

Replies of Taiwan NGOs to ICERD LOIs

Amnesty International

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1. Article 1, 2 The Convention in Domestic Law and the Institutional and Policy Framework for its Implementation

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| 1. | Both previous international review committees and the NHRC commented that instead of a comprehensive anti-discrimination law, anti-discrimination provisions are found in different sections of Taiwanese law. Are there more recent developments in the enactment of the Equality Law (Implementation Report, para. 38)? What is the timeframe for the enactment? Are representatives of Indigenous peoples and different ethnic groups involved in the drafting and deliberation process? |
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Reply:

As early as 2017, independent experts from the ICCPR and ICESCR International Review Committees have recommended the government of Taiwan to enact a comprehensive anti-discrimination law. As a result, it should be considered to be international standards as well as Taiwan government's obligations on its own.

The principles of Equality and Non-discrimination are not only at the core of the Constitution but also contained in various areas of legislation. Yet, the current legal provisions, spanning multiple regulatory authorities, makes it difficult to establish an effective oversight mechanism due to the existing scattered legislation over a wide terrain of equality issues. The existing channels for direct individual complaints also prove to be ineffective. Concerning the recent mounting reports of discrimination of various kinds, a comprehensive anti-discrimination law in line with international standards should be in place without delay to ensure both formal and substantive equality for all, especially the particularly vulnerable groups.

Although the Department of Human Rights and Transitional Justice has organized public hearings to increase the participation of stakeholders in decision-making, it remains unclear how the upcoming draft bill relates to the existing equality/non-discrimination rights provisions. Questions such as whether there will be a dedicated Equality Body in charge and what role the administrative unit responsible for the draft will play in the future under this law still lack clarity as well.

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN

TO:

- Eliminate discrimination by amending laws and policies to ensure both formal equality before the law and substantive equality
- Eradicate violence on the prohibited grounds of discrimination in civil and criminal laws as appropriate with equal access to justice guaranteed
- Establish specialized oversight bodies or similar mechanisms to identify, investigate, and remedy discrimination in reference to the Paris Principles

2.	ICERD entered into force in Taiwan on 9 January 1971, earlier than any of the other UN core human rights treaties ratified from 2007 onwards (Common Core Document, table 31 on pp. 58-60). Why was the ICERD Action Plan only adopted in 2020 and the international review process established thereafter (many years after similar procedures took effect for ICCPR and ICESCR, CEDAW, CRC and CRPD) (see Implementation Report, para. 2)?
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Article 2, 4 and 6 Racist Hate Speech, Incitement to Racial Hatred and Hate Crimes

3.	Please provide further information on a national policy on racial profiling (NHRC Independent Opinion, para. 18).
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Reply : Concerning the recent mounting reports of discriminatory speech against the disadvantaged groups, the official measures currently in place are limited to criminal penalties. The difference between hate crimes and advocacy of hatred should be legally accentuated and differentially addressed by all necessary means to simultaneously fulfill and balance between the rights to non-discrimination and freedom of expression. That is, except for hate crimes, the advocacy of hatred should only be prohibited by law against the requirements stipulated by Article 19&20 of ICCPR, let alone the poorly defined Article 153 of the Criminal Code against the fundamental principles of necessity, legitimate aims and proportionality. Other than that, a broader set of inter-ministerial policy measures including providing official statistics are of paramount importance to bring about public deliberation and eventually social change in discrimination.

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- Address advocacy of hate speech in accordance with Article 19&20 of ICCPR to ensure both rights to non-discrimination and freedom of speech
- Take all necessary steps to foster dialogue and eliminate discrimination, including evidence-based public awareness campaigns, human rights education and other interventions apart from legislation

4. Migrant Workers

29.	Are there any more recent developments regarding accession to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), as mentioned in the Common Core Document in para. 86?
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Reply : Amnesty International recommends the incorporation of the ICMW, ILO C188, ILO C189 and all relevant treaties into domestic law and for the Taiwanese government to act on the encouragement from international human rights experts on the review committee in implementing a core international human rights framework as soon as possible. Thus far, Taiwan's Executive Yuan has never submitted any related drafts to the Legislative Yuan.

