “an association composed of individuals and (or) associations for the purpose of promoting culture, academic research, medicine, health, religion, charity, sports, fellowship, social service, or other public welfare.” It can conduct events, solicit donations, recruit volunteers, receive revenue, and fundraise. The definition of social association is interpreted broadly so as to embrace a broad range of permissible purposes, including human rights, democracy and governance, and environmental issues.
 - c. ***political association***, which refers to “an association organized by the citizens of the Republic of China with a view to help form political volition and to promote political participation for the citizens based on common ideas of democratic politics.”

To set up a social association in Taiwan, there must be no less than thirty (30) initiators who are each over twenty (20) years old and of legal capacity. These initiators can be Taiwan nationals or foreign nationals with alien residence cards (“ARCs”).

Depending on whether the association to be formed is a local or a national association, the initiators must have registered household addresses or work addresses in particular locations. For local associations, initiators must have household or work addresses in the city or county in which the association is to be established. For national associations, the initiators must have household or work addresses in at least seven (7) different cities or counties in Taiwan.

2. The **foundation** is regulated under the 2018 Foundations Act. The Act defines a foundation as “a private legal person that is dedicated to public-benefit purpose with property endowed by endowers, approved by the competent authority and registered with the court.”

The Act distinguishes between a “**government-endowed foundation**” and a “**public-endowed foundation**”. A government-endowed foundation is one “established after August 15, 1945, with endowment property from the property left by the Japanese government or people and taken over by the Republic of China (“R.O.C.”) government.” All other foundations are regarded as public-endowed foundations.

Among public-endowed foundations, there are local and national foundations. Local foundations may only operate in a single city or county, whereas national foundations may operate nationally.

Unlike civil associations, the matter of the government authority that registers foundations is complex, and depends on the prospective foundation’s operational objectives. Each government agency has its own regulations and requirements with respect to the establishment and operation of Taiwan foundations.

One common requirement is that prospective foundations must acquire a certain minimum amount of endowment funding. The minimum amount of endowment funding varies depending on the particular government agency to which the application to establish the foundation is made. Such minimum endowment funding amounts vary from a few million New Taiwan dollars to NT\$50 million (approximately US\$100,000 to US\$1.7 million).

3. In addition to civil associations and foundations, the Ministry of Interior has also issued instructions for foreign CSOs to set up **representative offices** in Taiwan². These instructions were first issued in 1987 and then amended on December 31, 2020. (For more on representative offices, see Barriers to Entry below.)

In 2021, data from the Ministry of Interior indicate that there were:

- ⑩ 127 political associations (including political parties);
- ⑩ 11,324 occupational associations; and
- ⑩ 61,863 social associations, including 21,974 national associations and 39,889 local associations.

The number of registered foundations is uncertain, possibly because they are regulated by different agencies depending on the sector in which they work.

² [Directions for Foreign Civil Institutions and Organizations to Apply to Set up and Register Offices in the Republic of China \(Taiwan\).](#)

The number of religious organizations, which are regulated under the Foundation Act, is also unclear.

As of 2021, according to [data](#) from the Ministry of Interior, the number of religious organizations was 15,183 of which 12,281 were temples and 2,902 were churches. Religious organizations are in principle regulated under the Foundation Act, but it is unclear how many are registered. According to Professor Ming Ho-sho, only a [very small number](#) of temples are officially registered.

IV. Public benefit status

There are no specific laws or regulations that confer a special “charitable” or “public benefit” status for CSOs. However, the Foundation Act defines foundations as having a public benefit purpose (Article 2), and the Civil Association Act defines social associations as providing a “public welfare” purpose. (Article 39)

Tax laws in Taiwan do provide incentives to encourage individuals and companies to make charitable donations. The Income Tax Act of 2015 establishes that individual taxpayers can claim a tax deduction of up to 20 percent of gross consolidated income for donations to educational, cultural, public welfare or charitable organizations or associations, while companies can claim a maximum deduction of 10 percent of their income for charitable donations. (Income Tax Act, Article 36)

The Income Tax Act (Article 4) establishes a required tax exemption for the income of education, cultural, public welfare and charitable organizations or institutions. Certain restrictions apply; for example, the income shall not be distributed to any individual or executive official, and operating expenditures should be used only to pursue the purposes of the organization. The organization shall not carry out any unrelated business. Income generated by selling products and services are not tax-exempt. The income shall be deposited in banks, or as bonds, stocks, and others forms and systems permitted by the regulating authority. The organization shall not have any abnormal financial or operating relationship with founders or board members and should provide financial revenues and expenditures for examination.

