



**Parallel Report on the ICERD Initial Report of
ROC(Taiwan)**

**Drafted by Taiwan Alliance to Promote Civil
Partnership Rights(TAPCPR)**

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Preface

The Taiwan Alliance to Promote Civil Partnership Rights (TAPCPR) is an organization dedicated to legal and policy reforms for human rights and gender equality. In 2017, the legal team of TAPCPR represented Mr. Chi Chia-wei in winning the constitutional case for marriage equality, leading to the passage of the same-sex marriage law in Taiwan in May, 2019, making Taiwan the first country in Asia to legalize same-sex marriage.

However, after the legalization of same-sex marriage in Taiwan in 2019, the Taiwanese government claimed that if one party of a same-sex couple is from a country where same-sex marriage is not recognized, they cannot get married in Taiwan. For example, a Taiwanese-Japanese same-sex couple would not be allowed to register their marriage in Taiwan while Japan does not allow same-sex marriage. The Taiwanese government justified this by citing the "Act Governing the Choice of Law in Civil Matters Involving Foreign Element," stating that a marriage must comply respectively with the national laws of the two parties involved. However, considering that only a few countries have passed same-sex marriage laws, this restriction effectively creates nationality-based and sexual orientation-based discrimination, leaving transnational same-sex couples excluded from the protection of same-sex marriage in Taiwan.

As a result, the TAPCPR represented more than a dozen transnational same-sex couples to bring a series of strategic litigation after the legalization of same-sex marriage in 2019 in order to achieve equal marriage rights for all. Eventually, after the transnational same-sex couples winning five consecutive cases in Taipei High Administrative Court, the Taiwanese government modified its administrative interpretation on January 19, 2023, allowing transnational same-sex couples, to legally marry in Taiwan if one party of the couple is a Taiwanese citizen.

Nevertheless, this administrative interpretation does not include Taiwanese-Chinese (PRC) same-sex couples ("cross-strait same-sex couples"), nor does it include same-sex couples where both parties are foreigners but legally reside in Taiwan. Their rights are still lacking protection, and the TAPCPR continues to advocate and bring strategic litigation in this regard.

Measures for Ensuring Various Rights

I. Guarantee for Transnational Same-Sex Marriage (in relation to Article 5, Z, point 224 of Taiwan's ICERD State Report):

- i. The government's report mentioned that the guarantee for transnational same-sex marriage is in the process of research of legislative amendments prepared by the Judicial Yuan and the Mainland Affairs Council. However, this needs to be updated as on January 19, 2023, the Ministry of the Interior has already allowed transnational same-sex couples and Hong Kong/Macau same-sex couples to marry in Taiwan, regardless of their national laws. It shows clearly that an administrative interpretation can address the issue of guaranteeing transnational same-sex marriage, and it is not necessary to adopt further legislative amendments.
- ii. Nevertheless, the current administrative interpretation only covers transnational same-sex couples and Hong Kong/Macau same-sex couples under the "Act Governing the Choice of Law in Civil Matters Involving Foreign Element." It does not apply to cross-strait same-sex couples under the "Act on Relations between the People of the Taiwan Area and the Mainland Area." As a result, cross-strait same-sex couples are still unable to marry in Taiwan.
- iii. While the Taiwanese government claims that legislation is needed for cross-strait same-sex couples to marry, the Mainland Affairs Council has acknowledged since 2019 that the legal basis for cross-strait same-sex couples' union already exists in current laws. By making administrative adjustments, the government can immediately protect the legitimate right of cross-strait same-sex couples to marry. Thus, legislation is not an absolute necessity. The government's prolonged neglect of the issue is a serious violation of the equal rights of cross-strait same-sex couples.
- iv. Additionally, some cross-strait same-sex couples who legally married in third countries, such as the United States, have applied for reunification in Taiwan. However, the government unlawfully requires Chinese (PRC) same-sex partners to provide additional proof of marriage certificate issued by the PRC government to apply for spousal reunification. Despite a ruling by the Taipei High

Administrative Court clearly stating that such requirement is illegal, the government has not complied with the court's decision and continues to deny reunification for these cross-strait same-sex couples presenting marriage certificates issued by a third country.

v. TAPCPR's viewpoint:

