



# TAIWAN

SUBMISSION TO THE INTERNATIONAL REVIEW COMMITTEE ON  
THE DOMESTIC IMPLEMENTATION OF THE ICERD

22-26 APRIL 2024

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# 1. INTRODUCTION

Amnesty International firmly opposes discrimination, both direct and indirect, on the basis of race, ethnicity, sex or gender, sexual orientation, gender identity, religion, political opinion, nationality or social origin, disabilities, age, as well as intersectional discrimination against individuals or groups who hold multiple identities.<sup>1</sup> The international review of Taiwan's domestic implementation of the rights enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination – to be held on 22-26 April 2024 – provides an important opportunity for Amnesty International to highlight concrete challenges in Taiwan, and provide recommendations for how authorities can better ensure an end to all forms of discrimination.

In this submission, Amnesty International emphasizes concerns with regard to four themes which have been the focus of our work in Taiwan. These include:

- the rights of asylum seekers, refugees and others seeking international protection
- the labour rights of migrant workers and the institutional inequalities they face
- equalities surrounding transnational marriages, including transnational same-sex marriages
- discriminatory speech, in particular in the education sector

As a cross-cutting issue, this report will also address the lack of access to remedies for rights violations as a result of racial discrimination, in particular the absence of effective complaint mechanisms in the implementation of the Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

According to General Comment 30 of the Committee on the Elimination of All Forms of Racial Discrimination (CERD), "Article 5 of the Convention incorporates the obligation of States parties to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights. Although some of these rights, such as the right to participate in elections, to vote and to stand for election, may be confined to citizens, human rights are, in principle, to be enjoyed by all persons."<sup>2</sup>

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<sup>1</sup> Amnesty International, Policy Summary – Discrimination (Index: POL 30/2992/2012), March 2021.

<sup>2</sup> UN Committee on the Elimination of Racial Discrimination (CERD), General Recommendation 30: Discrimination against non-citizens, 2005, para. 3.

# 2. PROTECTING THE RIGHTS OF REFUGEE AND ASYLUM-SEEKERS (ARTICLE 1 AND 5)

## 2.1 DISCRIMINATION AND NON-REFOULEMENT

Taiwan's Ministry of Interior first proposed a draft *Refugee Act* in 2005, and it has been submitted to the parliament every year since then.<sup>3</sup> It was only in 2016 that it passed Committee review; after that, no progress was made in the legislative process.

National security concerns, including with respect to the government in Beijing, have been used to justify postponement of passage of the draft *Refugee Act* under the government; at the same time, as an apparent contradiction, only asylum seekers from China<sup>4</sup>, Hong Kong<sup>5</sup> 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.

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 punishment."<sup>6</sup> 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.<sup>7</sup> The Taiwanese government claims that, up to this point, they have refrained from sending asylum seekers to countries where they might face torture or inhumane treatment.<sup>8</sup> However, Amnesty International and its partners have identified two instances in which Kurdish people from Syria<sup>9</sup> were deported when immigration officers in Taiwan discovered they had travelled using fake passports.

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.

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<sup>3</sup> National Immigration Agency, International Convention on the Elimination of All Forms of Racial Discrimination Initial Report of the Republic of China(Taiwan), 14 December 2022, <https://reurl.cc/65RMG5> (in Mandarin), para. 121.

<sup>4</sup> National Immigration Agency, International Convention on the Elimination of All Forms of Racial Discrimination Initial Report of the Republic of China(Taiwan) (previously cited), para. 124.

<sup>5</sup> National Immigration Agency, International Convention on the Elimination of All Forms of Racial Discrimination Initial Report of the Republic of China(Taiwan) (previously cited), para. 123.

<sup>6</sup> CERD, General Recommendation 30 (previously cited), para. 27.

<sup>7</sup> International Review Committee(IRC), Review of the Third Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants, 13 May 2022, <https://reurl.cc/aVDgAY>, para. 77.

<sup>8</sup> National Immigration Agency, International Convention on the Elimination of All Forms of Racial Discrimination Initial Report of the Republic of China(Taiwan) (previously cited), para. 122.

<sup>9</sup> Eeling Chiu, Shi Wang, "敘利亞庫德族在台灣島上的困境" ["The Dilemma of Syrian Kurds on the Island of Taiwan"], 22 March 2019, <https://www.tahr.org.tw/news/2416> (in Mandarin).

