

Replies of Taiwan NGOs to ICERD LOIs

Taiwan Alliance to Promote Civil Partnership Rights(TAPCR)

2024/03/08

1. Article 1, 2 The Convention in Domestic Law and the Institutional and Policy Framework for its Implementation

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| 1. | Both previous international review committees and the NHRC commented that instead of a comprehensive anti-discrimination law, anti-discrimination provisions are found in different sections of Taiwanese law. Are there more recent developments in the enactment of the Equality Law (Implementation Report, para. 38)? What is the timeframe for the enactment? Are representatives of Indigenous peoples and different ethnic groups involved in the drafting and deliberation process? |
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Reply:

1. Currently, the administrative authorities only mention that they are expected to submit the draft Equality Act to the Legislative Yuan for deliberation in 2024, but the content of the draft legislation has not yet been formally announced.
2. The Taiwan Alliance to Promote Civil Partnership Rights (TAPCPR) continues to monitor the legislative schedule of the Equality Act and advocates for:
 - 2.1 The Equality Act should encompass discrimination or differential treatment based on factors such as sex, gender, sexual orientation, gender identity, gender expression, and other related characteristics, and should not be less extensive than the scope of existing legal protections in our country.
 - 2.2 The Equality Act should include equal protection in the private/commercial service sector, specifying discriminatory behaviors in private law contracts for which individuals should be held liable for damages.
 - 2.3 The Equality Act should explicitly regulate hate speech and hate crimes. Hate speech and hate crimes often target vulnerable groups in society, and without any regulation, they can lead to extreme phenomena, exacerbating social inequality and seriously infringing upon the rights and interests of marginalized groups.
 - 2.4 The Equality Act should establish/authorize administrative authorities to establish

more specific requirements, such as mandating anti-discrimination education and training for companies above a certain size, ensuring the widespread availability of gender-friendly restrooms in public spaces, and guaranteeing equal access to educational resources for diverse gender students in schools (such as accommodating transgender students in dormitories).

2.5 In principle, religion may not be used as a reason to exempt from anti-discrimination measures. Only in exceptional cases involving core matters of religious freedom (such as the appointment of clergy directly related to proven doctrines and beliefs), can exemption from punishment be argued.

2. Article 2, 4 and 6 Racist Hate Speech, Incitement to Racial Hatred and Hate Crimes

9.	Please provide detailed, updated information on complaints filed by the victims of racial hate speech (Implementation Report, paras. 85-95).
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Reply :

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1. In Taiwan, there is currently no clear legal regulation on hate speech and hate crimes, and judicial practice does not consider hate speech as a crime (as detailed below), thus statistical information on victims of hate speech and related complaints and cases is neglected.

2. According to current judicial practice in Taiwan, if hate speech only refers to specific groups without specifically targeting identifiable individuals, the courts will consider that the general public cannot know who the hate speech refers to, and therefore it does not constitute defamation, insult, or other criminal offenses or corre-

sponding civil liability.

3. For example, in 2023, during the election campaign for the departmental student association at National Taiwan University, several discriminatory statements were made, including "reducing the admission quotas for indigenous peoples, overseas students, and athletes" and "LGBTQ individuals and dogs are not allowed to play 'Arena of Valor' game in the department's meeting space," which involved hate speech. However, according to current practical interpretations, the above statements did not target specific individuals, thus they do not constitute any criminal offense, and no compensation can be sought from the individuals responsible. In other words, even if other National Taiwan University students who identify as indigenous or LGBTQ feel severely discriminated against by the aforementioned statements, they have no avenue for complaint.
4. Current laws in Taiwan have no regulations whatsoever regarding hate speech. On one hand, this leads to a proliferation of hate speech, while on the other hand, it makes it difficult for government agencies to identify the resulting harm caused by hate speech and propose concrete and effective protective measures. This issue still awaits the enactment of the Equality Act, which would include regulations on hate speech and mandate regular investigations and assessments of the effectiveness of such regulations.
5. TAPCPR argues that the regulation of hate speech does not necessarily have to rely on criminal penalties; it can also be handled through lighter measures such as clarification of rumors and fact-checking, but for hate speech and hate crimes that clearly and concretely cause harm, corresponding criminal and civil liabilities should still be imposed to allow victims to seek remedies through legal channels.

10.	The Common Core Document reports that “The concept of equal rights for racial and ethnic groups is promoted to the public through infographics, digital learning courses, teaching materials, and handouts.” (para. 123). On the other hand, the NHRC reports that “there have been many inappropriate comments in society recently which have reignited historical conflicts between ethnic groups and created controversy over the stigmatization of indigenous peoples” (para. 138). How does the government’s current strategy to promote understanding among different racial and ethnic groups in the public sphere, including in the media, address this persistent problem?
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3. Indigenous Peoples

3.2.3 Discrimination in Daily Life

23	Concerns are raised regarding the government's attitude towards microaggressions which negatively impact day-to-day lives of Indigenous peoples. Is there any governmental plan for the microaggressions?
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Reply :

Microaggressions in daily life in Taiwan often involve the intersectionality of race and other characteristics. It is important to be aware of the intersectionality of microaggressions to effectively prevent them.

We believe that the government currently lacks effective measures to prevent microaggressions. Therefore, in future legislation on the "Equality Act" (or existing regulations), it is necessary to impose on the government the active duty to promote equality rather than only passively handle discrimination investigations and remedies, as explained below:

1. Current relevant laws in our country, even though they have been legislated for many years and have undergone several amendments, mainly focus on "prohibiting discrimination and its complaints or remedies," rather than further caring about "specific actions to promote equality." This deficiency leads to situations such as the following: Schools set up gender equality committees in accordance with the law, but these committees mostly handle complaints and remedies between parties involved in gender incidents on campus, without dealing with schools' gender equality policies; In the corporate and workplace settings, genuine efforts to address the rights of diverse genders are mostly seen in foreign/international companies, while local enterprises often do not invest enough resources in creating a friendly workplace environment.

2. We advocate for a comprehensive Anti-Discrimination Law/Equality Act that should supplement the deficiencies of current regulations by establishing/authorizing more specific requirements. For example, it should stipulate that companies of a certain size must complete a certain number of hours of anti-discrimination/equality education and training each year and report to the competent administrative authorities for inspection. The training content should cover aspects such as race, gender, sexual orientation, disability, age discrimination, and their intersectionality.