

Shadow Report on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Inequalities faced by lesbian bisexual and transgender (LBT) women in Taiwan—
The right to form a family as a legal basis for anti-discrimination and liberation

**Presented by: Taiwan Alliance to Promote Civil Partnership Rights (TAPCPR)*
Email: tapcpr2010@gmail.com**

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* This report was authored by Victoria Hsu (CEO of TAPCPR, Attorney-at-law), translated by Mark McVicar, Andre Lin and Joseph Vincent.

Abstract

In Taiwan, LBT women are not recognized under the law due to their same-sex or alternative partnership status. Accordingly, these members of society are denied several hundred types of benefits, legal rights and statuses provided under Taiwan law, including those related to tax, medical treatment, adoption, property, inheritance, purchase of real estate, labor rights, social benefits, litigation status, residence and naturalization rights, or those rights and benefits are otherwise adversely affected. This, in turn leads to continued stigmatization and discrimination.

Taiwan's second national report on the implementation of the United Nations' Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), provides no observation or description of the aforementioned inequalities faced by LBT women, and also completely fails to offer potential solutions to the various discriminations suffered by LBT women as a result of their inability to form a family under the law.

The TAPCPR firmly believes that only by granting full marriage equality (freedom of marriage) to LBT women can we effectively alleviate the homophobia, transphobia and other discrimination they encounter throughout society. In addition, Taiwan's legal system should not solely recognize marital relationships, rather it should also provide protection for homosexual and heterosexual co-habiting partnerships. Only in this way can heterosexual and LBT women be truly liberated from oppressive traditional views of marriage and family that stem from "patriarchy" and "compulsory heterosexuality."

1. Introduction

1.1 A brief introduction of the reporting entity, the TAPCPR:

The Taiwan Alliance to Promote Civil Partnership Rights (TAPCPR) was established in 2009. The Alliance was formed by a number of groups advocating equality of gender, gender identity, and sexual orientation in concert with many other individual activists for equality. The TAPCPR was officially registered with Taiwan's Ministry of the Interior in August of 2012. Taiwan's current legal regime only recognizes and protects heterosexual marriage, thus completely neglects alternative types of families or intimate relationships, and causing relentless discrimination and hardships among gender non-conforming individuals and non-traditional families. By way of response, the TAPCPR has researched and drafted three proposed amendments to Taiwan's Civil Code, which cover 1. marriage equality (including same-sex marriage), 2. civil partnerships, and 3. family members system.

The TAPCPR, through several opposition legislators, submitted the first proposed amendment covering marriage equality for first reading at Taiwan's Legislative Yuan at the end of October 2013. Currently, the bill has been passed to the Legislative Yuan's Judiciary and Organic Laws and Statutes Committee for review; however, the amendment has yet to be added to the Committee agenda.

1.2 An overview of the plight of LBT women in society:

The feminist movement and the LGBT movement have been gaining momentum in Taiwan for the past twenty years and issues related to rights of gender, gender identity, and sexual orientation, once "invisible and unspeakable," are now widely recognized and discussed in society. However, in

Taiwan's political and legal spheres, LBT women, including lesbians, bisexual women, and transgenders, are still viewed as second-class citizens, facing severe stigmatism and discrimination and lacking resources in education, politics and many other areas of social life.

Over the past two decades, while statistics show that the ratio of unmarried women or women choosing to marry later in life is steadily increasing, an ideology of heteropatriarchy still exists and reinforces a common stereotype/ model emphasizing women's traditional role in both family life and reproduction. This construct discriminates against single and unmarried women, branding them as "unmarriageable," "problem women," or even referred to by the derogatory term, "leftovers."

Particularly in the last three or so years, under the spectre of a rapidly declining birth rate, many government agencies and civil groups have expended both public and private resources to conduct events promoting heterosexual relationships, marriage, and reproduction. The combined pressures exerted from government, society and families are not substantively dissimilar from "forced marriage" in terms of its characteristics and function. Society also typically provides preferential treatment to married women, a fact that is not only oppressive to many (unmarried) heterosexual women, but creates an extremely unfriendly social environment for LBT women. Therefore, we believe that the current marriage-based family system also oppresses women, whether heterosexual or non-heterosexual. Both heterosexual and non-heterosexual women must unite to overturn the marriage-based family system and culture. This is why TAPCPR fights not only for non-heterosexual women's freedom to marry, but also promotes retaliation against discrimination for single or unmarried individuals. We also believe that there should be legislation to create a partnership system that is different from the current marriage system in order to ensure the right to create a family for both heterosexual partners and non-heterosexual partners on a large scale, regardless of gender, sexual orientation, or gender identity.