## 2.2 DIFFERENTIAL TREATMENT OF ASYLUM SEEKERS OF DIFFERENT NATIONALITIES

Currently, people seeking asylum from different countries or regions receive differential treatment based on their country or region of origin.<sup>10</sup> Amnesty is aware of only a few cases in which individuals were granted visa extensions, and there is no standard procedures for those cases.

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*<sup>11</sup>, asylum seekers from Hong Kong may apply for Taiwanese residency under the "Hong Kong Humanitarian Aid Project".<sup>12</sup> Those from China may obtain residency through ad hoc review in accordance with *Cross-Strait Act*<sup>13</sup>, 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<sup>14</sup> according to Article 16 of the *Immigration Act*<sup>15</sup>; those who arrived in 2016 or after are ineligible for this pathway.

If national security concerns or diplomatic pressure from China are the main obstacles to adopting a domestic refugee law or implementing refugee protection mechanisms, it does not logically follow that asylum seekers from other countries (e.g., those not considered sensitive or special cases) should face more restrictions. Yet, the different treatment of different nationalities in practice puts into focus structural discrimination against asylum seekers from other countries.

## 2.3 OBSTACLES TO THE ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS BY ASYLUM-SEEKERS

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."<sup>16</sup> However, in Taiwan barriers exist to equality in employment and health, both between citizens and non-citizens and among different asylum-seeking populations.

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.<sup>17</sup>

Stateless and/or exiled Tibetans from India and Nepal who entered the country before 2016 obtained legal residency according to a sunset clause in the article 16 of *Immigration Act*, which provided that they would be

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<sup>10</sup> Radio Taiwan International, "在台烏克蘭人簽證到期沒關係 內政部：允許延長且無次數限制" ["Ukrainian Visa Holders in Taiwan: No Worries About Expiry, Ministry of the Interior Allows Extension with No Limit on Frequency"], 1 March 2022, <https://www.rti.org.tw/news/view/id/2125875> (in Mandarin).

<sup>11</sup> Taiwan, *Laws and Regulations Regarding Hong Kong and Macau Affairs*, 1997, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=Q0010003>, Article 18 (as amended on 22 January 2022).

<sup>12</sup> Reporter, "看得難拿到的「專案身分」——上千香港尋求庇護者通不過的兩道窄門" ["Visible but Hard to Obtain 'Special Status': The Two Narrow Gates that Thousands of Hong Kong Asylum Seekers Fail to Pass"], 17 June 2022, <https://www.twreporter.org/a/hong-kong-taiwan-asylum> (in Mandarin).

<sup>13</sup> Taiwan, *Act Governing Relations between the People of the Taiwan Area and the Mainland Area*, abbreviated as the 'Cross-Strait Relations Act', 1992, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=Q0010001>, Article 17 (as amended on 8 June 2022).

<sup>14</sup> The Mongolian and Tibetan Affairs Commission was in charge of facilitating exchanges and other related affairs between the Mongolian and Tibetan communities. However, it was dissolved in 2017.

<sup>15</sup> Taiwan, *Immigration Act*, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080132>, 1999, Article 16 (as amended on 30 May 2023).

<sup>16</sup> CERD, General Recommendation 30 (previously cited), para. 29.

<sup>17</sup> Taiwan, *Regulations Governing Permits for Hong Kong and Macao Residents Entering the Taiwan Area and Setting up Residence or Registered Permanent Residence in R.O.C.*, 2022, <https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=Q0020008> (in Mandarin).

granted permission to work after review by the Mongolian and Tibetan Affairs Commission.<sup>18</sup> However, a practical challenge has emerged, in that the Mongolian and Tibetan Affairs Commission ceased operations in 2017; without this body in place, there has been no mechanism or legal basis for reviewing the cases of Stateless and/or exiled Tibetans who arrived after 2016.

In 2022, the Executive Yuan passed the revision of article 24 of *Regulations Governing Visiting, Residency, and Permanent Residency of Aliens*<sup>19</sup>. 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 accordance with Article 24 of *Regulations Governing Visiting, Residency, and Permanent Residency of Aliens*, serving as an identification document. This provisional permit does not, however, provide for a right to employment, access to National Healthcare Insurance or other economic, social and cultural rights. A promise by the immigration agency to negotiate with other government agencies<sup>20</sup> in order to remedy this gap has not been realized. Amnesty International has documented no cases in which an individual on the provision permit has been afforded these rights.