Some CSOs that do not generate any operating revenue are also eligible for income tax exemption, such as religious groups which are registered as temples, religious social groups, or religious financial groups.

V. Barriers to entry

There is no law prohibiting the formation and operation of “unregistered” groups but neither does the Civil Association Act explicitly recognize the ability of unregistered groups to form and operate.

Social Associations

To set up an association, the founders must submit an application form, a draft of the association's constitution, and a list of the initiators to the regulatory authority to apply for approval. There is no minimum endowment or amount of assets required for social associations.

The Civil Association Act requires no less than thirty (30) initiators who are over 18 years old and of legal capacity. These initiators can be Taiwan nationals or foreign nationals with alien residence cards, but not non-resident foreign nationals and not meet any of the following conditions stated in Article 8 of the Civil Associations Act:

1. Is condemned to fixed-term imprisonment, and the imprisonment has not been executed or finished yet. However, this does not include probation.
2. Is under security punishment that has not been executed or finished yet.
3. Is announced to be bankrupted, and the rights have not been recovered.
4. Has been placed under custodianship and such custodianship has not yet been withdrawn.

Social associations can be registered at the local or national level. For local associations, initiators must have a household or work addresses in the city or county in which the association is to be established. For national associations, the initiators must have a household or work addresses in at least seven different cities or counties in Taiwan.

A civil association must be located where the regulatory authority is located. However, with the approval of the regulatory authority, it may be located in another place, and branches may be established. (Article 6)

After the application for establishing an association is approved, an initiators' meeting shall be called to to organize a Preparation Committee, and an establishment meeting shall be held (Article 9) to approve the articles of association, a list of members, and elect a board of directors and supervisors. The Ministry of Interior procedures call for a board with at least nine directors and three supervisors.

Within 30 days after the establishment meeting is held, the association will submit the articles of association, a list of members, and curriculum vitae of the elected board to the regulatory authority for approval and accreditation, and the regulatory authority shall grant an accreditation certificate. After being approved and registered by the regulatory authority, a civil association may register itself as a legal person at the governing local court and submit a photocopy of the registration certificate to the regulatory authority for reference within thirty (30) days after the registration is finished.

Foundations

Interestingly, unlike for social associations, the Foundation Law does not mention any restrictions on who can serve as a founder/initiator of a foundation and no required minimum number of founders/initiators. This may be because the Foundation Law is a “special law” and anything not specified in it is regulated by the Civil Association Law which is a “general law” and does place restrictions on founders.

Prospective foundations must have a minimum amount of endowment funding. The minimum amount of endowment funding varies depending on the government agency (e.g. the law uses the term “competent authority”) to which the application to establish the foundation is made. The minimum amounts of endowment funding vary from a few million New Taiwan dollars to NT\$50 million (approximately US\$100,000 to US\$1.7 million).

An application for establishment of a foundation will be made by submitting documents, including the charter of endowment, list of endowment property and supporting documents, list of directors and supervisors, if any, work plan, and other documents to the relevant government authority. (Articles 9-10)

Foundations shall be domiciled at the place where its principal office is located and may establish any branch office upon approval by the competent authority. (Article 6)

A foundation’s directors shall, within 15 days after receiving the approval document, apply for registration with the court having jurisdiction over the places where the principal office and branch office are located. (Article 12)

The Foundation Act requires foundations to establish a board of directors. The board may consist of five (5) to twenty-five (25) directors, provided there is an odd number of directors. One of the directors should serve as the chairperson of the board, and another may serve as the vice chairperson. A foundation may also establish a supervisory board, provided that the number of supervisors may not exceed one-third (1/3) the number of directors.

The Foundation Act specifies that the government authority shall grant approval or dismiss the prospective foundation’s application within 60 days after its receipt of the application. When necessary, the time period may be extended for not more than 30 days. (Article 12)

Representative Offices of Foreign CSOs

The Foundation Act allows foreign foundations to apply for recognition from the central competent authority by submitting the requisite documents in Chinese (Articles 69-70). A recognized foreign foundation has the same legal capacity as a

Taiwan foundation (Article 71). A recognized foreign foundation shall apply to the court for registration of the establishment of its principal office within 15 days after its receipt of the recognition document (Article 72).

