

Shadow Report on the Rights of Diverse Families and Same-sex Partners

Presented by Taiwan Alliance to Promote Civil Partnership Rights
(TAPCPR)¹

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- I. This report provides responses and supplementary comments to points 327 to 330 in the 2nd National Report on ICCPR and the concluding recommendations adopted by the international group of independent experts in the 2nd National Report on CEDAW.
- II. Based on points 78 and 79 of the concluding recommendations adopted by the international group of independent experts in the 1st National Report on ICCPR & ICESCR on March 1, 2013, which specifically point out that:
 1. Taiwan's current laws do not protect marriage equality (same-sex marriage) or cohabitation rights for same sex or different-sex couples, which is deemed discriminatory.
 2. The Experts recommend that Taiwan's government amend the Civil Code to give legal recognition to the diversity of families in the country.
 3. The Experts remind the Taiwan Government that the protection of human rights of all should not be made contingent on public opinion.
- III. Point 33 of the concluding recommendations adopted by the international group of independent experts in the 2nd National Report on CEDAW, on June 26, 2014 specifically points out that:
 1. The Review Committee is concerned at the lack of legal recognition of the diversity of families in the country and that only heterosexual marriages are recognized but not same-sex unions or cohabiting partnerships. This is discriminatory and denies many benefits to same-sex couples or cohabiting partners. Thus, the Experts recommend that the Civil Code be amended to protect the diversity of families in the country. (Note: this recommendation is

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- the same as the above recommendation from the Review Committee in the 1st National Report on ICCPR & ICESCR.)
2. The Review Committee is also concerned about the lack of statistical data on all cohabiting households and same-sex household. The Review Committee specifically recommends that steps to be taken to collect and collate data on all unregistered unions and provide the information in the next National Report.
- IV. Nevertheless, the Taiwan government has failed to correct the deficiencies of human rights as mentioned in the Experts' concluding recommendations until now, and has even worked against the recommendations in certain cases as listed below:
- i. The Ministry of Justice denies that "the lack of legal recognition of the diversity of families in the country in which only heterosexual marriages are recognized but not same-sex marriages or cohabiting partnerships is discriminatory." The Taipei City government sought a constitutional interpretation regarding whether Taiwan's Civil Code violates the Constitution by restricting marriage to heterosexual couples in July 2015. However, the Ministry of Justice concluded that marriage as recognized in the Constitution is limited to an agreement to marry made between one male and one female party. Same-sex marriage is thus neither a fundamental human right in the Constitution and the absence of regulations regarding same-sex marriage does not constitute a violation to the Constitution. The Ministry of Justice stated that the regulations regarding marriage as stipulated in the Civil Code have not violated the Constitution and provided their legal opinions for the Executive Yuan's reference². While the Executive Yuan did send the request for constitutional interpretation submitted by Taipei City Government to the Grand Justices for review, the Ministry of Justice's comments justifying the lack of legal protection of same-sex partners as not violating the Constitution, and denying the discrimination and social exclusion that result from it has demonstrated the authority's lack of sensitivity to such issues, which is especially troubling.

² Chih-Hsiang Chen (30 September, 2015). China Times. *Taipei City Government seeks constitutional interpretation on same-sex marriage Ministry of Justice: The regulations in the Civil Code do not violate the Constitution*. Retrieved on June 24, 2016 from: <http://www.chinatimes.com/realtimenews/20150930004835-260407>

- ii. The Ministry of Justice still tried to use public opinion as a condition for granting human rights protection and even had made contradictory remarks regarding the results of the public survey on same-sex marriage despite the fact that the survey was initiated by the Ministry of Justice itself. The Ministry of Justice only quoted survey results when the results were considered in line with its position and used such results as grounds to postpone the amendment to the Civil Code. For example, the Ministry of Justice conducted an online poll on legalizing same-sex marriage on August 3, 2015, disregarding the concerns and concluding recommendations as expressed by the Experts; and the results showed a majority in favor of legalizing same-sex marriage. To many people's surprise, the Ministry of Justice conducted a further phone survey to obtain new results and used these results as a ground for postponing the amendment to the Civil Code. Based on the results of the phone survey in December 2015, the Ministry claimed that "the public opinion is divided on the form and ways to protect same-sex partners" (see Point 329 in the 2nd National Report on ICCPR) and thus the amendment to the Civil Code was further delayed on grounds that there was not sufficient social consensus. Under such circumstances, the Ministry of Justice claimed to initiate amendments in "two phases" in point 329 of the 2nd National Report on ICCPR. This is unreasonable in terms of the time consumed and costs incurred to adopt two-phase amendments instead of directly amending the Civil Code to allow same-sex partners to marry. The Ministry of Justice has never provided convincing statements to justify the two-phase amendment approach which violates the principle of substantive equality for same-sex partners.
- iii. The Ministry of Justice has continued to refuse to amend the Civil Code to include clauses to protect LGBTIQ partners right to marriage as well as heterosexual couples the right of cohabitation.
 1. The marriage/family institution is regulated by the Civil Code in Taiwan. There are no technical difficulties in amending the Civil Code to include the rights to marry for the LGBTIQ, which would help realize the principle of equality (we believe that "separate is not equal"). In the previous legislative term, there were already two proposed bills to amend the Civil Code regarding marriage equality (same-sex marriage); however, even after the new government took office, the Ministry of Justice continues to use stalling tactics and fails to give