4-1 Right to Work

30.	The Employment Service Act continues to restrict migrant workers' right to change employers; and there are a number of related discriminatory provisions including accommodation, access to health services, right to organise and join trade unions especially in relation to migrant domestic workers, farm workers and fishers; survivors' benefits (as identified in the state report); migrant workers are significantly disproportionately represented in occupational health and safety fatalities and injuries.
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Reply :

Distant-water migrant fishers and domestic caregivers are unable to enjoy statutory minimum wages, reasonable vacation, and related overtime benefits due to Article 3 of the Labor Standards Act and the current dual-track system for distant water fisheries. This exclusion leads to the vulnerability of migrant workers to forced labor, sexual exploitation, and human trafficking. Additionally, based on Articles 53 and 46 of the Employment Service Act, they can only file for changing the employers and jobs under narrow circumstances, which also violates Article 6 of the International Covenant on Economic,

Social, and Cultural Rights at the same time.

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- Extend the application of Labor Standards Act to all migrant workers.
- Domesticize the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) in domestic law, and implement relevant provisions in policies and practices, allowing all migrant workers to freely change employers and jobs.
- Domesticize the Work in Fishing Convention (ILO C188), including ensuring reasonable access to communication facilities for all deep-sea fishers
- Domesticize the Domestic Workers Convention (ILO 189) to ensure the rights of domestic caregivers.

4-2 Women Migrant Workers

31.	Issues relate to the treatment of pregnant migrant workers; notably the disproportionate number of women migrant workers who “go missing”, especially those from Indonesia and the Philippines (Implementation Report, table 18 on p.50).
32.	What reasons have been identified for the number of women migrant workers who go missing? What provisions are in place to support those who are pregnant?

Reply : In Taiwan, 99% of domestic migrant workers are female susceptible to forced labor, sexual violence and human trafficking due to the lack of protection from the exclusion from under the order of Ministry of Labour. Other than that, various barriers in terms of languages and the access to justice prevent the victims from seeking redress, eventually leading to the undocumented status of “missing migrant workers”. Undocu-

mented migrant workers are unable to legally reside and work in Taiwan. Without a contract and work permit, it poses substantial challenges to rely on the law for protection. If undocumented migrant workers cannot access sufficient healthcare services and educational opportunities for their children, it can also lead to intergenerational inequality as a result.

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- Safeguarding domestic workers’ rights to legal protection and access to justice under the Labour Standards Act on an equal basis or through enactment of the Domestic Workers Protection Act as well as domestication of ILO 189.

4-3 Right to Justice

50.1	Issues raised most frequently: <ul style="list-style-type: none">•ability to seek redress for revocation of work permits and interpretation of what constitutes “serious violations” as provided in the Employment Service Act;
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Reply :

In May 2023, Taiwan's amendment to Article 73 of the Immigration Act increased penalties for overstaying undocumented migrant workers. The fines were raised from the existing range of NT\$2,000 to 10,000 to NT\$10,000 to 50,000, including extension for the ban on re-entry to seven years. Penalizing a specific group and labeling undocumented migrant workers as "criminals," has been criticized for violating their basic human rights and due process, exacerbating public discrimination against migrant workers. Due to the language barriers, many migrant workers facing difficulties often have limited avenues for seeking assistance, either having to seek help from non-governmental organiza-

tions or relying on these organizations to hire professional translators.

Furthermore, according to Article 29 of the Immigration Act, only foreign nationals with legal residency are permitted to petition and participate in demonstrations. Yet, many asylum seekers, refugees, and migrant workers reside in Taiwan undocumented. It is essential to ensure the right of these groups to protest in order to effectively improve governance measures concerning foreign nationals in Taiwan.

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- Extend the application of Labor Standards Act to all migrant workers.
- Domesticize the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) in domestic law, and implement relevant provisions in policies and practices, allowing all migrant workers to freely change employers and jobs.
- Provide regular human rights training to frontline public officials involved in handling migrant worker affairs, including police officers, judges, government officials, healthcare professionals, and customs officers, among others.
- Revise Article 29 of the Immigration Act to ensure the right to protest for of non-citizens.

