

Commentary

Analyzing Thailand’s Amendments to the Civil and Commercial Code on Marriage Equality: Progress, Shortcomings, and the Struggle for LGBTIQAN+ Rights to Family Establishment

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Thailand’s proposed amendment of the Civil and Commercial Code (“CCC”) on marriage equality, recently passed by the lower house of Parliament on 27 March 2024, marks a historic milestone and represents a significant step towards recognizing the rights of Lesbian Gay Bisexual Transgender Intersex Queer Asexual and Non-Binary+ (LGBTIQAN+) individuals to establish families. This commentary article critically examines the draft legislation through the lens of international human rights law and domestic constitutional principles of equality and human dignity. Situating the Act within Thailand’s international obligations, the article traces the legislative history and highlights the progressive vision of the Civil Society Draft, which developed from the thesis-based research of Chawinroj Teerapatcharaporn, School of Law, Sukhothai Thammathirat Open University (STOU). It commends the shift towards gender-neutral language in marriage eligibility while critiquing the retention of binary “father/mother” terminology as falling short of genuine inclusivity. Drawing

* Lecturer, School of Law, Mae Fah Luang University; nada.cha@mfu.ac.th. This Commentary provides insight into several significant factors and key provisions of the draft bill containing 69 sections as passed by the lower house. However, it is important to note that the analysis is limited to the version of the bill approved by the House of Representatives and does not cover any potential amendments or changes that may be introduced during the Senate’s consideration of the bill, which includes the 2nd and 3rd readings. As the legislative process was still ongoing at the time of writing, the final content of the Marriage Equality Act may differ from the version analyzed in this commentary. Furthermore, the Commentary focuses on specific aspects of the bill, such as gender-neutral language, parental terminology, and religious opposition, and does not provide a comprehensive analysis of all 69 sections. Future research may be necessary to examine the impact and implications of the final Act once it is passed and implemented.

from parliamentary debates, the commentary engages with objections raised by religious party MPs, countering them by reasserting the primacy of constitutional equality and secular human rights principles over religious precepts in civil law matters. The article concludes by assessing the Act's potential impact and the ongoing struggle for fully realizing LGBTIQAN+ family rights, calling for further reform that embraces gender neutrality and equality regardless of sexual orientation, gender identity, gender expression, and sex characteristics (SOGIESC).

I. THE INTERNATIONAL HUMAN RIGHTS LAW FRAMEWORK AND THAILAND'S OBLIGATIONS AROUND EQUALITY, NON-DISCRIMINATION AND PROTECTING THE DIGNITY OF LGBTIQAN+ INDIVIDUALS

The right to non-discrimination and equality before the law is a fundamental right enshrined in international human rights instruments.¹ However, many LGBTIQAN+ individuals have faced the burden of concealing their identity due to fear of prejudice. In 2009, the Committee on Economic, Social and Cultural Rights (CESCR) released General Comment No. 20, which affirmed that sexual orientation and gender identity are protected under the category of “other status,”² and are among the prohibited grounds of discrimination recognized in the Universal Declaration of Human Rights.³ Additionally, the Committee on the Elimination of Discrimination against Women has emphasized the importance of applying an “intersectional” approach to states’ obligations, considering not only sex and gender but also sexual orientation and gender identity when fulfilling their duties to respect, protect, and fulfill human rights.⁴ Thus, it could be argued that the right to family establishment addressed in Article 16 of the UDHR can be interpreted as one of the fundamental rights that LGBTIQAN+ individuals should be able to enjoy, just as straight women and men do.⁵

Thailand has demonstrated its commitment to human rights by being one of the first nations to join the Universal Declaration of Human Rights and ratifying eight

¹ United Nations Human Rights Committee, CCPR General Comment No. 18: Non-Discrimination, 10 November 1989, para 1.

² United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (International Covenant on Economic, Social and Cultural Rights, art 2 para 2) 2 July 2009, E/C.12/GC/20, para 32.

³ Universal Declaration of Human Rights, United Nations General Assembly Res 217 A(III) art 2.

⁴ United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 28: The Core Obligations of States Parties (Article 2 of the Convention), 16 December 2010, CEDAW/C/GC/28, para 18.

