



**Reset and reflect:
LGBTIQ community in
Taiwan after the marriage
equality campaign**



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This publication is commissioned by ILGA Asia - the Asian Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, representing more than 170 LGBTI organizations in East, South, Southeast, and West Asia. The document has been produced in consultation with member organisations and key partners as suggested by member organisations in the country. Permission to quote or otherwise use the information has been provided by the informants.

The analysis in the report is intended to recommend ILGA Asia to produce a strategic plan for 2021-2025. Positions in the report lie with the participants of the consultations and interviews, and do not reflect the values and viewpoints of the collective network.

Suggested citation: Chen, N.W., 2021. *Reset and reflect: LGBTIQ community in Taiwan after the marriage equality campaign*. ILGA Asia.



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Acknowledgements

This report is commissioned and conducted by ILGA Asia from November 2020 to January 2021. Publication of this report is made with a series of consultations with ILGA Asia's member organizations in Taiwan, with the support of the lead consultant Nai-chia Chen. The peer review and editing team included ILGA Asia Executive Director Lieu Ann Vu, Research Officer Henry Koh, Program Officer Khine Su Win, Senior Global Advocacy Officer Ripley Wang and UN Advocacy Intern Meghna Sharma.

Independent consultant Pak Yong Kang provided proofreading and editing support. Several interpreters and translators, unnamed here for security reasons, assisted with secondary transcriptions of audio files of eyewitness and survivor testimony to enable ILGA Asia to triangulate findings and double-check initial interpretations for accuracy. Independent graphic designer Aaron Bonete created the layout and design of the report, under supervision of ILGA Asia Communications and Campaign Officer Numan Afifi and Communications Intern MJ Estabillo.

ILGA Asia extends a special thanks to survivors of rights violations, eyewitnesses, interviewees as well as human rights defenders, aid workers, and others who contributed to the research and documentation and generously shared their invaluable time, energy, and insights with ILGA Asia. Many are unnamed here.

ILGA Asia also extends solidarity and support to Taiwan's civil society and the LGBTIQ community who are engaged in local, national, and international-level human rights activism and advocacy, often at great personal risk. Special thanks to the generous supporters of ILGA Asia who make our work possible.

To protect the safety and privacy of members and informants, their names have been omitted from the publication where appropriate.



Executive Summary

Since World War II, SOGIESC rights movement in Taiwan took onto a different direction and flourished right after the then 38-year-long consecutive martial law period (between 20 May 1949 and 14 July 1987) was lifted – alongside democratization and other social movements – the visibility and discourses of sexual and gender minorities began to assimilate into Taiwan’s mainstream society. On 17 May 2019, coinciding with the International Day Against Homophobia, Transphobia and Biphobia (IDAHOBIT), the Constitutional Court of Taiwan legalized same-sex marriage. However, the historic ruling (*Judicial Yuan Interpretation No. 748*) is caveated with limited marriage rights. Same-sex couples are not entitled to transnational same-sex marriage, co-adoption, and assisted reproductive technologies. Furthermore, the same-sex marriage ruling created a vacuum on the protection against domestic violence. Traditionally, the development of family law and spousal rights are measured and benchmarked upon heteronormative family values and culture, incompatible with the diversity and dynamics of queer families. Since the major milestone on same-sex marriages, LGBTIQ rights advocates and communities are also fighting for rights in different areas including trans rights, HIV/AIDS prevention, intersex rights, and labour rights. The government stated that it would propose a draft bill to ensure the protection of fundamental rights for trans people. The proposed law reform promised to abolish the requirement for trans people to undergo sex reassignment surgeries as a precondition for those who wish to change their legal gender marker while introducing the third gender option in the proposed ‘surgery-free’ legal gender marker change process. The watershed moment that cemented Taiwan’s long and hard-fought journey towards achieving