50.2	•unfairness of State Reciprocity law;
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Reply :

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- Sign bilateral agreements with migrant workers 'origin countries to impose ethical conditions on their recruitment, including commitments to zero-cost recruitment processes. The Taiwanese government should work closely with governments of origin countries to prevent payment of recruitment fees and curb the practice of contract deception. Additionally, the Taiwanese government should identify ethical recruitment agencies in origin countries and in Taiwan, and work with them to recruit workers into the country.

50.4	•poor, uneven quality of interpretation services – across the public sector as a whole.
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Reply : Due to the language barriers, many migrant workers facing difficulties often have limited avenues for seeking assistance, either having to seek help from non-governmental organizations or relying on these organizations to hire professional translators.

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- Train professional interpreters to enhance access to justice.

5. Refugees and Asylum Seekers

57.	What is the status of the refugee bill that is currently being drafted by the government (Common Core Document para. 171)? Are there any more recent developments on the draft refugee act (Implementation Report, para. 121)?
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Reply :

Taiwan's Ministry of Interior first proposed a draft Refugee Act in 2005, and it has been submitted to the Legislative Yuan every year since then. It was only in 2016 that it passed Committee review; after that, no progress was made in the legislative process.

Lack of universal consensus and national security concerns, including with respect to the government in Beijing, have been used to justify postponement of passage of the Refugee Law under the government; At the same time, as an apparent contradiction, only asylum seekers from China, Hong Kong and stateless people who are exiled Tibetans from India and Nepal enjoy some kind of protection in practice, although the mechanisms for them still lack transparency and due process. There is no legal mechanism for asylum seekers of other nationalities.

In 2022, Taiwan's Ministry of Interior launched the National Action Plan on Human Rights(NAP), including passing the Refugee Law in 2024. The other two main opposition parties Taiwan People's Party(TPP) and Kuomintang(KMT) proposed their political views on supporting the Refugee Law as well.

Taiwan's government should not use lack of universal consensus and national security concerns as the reasons to postpone the Refugee Law. Instead, pass the law to ensure there is a process to evaluate individual claims and legal status of refugees and asylum seekers, and integrate into domestic law the principle of non-refoulement for all foreign nationals on Taiwanese territory.

58.	How many asylum requests have been received by the government of Taiwan in recent years? How many have been accepted or rejected, respectively? (Implementation Report, para. 122)
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Reply :

According to Article 36 of the Immigration Act, aliens may be subject to deportation for

certain reasons. Before being repatriated according to Article 38 of the Immigration Act, they may be detained by the National Immigration Agency. However, if the detained individual's home country or another country refuses to accept their return, humanitarian considerations should lead to their release to avoid violating their rights. As the released individual does not possess a legal residency status, a provisional alien registration permit may be issued according with Article 23 of Regulations Governing Visiting, Residency, and Permanent Residency of Aliens serving as an identification document. However, This provisional permit does not provide for a right to employment, access to National Healthcare Insurance or other economic, social and cultural rights. To date, no case has received a provisional permit, and the first batch of applicants have been waiting for the review process for over six months. During this waiting period, they still have been unable to obtain any form of identification document.

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- For cases under Article 23 of the Regulations Governing Visiting, Residency, and Permanent Residency of Aliens that the Taiwanese government cannot repatriate, the government should establish an inter- departmental review mechanism for special cases in order for those individuals to work and become self- sufficient.

59.	In the current absence of a Refugee Act, the Review Committee is concerned about the visa requirements for stateless Tibetan students requiring them to leave and re-enter Taiwan every six months, “imposing enormous stress and a heavy financial burden” according to the NHRC (para. 94), and an alternative to this procedure should be identified.
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Reply :

Although the ICERD acknowledges the possibility of grounds for differential treatment of non-citizens, Article 5 as noted above continues: “States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognized under international law.” This was further elaborated in General Recommendation 30 of CERD in 2005, which determined that states parties should “remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education, housing, employment and health.

