

**COMMENT BY AMNESTY INTERNATIONAL (HONG KONG) ON THE PROPOSED
OUTLINE OF THE TOPICS INCLUDED IN THE THIRD REPORT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION UNDER THE INTERNATIONAL COVENANT
ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS FOR CONSIDERATION BY THE
LEGISLATIVE COUNCIL ON 10TH FEBRUARY 2010**

Amnesty International Hong Kong (“AIHK”) is a part of a worldwide movement of people who undertake research and action focused on preventing and ending grave human rights abuses, and within the context of its work to promote all human rights.

Although AIHK is concerned with a variety of issues, these comments will focus on selected items on the proposed outline of the topics to be included by the government in the third report of the Hong Kong Special Administrative Region (HKSAR) under the International Covenant on Economic, Social and Cultural Rights (Covenant). As the outline of the report is in broad subject headings and individual topics, our comments will focus on what we believe is necessary information not only on the implementation of the Convention, but also regarding progress on and outcomes of the concerns and recommendations which were raised by the Committee on Economic, Social and Cultural Rights (ESCR Committee) at its 27th meeting held on 13 May 2005, where Concluding Observations were adopted.

The HKSAR government in its outline states that it will make a report under Article 2: Progressive realisation of the rights recognised in the Covenant and the exercise of those rights without discrimination. Amnesty International will focus on a few of these, particularly:

- a. Legislation against racial discrimination
- b. Discrimination on the grounds of sexual orientation and age
- c. Human rights institution

A. Legislation against racial discrimination

The Racial Discrimination Ordinance (RDO) was passed and is in force and effect. Amnesty International welcomes this development, and further views in a positive light, the effort of the Hong Kong SAR government to introduce draft Administrative

Guidelines on the promotion of Racial Equality for government bureaux, departments and relevant public authorities.

However, Amnesty International notes that the ESCR Committee in paragraph 91 of its Concluding Observations dated 13 May 2005 strongly urged the HKSAR government to extend the protection afforded by the proposed racial discrimination law in 2005 to internal migrants from the Mainland, and to put a stop to the widespread discriminatory practices against them on the basis of their origin.

Amnesty International is concerned that the RDO's definition of racial discrimination is not completely consistent with international standards. Although the organization believes that the passing of the Ordinance provided the HKSAR government with a good opportunity to address the different concerns on racial discrimination in Hong Kong, including the issues raised in the Concluding Observations pertaining to legislation on racial discrimination, not all these concerns were addressed in the RDO.

Amnesty International recommends that indirect discrimination with regard to language, immigration status and nationality be added to the RDO definition of discrimination to protect migrants from mainland China as well. The HKSAR government should give an update on its plans to address this concern in its report.

Discrimination based on Immigration Status and Nationality

1. Amnesty International reiterates the concerns of the ESCR Committee as stated in paragraph 80 of the Concluding Observations, "The Committee is concerned that HKSAR lacks a clear asylum policy and that the Convention relating to the Status of Refugees of 1951 and the Protocol thereto of 1967, to which China is a party, are not extended to HKSAR. In particular, the Committee regrets the position of HKSAR that it does not foresee any necessity to have the Convention and the Protocol extended to its territorial jurisdiction."

While noting planned reform in torture claims procedure, Amnesty International urges the authorities to provide effective protection for the full range of rights of asylum seekers and refugees based on the principle of non-discrimination.

We note that ICESCR Article 6 ensures the right to work, Article 11 provides for the right to an adequate standard of living including food and housing, Article 12 deals with the right to health, and Article 13 provides for the right to education. These rights apply to refugees and asylum seekers. And although Article 2(3) provides that developing countries "may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals", this exception clearly does not apply to Hong Kong, which is a developed economy.

2. Amnesty International likewise notes that the ESCR Committee in its Concluding Observations, recommended that “the relevant provisions of the existing immigration legislation governing entry into, period of stay, and departure from, HKSAR are amended to ensure full conformity and consistency with the new racial discrimination legislation”. Also, the Committee urged the Hong Kong SAR government to review the existing “two-week rule” affecting foreign domestic helpers, which is part of its Immigration Ordinance, with a view to eliminating discriminatory practices and abuse arising from it.

As it stands, the present Race Discrimination Ordinance (RDO) excludes from coverage certain government roles, thus discrimination based on immigration status, including issues that deal with entry, stay, and departure of people in Hong Kong that do not have the right of abode, carried out by the government functionaries including immigration officials, are excluded from its coverage. The Immigration Ordinance is not affected by the RDO thus allowing discrimination to continue in cases that involve certain immigration status. The RDO also fails to provide effective protection from discrimination and abuse of foreign domestic helpers.