Currently, the vast majority of social policy still fails to incorporate perspectives of diverse sexuality and implement accompanying education and training. Take the campaign for the prevention of domestic violence for example. While Taiwan's Domestic Violence Prevention Act does recognize that homosexual partners "currently or previously cohabiting" may seek redress under the law, according to front-line social workers, the assistance available to sexually diverse individuals who are the subject of domestic violence is very limited. The main reason for this discrepancy is the lack of education on sexual diversity among social workers specializing in domestic violence. The TAPCPR also discovered that due to the lack of recognition and support for diverse sexuality and partnership relationships, many individuals of diverse sexual orientation or gender identity are the subject of violence from members of their own families, are forced to flee from their homes, or are physically abused by their partners. These individuals rarely seek assistance through formal channels. Thus, many incidents of domestic violence against sexually diverse individuals go unreported and do not appear in official statistics, essentially rendering them "invisible."

We strongly believe that Taiwan's legal recognition of heterosexual marriage, while ignoring same-sex marriage or cohabiting partnerships; acknowledgements of heteronormativity, while neglecting sexually diverse individuals and homosexual cohabiting partnerships only serves to strengthen and entrench discrimination against sexual diversity. Thus, these individuals continually face great difficulties of "coming out" and significant problems of "social exclusion". This type of "systemic homophobia" clearly impacts all aspects of life for LBT women, with the examples of domestic violence described above being only the tip of the iceberg.

2. Report parameters

This report is in response to Taiwan's second national report on the implementation of the United Nations' Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) issued in December 2013 and, in particular, Article 16 covering family rights. We also offer recommendations and raise questions relating to some of the information put forth on LBT women in the report.

3. Taiwan's current status of implementation: Response to the second national report

3.1 Freedom of marriage and the right to form a family for LBT women

With regard to Article 16 of the CEDAW Convention, the second national report only briefly states that "according to the relevant interpretations by Taiwan's Justices of the Constitutional Court, Taiwan's Civil Code should limit the definition of marriage as being between one man and one woman". The report completely ignores the fact that Taiwan's Civil Code fails to recognize same-sex marriage or cohabiting relationships and how this results in various forms of discrimination against LBT women. This omission clearly and deliberately ignores the "systemic and state-sponsored homophobia" inherent in the status quo.

In reality, the focal point of any interpretations on marriage put forth by Taiwan's Justices of the Constitutional Court relate to "monogamy." The Justices have yet to opine on sexual orientation as a "qualification" for marriage, nor have they ever issued an interpretation on whether the current legal regime, which prohibits same-sex marriage, violates the principle of equality enshrined in the Article 7 of the Constitution. Thus, the national report's citation of the interpretation by Taiwan's Justices of the Constitutional Court is clearly inappropriate.

The TAPCPR and other civil rights groups have, for many years, called upon the government to legislate protection for homosexual couples. In response to this request, the national report states that the government has outsourced two research projects on this issue, and conducted symposiums to facilitate "consensus building." With regard to the draft legal amendments proposed by the opposition legislator on this issue, the report simply states that it is "an area for future effort, planning, and promotion by the government" (see Points 16.7, 16.7.1, and 16.7.2 of the national report). The lack of sincere effort and progress on these issues is indeed troubling.

Taiwan signed the CEDAW Convention in 2007 and subsequently passed the Act to Implement the Convention on the Elimination of All Forms of Discrimination against Women on 20 May 2011. By doing so, Taiwan assumed the obligations of a signatory to the Convention and should make all efforts to eliminate discrimination as described therein. In addition, Taiwan has also signed and implemented the UN's International Covenant on Civil and Political Rights (ICCPR). Article 23 of that document and Article 16 of the CEDAW Convention undeniably confirm the right to marry and form a family. It is the general position of international human rights law as well as the 27th and 28th general recommendations put forth by the Committee on the Elimination of Discrimination against Women in 2010 that discrimination based on sexual orientation, gender identity, or marriage/ family status violates Article 2 of CEDAW.