marriage equality claimed its victory through the ruling of a landmark constitutional challenge. The **judicial** precedent paved a pivotal foundation for subsequent **legislative** reforms (including the government's commitment to see through the proposed bills into laws vowing to advance the fundamental rights of LGBTIQ people). While Taiwan's judiciary and legislative bodies' officiated the journey towards marriage equality through a binding legal precedent of the highest court (Supreme Court ruling) in the Republic's judicature – powerful enough to redefine the institution of marriage in its 1946 Constitution; the **executive** body of Taiwan's current government has been implementing reforms that would create social impact and encourage deeper civil discourse on SOGIESC, misconceptions and taboos assumed at LGBTIQ people, and what to educate the public on what does the ruling on marriage equality mean for its people, and to foster a tolerant society towards LGBTIQ people through systemic reforms within the administration. These reforms are measured and observed from the gradual updates of guidelines, regulations and policies used across Taiwan's civil service agencies, administrative departments, and its social welfare system – representing the State in setting the right public tone recognize the inclusion of SOGIESC rights along with non-discrimination in State policies.

However, the consultative findings of this report noticed existing challenges and opportunities for the Taiwan LGBTIQ movement. Community-based organizations (CBOs) are facing the struggle with sustainable funding to support their grassroots programmes; coupled with the unavoidable impact of the COVID-19 pandemic, not only does the virus outbreak has severely impaired the human biology and our ecosystem, but the health of our global economy suffered a major stroke, and metastasized across the demographics that suffered most, namely small medium business enterprises (SMEs) and grassroots-led organisations or CBOs within the third sector. Leaders of CBOs emphasized their shared financial and operational struggles. With the halt of project grants and a sharp drop in donation and contributions in resources, some planned activities, campaigns and workshops have to be postponed without further notice; as majority of CBO initiatives involve grassroot-mobilisation on civic engagements. Some of

the advocacy-focused and urban-based activists also shared their concerns of how the pandemic has affected the general well-being of LGBTI activists and community leaders, where most of them and their respective organisations are trying their best to cope with the new normal, and still hoping to find solutions to reassimilate important annual events in the movement that are typically physically events to virtual options, as such as the annual pride event, global conferences and workshops. Some activists also noted their concerns in their advocacy work through political engagements due to the devastating referendum in 2018. During the pandemic and lockdown periods, the advocacy groups were reflecting on their previous campaigns and redirected their focuses to issues that were put aside or neglected in the past few years. On an optimistic note, the activists are willing to share their experiences with others in the region but some also pointed out the language barriers are still intimidating.



Introduction

Since the democratization of Taiwan in 1987, the local LGBTIQ rights movement, accompanied by other various social movements, have flourished. The first-ever Pride event took place in 2003 in the capital city, Taipei; and has grown into one of the largest Pride events in Asia. There are seven cities across the country that host Pride parades now, and all of them are organized by grassroots organizations and volunteers. Same-sex relationships are not criminalized, and same-sex marriage was legalized on 17 May 2019. However, the current law does not give full marriage rights to same-sex spouses, and the details will be further addressed in later sections. There is no “Equality Act” or “Non-discrimination Act” in Taiwan, but there are anti-discrimination clauses in different sets of laws. Two essential laws that protect LGBTIQ rights are the “Act of Gender Equality in Employment” (enacted in 2002) and the “Gender Equity Education Act” (enacted in 2004). Article 7 of the Constitution states that “All citizens of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law.” However, the term “gender” is not expressly written in the Constitution; hence in the ruling of the Constitutional Court, “sexual orientation” was said to be covered in Article 7 (Constitutional Court, 2017). In court decisions, when applying Article 7 of the Constitution, gender identity, gender expression, and sexual orientation are incorporated and no longer limited to sex anymore.

This report will start with introducing the terminology used, and turn to the overview of sexual orientation, gender identity and expression of sex characteristics (SOGIESC) rights issues in Taiwan based on news, public materials, and insights from activists, followed by viewpoints and analysis based on five interviews with community-based organizations, and conclude with recommendations.