## 2.4 RECOMMENDATIONS

Amnesty International recommends that the Government of Taiwan:

- Legislative Yuan to pass a law to ensure that there is legal status of refugees and asylum seekers<sup>21</sup>, 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.
- Ensure that Chinese nationals, Hong Kongers and exiled Tibetans in need of protection have alternative means provided to them that grant protection from return and access to internationally recognized rights, including the right to employment.
- For cases under Article 24 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.

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<sup>18</sup> Reporter, “流亡藏人的日子 為什麼來、往哪裡去——來台藏人的離散足跡與選擇” [“The Days of Tibetan Exiles: Why They Come, Where They Go—The Dispersed Footprints and Choices of Tibetan Refugees in Taiwan”], 21 May 2021, <https://www.twreporter.org/a/exiled-tibetan-in-taiwan> (in Mandarin).

<sup>19</sup> Taiwan, *Regulations Governing Visiting, Residency, and Permanent Residency of Aliens*, 2002, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080129>, Article 24 (as amended on 13 June 2022).

<sup>20</sup> Other government agencies are the Ministry of Labour and Ministry of Health and Welfare.

<sup>21</sup> IRC, *Review of the Third Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants* (previously cited), para. 78.



# 3. INEQUALITIES IN THE LEGAL SYSTEM FACED BY MIGRANT WORKERS (ARTICLES 2 AND 5)

Migrant workers involved in manual labour account for 90% of the official total foreign labour force in Taiwan of over 700,000 people.<sup>22</sup> The majority of these workers hail from Southeast Asian countries such as Vietnam, the Philippines, Indonesia, and Thailand.<sup>23</sup> In addition, there are an estimated 70,000 to 80,000 undocumented migrant workers in the country<sup>24</sup>. The populations of migrant workers are at particular risk of discrimination on the basis of race, or ethnic origin, as well as in some cases their irregular residence status.<sup>25</sup>

CERD General Recommendation 30 calls on states to "take effective measures to prevent and redress the serious problems commonly faced by non-citizen workers, in particular by non-citizen domestic workers, including debt bondage, passport retention, illegal confinement, rape and physical assault."<sup>26</sup> Taiwan's failure to meet international law and standards, including International Labour Organization (ILO) conventions, coupled with long-term direct and indirect institutional discrimination, perpetuates discrimination against non-citizen workers. Such discrimination is exacerbated by regulations on migrants' engagement in manual labour<sup>27</sup>, such as the prohibition on workers freely switching employers, and the common practice of exorbitant recruitment fees which cause debt bondage and other potential labour abuses.

Under Article 53 of the *Employment Service Act*<sup>28</sup>, certain categories of migrant workers are prohibited from changing employers or jobs, except in very limited circumstances.<sup>29</sup> Furthermore, the Ministry of Labour excludes deep-sea fishery workers and domestic workers from labour protections through executive order and Article 3 of the *Labor Standards Act*<sup>30</sup>, despite both sectors being identified globally as at high risk of forced labour<sup>31</sup>. As such, many migrant workers in these two industries are subject to abuses such as sexual

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<sup>22</sup> National Development Council, Statistic of Migrant Workers Categorized by Application Type, 2022, [https://www.ndc.gov.tw/Content\\_List.aspx?n=44CB0EDF55E07A07](https://www.ndc.gov.tw/Content_List.aspx?n=44CB0EDF55E07A07) (accessed on 29 May 2023); Statistic of foreign professionals categorized by application type, 2022, [https://www.ndc.gov.tw/Content\\_List.aspx?n=00305E435F91FE1F](https://www.ndc.gov.tw/Content_List.aspx?n=00305E435F91FE1F), (accessed on 29 May 2023). The total number of migrant workers categorized by application type was 710,000 and the total number of foreign professionals categorized by application type was 54,000.

<sup>23</sup> National Development Council, Number of Migrant Workers - by Nationality, 2022, [https://www.ndc.gov.tw/Content\\_List.aspx?n=421CC0712EC314BD](https://www.ndc.gov.tw/Content_List.aspx?n=421CC0712EC314BD) (accessed on 29 May 2023).