⁵ Universal Declaration of Human Rights (n 3) art 16. “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.”

of the nine core international human rights instruments,⁶ including the International Covenant on Civil and Political Rights (ICCPR),⁷ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁸ In terms of specific international instruments related to gender equality, Thailand ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1985, initially with reservations on Article 16. This article instructs the government to ensure that women have equal rights in all aspects of family life, including in marriage and their role as mothers. These reservations were later withdrawn in 2012.⁹

Furthermore, Thailand was one of the states supporting the historic resolution for upholding the principles of the Universal Declaration of Human Rights (UDHR). The United Nations Human Rights Council passed a resolution on human rights violations based on sexual orientation and gender identity.¹⁰ While Thailand has sought to establish itself as a committed advocate for human rights on the international stage, as evidenced by its support for the appointment of the first-ever UN Independent Expert on Sexual Orientation and Gender Identity (UN IESOGI), Professor Emeritus Vitit Muntarbhorn observed on 30th September 2016¹¹ that the country's progress in advancing LGBTIQAN+ rights domestically has been notably slow and incremental. Despite this symbolic gesture of support for the UN IESOGI, Thailand has struggled to translate its international commitments into tangible legal protections and equality measures for its LGBTIQAN+ citizens.¹²

For example, during the 3rd Universal Periodic Review, Thailand received 12 recommendations based on SOGIESC, with 4 of them specifically urging Thailand to enact marriage equality and legal gender recognition laws.¹³ However, Thailand's

⁶ On 14 May 2024, Thailand deposited the instrument of ratification of the International Convention for the Protection of all Persons from Enforced Disappearance (ICPPED), which came into effect on 13 June 2024. See Ministry of Foreign Affairs of the Kingdom of Thailand (16 May 2024) <<https://www.mfa.go.th/en/content/icpped140524-2?cate=5d5bcb4e15e39c306000683e>>.

⁷ Thailand entered to be bound by the ICCPR since 29 October 1996.

⁸ Thailand entered to be bound by the ICESCR since 5 September 1999.

⁹ "Consideration of Reports Submitted by States Parties Under Article 18 of the Convention, Sixth and Seventh Periodic Reports of States Parties due in 2010: Thailand" *UN Committee on the Elimination of Discrimination Against Women (CEDAW)* (29 May 2016) (CEDAW/C/THA/6-7) <<https://www.refworld.org/docid/582d782f4.html>>.

¹⁰ "Historic Decision: Council Passes First-Ever Resolution on Sexual Orientation & Gender Identity" *International Service for Human Rights* (17 June 2011) <<https://ishr.ch/latest-updates/historic-decision-council-passes-first-ever-resolution-sexual-orientation-gender-identity/#Votes>>.

¹¹ "UN Human Rights Office Congratulates Prominent Thai Academic on Becoming UN's First SOGI Independent Expert" *UN OHCHR South-East Asia Regional Office* (30 September 2016) <<https://bangkok.ohchr.org/news-release-un-human-rights-office-congratulates-prominent-thai-academic-on-becoming-uns-first-sogi-independent-expert/>>.

¹² Vitit Muntarbhorn, "Challenges to Gender Equality in Thailand" *Bangkok Post* (8 March 2018) <<https://www.bangkokpost.com/opinion/opinion/1424306/challenges-to-gender-equality-in-thailand>>.

¹³ ข้อเสนอแนะที่ประเทศไทยได้รับ และคำมั่นโดยสมัครใจภายใต้กลไก Universal Periodic Review (UPR) กระทรวงการต่างประเทศ ["Thailand's Accepted Recommendations and Voluntary Pledges Universal Periodic Review (UPR) 3rd Cycle" *Ministry of Foreign Affairs*] (Thai) <<https://humanrights.mfa.go.th/th/upr/report-3/reporto8.php>>.

decision to deny acceptance of these crucial recommendations raises serious concerns about its genuine commitment to advancing LGBTIQAN+ rights.¹⁴ The rejection of these recommendations, coupled with the glacial pace of reform and the persistence of discriminatory laws and practices, calls into question the sincerity of Thailand's support for the UN IESOGI and its overall dedication to ensuring the fundamental human rights and dignity of all individuals, regardless of their SOGIESC status.¹⁵ By refusing to accept these recommendations, Thailand has missed an opportunity to demonstrate its commitment to LGBTIQAN+ rights, especially when it comes to the right to family establishment. This is particularly striking, given that the government has been promoting the idea that diversity is amazing and has produced a commercial campaign to support marriage ceremonies through "Go Thai Be Free" by The Tourism Authority of Thailand. Meanwhile, Thai LGBTIQAN+ citizens still lack the basic fundamental right to marry someone they love.¹⁶