The Civil Associations Act does not recognize foreign NGOs. The Ministry of Interior, however, has issued [directions for foreign NGOs](#) to register a representative office in Taiwan. These instructions were first issued on November 4, 1987, by the Ministry of the Interior (Order (76) Tai-Nei-She-Tzu No. 539766) and amended on December 30, 2020. A representative office may operate in Taiwan only as the agent of its overseas principal and is not considered a separate legal entity. The responsible person may be a Taiwan national or foreign national with an ARC. This means that NGOs that are not registered in another country cannot register as a representative office in Taiwan. Their only option would be to register under the Civil Associations or Foundation Act. This raises the barrier to entry significantly for overseas groups that are not registered abroad or are in exile to gain legal status in Taiwan.

Significantly, while these directions apply to NGOs from Hong Kong and Macao that wish to set up representative offices in Taiwan, they “do not apply to people, legal persons or organizations from mainland China or other mainland Chinese institutions and organizations established in Hong Kong or Macao that wish to set up offices in Taiwan.” Nor may a person from mainland China “serve as the responsible person or be a staff member of an office.”

Establishing a representative office of a foreign CSO is relatively simple and does not require initial capital or a certain number of initiators. However, a representative office is not considered a legal entity and is not permitted to solicit local donations or recruit volunteers in Taiwan. Nor can a representative office organize public events on its own; rather, it must do so with a local partner.

VI. Barriers to operation

There are few prohibitions or restrictions on CSO activities, with the exception of promoting communism or “fake news”; see Article 4 of the Assembly and Parade Act and Article 63 of the Social Maintenance Act.

However, the Civil Associations Act and Foundation Act, and related implemented regulations and procedures, impose a number of burdensome requirements on the operations of associations and foundations. Below are a few examples:

1. Both the Civil Associations Act, Regulations on the Approval for the Establishment of Civil Association and Foundation Act mandate that the names of the organizations clearly reflect the nature of their responsibilities and align with their missions. It is not uncommon for the Ministry of Interior to request CSOs to modify their names by adding “association” or “foundation.”

ICNL’s commentary on Mongolia’s 2021 Association argues that this regulation of names is intrusive: ‘[the] draft laws’ limitations on permissible names for associations and foundations are overly restrictive. Both the Associations Law and Foundations Law contain prohibitions on the use of the words “Mongolian,” “National” and “United” in the name of an association or foundation. These provisions unduly restrict associations and foundations who want to use these words (which may be relevant to their purpose).”

2. The Foundation Act restricts CSO activity based on their administrative area, similar to the way China regulates its nonprofits.³ Article 2 of the Foundation Act states: “In this Act, ‘local foundation’ means a foundation the main operation or beneficiary of which is limited to a single municipality or county (city) under its charter of endowment and the establishment of which is subject to the local competent authority’s approval.

In 2022, the Frontier Foundation, a local foundation based in New Taipei City which had been operating nationally, had to suspend its programs because it was a local foundation which had been operating nationally and thus had violated Article 2 (ACFA 2023:18)

This restriction seems to vary depending on the local regulatory authority. According to an email from a Taipei foundation, their regulatory authority in Taipei City noted that it could operate in other counties and cities as long as it spent more than 60% of its annual budget in Taipei City (Email correspondence, October 4, 2023)

Articles 5-6 of the Civil Association Act links social associations to their local administrative area but does not explicitly restrict their activities to that area. That restriction was removed in a 2011 amendment (ACFA 2023: 30).

3. The Civil Association Act and Foundation Act, and related implementing regulations and procedures, impose requirements for an executive board and supervisory board with a minimum number of directors and supervisors. Associations need at least nine directors for the board and three supervisors for the supervisory board, a number which is quite large for small associations. This minimum number is not stated in the Civil Associations Act but only shows up in the MOI online procedures. When the MOI was asked if there was flexibility about the number of board members, they said there was no flexibility.

The Foundation Act requires 5-25 board directors for a publicly-endowed foundation, and 7-15 directors for a government-endowed foundation. It is not clear why a foundation is allowed to have a fewer number of directors than an association.

