

[Shadow Report 2017 on the CRC re: the welfare of LGBT children and children growing up in LGBT families]

Prepared by the Taiwan Alliance to Promote Civil Partnership Rights (TAPCPR)

In our review of the Taiwanese government's State Report on the Convention on the Rights of the Child (CRC), we notice that the entire report does not mention a word on LGBT children. This omission shows a grievous failure by the government to address the welfare of LGBT children as well as of children growing up in LGBT families, and failure to provide adequate resources to sustain and promote the welfare of LGBT children.

Articles 3, 17, and 24

1. The recent homophobic waves in which a few homophobic organizations and 'parental groups' actively opposed gender equality education (including the lessons on homosexuality and sex education) have seen some conservative politicians, administrative branches and schools back off, compromising gender equality education. This trend will grievously affect LGBT children and deny them the chance and resources to obtain sufficient information, skills, counselling and health care necessary for children's health and growth.
2. We advise the review panel to remind the government that according to general comments nos. 4 and 14, regardless of assent from the parents or the guardians of the children, adequate information on gender equality should be accessible to children, and diversity (including their sex and sexual orientation) must be taken into account when assessing their best interests.

Articles 8 and 10 (responding to points 95, 138, 142, and 150 in the State Report)

3. Because currently in Taiwan children from same-sex families cannot establish legal kinship with both of their parents at the same time (the children can only be legally kin with one of the parents because the Taiwanese Civil Code permits only heterosexual married couples to adopt together; also, same-sex couples still cannot register their marriage legally), the children's best interests are severely infringed, particularly in the case of international marriages. In such cases, when one of the parents doesn't enjoy legal

parenthood of their children, there might be problems affecting the children's long-term residency, schooling, and livelihood, as well as being with the parents.

4. On 24 May 2017 the Taiwanese Constitutional Court issued Constitutional Interpretation No. 748, which pronounces that the provisions of the Civil Code excluding same-sex couples from marrying legally are unconstitutional. The interpretation requires the Government to amend the Code or enact other relevant legislation to remedy this defect within two years' time; if not, all of the Code's provisions concerning marriage will automatically apply to same-sex couples.
5. We recommend that the government make all legislative amendments needed to protect the equal rights of same-sex families and proactively take all necessary measures to offer full and equal rights to children with same-sex parents.

Articles 12 and 14 (responding to points 76, 81, and 118 of the State Report)

6. In June 2017, the students of Taipei Municipal Jianguo High School hung a rainbow banner as part of the graduation ceremony decoration to express their concern for the issue of marriage equality. However, the school administration took the rainbow banner down immediately after receiving protests calls from homophobic groups. After the event, some students hung rainbow banners back up on campus in protest, but the banners were taken down again by the school administration.
7. In recent years, there have been cases in which junior and senior high school teachers have asked examination questions that imply homophobia. At primary schools, some teachers have assigned a "Guardian the Family Referendum petition" initiated by homophobic groups as homework and asked students to have their parents' sign it and hand it in. Given the inherently imbalanced teacher-student power relationship within the educational system, such actions force children to 'come out' on marriage equality issues and create a hostile learning environment for children of sexual minority.
8. We recommend implementing democratic participation, freedom of speech, and the right of children to express their educational interests at the compulsory education levels.

In addition to fully implementing the existing Gender Equity Education Act, the government should introduce a more comprehensive anti-discrimination law.

Articles 17 (responding to points 40 to 42, 103, and 104 of the State Report)

9. A television station was penalized and fined in 2012 for broadcasting the film *the Silent Thrush* on the grounds of breaching censorship because of its lesbian content and hints of homosexuality on television. However, similar contents and expressions of heterosexuality are not sanctioned or subject to 'restricted' or 'parental guidance' ratings. Therefore, we can conclude that the National Communications Commissions is biased against non-heterosexual contents and deems them 'inappropriate for children and young adults', thereby denying children channels to receive information on diverse gender issues. This bias deprives children of the right under Article 17 of the CRC.
10. We strongly recommend that governmental publications and mass media should not tolerate homophobic and discriminatory bias, nor should censorship be based on any discrimination against genders or sexual orientations.

Article 21 (responding to points 163 and 164 of the State Report)

11. Many adoption institutions in Taiwan have a religious background and their religious background can affect their will to allow same-sex couples to adopt, and narrow the chances for the same-sex couples to adopt.
12. We recommend that the government implement Article 10 of the Permit and Management Regulations for Children and Youth Adoption Service Providers and Article 7 of the Constitution on equality, and follow general comment no. 14 of the CRC, to put children's best interests as the top priority, and prohibit adoption service providers and courts from discriminating against adopters because of their sexual orientations, gender identities, or gender attributes.

Article 40 (Responding to point 296 of the State Report)

13. In January 2016, during the parliamentary and presidential election campaigns, one high school student in Hualien received a notice from the Da-an police station in Taipei, asking him to testify in a criminal case on a specific date. It was discovered that the police suspected the youth of possibly 'swinging election results' because he had reported a homophobic political party's internet campaign clip. The police subpoenaed the youth on account of breach of the Civil Servants Election and Recall Act, and demanded an explanation from the student as to his reasons for reporting the clip and for leaving a message saying that the "Guardian the Family Referendum petition" initiated by homophobic groups is unconstitutional. We deem that the police have used judicial means to threaten children and youth and to restrict their freedom of speech (when the police issued the summons, they were aware that person wasn't an adult because the birth date was registered on the notification with a special note that 'the guardian should be present'). This event aroused suspicion, and attorneys at Taiwan Alliance to Promote Civil Partnership Rights acting on behalf of the youth telephoned the police to investigate the situation and reminded the police of relevant laws. In the end, the police would only offer the rather vague answer that they only wished for the youth to 'ring up and offer some explanation'.
14. We believe that the youth did not breach any laws by leaving messages on the internet or reporting a clip to the internet server, so there was absolutely no need for the police to treat the case as a criminal offence. Moreover, the police's investigation violated article 18 of the Juvenile Delinquency Act. That Act is a special law in relation to the Criminal Code and the Code of Criminal Procedure. Its article 18 provides that when the court, the prosecutor, or the judicial police learn of juvenile crime or delinquency while on duty, the juvenile should be sent to or reported to the juvenile court. The juvenile court should then rule according to the findings of investigations by the juvenile investigator and the judge's examination of the case.
15. We recommend that the review committee call on the government to investigate this matter based on the question list and to reinforce education for the police on the juvenile judicial system and juvenile rights.