1. Taiwan and China have been in a long-standing hostile relationship, and China has clearly shown its ambition to invade Taiwan. Therefore, the Taiwanese government's differentiated treatment of cross-strait (same-sex) marriage cases (comparing to non-Chinese foreign partners cases) may be considered necessary and justified.
2. However, since the Taiwanese government allows cross-strait heterosexual marriages, the equivalent marriage requirements for cross-strait same-sex marriages should be and can be applied. This would help avoid indirect discrimination and intersectional discrimination based on nationality and gender/sexual orientation (as per ICERD General Recommendation No. 25, Point 1)
3. The Taiwanese government should promptly implement administrative measures for cross-strait same-sex couples to marry in Taiwan. At this stage, it can at least follow the procedures for transnational same-sex marriages that require marriage interviews and modify the relevant procedures for same-sex partners from China coming to Taiwan for marriage interviews. This would enable same-sex partners from China to apply for marriage interviews at the airport for the purpose of "registering marriage," and after passing the interview, they can enter Taiwan for marriage registration. This ensures equal marriage rights for cross-strait same-sex couples, and legislative amendments to the Act on Relations between the People of the Taiwan Area and the Mainland Area are not an absolute necessity.

II. Concerning Marriage of Two Foreigners:

- i. As mentioned above, although the Taiwanese government has

allowed transnational same-sex couples to marry in Taiwan through an administrative interpretation, this interpretation only covers transnational same-sex couples with one Taiwanese partner. It does not apply to two foreigners' same-sex marriage. If one party's home country does not recognize same-sex marriage, the Taiwanese government still does not acknowledge their marriage or allow them to register their marriage in Taiwan. For example, two Filipino same-sex migrant workers who become partners in Taiwan or a U.S. citizen -Filipino same-sex couple, despite living together in Taiwan for a long time, according to the current policy of the Taiwanese government, which we believe is clearly unreasonable and illegal, are restricted by the Philippines' non-recognition of same-sex marriage, preventing them from marrying in Taiwan.

- ii. Considering that many long-term foreign residents in Taiwan are from Southeast Asian countries and that most Asian countries, except Taiwan and Nepal, do not allow same-sex marriage, the current policy is discriminatory to these foreigners. Foreign partners are often unable to legally marry in Taiwan, despite their long-term legal residency, resulting in unequal treatment within Taiwan's jurisdiction and exposing them to risks and damages due to the lack of legal protection for their relationship and property rights.
- iii. TAPCPR's viewpoint:
 - 1. The ICERD General Recommendation No. 30 states that "human rights are, in principle, rights to be enjoyed by all individuals, and contracting states have an obligation to secure equal enjoyment of these rights to citizens and non-citizens alike within the scope recognized by international law" and "differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim." The recommendation also addresses the issue of discrimination against non-citizen spouses of laborers.
 - 2. Marriage rights are fundamental human rights, and within

Taiwan's territory, they should be equally enjoyed by all individuals, regardless of citizenship. While the Taiwanese government allows transnational couples with one Taiwanese partner to marry in Taiwan, regardless of the other partner's home country's recognition of same-sex marriage, it refuses to apply the same standard to marriages of two foreigners. The reason for this differential treatment has not been justified, making it discriminatory and requiring correction.

3. The marriage rights of long-term foreign residents in Taiwan should be protected, and the government should consider adopting the Ministry of the Interior's administrative interpretation "Tai-Nei-Hu-Tze no. 1120240466" on January 19, 2023, to develop appropriate regulations allowing two foreigners legally residing in Taiwan to marry in Taiwan, regardless of their national laws.

III. Concerning Marriage Interview (in relation to Article 5, I, points 140 and 141 of Taiwan's ICERD State Report):

- i. Despite the government's claim that marriage interviews for specific countries are not racially motivated, the report of Independent Opinions provided by National Human Rights Commission, Taiwan, has pointed out that "the government of Taiwan has not established clear guidelines and regulations for overseas marriage interviews." In this regard, the government state report only vaguely states that "the selection of specific countries is based on past cases and considerations related to safeguarding national security, preventing human trafficking, and the impact on Taiwan's public security," without providing specific standards.
- ii. In fact, using only the foreign spouse's nationality as the sole criterion for whether a marriage interview is required completely disregards other factors (such as whether the applicant has a record of missing contact after entry, etc.). This constitutes unjust differential treatment based on specific nationalities, and it constitutes discrimination based on nationality.
- iii. It is essential to emphasize that ICERD General Recommendation No. 25 has already pointed out that "racial discrimination does not