³ See the China Note in ICNL’s Civic Freedom Monitor in the Barriers to Entry section: <https://www.icnl.org/resources/civic-freedom-monitor/china>

Moreover, the Acts provide very detailed rules about a quorum for meetings, voting rules, and attendance at board meetings that should best be left to the association's or foundation's members and board to decide and specify in the articles of association. A quorum requires at least 50 percent of the association members to attend for the general assembly, and 50 percent of the directors for board meetings (Article 29). Article 30 of the Civil Association Act places a heavy burden on the directors or supervisors to attend board meetings in person: "The directors or supervisors of a civil association shall personally attend the meetings of the board of directors or the board of supervisors, and may not entrust others to represent them. Absence without due reason for two (2) consecutive times will be regarded as resigning, and the vacancy will be filled by the alternate directors or alternate supervisors in sequence." The Foundation Act has no similar language and also allows directors to meet online rather than in person. The Civil Association Act requires directors to meet in person.

VII. Barriers to international exchange

International exchange can be challenging given Taiwan's external environment. Taiwan for example does not have a seat at the UN and is not recognized as a country by many countries. It is also under constant threat from the People's Republic of China which sees Taiwan as an inalienable part of the PRC. The COVID-19 pandemic also made international cooperation more difficult because of Taiwan's strict quarantine policies, which were in effect until October 2022.

There are thus restrictions on the ability of CSOs to contact and cooperate with organizations from China and Hong Kong given the growing political tensions between China and Taiwan. CSOs from mainland China may not set up representative offices in Taiwan, nor can persons from mainland China serve as the responsible person or be a staff member of a representative office.

In addition, there are other protectionist barriers that make it challenging for Taiwan to strengthen its engagement with the international community, and run counter to Taiwan's efforts to expand its international engagement, particularly people-to-people relationships.

1. In the MOI's interpretation, the Civil Association Law restricts general membership and board membership to Taiwan citizens and foreigners with Taiwanese residence. Initiators of social associations must come from one of these two categories, and association members are chosen from the initiators. Board members are also elected from the ranks of members.
2. Taiwan's Directions for International Civil Institutions and Organizations to Apply to Set up and Register Representative Offices in the Republic of China (Taiwan) states that "a person from mainland China may not serve as the responsible person or be a staff member of an office" (Article 5). It also requires that the responsible person for the representative office have Taiwan citizenship or residency unless there are extenuating circumstances.

3. Taiwan's Labor Law requires that social associations increase their membership from 30 to 50 if they want to hire foreigners.
4. Taiwan imposes a 18-20% tax on fund transfers to pay for salaries, consultancy fees and other expenses to individuals and organizations overseas⁴.

VIII. Barriers to resources

There are no legal restrictions on domestic or foreign funding in the Civil Association or Foundation Act. However, there are conditions in Taiwan's banking, taxation and labor regulations that make it more difficult for foreigners and foreign CSOs to operate in Taiwan.

Neither the Civil Association Act nor the Foundation Act address whether or not associations or foundations can engage in commercial, business, or economic activities. Statements from social associations and foundations indicate there are no restrictions on carrying out commercial or economic activities as long as the profits are used to support the not-for-profit purpose of the organization.

CSOs are permitted to carry out public fundraising but they must submit a separate application for public fundraising to the Ministry of Health on an annual basis.

IX. An Argument for Reform: Taiwan and international/comparative good practices

As discussed in Section IV, during the mid-2010s, Taiwan's policymakers recognized the restrictive nature of the current Civil Associations Act, and made efforts to revise the law to lower the barriers to entry and operation for association. These efforts included a Ministry of Interior proposed a Social Associations bill proposed by the Ministry of Interior in 2017 and another Social Associations bill proposed by the Legislative Yuan in 2020. Neither of these bills though made it past the second reading which suggests continued reservations among lawmakers (ACFA 2023: 31).

The preface to both of these bills explaining their rationale show that Taiwan policymakers recognize the Civil Associations Act's intention to control rather than enable freedom of association. They make several important points about the need for reforming the Civil Association Act:

1. The Civil Association Act is overly broad, seeking to regulate three categories of associations with different attributes and purposes - political associations, occupational associations and social associations. Separate laws should be drafted for each category.
2. The current law is not in line with Taiwan's constitutional provisions and judicial interpretations.

⁴ 核釋公益慈善團體對海外捐贈應否辦理扣繳規定, <https://law-out.mof.gov.tw/LawContent.aspx?id=GL000556>

3. The current law is not in line with Taiwan’s commitment to international conventions and best practices. It points specifically to the Civil Association Act explicitly denying people under the age of 18 the right to form associations.
4. These reforms represent progress in strengthening the partnership between government and civil society and Taiwan’s democratic development.