Despite this, Taiwan's current legal regime only recognizes heterosexual marriage, effectively

denying equal protection to same-sex partners, cohabiting partners, and sexually diverse households. Under Taiwan's legal system, discrimination based on sexual orientation is only prohibited under the Employment Services Act, the Gender Equality in Employment Act, and the Gender Equality Education Act. In addition, the Domestic Violence Prevention Act does include cohabiting and same-sex partnerships. However, there are still numerous benefits, legal rights and statuses under Taiwan law that are strictly denied or adversely affected due to LBT status, including those related to tax, medical treatment, adoption, property, inheritance, purchase of real estate (including mortgage terms), labor rights, social benefits, litigation status, residence and naturalization rights.

In short, any government policy or measure based on marriage or relationship status, inherently excludes unmarried partnerships and their family members. Under Taiwan law, there are literally several hundred types of benefits, legal rights and qualifications based on marriage or relationship status that are directly denied unmarried couples, including LBT women unable to marry under the current legal framework.

In everyday life, the rights of LBT women are adversely affected in many areas of private law, including business transactions. For example, the Family Card issued by hypermarket COSTCO, may only be applied for and used by spouses in heterosexual marriages or other individuals with specific legal family status. An unmarried cohabiting couple may not apply for the card, even where the two individuals involved view themselves as a family. As such, two separate cards must be applied for and additional costs (by way of annual fees) are incurred. In addition, favorable mortgage terms are offered by several banks to heterosexual couples. For example, the mortgage terms at one bank describe individual qualifications as "a steadily employed individual borrower with an annual income of NT\$800,000 or more, or a husband and wife with a combined income of more than NT\$1.2 million." Clearly, LBT women unable to marry under the current legal regime do not qualify as a "husband or wife," thus depriving that individual of potential favorable terms.

With regard to issues surrounding homosexual and heterosexual unmarried partnerships and diverse families, the TAPCPR issued a shadow report on the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in November 2012. In February 2013, ten international experts on human rights were invited to Taiwan to examine Taiwan's national report issued with respect to those to Covenants. Subsequently, in Points 78 and 79 of their Concluding Observations and Recommendations the group accepted the observations and recommendations of the TAPCPR stating that Taiwan law fails to recognize diverse families. Also, the fact that Taiwan only recognizes heterosexual marriage and not same-sex marriage or cohabiting relationships is discriminatory and thus the international experts clearly suggest Taiwan's government to amend the Civil Code to provide recognition to diverse families. During meetings held on the two aforementioned Covenants and in subsequent written remarks, the international experts more clearly expressed to local government officials that "the Government has an obligation to fulfill the human rights of all people and not make such fulfillment contingent on public opinion" Clearly, even where there is some objection among certain elements of society, the rights of sexually diverse individuals to form a family should not be denied or delayed for the sake of a so-called "social consensus" or "majority opinion."

3.2 Adoption

It is mentioned and acknowledged in Points 16.22, 16.27, and 16.28 of the national report that discrimination still exists within the adoption services and accompanying legal framework against single or homosexual individual as it relates to the adoption of children. These points are consistent with our conclusions based on long-term observation.

The adoption services in Taiwan often require that the adopters must be legally wed couples, either explicitly or in practice. In fact, discrimination against single or homosexual individuals pervades, and these persons are often denied the right to adopt children. In other words, it is very difficult for persons other than heterosexual married couples, including single persons, homosexual partners, and unmarried heterosexual partners, to adopt children through social welfare institutions. There have been, however, many credible international academic studies showing that homosexual partners are equally qualified and fit to act as parents. Furthermore, these studies show that children raised by homosexual couples show no difficulties adapting to society, and are more capable of embracing diversity. More specifically, the appropriate upbringing and development of children depends not on family structure or the sexual orientation of the parents (such as single-parent or two-parent families, or homosexual or heterosexual parents), but mainly on the quality of family relations and the sufficiency of resources and support given to the children by the family. We know that in a recent case, Taiwanese courts granted permission for a single LBT woman to adopt a child. We are happy to see this improvement. In order to implement the doctrine of non-discrimination, the draft bill for marriage equality proposed by the TAPCPR explicitly states that the court, in exercising judicial discretion with respect to adoption, shall not discriminate against sexually diverse adopters, and shall offer equal opportunity for sexually diverse individuals and spouses to adopt children.