II. THE LEGISLATIVE HISTORY AND BACKGROUND ON THE VARIOUS DRAFT BILLS, INCLUDING THE PROGRESSIVE CIVIL SOCIETY DRAFT'S PROPOSAL FOR GENDER-NEUTRAL PARENTAL TERMINOLOGY

According to the archives of the Thai parliament, on August 9th, 2012, a same-sex couple wanted to register their marriage but was rejected. They then filed a complaint with the relevant government agencies, leading to the drafting of the Civil Partnership Bill during the term of former Prime Minister Yingluck Shinawatra in 2013. However, it did not cover the same benefits and welfare as male–female couples because the drafting of this Civil Partnership Bill used provisions in the form of a "presumption" to apply the legal principles of the obligations between husband and wife, as stipulated in Book 5 and Book 6 of the Civil and Commercial Code.¹⁷

At that time, the global trend in Western countries was to have a Civil Partnership Act, so the movement began in earnest in Thailand, while marriage equality was just a blurry idea with a mere possibility of it happening in Thailand. The

¹⁴ แผนการปฏิบัติตามข้อเสนอแนะที่ไทยตอบรับ และคำมั่นโดยสมัครใจภายใต้กลไก กระบวนการต่างประเทศ ["Implementation Plan for Thailand's Accepted Recommendations and Voluntary Pledges, Universal Periodic Review (UPR) 3rd cycle" *Ministry of Foreign Affairs*] (Thai) <<https://humanrights.mfa.go.th/upload/แผนการปฏิบัติตามข้อเสนอแนะที่ไทยตอบรับและคำมั่นโดยสมัครใจ.pdf>>.

¹⁵ "Thailand's Third UPR Outcome: We Must Not Congratulate the Thai Government!" *Manushya Foundation* (22 March 2022) <<https://www.manushyafoundation.org/post/thailand-s-third-upr-outcome-we-must-not-congratulate-the-thai-government>>.

¹⁶ Tourism Authority of Thailand New York Office's "Go Thai. Be Free." <<https://www.gothaibefree.com>>.

¹⁷ ศิริชนก วิริยะก่อกุล สิทธิการสมรสระหว่างบุคคลเพศเดียวกัน กลุ่มงานบริการวิชาการ 3 สำนักวิชาการ [Sirichanok Wiriyaekul, "The Right to Same-Sex Marriage" *Academic Services Group 3, Bureau of Academic Affairs, Parliament*] (Thai) <https://www.parliament.go.th/ewtadmin/ewt/parliament_parcy/ewt_dl_link.php?nid=47682>.

coup in Thailand on May 22, 2014 led to the cancellation of this draft law before the consideration of the lower house, and it was further developed during the military government of General Prayut Chan-o-cha, the Prime Minister, until the draft of Civil Union Bill was completed to compete with the marriage equality bill proposed by Move Forward Party, the opposition after the general election of the 25th Parliament.¹⁸ However, both draft bills passed the first reading on May 15, 2022, yet they failed to progress through the third reading before the conclusion of the 25th Parliament due to the uncertain political atmosphere.¹⁹

The equal marriage movement was reignited into a surging social trend following the general election on May 14th, 2023. All political parties, especially the Move Forward Party and the Pheu Thai Party, sought to push for equal marriage, except for the party whose supporters are Muslim religious groups. The author notes three important factors that have resulted in the marriage equality draft bill being at the heart of the political landscape in this election:

- 1) The Constitutional Court's ruling no. 20/2564: The Constitutional Court's ruling that the current marriage law under Section 1448 of the Civil and Commercial Code is not unconstitutional.²⁰ One of the reasons the judges addressed was that marriage law is preserved only for heterosexual couples; thus, social welfare is supposed to support heterosexual married couples as they can form delicate family relationships.²¹ The judges argued that sex assigned at birth is an "Act of God," which is a part of nature, unless LGBTIQAN+ individuals can prove that same-sex animals can develop the same kind of delicate relationships among their species. Only then can the call for marriage equality resume for its consideration. Furthermore, to allow LGBTIQAN+ couples to enjoy the social welfare benefits of heterosexual couples is deemed as taking advantage of the national tax system that could lead to national insecurity.²² This ruling has ignited the power of the civil society movement's struggle.
- 2) The support of over 360,000 signatures from the public in the "Support 1448" campaign by the Rainbow Coalition for Marriage Equality (RCfME): During the consideration of the Civil Union Bill and Marriage Equality Bill in the 25th House of Representatives, the RCfME was formed under the leadership of Aun Waaddao Chumaporn, a civil society organization representative and the