<sup>24</sup> National Immigration Agency, Statistics of absconding migrant workers, <https://www.immigration.gov.tw/5385/7344/7350/8943/?alias=settledown> (accessed on 28 April 2023).

<sup>25</sup> Amnesty International, Europe: Dealing with Difference: A framework to combat discrimination in Europe (Index: EUR 01/003/2009), 1 July 2009, <https://www.amnesty.org/en/documents/EUR01/003/2009/en>, pp. 27.

<sup>26</sup> CERD, General Recommendation 30 (previously cited), para. 34.

<sup>27</sup> UN Committee on the International Covenant on Economic, Social and Cultural Rights (CESCR), General Comment 20: Non-discrimination in economic, social and cultural rights (Article 2), 2 July 2009, UN Doc. E/C.12/GC/20, para. 10.

<sup>28</sup> Taiwan, Employment Service Act, 1992, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001>, Article 53 (as amended on 10 May 2023).

<sup>29</sup> This restriction applies to migrant workers involved in manual labor and/or skilled trades, with exceptions made in specific circumstances. Exceptions can be granted if the worker was abused or if both the current employer and the prospective employer agree to the change.

<sup>30</sup> Taiwan, Labor Standards Act, 1984, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>, Article 3 (as amended on 10 June 2020).

<sup>31</sup> Environmental Justice Foundation (EJF), Submission by the Environmental Justice Foundation to the US Department of Labor regarding human rights abuses on the distant water fishing fleet of Taiwan, 2011, <https://www.dol.gov/sites/dolgov/files/ILAB/submissions/Taiwan20211031.pdf>

exploitation<sup>32</sup> and human trafficking<sup>33</sup>. Because of language barriers and unfamiliarity with labour rights in Taiwan, many exploited migrant workers have no choice but to “abscond”<sup>34</sup>, becoming undocumented or “missing” workers.

Undocumented migrant workers face particular difficulties in relying on the law to protect their basic rights, without recognized legal status to live and work in the country. The problem is compounded, and could lead to inter-generational inequality, when undocumented migrant workers are provided inadequate access to medical care and limited educational opportunities for their children.

Further, the Taiwanese government amended the *Immigration Act* to include Article 74-1 from the Executive Yuan’s draft amendment in May 2023, to impose heavier fines<sup>35</sup> and deny entry for seven years to individuals who are found to be working without legal documentation. Legislation that targets specific groups for punishment not only infringes on their basic human rights and right to legal recourse<sup>36</sup>, but is also discriminatory<sup>37</sup>. The Committee on the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) notes that regularization is an effective way to address the vulnerable situations of undocumented migrant workers.<sup>38</sup> Taiwanese government should take circumstances that result in irregular status into account when formulating policies, and avoid defining absconding migrant workers as “criminals”, as doing so may exacerbate public prejudice and discrimination against migrant workers.

Migrant workers faced discriminatory treatment, including limits on their freedom of movement, during the Covid-19. For example, when a Covid-19 cluster broke out in an electronics company in Miaoli County, the county government prohibited migrant workers from leaving the dormitory except for work. The same restrictions were not applied to the Taiwanese employees in the factory.<sup>39</sup> Private companies in other counties quickly followed suit.<sup>40</sup> Article 1 of the *ILO Discrimination (Employment and Occupation) Convention* prohibits “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, or such other distinction, exclusion or preference”.<sup>41</sup> While certain restrictions on movement imposed by the Miaoli County government may be permissible in the interests of protecting public health, they must be proportionate and non-discriminatory under international human rights law. In the absence of any direct justification, it is discriminatory to restrict the movement of migrant workers as well as being a violation of Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and its General Recommendation 14<sup>42</sup>, which highlights the right to enjoy the highest attainable standard of health for everyone, including the freedom of movement.

According to Article 73 of the *Employment Service Act*<sup>43</sup>, the Ministry of Labor may revoke the employment permits of migrant workers who have violated domestic law in “serious cases”. However, an investigation carried out by the Control Yuan revealed that all attempts by the Ministry of Labor to revoke<sup>44</sup> employment permits were dismissed by the high court.<sup>45</sup> At present is the concern that revocation of employment permits

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<sup>32</sup> South China Morning Post, “Death, abuse, exploitation: Taiwan’s migrant worker shame”, 6 October 2016,

<https://www.scmp.com/magazines/post-magazine/long-reads/article/2025340/death-abuse-exploitation-taiwans-migrant-worker>

<sup>33</sup> Institute for Human Rights and Business (IHRB), “What’s the Catch? Forced Labour and Trafficking in the Taiwanese Distant Water Fishing Industry”, 26 MAY 2020, <https://www.ihrb.org/focus-areas/migrant-workers/commentary-forced-labour-trafficking-taiwanese-distant-water-fishing-industry>.