Terminology

In this report, the phrase “*Tongzhi*” refers to the LGBTIQ community or a person identifying as LGBTIQ. *Tongzhi* was first used in the 1990s in Hong Kong, referring to homosexual individuals, but the term expanded and became an umbrella term describing those who do not conform to heteronormativity among the Mandarin-speaking society. In the Taiwanese context, “*Tongzhi*” is the term that is usually used by activists to indicate “LGBTI” or “LGBTQ+” or “LGBTQIA+.” However, some community members do not see themselves as *Tongzhi*. Scholars have also debated about the definition of *Tongzhi*, but it remains the most commonly used term that avoids stigmatized or stereotypical meanings in the local cultural context.

In the section on activists’ views, “*Tongzhi*” will be used instead of “LGBTIQ” to retain their original meanings. While this could be ambiguous sometimes, it is important not to deviate from the context of Taiwan.

Abbreviation of names of the organizations:

Family Advocacy	Taiwan LGBTIQ Family Rights Advocacy
Gay Sport	Taiwan Gay Sports and Taiwan Gay Development Movement Association
Hotline	Taiwan Tongzhi Hotline Association
BTW	Bi the Way Taiwan
OII	Organisation Intersex International Chinese

The list of organizations:

Family Advocacy

Established in 2005, Family Advocacy was formed by a group of lesbian mothers and gay fathers. It offered support and educational materials in the fight for the rights and interests of diverse families.

The organization runs three projects:

- a. family building consultation and support for same-sex couples who are planning to have children;
- b. family services including community support and legal consultation, and education programs for those who have children; and
- c. policy advocacy.

Gay Sport

The organization started by hosting sports games for gay men in Taiwan in 2017 and then officially registered in 2018 to join the 2018 Gay Games in Paris, France. It has two major projects: social movement and sport activity. Gay Sports launched a storytelling tour before the referendum in 2018 to share the stories of *Tongzhi* to rural areas in Taiwan and published a book of *Tongzhi* life stories. Gay Sports also advocated for same-sex marriage throughout the years. Currently, the organization is focused on hosting the 2021 Straits Games in Taipei.

Hotline

Founded in 1998 and is now the oldest and the largest lesbian, gay, bisexual, and transgender (LGBTIQ) organization in Taiwan. Hotline provides phone consulting services and a wide range of support, including HIV/AIDS prevention, trans rights advocacy, gender education, services for elder and teenage *Tongzhi* and family, and policy advocacy. Hotline serves as a community center, a support network, and a hub for SOGIESC rights activists in Taiwan.

BTW

Founded in 2007 from a virtual gathering group on an online forum, BTW is the first open-to-public bisexual support group. With only three volunteers, BTW focuses on hosting safe and welcoming gatherings for bisexual and pansexual folks. By organizing events in different cities around the country and marching in Pride events, BTW continues to raise awareness for bisexuality and recently included pansexuality into their focus.

OII

OII is a platform for Chinese-speaking intersex people to get information, awareness, connection, and peer support, and is also an intersex human rights advocacy organization. The founder came out as intersex to raise intersex awareness publicly by initiating the “Global Free Hugs with Intersex Movement” in the 8th Taiwan Pride in 2010. After coming out, s/he received more than 100 inquiries from Chinese-speaking intersex people and many intersex people worldwide. S/he is the only out Intersex activist in Taiwan now; by giving speeches and receiving media requests to share personal stories, S/he has raised awareness for intersex rights for more than a decade and has been very active in international intersex activism.





Overview of SOGIESC Rights Issues in Taiwan

Marriage and family issues:

Complete adoption rights: In “Act for Implementation of J.Y. Interpretation No. 748” (Act 748), same-sex spouses are not entitled to joint adoption rights for non-biological children, but a single person can apply to become an adoptive parent. Therefore, some same-sex couples are hesitant to get married, or if even they’re married, the legal adoption-matching services agency has to ask them to get a divorce first to be eligible. According to a poll in May 2020, the rate of support for same-sex couples adopting children is 56.8%, which implies that the majority of the public is relatively supportive (Taiwan Equality Campaign 2020).