However, such discrimination on the basis of origin is evident in the (inadequate) range of pathways to protection provided by law. To illustrate, under Article 18 of Laws and Regulations Regarding Hong Kong and Macau Affairs, asylum seekers from Hong Kong may apply for Taiwanese residency under the "Hong Kong Humanitarian Aid Project". Those from China may obtain residency through ad hoc review in accordance with Cross-Strait Act, but their applications are often put on hold, forcing them to either leave or stay in Taiwan irregularly. For stateless or exiled Tibetans from India and Nepal, those who entered Taiwan before 2016 can obtain residence permits through review by the Mongolian and Tibetan Affairs Commission according to Article 16 of the Immigration Act; those who arrived in 2016 or after are ineligible for this pathway. Other forms of structural discrimination based on nationality include:

Issue of the Right to Work: In Taiwan, those eligible to apply for asylum through the "Hong Kong Humanitarian Aid Project" must find an employer who is willing to hire them before they can obtain a work visa. In addition to this requirement, Hong Kongers seeking employment in Taiwan must meet a salary requirement that is three times higher than Taiwan’s minimum wage. This high salary requirement makes it challenge for Hong Kong residents to find employers willing to hire them – and as a result, poses a challenge to acquiring a work visa.

Issue of the Right to Peaceful Assembly: According to Article 29 of the Immigration Act, only foreign nationals with "legal residence" are permitted to petition and participate in demonstrations and marches. This unnecessarily restricts the right to peaceful assembly for foreign nationals, particularly for many asylum seekers, refugees, and migrant workers who reside in Taiwan under irregular status.

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- Ensure that Chinese nationals, Hong Kongers and exiled Tibetans in need of protection have alternative means provided to them that grant protection from repatriation and human rights, including but not limited to the right to employment.

60.	Covenants Watch states that the “deferred forced deportation” status does not protect refugees from countries, such as Myanmar, Ukraine and Afghanistan, against deportation in violation of the principle of non-refoulement. Which actions is Taiwan taking to regularize the residence status of refugees who are not allowed to be deported?
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Reply :

Currently, the Taiwanese government has stated that prior to the passage of the Refugee Act, assistance will be provided to asylum seekers on a case-by-case basis. Consequently, each case lacks a standardized procedure, and asylum seekers may also face differential treatment based on their nationality or region of origin.

There is no content related to non-refoulement in Article 36 of the Immigration Act, which deals with situations of deportation. According to the General Recommendations 30 of CERD, the state party should "ensure that non-citizens are not returned or removed to a country or territory where they are at risk of being subject to serious human rights abuses, including torture and cruel, inhuman or degrading treatment or punish-

ment." Though protections against torture and other ill-treatment are outlined in the International Covenant on Civil and Political Rights (ICCPR) – an international legal instrument that has already been incorporated into law in Taiwan since 2009 – the non-refoulement principle is not specifically addressed in any domestic laws in Taiwan. The Taiwanese government claims that prior to the passage of the Refugee Law, in cases where individuals seek asylum, assistance will be provided on a case-by-case basis and the direction of processing will involve transit to a third country. To date, individuals seeking asylum have not been returned to countries where they may face torture or inhumane treatment. However, in January 2024, three Chinese dissidents who had refugee travel documents flew from Malaysia to Taiwan to seek asylum in the USA, were deported back to Malaysia. Without integration into domestic law of provisions for determination of asylum claims and granting asylum and/or alternative protection, as well as non-refoulement standards, there is no official protocol on how Taiwanese authorities can ensure that individuals in need of asylum are treated equally and without discrimination.

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TAIWAN TO:

- Legislative Yuan to pass a law to ensure that there is legal status of refugees and asylum seekers, and integrate into domestic law the principle of non-refoulement for all foreign nationals on Taiwanese territory, and ensure that there is a process to evaluate individual claims for asylum and grant it, without discrimination, and provide access to basic rights such as adequate healthcare, work, and schooling, among others.