always affect women and men equally or in the same way. There are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men. Such racial discrimination will often escape detection if there is no explicit recognition or acknowledgement of the different life experiences of women and men, in areas of both public and private life.” The current practice of conducting marriage interviews based on specific nationalities often targets marriages between "Taiwanese men and foreign women," (*Note 1) leading to discrimination against specific nationalities and foreign women.

- iv. Moreover, marriage interviews often involve highly private matters, and the criteria for approval are frequently based on traditional heterosexual family norms, which can disadvantage diverse LGBT+ families. For example, in (heterosexual) transnational marriages where couples have biological children, they are more likely to be recognized as "genuine marriages" and pass the marriage interview. However, applying this standard to transnational same-sex partners may lead to unfair treatment.
- v. The TAPCPR believes that the Taiwanese government should comprehensively review the marriage interview system and propose objective criteria for assessment beyond "nationality." Relevant public servants should also receive training on understanding gender diversity and recognizing the various forms of marriage and family. Evaluating same-sex partners' marriages should not be based on a heteronormative perspective and should avoid hasty judgments of the authenticity of same-sex marriages.

Note 1:

According to the data released by the National Immigration Agency of the Ministry of the Interior, the number of foreign spouses and mainland Chinese (including Hong Kong and Macau) spouses has consistently shown more females than males over the years (the latest release date is May 31, 2023, see

https://www.gender ey.gov.tw/gecdb/Stat_Statistics_DetailData.aspx?sn=1Jvq!GDSYHCFfHU73DDedA%40%40).

Additionally, the "Questionnaire" required by the Taipei Economic and Cultural Office in the Philippines for applicants to fill out (as shown in the attachment) indicates that for Taiwanese applicants, the default pronouns used are male (he/him), while for applicants from foreign countries, the default pronouns used are female (she/her) when referring to the couple. The source of this questionnaire can be found at <https://www.taiwanembassy.org/ph/post/3583.html>.

This questionnaire design not only clearly shows Taiwan's government's gender presumption of "Taiwanese male - foreign female" for marriage interviews but also highlights the need for a LGBT+ inclusive approach, as Taiwan has already recognized transnational same-sex marriages from January 2023 (but same-sex partners from China are excluded).

Reference Number: _____

attachment

Male: _____

Female: _____

TAIWANESE: 國人

1. 您在台灣從事那一方面的工作? 工作穩定嗎? 教育程度? What is your work? Education?
2. 您在那裡認識? 認識多久了? Where, how & when did you met? How long have you known her?
3. 您通常都怎麼跟對方聯絡? 電話? EMAIL? 傳簡訊? How do you communicate?
講英文嗎還是中文?
4. 您來過菲律賓幾次了?看過她的家人嗎? 看到誰? How many times have you been here? Have you
Met her family? Who?
5. 您家裡有那些人?您的家人看過她嗎?幾次?喜歡她嗎? Have she met your family? Who?
6. 結婚後跟誰住在一起? 溝通會有問題嗎? After Marriage where do you plan to stay? With Whom?
7. 您曾經離過婚, 多久了?跟前妻/夫有小孩子嗎?小孩子跟你住在一起?女朋友知道嗎?小孩子知道
您要跟這位小姐結婚有什麼看法?

FILIPINO

1. How long have you know him? Since? 您在那裡認識? 認識多久了? 你從什麼時候開始交往?
2. How do you communicate? What language do you use? 您通常都怎麼跟對方聯絡? 講英文,中文?
3. Have you met his family? How many times? 您在台看過他的家人嗎?看到誰?
4. Have he met your family? Who? When? 您家裡有那些人?

5. What is your educational background? 你的教育程度?

6. What were your previous working experiences? 你以前在菲律賓做什麼?

7. Previous Marriage? Kids? Who take care of them? Does your child know you are getting married again?

What is their opinion? 你有前婚姻嗎? 有孩子嗎? 他們知道嗎?