

# Shadow Report 2017 on the CRC<sup>1</sup>

Prepared by

Taiwan Association for Human Rights

Covenants Watch

Taiwan Alliance to Promote Civil Partnership Rights

## [Additional information to complement the CRC State Report of Taiwan]

Prepared by the Taiwan Association for Human Rights and Covenants Watch

### Article 7 (Responding to Paragraph 89 of the State Report)

#### Current laws and regulations

1. According to Article 14 of the Protection of Children and Youths Welfare and Rights Act, persons who deliver babies must report relevant birth information to the local health authority within seven days after the delivery of the baby. In 2004, the reporting system for new births was fully put on the internet. Household registration and immigration agencies and other different agencies can link to the notification system and obtain information on childbirths and the parents of the new infant.
2. The original intent of the above-mentioned regulation was to gain an accurate understanding of population trends and to provide a factual basis for the provision of subsequent health and sanitation services for women and children. However, given the occurrence of pregnant women who were undocumented migrant workers, the actual operation of this regulation would turn hospitals, which should have protected the health of mothers and newly born infants, into informers against missing migrant workers and forced the latter to worry that going to the hospital could result in deportation instead of proper pre-partum and childbirth care. This state of affairs is

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not healthy for the expecting mother and may well threaten the health or even life of the foetus or newly born infant.

3. According to statistics from 2007 to 31st August 2016, the number of non-national newborns was increased to 6681. We believe that the actual number should be higher considering babies of undocumented migrant workers may have not been reported to the authorities under certain circumstances.
4. To avoid causing children of overstaying migrant workers to become unregistered, invisible persons, we believe the government definitely must adopt effective preventative and intervening measures. However, using health care systems or immigration databases to locate migrant workers who have lost contact could make it impossible for such workers to feel safe to approach hospitals or clinics when they need medical assistance. Such a situation will neither represent a solution nor protect the best interests of the children in question.
5. According to Article 2 of the Nationality Act, a person is granted Taiwanese nationality provided that at least one of the parents is a Taiwanese national. A child born in Taiwan with both stateless parents or unidentified parents is also able to get Taiwanese nationality. The worst case is for children with undocumented yet identified mother that cannot be located. In this case, the Taiwanese government considers them nationals of the mothers' country of origin and will not grant them the Taiwanese citizenship as a result. However, since these children are not registered in the "home countries" and thus become de facto "stateless" children in Taiwan. No official data of the stateless children are available in Taiwan.

### **Social protection and health rights of "stateless" children**

6. According to Article 22 of the Protection of Children and Youths Welfare and Rights Act, stateless children and youth will be covered by social welfare services, medical care, and granted the right to education and their interests safeguarded. However, there is no clear legal definition of stateless people, and no established procedure for stateless status determination. Foreign children are not covered by the foresaid Act.
7. A non-national child without a residence permit is not covered by the national health insurance system. Certain children will be handled by the Health Protection Administration and CDC as special cases. As for the right to education, schooling for non-national children are not compulsory, the parents or guardian should apply directly to the school by themselves for admission. Children without any identity documents is of another issue.

8. We suggest that the Nationality Act be amended to include clear definition of “stateless people” and an appropriate determination procedure for stateless status. There should be official statistics of stateless people and stateless children. The de facto stateless children should enjoy the basic rights enshrined in the CRC and other core human rights treaties. Any domestic law incompatible with international human rights standards should be revised as soon as possible.

### **Article 39 (Responding to Paragraphs 316-320 of the State Report)**

#### **The situation of child labor on the ground remains a mystery in Taiwan**

9. The government has continued to reply the issue of child labor based on the assumption that the permitted form of child labor for those between 16 and 18.
10. In fact, many children under 16 are working; some within family business, but many are informally and illegally employed by ordinary businesses. For examples, it’s not rare to spot children and teenagers working in construction sites, markets, restaurants... . We have to emphasize that we don’t agree that all children under 15 should be banned from work; as a matter of fact, some types of work may help children and teenagers learn and develop better. We also recognize the dangers and risks of what extreme bans on child labor might bring: children who have to work to support themselves and families might as well be pushed into working in illegal and harmful settings. Nonetheless, no one knows how prevalent and what types of work that children are involved in employment. The government has not conducted surveys to understand the prevalence and the types of this form of child labor.
11. For those between 16 and 18, many are employed in the service sector, and often have to work in the night shift so that they can attend school during the day. What is worse, those who need to work are more likely to attend private schools and pay higher tuition and fees than those who don’t have to work, who attend public schools.
12. We recommend that:
  - (1) The government should investigate the problem of child labor under 16 years of age.
  - (2) The government should close the gap of tuition subsidies between public and private high schools.

## **Article 35 (Responding to Paragraphs 346-349 of the State Report)**

Illegal adoption or human trafficking? The case of 11 young-aged Vietnamese children found working in tea gardens and farms in Taichung

13. According to news reports in May 25-6, 11 young-aged Vietnamese children working on farms in the central and southern regions of Taiwan were “rescued” by the National Immigration Agency (NIA).<sup>2</sup> The NIA announced that these children were trafficked to Taiwan by a Taiwanese-Vietnamese couple using fake birth certificates and charged 3000-7000 USD per child from their parents. However, a different version of the story came out the next day, claiming those children have been adopted by local couples for them to pursue a future better and brighter than what they could have in Vietnam. The only thing that is certain is that these children have been working in the farming sector without going to school.
14. We urge the CRC Committee to request information from the government with the List of Issue and make inquiries in this regard.

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<sup>2</sup> [http://news.ltn.com.tw/news/focus/breakingnews/2080652;](http://news.ltn.com.tw/news/focus/breakingnews/2080652)

## **[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 'Protect 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 'Guarding the Family Campaign' 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.