<sup>34</sup> Reporter, “來台工作的移工，為什麼一直逃跑？” [“Why do migrant workers who come to Taiwan for work keep running away?”], 31 July 2016, <https://www.twreporter.org/a/opinion-migrant-worker-story> (in Mandarin).

<sup>35</sup> Udn, “失聯移工修法重罰：違反人權的政策將加深既有問題”, [“Stricter Penalties in Revised Law for Missing Migrant Workers: Human Rights Violating Policy to Worsen Existing Issues”], 31 January 2023, <https://opinion.udn.com/opinion/story/10124/6938601> (in Mandarin).

<sup>36</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), General Comment 2: The rights of migrant workers in an irregular situation and members of their families, 28 August 2013, UN Doc. CMW/C/GC/2, para. 2.

<sup>37</sup> CERD, General Recommendation 31: The prevention of racial discrimination in the administration and functioning of the criminal justice system, 2005, para. 4.

<sup>38</sup> CMW, General Comment 2 (previously cited), para. 16.

<sup>39</sup> Taiwan Association for Human Rights (TAHR), “指揮中心認證：苗栗移工禁令 無法律拘束力” [“Command Center Certification: Miaoli’s Ban on Migrant Workers Has No Legal Binding.”], 06 August 2021, <https://www.tahr.org.tw/news/3009> (in Mandarin).

<sup>40</sup> Diplomat, “Taiwan Under Fire for Racist Policies Toward Southeast Asian Workers”, 19 June 2021, <https://thediomat.com/2021/06/taiwan-under-fire-for-racist-policies-toward-southeast-asian-workers>

<sup>41</sup> International Labour Organization (ILO), *Discrimination (Employment and Occupation) Convention* (ILO Convention 111), 1958, Article 1.

<sup>42</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 14: The Right to the Highest Attainable Standard of Health (Article 12), 11 August 2000, UN Doc. E/C.12/2000/4, para. 3.

<sup>43</sup> Taiwan, *Employment Service Act*, 1992, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001>, Article 73 (as amended on 10 May 2023).

<sup>44</sup> Ministry of Labor had proposed five criteria for determining ‘serious’ breaches in 2016. There were no distinctions between serious and minor cases before then.

<sup>45</sup> The Control Yuan, “外籍移工一旦刑事犯罪，目前勞動部對「犯罪情節」是否重大致應廢止聘用許可之實務作法，對外籍移工之工作權保障不足，監委林雅鋒要求勞動部檢討改進。” [“Once foreign migrant workers commit a criminal offense, the current practice of the Ministry of Labor in revoking their work permits based on whether the “criminal circumstances” are significant is inadequate in safeguarding the

results in unequal treatment. While the employer of a Taiwan national is forbidden to terminate their contract before said employee serves their prison sentence, migrant workers with a revoked permit lose their right to work immediately, and are barred from finding employment in Taiwan for life. This practice violates Articles 19 and 26 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), which stipulates that humanitarian considerations related to the status of a migrant worker, in particular with respect to his or her right of residence or work, should be taken into account in imposing a sentence for a criminal offence committed by a migrant worker or a member of his or her family, as well as the prohibition of discrimination on the basis of national origin as contained in the Article 26 of the ICCPR and in the ICESCR.<sup>46</sup>

## 3.1 RECOMMENDATIONS

**Amnesty International recommends that the Government of Taiwan:**

- Amnesty International recommends the incorporation of the ICMW, 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<sup>47</sup>.
- The Taiwanese government should adhere to Article 2 of the ICERD, and take effective measures to review national and local policies which have the effect of perpetuating racial discrimination. Aside from ensuring labour laws and regulations in Taiwan are in line with international labour law and standards, the government should adhere to ICMW's principles and ensure migrant workers enjoy in law and practice the same treatment and labour conditions as nationals.
- Amend the *Employment Service Act* to allow all migrant workers to change jobs without the permission of their current employer.
- Refrain from imposing harsher penalties, such as heavier fines, on migrant workers for 'running away' from their employers.
- Sign bilateral agreements with migrant workers' origin countries to impose ethical conditions on their recruitment, including commitments to zero-cost recruitment processes. 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. Furthermore, work closely with governments of origin countries to prevent payment of recruitment fees and curb the practice of contract deception.
- Promote changes in the social and cultural patterns of behaviour of people towards migrant workers and take immediate steps to eradicate harmful stereotypes and racism. Provide human rights training for police, judges, officials, medical staff and inspectors dealing with migrant workers.