The 2020 Legislative Yuan bill is an improvement on the 2017 bill proposed by the Ministry of Interior in that it removes the age limit for founders of social associations citing the Convention on the Rights of the Child which recommends that countries should actively encourage the establishment of organizational networks led by children and adolescents.

Both these bills are evidence that there is political will in both the executive and legislative branches for reform and they represent incremental progress in lowering the various barriers discussed in the sections above. But Taiwan policymakers still have more work to do to bring their civil society laws in line with comparative and international best practices. In the table below, we discuss a number of the barriers and recommend changes to align the laws with those best practices.

| Barriers in Taiwan’s Civil Association Laws | Recommended changes to align with comparative/international best practices |
|---|---|
| The Civil Association Act, Foundation Act, and Directions for Foreign Civil Institutions and Organizations to Apply to Set up and Register Offices in the Republic of China (Taiwan) use a “permission” procedure rather than a “notification” procedure in which registration is assumed upon receipt of notification by the regulating authority. | According to a report by the UN Special Rapporteur for the Rights to Freedom of Association and Assembly, notification procedure is in force in a number of countries such as Cote d’Ivoire, Djibouti, Morocco, Portugal, Senegal, Switzerland, Uruguay (Kiai 2012: 14). The notification procedure is also used in Taiwan’s 2022 Labor Union Act . |
| The Civil Association Act, and Directions for Foreign Civil Institutions and Organizations to Apply to Set up and Register Offices in the Republic of China (Taiwan), discriminate against groups such as those under 18, people with disabilities, and foreigners. They also reflect the government’s unequal treatment of nonprofits and companies. Whereas non-resident foreigners can register a company in | International best practice is that laws “should not discriminate against any person or group of persons on any grounds, such as age, birth, colour, gender, gender identity, health condition, immigration or residency status, language, national, ethnic or social origin, physical or mental disability, political or other opinion, property, race, religion or belief, sexual orientation or other status. No person or group of persons wishing to form an |

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| <p>Taiwan, non-resident foreigners cannot be initiators of an association.</p> <p>The restrictions on non-resident foreigners make it difficult for foreign CSOs which are not already registered in other countries to register and operate in Taiwan.</p> <p>Taiwan's 2020 Social Associations bill removed language about the age limit and , and explicitly allows for minors and people with disabilities: "If the person in charge mentioned in Paragraph 1 is a minor or a person with limited capacity, he may, with the consent of the legal representative, oversee the affairs of the association and represent the group" (Article 7).</p> | <p>association shall be unduly advantaged or disadvantaged over another person or group of persons. Membership or non-membership in an association shall not constitute grounds for the discriminatory treatment of persons" (OSCE 2015:23).</p> <p>"Non-nationals, including stateless persons, refugees and migrants, have the right to freedom of association and must not suffer discrimination with respect to its exercise based on their status" (OSCE 2015: 52).</p> |
| <p>The Civil Association Act does not explicitly recognize unregistered organizations.</p> | <p>France and the Netherlands recognize and affirm the existence of unregistered or "informal" organizations (OSCE 2015: 57). A simple statement could be included recognizing that registration is required for an association to gain legal status, but that an association is free to form and operate without registration. Mongolia's 2021 Associations bill also explicitly recognizes the right of individuals to form unregistered associations (ICNL Briefer-Mongolia 2022b: 1).</p> |
| <p>Barriers to Entry</p> | |
| <p>Act 8 of the Civil Associations Act states that a social association requires at least 30 founders/initiators who must be at least 18 years old. In addition, to register a national social association, the household registration of those 30 founders must be distributed across at least 7 municipalities, cities or counties in Taiwan.</p> <p>The 2017 and 2020 Social Associations bill proposes lowering that number to 20 founders/initiators, and the 2020 bill removes the age requirement and reduces the regional distribution of initiators for national associations from seven municipalities, cities or counties to two.</p> | <p>International best practice calls for keeping the number of founders to no more than two people to lower barriers to entry and reduce the burden on small associations (African Commission 2017: 11). The UN Special Rapporteur for the Rights to Freedom of Peaceful Assembly and Association considers as a best practice the Armenian and Estonian legislation that require no more than two persons to establish an association. A higher number may be required to establish a union or a political party, but this number should not be set at a level that would discourage people from engaging in associations." (Kiai 2012: 14).</p> |

