

# 香港人權監察

## HONG KONG HUMAN RIGHTS MONITOR

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### Submission to the Bills Committee on Domestic Violence (Amendment) Bill 2007

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1. The Domestic Violence Ordinance (DVO) provides that a party to marriage, or a man and a woman in cohabitation, a civil remedy of injunction if s/he is the victim of any domestic violence. In June 2007, the Government introduced the Domestic Violence (Amendment) Bill 2007 to extend the scope of protected persons under the DVO and to expand the power of the courts. This submission aims to provide our views on the scope of the protected persons under the DVO.
2. Under the proposed amendments, the coverage includes "a wide range of immediate and extended familial relationships commonly accepted in the Chinese community".<sup>1</sup> The coverage includes former spousal relationships and former partners in cohabitation relationships between persons of opposite sex. It should be noted that the DVO amendments does not cover all kinds of relationships in the same household and cohabitation relationships between persons of the same sex are not included.
3. Non-discrimination is a core principle central to all key human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) (e.g. Articles 2(1), 3 and 26), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (e.g. Articles 2(2) and 3 ) and other 4 major human rights treaties applicable to Hong Kong.<sup>2</sup>
4. Although the term "sexual orientation" does not appear in any major human rights treaties, sexual orientation rights are subsumed by existing provisions in respective UN human rights treaties. The UN Human Rights Committee has stated that "sexual orientation" is subsumed by the ICCPR's jurisdiction on the basis of "sex".<sup>3</sup> The UN Committee on Social, Economic and Cultural Rights has also suggested that "sexual orientation" is a ground for protection that is subsumed by the ICESCR's grounds of "other status".<sup>4</sup> Thus the covenant and legal rights of sexual minorities are protected under the whole international human rights treaty system.

<sup>1</sup> Bills Committee on Domestic Violence (Amendment) Bill 2007: Summary of views/suggestions given by deputations. LC Paper No. CB(2)330/07-08(01).

<sup>2</sup> Please refer to the Enclosure attached for the extracts of the two international human rights covenants.

<sup>3</sup> See *Toonen v. Australia*, UN Human Rights Committee, U.N. Soc. A/49/40, at para. 8.7 ("in [the Committee's view] the reference to 'sex'... is to be taken as including sexual orientation").

<sup>4</sup> CESR *General Comment No. 14*, U.N. Soc. E/C. 12/2000/4 at para. 18.

5. It should be noted that, domestic violence does not occur only between familial and spousal relationship. It is not uncommon for partners of same sex. According to a survey conducted by several NGOs, around one-third of same sex couples had suffered from certain kinds of domestic violence.<sup>5</sup>
6. Unfortunately, the amendments make an unjustified distinction between heterosexual and same sex cohabitation, failing to include the latter in its extended scope of protection.
7. Such a distinction is clearly inconsistent with the covenant standards laid down in the ICCPR that "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law."<sup>6</sup> The standards are now constitutionally entrenched by Article 39 of the Basic Law. They should therefore be followed by the Government.
8. In May 2008 the Government announced its view that protection under the DVO "should be extended to cover cohabitation between persons of the same sex". The Administration further promised to introduce amendments to the DVO to "include cohabitation relationships between persons of the same sex in its coverage at the earliest possible time in the next legislative session".<sup>7</sup>
9. The Monitor welcomes the decision of the Government to extend protection to same sex relationships.
10. However, we do not see any good reasons to delay the provision of protection to same sex cohabitants to the next legislative session, especially when there are amendments to the DVO being dealt with by the LegCo during the current legislative session. The delay is inconsistent with the Government's obligation to take immediate steps to secure the immediate realization of the right to equal protection of the law.
11. It is a well established principle that the Government has an absolute and immediate obligation to ensure the realization of the civil and political rights enshrined in the ICCPR. The Committee on Economic, Social and Cultural Rights stated in its General Comment No. 3 that the obligation "contained in article 2 of the International Covenant on Civil and Political Rights" "embodies an immediate obligation to respect and ensure all of the relevant rights."<sup>8</sup>
12. The court, in its judgment in *Chan Mei Yee and another v Director of Immigration*,<sup>9</sup> has also confirmed the immediate nature of this obligation.
13. In its Second Report of the Hong Kong Special Administrative Region of the People's Republic of China in the light of the International Covenant on Civil and Political Rights, the HKSAR Government has also accepted the principle. In Paragraph 46, Part II of the Report, the Government acknowledges, "Thus,

<sup>5</sup> See the Women Coalition of HKSAR's submission on Domestic Violence (Amendment) Bill 2007 in 2007. LC Paper No. CB(2)2769/06-07(10).

<sup>6</sup> See Article 26, ICCPR.

<sup>7</sup> Labour and Welfare Bureau, Coverage of Cohabitation Relationships in Domestic Violence Ordinance, May 2007.

<sup>8</sup> Committee on Economic Social and Cultural Rights, General Comment 3: The nature of States parties obligations. 14/12/90. Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument)

<sup>9</sup> HCAL No 77/1999, 13 July 2000.

the balance of opinion is that the Covenant does impose immediate international treaty obligation on its State Parties.”<sup>10</sup>

14. The protection from domestic violence is an issue of immediate obligation, but not a discretionary action. The Government thus has the immediate obligation to secure the protection to cohabitation relationships, irrespective of whether they are heterosexual or not. The Monitor urges the Government to come up with amendments to have it done in the current session.

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<sup>10</sup> Available at:

[http://www.cmab.gov.hk/doc/en/documents/references/papers\\_reports\\_others/human\\_rights/SecondReport/PartII\\_Article2\\_Eng\\_r2.doc](http://www.cmab.gov.hk/doc/en/documents/references/papers_reports_others/human_rights/SecondReport/PartII_Article2_Eng_r2.doc)

## **Enclosure: Extracts from the two international human rights covenants**

### **International Covenant on Civil and Political Rights (ICCPR)**

#### Article 2(1)

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

#### Article 3

“The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”

#### Article 26

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

### **International Covenant on Economic, Social and Cultural Rights (ICESCR)**

#### Article 2(2)

“The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

#### Article 3

“The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.”