Transnational same-sex marriage: Article 46 of “Act Governing the Choice of Law in Civil Matters Involving Foreign Elements” states that “The formation of a marriage is governed by the national law of each party”; hence people from states where same-sex marriage is not yet legalized cannot get married in Taiwan. Even for two foreign nationals who married each other in countries such as Canada, if one of them comes from a country where same-sex marriage is illegal, their marriage would not be recognized by Taiwan (Taiwan Equality Campaign 2020). Due to different sets of laws and regulations, people from Hong Kong, Macau, and China cannot register for same-sex marriage (Taiwan Equality Campaign 2020). This complex situation has caused inconvenience for transnational same-sex couples, and is exacerbated due to the COVID-19 pandemic. More than 200 pairs of transnational same-sex couples started a support group after Act 748 was enacted, and several lawsuits were filed against the government in challenging their transnational same-sex marriage rights.

Assisted reproductive technologies & surrogacy: Assisted reproductive technologies are available for heterosexual married couples only. Family Advocacy shared that because the society is unfamiliar with non-normative families, some counter-movements blame same-sex marriage for causing low birth rates. Surrogacy is illegal in Taiwan, but organizations such as the Taiwan Society for Reproductive Medicine have advocated for legalizing surrogacy. One lawmaker proposed a draft for surrogacy legislation in October 2020, but the draft is only catered for heterosexual married couples. Family Advocacy shared in the press conference that more than fifteen non-hetero normative families took risks and went overseas for surrogacy, but faced visa issues and challenging border restrictions in 2020 (Taiwan Equality Campaign 2020).

Domestic violence: Since 2007, the “Domestic Violence Prevention Act” redefined “family members” and covered non-marriage relationships; same-sex couples were therefore included, but throughout the years, very few cases were reported. According to the observations of non-governmental organisations’ (NGOs), 90% of the cases were unaddressed because

the persons involved were afraid of having their identities exposed, and did not trust institutions and professional support (Modern Women's Foundation 2019). Only when circumstances became very dire and urgent would *Tongzhi* victims reach out for help. Although Act 748 passed, "in-laws" were not expressly written in the clauses, creating a legal vacuum of domestic violence prevention. Supposedly, the abuser does not live with the victims in the same household, for instance. In this case, because the "Domestic Violence Prevention Act" is not applicable to same-sex marriages, parents-in-law can legally engage in abusive behaviour, so to say; which could result in a vicious cycle for domestic violence prevention since *Tongzhi* individuals tend not to report such cases (Ye Guanyu 2020).

Trans issues:

Discrimination: Although there are different sets of laws prohibiting the discrimination towards persons of diverse sexual orientations and gender identities, trans people seldom report cases of discrimination because they do not trust the system or do not want to be outed. *"No law regarding gender marker change and medical resources for trans persons, no inclusive public toilets and not enough physical/ mental health resources are available"* (Undisclosed Interview by ILGA Asia 2020)

The third gender option: It was reported that the government is considering providing the third gender option for legal documents, which aims at making the institution more inclusive for trans and intersex persons. The last public updates were announced in late 2018, with the Minister of National Development Council announcing that the new design of I.D. cards will be inclusive for trans persons but with no further details (Yiyuan 2018) A participant from intersex-led organization is willing to use the third gender, but they cannot speak on behalf of the intersex community on this issue. A LGBTIQ organization has no clear and firm statement on this issue yet, but mentioned that they would continue to provide knowledge and needs from the trans community to the government.