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| | <p>Surprisingly, Taiwan’s barrier to entry is much higher than in most countries in the East Asia region, even authoritarian countries such as China. Many of these countries have a category similar to nonprofit corporations which only require as few as 1-3 founders. In Hong Kong, many nonprofits are registered as a company by guarantee which requires only one founder. China has a category of nonprofits called private non-enterprise units, now renamed social service organizations, which require only one founder.⁵ Moreover, Chinese CSO regulations do not stipulate an age limit or other restrictions on the founders or members. South Korea has a category called nonprofit private organization which only requires one founder, and another category called nonprofit association which requires two founders.</p> <p>Mongolia’s 2021 Associations bill required only five founders but even that number was seen as too many by international observers who felt it restricted the ability of small organizations to form (ICNL: 2021b).</p> <p>In addition, the process requires collecting the IDs and other personal information of the 30 initiators without proper protection of their personal data. To collect the IDs of the initiators in a secure way requires the founders to spend an excessive amount of time on the registration process.</p> |
| Barriers to Operation | |
| <p>The Civil Associations Act and Foundation Act (in particular Article 2) place undue restrictions on the operations of associations and foundations by creating separate categories for local and national associations and foundations.</p> <p>The Frontier Foundation, a local foundation, which had to suspend its programs in 2022 for violating Article 2 of the Foundation Act</p> | <p>The restrictions placed on the regional scope of associations and foundations by defining them as “local” or “national” should be removed. Under international standards, NGOs have the right to operate free from unwarranted state interference, including operating in different parts of their countries which is protected by the freedom of movement principle as enshrined in Article 12 of the ICCPR (ICNL 2022a: 5)</p> |

⁵ <https://www.icnl.org/resources/civic-freedom-monitor/china>

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| because it was operating nationally is a case in point (ACFA 2023:18). | |
| <p>The Civil Associations Act and Foundations Act, and related implementing regulations, place a number of burdensome requirements on associations and foundations, particularly on associations which can be small and operated by part-time and volunteer staff.</p> <p>One burdensome requirement is for associations and foundations to elect a board with a specified number of directors.</p> <p>The Civil Association Act requires at least nine directors and three supervisors. This requirement is not stated in the Act itself, but is something that appears in the registration procedures.</p> <p>Article 39 of the Foundations Act states that a public-endowed foundation will have a board of 5-25 members.</p> <p>The 2017 and 2020 Associations bills do not mention a minimum number of board members.</p> | <p>ICNL's comments on Mongolia's 2021 Associations bill could apply to Taiwan's laws: "The draft laws address the internal governance of associations and foundations with excessive detail and rigidity, particularly with respect to associations. For example, the requirement that every association have a board of directors and a supervisory committee imposes an unwieldy and unnecessary governance structure on small organizations and thereby amounts to interference in the association's internal affairs. Such internal governance choices would be more appropriately left to the individual discretion of associations."</p> <p>The Civil Association Law should remove citizenship and membership requirements for members and board members. Currently, the Law is written in a way that is unclear whether association members and board members can be non-resident foreigners.</p> |
| Taiwan's Civil Association Act requires the association to notify the regulatory authority of meetings, and allows for the presence of government officials in those meetings: Article 6 states: To call a meeting of the Preparation Committee and the establishment conference, a notice shall be given to the regulating authority, and the regulating authority may send personnel to attend the meetings as non-voting delegates. | International best practices discourage allowing government officials to attend these meetings unless invited: "under no circumstances should legislation mandate or permit the attendance of state agents at non-public meetings of associations, unless they are invited by the association itself" (OSCE 2015: 63) |
| Taiwan's Civil Association Act Article 54 also requires that "after a civil association is approved and registered, the alteration of its constitution, curriculum vitae of the employed personnel or list of the principals shall be reported to the regulating authority for examination and reference within 30 days." | <p>International best practices call for giving more freedom to associations to determine their internal governance and management:</p> <p>"Associations should be free to determine their internal management structure, and their highest governing bodies....Furthermore,</p> |

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| | <p>associations should not be required to obtain any authorization from a public authority in order to change their internal management structure, the frequency of meetings, their daily operations or rules, or to establish branches that do not have distinct legal personality.” (OSCE 2015: 63)</p> <p>“Furthermore, States have a negative obligation not to unduly obstruct the exercise of the right to freedom of association. Members of associations should be free to determine their statutes, structure and activities and make decisions without State interference (e.g. legislation in Bulgaria, Slovakia and Slovenia)” (Kiai 2021: 16).</p> |
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