reasons for not amending the Civil Code. It has once again outsourced a research on a “special law” to govern the rights of same-sex partners in June 2016. The lack of a substantive reason for the Ministry of Justice to sponsor further research that aims to draft a “special law” on the basis of segregated legislation and the absence of a specific timetable for the legislation of same-sex marriage are clearly just further avoidance and delay in fulfilling the principle of substantive equality. We’d like to voice our strong opposition and protest the “segregation policy” and continued stalling strategy by the Ministry of Justice. In addition to the inaction of Ministry of Justice, the current opinions upheld by the Ministry of Foreign Affairs also prohibit legal same-sex partners that registered their marriage overseas from filing for long-term residency in Taiwan as spouses, which has greatly undermined the rights to reunite for transnational same-sex couples/families³.

2. The current laws in Taiwan only protect “heterosexual marriage between a man and a women” while cohabiting heterosexual couples do not have any substantive legal protection. These families exist, but like same-sex partners, they are provided no legal protection in terms of the rights of property, tax, labor, social welfare, litigation status, acting as agents for each other in daily household matters and many other areas.
- iv. To add further context to the above, many local governments have begun to accept civil partnership household registration for same-sex partners, but this household registration does not carry legal weight as the legal status of spouses. Rather this registration only serves to establish identity in rare circumstances (for example, the permission of same-sex couples visitation rights and the right to make medical decisions for each other; or the right to take “family care leave” as regulated in the labor laws). However, the rights derived from the household registration are a far cry from the rights enjoyed by legal spouses in Taiwan, that is, the household registration is neither a synonym to marriage nor does it solve the problems and discrimination faced by same-sex partners every day in terms of social and legal aspects. In addition, the household registration is restricted to same-sex couples but not heterosexual

³ Referring to the Official Letter (Date: 2016/6/15, Ref. No. 1055120732) in response to Attorney at Law Ms. Victoria Hsiu-Wen Hsu (CEO of TAPCPR) issued by Ministry of Foreign Affairs.

- cohabiting couples, thus continuing the lack of legal protection for heterosexual cohabiting couples that are not yet in a marriage.
- v. There is currently a lack of statistical data on all unregistered unions. Even though the Review Committee of CEDAW specifically requested the inclusion of such data in the next National Report, the Taiwan government has failed to collect and collate the data to date.

We believe that there are strong reasons for the government to conduct a census regarding sexual minority and unmarried cohabiting families: it is by referring to a reliable data source that sexual minority and unmarried cohabiting families can be included in the Sustainable Development Goals (SDGs) and other human rights categories and we can correctly identify the influence on the income, safety, education, health, domestic violence and migration that result from the stigmatization and prejudice against sexual minority and unmarried cohabiting families. This will also help us understand and define the preferences and life goals, evaluate the efforts that should be devoted by the government to realize the human rights of sexual minority and unmarried cohabiting families and the effectiveness of the plans (if any) put forward by the government as well as the fair distribution of the resources devoted.

- V. The lack of legal protection for same-sex partners and unmarried (heterosexual) cohabiting partners under current laws violates Articles 2.1, 2.2, 23.1, 23.2 and 26 of the International Covenant on Civil and Political Rights (ICCPR).
- VI. The violation stated above is, in our opinion, resulted from the idleness of administrative departments and Legislative Yuan (parliament), which is the result of a lack of political will of those in power to provide equal rights to same-sex partners and cohabiting couples. To get to the bottom of the issue, the government should seriously acknowledge that “the lack of legal recognition of the diversity of families and that only heterosexual marriages are recognized but not same-sex marriages or cohabiting partnerships is discriminatory and a denial of human rights.” Based on the acknowledgement, the government should further proceed to collect and collate statistical data on sexual minority and unmarried cohabiting families and to amend the Civil Code accordingly.