Surgery-free gender marker change (免術換證):

If one wishes to change the gender marker on their legal documents, one must acquire a certified diagnosis from two psychiatrists and undergo gender-affirming surgery to get their documents changed. Currently, this procedure is sanctioned by the Ministry of the Interior's executive orders in 2008 (Ministry of the Interior 2008). According to the concluding observations and general recommendations of Taiwan's CEDAW reporting cycle 2014, the review committee "is concerned about the surgical removal of reproductive organs" (International Review Committee 2018). In the ICCPR and ICESCR reporting cycle 2017, the review committee recommended the government "to provide for explicit legal recognition of their freely chosen gender identity, without unnecessary restrictions." (International Review Committee 2018) Whether or not trans people can change their gender marker freely without surgery, there have been policy discussions in the government since 2013; however, with no further progress since 2015. A trans woman accompanied by TAPCPR applied for gender marker change without providing surgery documents in November 2020 and campaigned for surgery-free gender marker change in the first half of 2021 (TAPCR 2020)

Employment and workers' rights: According to the online survey conducted by Hotline and Marriage Equality Coalition Taiwan in early 2020, the average income of trans people is lower than the average income of the whole *Tongzhi* community, while the average income of the *Tongzhi* community is lower than the national income, which implies that income inequality among queer persons does exist in Taiwan. (LGBTQ+ Workplace Equality Survey in Taiwan 2020) TAPCPR also surveyed in March 2020, and 37.3% of the trans respondents said they'd experienced discrimination and bullying due to their gender in their workplace; although there is the "Act of Gender Equality in Employment," 70% of the discrimination cases were also not taken care of, according to the respondents (Hsiao 2020) (Taiwan Tongzhi (LGBTQ+) Hotline Association 2020)

HIV/AIDS issues:

Social attitude: According to a poll released in June 2020, more than 50% of respondents have negative opinions of people living with HIV (PLHIVs); 40% of respondents had false or negative opinions about HIV, such as sexual promiscuity or assuming that PLHIVs are *Tongzhi*. Furthermore, 70% of the respondents did not know that daily medication reduces the risk of getting HIV if they were exposed to the virus, and 45% of them did not agree that people with HIV should receive equitable and friendly treatment, which reflects the challenges that HIV prevention measures are facing. (Staff Writer with CNA 2020)

Undetectable equals untransmittable (U = U):

The understanding of U = U is not prevalent yet, and in the "HIV Infection Control and Patient Rights Protection Act," article 21 regulates that people with HIV could be sentenced to up to twelve years in prison if they have sex without using a condom, including attempted sexual acts. An example of this is how two gay men used the law to sue each other after they broke up, which is not uncommon within the community (Li, 2020). In May 2020, one HIV activist launched a petition to amend the law on the National Development Council's website and received more than 5000 signatures within 60 days. The Ministry of Health and Welfare's official response stated that they acknowledged "U = U" but will continue to promote HIV/AIDS prevention through the current policy tools; the amendment of law will be taken into further consideration but with no specific time frame. According to a participant from LGBTIQ organization, some are afraid of being caught and sentenced, so they lied about their HIV statuses to their partners or refused to take medication; and some exploit the law as a form of revenge to report their ex-partners, which makes HIV/AIDS prevention even more challenging.

Intersex issues:

In June 2018, the Control Yuan issued a report on intersex human rights in Taiwan and proposed corrective measures to the Ministry of Health and Welfare and the Ministry of the Interior for neglecting the rights of intersex people. It is estimated that Taiwan has 400,000 intersex people, but there is no official demographic data, not to mention policies that support them and their families. The report also pointed out the need to change the gender registration system to include intersex people's needs (Gao and Sun 2018).

After receiving corrective measures from the Control Yuan, the Ministry of Health and Welfare released a guideline in November 2018. The guideline regulates that intersex children fewer than twelve should not receive involuntary surgery unless diagnosed with cancer or physiological dysfunction (Department of Medical Affairs, 2018). In January 2020, the Ministry of Health and Welfare released a list of 16 hospitals recommended for intersex people for medical resources (Department of Medical Affairs, 2018).



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ILGA Asia is the Asian Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, representing more than 170 member organizations in East Asia, South Asia, Southeast Asia and West Asia.

Our vision is a world where Asia is a safe place for all, where all can live in freedom and equality, be properly informed in the nature of sexual orientation and gender identity & expression and sex characteristic (SOGIESC) rights, have access to justice, and diversity is respected.

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