4. Conclusions and Recommendations

4.1 With the exception of the Domestic Violence Prevention Act, Taiwan provides no other legal protection for same-sex couples. As such, the differential treatment towards heterosexual married couples and homosexual couples that are unable to marry (or to register as partners), with respect to areas such as taxes, property, inheritance rights, labor and social welfare, constitute discrimination under Articles 2 and 26 of the ICCPR, therefore violating the obligations therein. We have observed, for example, that a woman living in a cohabiting lesbian relationship and the child born by her partner, is unable to legally adopt the child, nor can she list the child as a dependent when filing income taxes. Other legal cases involving lesbian couples are also illustrative. Where these individuals live together and share property, or who operate business together, and when one passes away, that relationship is not protected by law or recognized by society. Thus, the surviving individual often becomes embroiled in unnecessary litigation involving inheritance and property rights with the original family of the deceased. The surviving partner, more often than not, needs to undergo protracted legal proceedings, and endure significantly sacrifices to safeguard her rights and interests.

Examples involving discrimination against LBT women resulting from the lack of freedom to marry and the right to form a family are pervasive in society and are a day to day occurrence. We suggest that relevant laws (the proposed amendments covering marriage equality at Taiwan's Legislative Yuan at the end of October 2013) be passed as soon as possible to protect the rights of LBT women's marriage, and to provide equal opportunity to adopt children, which may serve as

the legal basis to fight discrimination, and help the society break away from patriarchal family values, and the prejudice of heterosexuality as the only “normal” sexual orientation.

4.2 We recommend the following questions be asked of Taiwan’s government representatives:

4.2.1 We have found that LBT women face multi-types of discrimination in the job market (including specific dress codes, forcing individuals to wear make-up, rejection of employment, illegal termination, or other discrimination simply based on the individual’s sexuality). Yet Point 2.10 of the national report, claims that the Taiwan government has laid out policies for different groups of sexually diverse individuals, providing appropriate employment plans, assistance in business establishment, and social welfare services. Therefore, we ask that the Taiwan government to explain the specific content of these policies, and disclose the budget allocated for these programs.

4.2.2 The national report fails to discuss Points 78 and 79 of the Concluding Observations and Recommendations made by the aforementioned international human rights experts in 2013 in response to Taiwan’s initial state report regarding the ICCPR and ICESCR (namely, that the current Civil Code only offers protection for heterosexual marriage, constituting discrimination against sexually diverse couples, and that Taiwan should amend the Civil Code so that diverse families are recognized under the law). What and how will the Taiwan government, apart from organizing seminars/symposiums with no substantive effect or result, respond to the aforementioned recommendations?

The draft amendment on marriage equality proposed by the TAPCPR with the help of legislators was submitted for first reading in October 2013. We think the Taiwan government is obliged to clarify its policy and stance on marriage equality. In particular, how does the Taiwan government plan to protect LBT women and to fight against the multiple forms of discrimination which LBT women face?

4.2.3 With respect difficulties and discrimination faced by single and LBT women in adoption proceedings (as individuals or couples), does the Taiwan government, in addition to the generic description provided in the national report, have any concrete, specific solutions either through the legislative, executive, and judicial branches? For example, what is the budget allocated to provide education training for the relevant personnel (including adoption services and judicial personnel), in order to eliminate discrimination that occurs

4.2.4 The article 5 (a) of CEDAW concludes that all countries should take the appropriate measures “To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. “ We all know that it’s necessary and appropriate to carry out gender equity education (including LGBT inclusive education) to accomplish the above article’s described requirements. This year (2014), the list of the Ministry of Education’s sixth committee on gender equity included two members of Christian faith, one had opposed elementary and middle school gender diversity education, the other previously made sexually discriminative remarks and opposed the legislative draft for marriage equality (his reasons for opposition included the idea that heterosexual partners can naturally procreate and thus hold more value than non-heterosexual partners). May we ask the Ministry of Education, what is the standard for gender equity committee members? Is it true that the above described committee members’ stances

and assertions can be said to “possess awareness of gender equity?”

4.2.5 The conservative Christian institutions that currently oppose the Marriage Equality draft and oppose non-heterosexuality spend many resources to promote normative gender and family ideologies all across Taiwan (such as, “families should consist of a husband and wife,” “the husband leads, the wife follows,” and “men and women each have their place,” etc.). There are even places where the government financially supports these sorts of parades (for example, on March 16th, 2014, the Taoyuan County government made a donation of 50,000 NT dollars to Christian organizations in support of the “Happy Family Parade.”) May we ask, what is the stance of the Taiwanese government if they support Christian organizations that obviously violate Article 5(a) of CEDAW? What are government’s strategies and plans to implement the obligations under the above article?