

Same-sex Marriage Bill in Taiwan

Amnesty International calls for an end to all forms of discrimination and advocates the equal protection of basic human rights enshrined in international human rights instruments regardless of sexual orientation. Amnesty International specifically opposes discrimination in civil marriage laws and civil partnership laws and calls for recognition of families of choice.

Introduction

On 26 December 2016, Taiwan's Legislative Yuan's Judiciary and Organic Laws and Statutes Committee passed draft amendments to the Civil Code that would legalize same-sex marriage in Taiwan.¹ This was the first reading of the bill. It will then be referred to a party caucus for further negotiations and a second and third readings for discussion, re-examination and then conclusion in the full general assembly. Supporters of same-sex marriage raised many other issues in the debates on same-sex relationships in Taiwan including the right to participate in medical decisions for incapacitated partners, legal claims concerning shared property and various concerns about adoption, parental and surrogacy rights.

The existing Taiwan Civil Code only recognizes heterosexual marriage.² Some Christian groups and parents groups oppose the amendments recognizing same-sex marriage claiming that they will result in damaging heterosexual marriage and harming children's development.³

Both supporters and opponents of the bill staged mass demonstrations before and during the discussion of the bill.⁴ On 24 March 2017, the Constitutional Court will debate two landmark cases involving same-sex marriage.⁵ The Legislative Yuan's general assembly will likely take up deliberation of the draft bill before the end of the current legislative session in May.

There have been several proposals in the course of the debates. One proposal combined the proposed amendments by Democratic Progressive Party (DPP) legislator You Mei-nu, Kuomintang (KMT) legislator Jason Hsu and the New Power Party and was approved by the Legislative Yuan's Judiciary and Organic Laws and Statutes Committee on 26 December 2016. This draft provides for the same right to marriage for same-sex and heterosexual couples, and the same rights concerning "parents and children and kinship". It also raises the age of marriage to 18 for both sexes and provides that adoption decisions should be made based on the best interest of the child without discrimination. Another proposal by DPP legislator Tsai Yi-yu with some amendments also passed at the Committee and provides for a new

¹ Taiwan News, 'Taiwan takes major step towards gay marriage as bill passes committee review', 26 December 2016, <http://www.taiwannews.com.tw/en/news/3058193>; The text of the two proposals is available at http://www.pridewatch.tw/beta/sites/default/files/file_download/pridewatch_2017_2bills.pdf (Chinese only)

² Taiwan's Civil Code, <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=B0000001>

³ Taipei Times, 'Thousands protest gay marriage in Taipei', 4 December 2016, <http://www.taipetitimes.com/News/front/archives/2016/12/04/2003660533>

⁴ Associated Press, 'Taiwanese protest for, against same-sex marriage bill', 17 November 2016, <http://www.dailymail.co.uk/wires/ap/article-3944818/Taiwanese-protest-against-sex-marriage-bill.html>

⁵ Taiwan News, 'Constitutional Court discussion of same-sex marriage to be broadcast live', 10 February, <http://www.taiwannews.com.tw/en/news/3091870>

separate Chapter on same sex marriage to be added to the code, but also provides for the same rights as heterosexual marriages and parallel requirements concerning “parents and children and kinship”.

There has also been discussion about the possible introduction of a new bill that would only legalize same-sex civil partnerships, not marriage and not civil partnerships of opposite sex. Currently, civil partnerships are not recognized in national legislation but several municipalities and counties maintain same-sex partnership registers. While any form of recognition is better than nothing, failure to allow same-sex couples equal rights is discriminatory as it only recognizes one type of relationship.

Non-discrimination on grounds of sexual orientation is an internationally recognized principle and denial of equal civil recognition of same-sex relationships prevents many people from exercising a whole range of other rights, such as rights to housing and social security, and stigmatizes those relationships in ways that can fuel discrimination and other human rights abuses against people based on their sexual orientation or gender identity.

International human rights instruments specify the significance of equality in marriage to ensure equal protection of human rights based on the principle of non-discrimination.

The right of adults to enter into consensual marriage is enshrined under existing international human rights standards including in Article 16 of the Universal Declaration of Human Rights (UDHR) and Article 23 of the International Covenant on Civil and Political Rights (ICCPR) which both explicitly recognize such a right. The right to be free from arbitrary discrimination in the enjoyment of the full range of human rights is a basic principle clearly underlined in all major human rights instruments, including Article 2 of the ICCPR. Furthermore, Article 26 of the ICCPR provides for equal protection before the law.

Although Taiwan is not a member of the United Nations, in 2009, Ma Ying-jeou, then-President of Taiwan, announced the implementation, as a matter of domestic law, of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Likewise Taiwan has approved the adoption of other UN Human Rights treaties into domestic law demonstrating a commitment to protect and respect international human rights law and standards.

The non-discrimination principle has been interpreted by UN treaty bodies and numerous inter-governmental human rights bodies as prohibiting sexual orientation discrimination. The Human Rights Committee and the Committee on Economic, Social and Cultural Rights have applied this provision to discrimination across the spectrum of human rights, including partnership rights.

The UN Office of the High Commissioner for Human Rights says that “the protection of people on the basis of sexual orientation and gender equality does not require the creation of new rights or specific rights for LGBT people. Rather, it requires enforcement of the universally applicable guarantee of non-discrimination in the enjoyment of all rights.”⁶ In a 2015 report, it specifically recommended that states provide “legal recognition to same-sex couples and their children, ensuring that benefits traditionally

⁶ UN Office of High Commissioner for Human Rights, 'Born Free and Equal: Sexual Orientation and Gender Equality in International Human Rights Law', 2012, p.10, <http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>

accorded married partners – including those related to benefits, pensions, and taxation and inheritance – are accorded on a nondiscriminatory basis;”⁷

The failure of the state to recognize same-sex relationships can prohibit a partner from making decisions on a partner’s behalf when she or he is sick or visit a partner’s child in the hospital; share equal rights and equal responsibility for children in their care; have his or her partner and children covered under their health insurance or receive employment based benefits; and inherit from a deceased partner if he or she dies without a valid will.

Speaking at a high-level LGBT core group event on 29 September 2015, the then UN Secretary-General Ban Ki-Moon said: “We are here together to break down the barriers that prevent LGBT people from exercising their full human rights. When we do that, we will liberate them to fully and productively contribute to our common economic progress. The investments we make in eliminating intolerance and hate will bring huge benefits across the global agenda.”⁸

Amnesty International opposes discrimination in civil marriage laws and calls on the Taiwan government to:

recognize marriages between couples of the same sex, on the same basis and conferring all the same rights, as marriages between different-sex couples;

ensure that where other forms of recognized partnerships exist, that they are available to same-sex and different-sex couples.

The rights of every lesbian, gay, bisexual, transgender and intersex persons must be fully respected and protected. No one should experience discrimination or violence because of who they are, who they love, or how they express their gender.

⁷ A/HRC/29/23, ‘Discrimination and violence against individuals based on their sexual orientation and gender identity’ http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/29/23&referer=/english/&Lang=E

⁸ UN Secretary-General Ban Ki-Moon’s remarks at the High Level LGBT Core Group Event “Leaving No-one Behind: Equality & Inclusion in the Post-2015 Development Agenda”, 29 September 2015, <https://www.un.org/sg/en/content/sg/statement/2015-09-29/secretary-generals-remarks-high-level-lgbt-core-group-event-leaving>