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employment rights of foreign migrant workers. Ombudsman Lin Ya-feng has requested the Ministry of Labor to review and improve this practice."], 5 May 2020, [https://www.cy.gov.tw/News\\_Content.aspx?n=125&s=17900](https://www.cy.gov.tw/News_Content.aspx?n=125&s=17900)

<sup>46</sup> National Human Rights Commission (NHRC), Independent Opinion on the Third National Report on the ICCPR & ICESCR, 2020, <https://nhrc.cy.gov.tw/Content/Uploads/ConventionArea/b0270501-d1bb-4408-9d56-bc7933587729.pdf>, para. 87.

<sup>47</sup> IRC, Review of the Third Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants (previously cited), para. 15.

# 4. STRUCTURAL INEQUALITIES IN THE INSTITUTION OF MARRIAGE (ARTICLES 2 AND 5)

The *Guidelines for the Ministry of Foreign Affairs and Overseas Missions of the Republic of China (Taiwan) Regarding Interviews with Foreigners Applying for Entry into Taiwan on the Basis of Marriage to an ROC Citizen* stipulates that nationals from specific countries who come to Taiwan for the purpose of marriage are required to have an interview at designated locations.<sup>48</sup> The term “nationals from specific countries” refers to people from 19 countries.<sup>49</sup> There are concerns regarding discriminatory practices based on nationality in the “Marriage Interview Procedures” conducted for citizens of these 19 designated countries. The Taiwanese government claims that the procedure is based on preventing human trafficking, without any differentiation based on gender and race.<sup>50</sup> The National Human Rights Commission (NHRC) pointed out that Taiwan’s “Marriage Interview Procedures” lacks a legitimate and reasonable connection in current legislation and practice, violating the principle of improper linkage and raising concerns regarding the violation of equal rights guaranteed under Article 7 of the Constitution.<sup>51</sup> While it is unclear whether the procedures are effective at preventing and protecting human trafficking, civil society, including Amnesty International, have documented their impacts on the right to family reunification of individuals in consenting and loving relationships.<sup>52</sup>

In light of the Constitutional Court of Taiwan’s Constitutional Interpretation No. 748 of 2017 on “Same-Sex Marriage Case”<sup>53</sup> same-sex marriage falls within the scope of the protection of the equal rights under Article 7 of the Constitution and guarantees of freedom of marriage under Article 22. Taiwan safeguards the rights to same-sex marriage and transnational same-sex marriage, expanding the protections to include marriage registrations between Taiwanese nationals and most foreign partners whose same-sex marriages are not recognized through Article 2 of the Implementation Act of Interpretation No. 748, based on the result of multiple lawsuits in higher administrative courts and appeal by the New Taipei City Government.<sup>54</sup> However, Taiwanese and Chinese same-sex couples are still restricted by the Article 41 and 42 of *Cross-Strait Act*<sup>55</sup> and are

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<sup>48</sup> Ministry of Foreign Affairs, *Guidelines for the Ministry of Foreign Affairs and Overseas Missions of the Republic of China (Taiwan) Regarding Interviews with Foreigners Applying for Entry into Taiwan on the Basis of Marriage to an ROC Citizen*, <https://www.boca.gov.tw/lp-160-2.html>, March 2023.

<sup>49</sup> The 19 countries are Indonesia, the Philippines, Vietnam, Thailand, Cambodia, Sri Lanka, India, Myanmar, Nigeria, Mongolia, Ukraine, Pakistan, Nepal, Bhutan, Bangladesh, Senegal, Ghana, Gambia, and Cameroon.

<sup>50</sup> National Immigration Agency, *International Convention on the Elimination of All Forms of Racial Discrimination Initial Report of the Republic of China (Taiwan)* (previously cited), para. 140.