The two-week rule targets a specific segment, the foreign domestic workers. It requires them to leave Hong Kong within 14 days of the termination of their contract, even if they have found another employer. Further, there are complaints filed against employers in the HKSAR tribunals by domestic helpers affected by the Immigration Ordinance, but they are unable to see their case to completion because they have to leave within the 14 day period, and this will not be sufficient time for the completion of the case they have filed.

Amnesty International would like to know what the HKSAR government has done to address the persisting discriminatory practices governing period of stay and departure from HKSAR, such as the two-week rule, and other similar discriminatory practices.

B. Discrimination on the grounds of sexual orientation

Amnesty International also notes that the Committee regretted that the Hong Kong SAR government has not implemented a number of the recommendations contained in its concluding observations of 2001, which were reiterated in 2005. One of the concerns raised was that the existing anti-discrimination legislation does not cover discrimination on the basis sexual orientation and age.

Although Amnesty International recognises some initiative to address this with the establishment of a Gender Identity and Sexual Orientation Unit (GISOU) in May 2005

with the mandate to, among other things, set up and maintain a hotline for enquiries and complaints in relation to sexual orientation and gender identity, yet its efforts only extend to mediation and are not legally binding.

The GISOU also organizes and provides secretariat support to the Sexual Minorities Forum (SMF), which acts as bridge between the government and lesbian, gay, bisexual, same-sex practicing and transgender individuals. The Constitution and Mainland Affairs Bureau representatives who host the SMF continue to ignore calls for an anti-discrimination law on the ground of sexual orientation and gender identity even though these are persistently raised by NGO representatives. The Representatives claim that social norms do not support an anti-discrimination law to protect the rights of persons on the basis of sexual orientation or gender identity. The lack of any anti-discrimination legislation protecting sexual orientation and gender identity also makes it difficult for SMF to take any concrete step in facilitating its complaint mechanism.

Amnesty International recommends that HKSAR government give a report on its effort to ensure that all allegations and reports of human rights violations based on sexual orientation or gender identity are promptly and impartially investigated and perpetrators held accountable and brought to justice, and what measures it has taken to prohibit and eliminate prejudicial treatment on the basis of sexual orientation or gender identity.

C. Establishing a Human Rights Commission

The Concluding Observations of the CESCR Committee state as a matter of concern the absence of a human rights institution with a broad mandate (para.78. b). Amnesty International is also concerned that responsibility for human rights monitoring and protection remains split between a number of different bodies. It likewise notes the claim of the HKSAR government that the Equal Opportunities Commission (EOC) has comparable functions to the human rights institution. Amnesty International believes that a human rights commission, properly constituted, adequately resourced and genuinely independent, could provide an accessible, affordable, speedy and effective human rights complaints system. Such a commission could also facilitate more effective human rights awareness, education and training programs.

Amnesty International recommends that the HKSAR government makes a report on any steps or initiatives taken, if any, to establish a Human Right Commission with a broad mandate that can effectively fill the need for a human rights complaints system, and facilitate human rights education programmes.

The HKSAR government in its outline states that it will advise the Committee in respect to Article 13 and Article 14: Right to education

1. Education for Non-Chinese-speaking students

Under ICESCR Article 13, primary and secondary education must be made available and accessible to all. While non-Chinese speaking children can enroll in state schools, the provision of education fails to meet the criterion of accessibility established in the ICESCR Committee's General Comment on Article 13. Non-Chinese-speaking students' ability to benefit from their education is impaired by the fact that their Chinese language is often not adequate to study through the medium of Chinese. Amnesty International notes with concern that under the RDO, the government is under no legal obligation to make any modifications to the medium of instruction for non-Chinese-speaking students.

Amnesty International would like the HKSAR government to make available information on the provisions that have been made to ensure that education is accessible to non-Chinese-speaking students.

2. Vocational education

Opportunities for vocational training for non-Chinese speaking students to improve their prospects are very limited. Only five out of 100 courses offered by the Institute of Vocational Education use English, and training courses conducted by the Vocational Training Council and the Employee Retraining Board are nearly all in Chinese. Project *Yi-jin*, is only available in Chinese. Under Article 13, vocational and technical education must be available and accessible to all and under Article 6 (Right to Work) parties to the Covenant are obliged to provide technical and vocational training programmes to ensure that everyone has the opportunity to work.

Amnesty International would like the HKSAR government to provide information on the provisions that have been made to ensure that vocational education is accessible to non-Chinese-speaking students, to fulfill the right to education and right to work.

3. Compulsory education for all

Article 14 obliges parties to the ICESCR to provide compulsory education, free of charge for all, at the very least for primary level education.

Amnesty International would like the HKSAR government to provide information on the provisions that have been made to ensure that education, up to the official Hong Kong school-leaving age, is free and compulsory for all children in Hong Kong, including the children of refugees, asylum seekers and migrants with no legal right to remain.