<sup>51</sup> NHRC, *Independent Opinion on the Third National Report on the ICCPR & ICESCR* (previously cited), para. 132.

<sup>52</sup> China Times, “綠委盼全面取消外籍配偶境外面談 內政部：研議改善” [“DPP’s Legislator Hopes for Complete Abolition of Marriage Interview Procedures for Foreign Spouses; Ministry of the Interior: Considering Improvements”], 1 November 2022, <https://www.chinatimes.com/realtimenews/20221101002010-260407?chdtv> (in Mandarin).

<sup>53</sup> Constitutional Court R.O.C (Taiwan), No. 748 [Same-Sex Marriage Case], constitutional interpretation, 24 May 2017, <https://cons.judicial.gov.tw/en/docdata.aspx?fid=100&id=310929>

<sup>54</sup> In 2019, Taiwan made history by legalizing same-sex marriage in Asia. However, initially, the law only allowed for same-sex couples who were both Taiwanese nationals or whose spouse came from a country where same-sex marriage was legalized to register their marriage in Taiwan. Over the course of four years, Taiwanese courts issued four rulings supporting transnational same-sex marriage registration.

<sup>55</sup> Taiwan, *Act Governing Relations between the People of the Taiwan Area and the Mainland Area*, 1992, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=Q0010001>, Article 41 and Article 42 (as amended on 8 June 2022).

excluded from the right to freedom to marry. Discriminatory treatment and denial of justice based on national origin intersect with sexual orientation or gender identity and breaches the binational same-sex couples' right to marriage and choice of spouse, family life and health and the principle of non-discrimination enshrined both in the International Bill of Rights and the ICERD.

## 4.1 RECOMMENDATIONS

**Amnesty International recommends that the Government of Taiwan:**

- There are concerns regarding discriminatory practices based on national origin in the “Marriage Interview Procedures” conducted for nationals of the 19 designated countries. These practices deepen negative perceptions of certain migrant groups and have the potential to contribute to xenophobic attitudes and behavior. Amnesty International calls on the government to comply with Article 2 of the ICERD, which prohibits racial discrimination, including discrimination based on national origin, by any person, group, or institution, and to ensure that all national and local authorities and public institutions comply with this obligation.
- Article 5 of the ICERD guarantees everyone the right to equality before the law, including in the enjoyment of the right to marriage and choice of spouse. Amnesty International urges the government to expeditiously realize marriage equality for same-sex couples in which one of the spouses has identity documents from the People’s Republic of China.

# 5. DISCRIMINATORY SPEECH AND THE LACK OF DISPUTE SETTLEMENT MECHANISMS (ARTICLES 2, 4, 6 AND 7)

Article 7 of the ICERD underscores the significance of implementing immediate and effective measures in the realms of culture, education, and media to counteract prejudices that contribute to racial discrimination. These measures serve to foster improved communication, understanding, and inclusivity among nations and ethnic or national groups. The occurrence of insinuations, and stereotypes targeting indigenous communities or individuals within Taiwan's higher education sector in 2023 is deeply concerning.<sup>56</sup> Statements asserting views such as "indigenous privileges are the government's tyranny over non-indigenous people"<sup>57</sup> contravene fundamental principles of equality and non-discrimination. However, the existing education system lacks a racial discrimination complaint mechanism.

Regarding the existence of racial discrimination more broadly, including discriminatory speech, Article 62 of the *Immigration Act*<sup>58</sup> prohibits discrimination based on nationality, race, colour, social class, birthplace, and other status. The National Immigration Agency established the Taiwan Area Residents Discrimination Petition Review Committee (the Review Committee) as a body responsible for reviewing such complaints. However, it is concerning that between 2008 and 2022, only 29 cases were accepted for review by the Review Committee; over fourteen years, none of the cases has resulted in a finding of discrimination.<sup>59</sup> This raises questions about the effectiveness of the current complaint mechanism and the need for stronger measures to address racial discrimination. Additionally, the establishment of the Review Committee under the National Immigration Agency suggests that the government may not be fully cognizant of the issue of racial discrimination within Taiwan.

Article 4 of the ICERD requires the immediate adoption of "positive measures" to eliminate racial discrimination. General Recommendation 32<sup>60</sup> highlights that these measures can encompass legislative, executive, administrative, budgetary, and regulatory instruments, as well as documents, plans, and policies. Furthermore, in accordance with General Comment 20 of the ICESCR<sup>61</sup>, appropriate remedies may include the restoration of rights, public apologies, public memorials, and the amendment of relevant laws. Therefore, it is

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<sup>56</sup> Taipei Times, "NTU Student Association apologizes for banners at 'free speech month'", 23 May 2023, <https://www.taipeitimes.com/News/taiwan/archives/2023/05/23/2003800277>

<sup>57</sup> Taipei Times, "Sensitivity to racial discrimination", 12 May 2023, <https://www.taipeitimes.com/News/editorials/archives/2023/05/12/2003799637>

<sup>58</sup> And file a complaint in accordance with Article 63(3), of the Regulation for Petitions against Discrimination against People Residing in the Taiwan Area.

<sup>59</sup> National Immigration Agency, Initial National Report of the Republic of China (Taiwan), 2023, para. 242.

<sup>60</sup> CERD, General Recommendation 32: The meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination, 24 September 2009, UN Doc. CERD/C/GC/32, para. 13.

<sup>61</sup> CESCR, General Comment 20 (previously cited), para. 40.

essential for the Taiwanese government and relevant authorities to take these incidents seriously and to ensure effective mechanisms are in place to promptly receive and effectively investigate complaints of racial discrimination and provide access to effective remedies for victims of racial discrimination. This may involve strengthening the capacity and resources of the Review Committee, increasing awareness and education on racial equality and non-discrimination, and promoting a culture of respect and inclusion in educational institutions.

## 5.1 RECOMMENDATIONS

**Amnesty International recommends that the Government of Taiwan:**

- In terms of article 6 of the ICERD, states are obliged to ensure individuals whose rights have been violated as a result of racial discrimination have access to effective remedies. To achieve this goal, we recommend the government to pass the *Equality Act*<sup>62</sup>, including establishing accessible and effective judicial and administrative procedures.
- Article 4 of the ICERD requires States to address the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, and incitement or use of violence against any racial or ethnic group. Article 20 of the ICCPR also explicitly requires states to prohibit by law advocacy of hatred that constitutes incitement to discrimination, hostility or violence. States therefore have an obligation to prohibit expressions that constitute advocacy of hatred (though not necessarily to criminalize) through a law that is formulated precisely to allow individuals to modify their behaviour in accordance with it. The law and its application must comply with ICCPR's provisions on the right to freedom of expression, and in particular must meet the requirements of necessity and proportionality in compliance with the three-part test in Article 19(3) of the ICCPR.
- Amnesty International recognizes that restricting expression in isolation is an incomplete and often ineffective means of preventing and combating racial discrimination. Tackling the root causes of discrimination and intolerance requires a much broader set of policy measures and interventions, including education on pluralism and diversity. Amnesty International recognizes that a lack of understanding of historical context and different racial groups can contribute to racial discrimination. Therefore, we recommend that the government strengthen human rights education and engage in public awareness campaigns and dialogues concerning racial equality and non-discrimination.

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<sup>62</sup> Executive Yuan, National Human Rights Action Plan 2022-2024, 2022, <https://www.humanrights.moj.gov.tw/media/20211932/national-human-rights-action-plan.pdf?mediaDL=true>, pp.67. The Taiwanese government has set up a goal to pass the Equality Act in 2024 in the National Human Rights Action Plan 2022-2024, and the Department of Human Rights and Transitional Justice held several consultation meetings with NGOs on the bill of Equality Act.

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# TAIWAN

## SUBMISSION TO THE INTERNATIONAL REVIEW COMMITTEE ON THE DOMESTIC IMPLEMENTATION OF THE ICERD

This submission sets out some of Amnesty International's key concerns and recommendations related to the implementation of the ICERD by the government of Taiwan. It highlights four themes which have been the focus of our work in Taiwan. These include:

- the rights of asylum seekers, refugees and others seeking international protection
- the labour rights of migrant workers and the institutional inequalities they face
- equalities surrounding transnational marriages, including transnational same-sex marriages
- discriminatory speech, in particular in the education sector

As a cross-cutting issue, this report will also address the lack of access to remedies for rights violations as a result of racial discrimination, in particular the absence of effective complaint mechanisms in the implementation of the ICERD.