¹⁸ รวมข้อมูลความเคลื่อนไหวการแก้ไขประมวลกฎหมายแพ่งฯ เพื่อ #สมรสเท่าเทียม ["Compilation of Information on the Movement to Amend the Civil Code for #MarriageEquality"] *iLaw* (30 January 2023)] (Thai) <<https://www.ilaw.or.th/articles/17971>>.

¹⁹ เส้นทาง 22 ปี สู่ "สมรสเท่าเทียม" อีกขั้นสู่ความเท่าเทียม *Thai PBS* ["22-Year Journey to 'Equal Marriage' Takes Another Step Toward Equality"] *Thai PBS* (21 December 2023)] (Thai) <<https://www.thaipbs.or.th/news/content/335137>>.

²⁰ Constitutional Court of Thailand, Ruling No. 20/2564.

²¹ *ibid* 8.

²² *ibid* 10.

founder of Bangkok Pride.²³ The coalition gathered over 362,358 signatures in support (data as of May 10, 2024) in order to respond to the Constitutional Court's ruling that marriage equality is possible through the amendment of Thailand's CCC, as demonstrated through the comprehensive legal model thesis and problem-based research by Chawinroj Teerapatcharaporn and Panumas Kudngaongarm from the School of Law, Sukhothai Thammathirat Open University. The campaign highlighted that without political will and meaningful engagement from LGBTIQAN+ people, achieving marriage equality, including changing legal terms to gender-neutral language, can be an insurmountable challenge.²⁴

- 3) The estimated 4 million-strong LGBTIQAN+ voter base: "Marriage equality" has been a long-standing political battleground together with the growing acceptance of LGBTIQAN+ rights, self-determination, and inclusivity, combined with the economic potential of the 4 million-strong Thai and 7 million-strong global LGBTIQAN+ community, has made it essential for political parties to engage with this demographic.²⁵ As social trends evolve, parties risk losing votes if they fail to address these issues, and MPs face media and online scrutiny for their voting records.²⁶ During the latest election, the LGBTIQAN+ Civil Rights Network for Political Party's Policy 2023 was sought out by nearly every party for their input, highlighting the increasing political significance of the equal rights movement, as well as the parties' commitment and accountability to the cause.²⁷

²³ From the Rainbow Coalition for Marriage Equality website <<https://www.support1448.org>>.

²⁴ "สมรสเท่าเทียมเป็นของประชาชน" คุยกับ 'วาดดาว' ชุมมาพร แต่งเกลี้ยง ในวันที่ผู้คนส่งเสียงถึงความหลากหลาย *Thairath Plus* ["Equal Marriage Is for the People': Discussing With 'Waad Dao' Chummaporn Taengkliang on the Day When People Express their Voices about Diversity"] *Thairath Plus* (22 June 2023)] (Thai) <<https://plus.thairath.co.th/topic/politics&society/101692>>.

²⁵ สู่เลือกตั้ง '66: หาเสียงนโยบาย 'LGBT-สตรีและเด็ก' รัฐโอบรับหรือการตลาดชายผืน? ["The Road to the '66 Election: Seeking Votes with the Policy 'LGBT-Women and Children' – State Support or Market of Dreams?"] *The Opener* (25 January 2023)] (Thai) <<https://theopener.co.th/node/1560>>.

²⁶ สภาขับเคลื่อนการร่างกฎหมายแพ่ง #สมรสเท่าเทียม และร่างพ.ร.บ.คู่ชีวิต จับตาต่อวาระสอง-สาม ["iLaw Reviewing the Draft Principles of the #EqualMarriage Law and the Draft Civil Partnership Bill, Watching Over the Second and Third Readings"] *iLaw* (15 June 2022)] (Thai) <<https://www.ilaw.or.th/articles/5259>>.

²⁷ เปิดซองคำถาม . . . นโยบายเพื่อความหลากหลายทางเพศ พรรคไหนมองลง! ["Opening the Envelope of Questions . . . Which Party Will Embrace Policies for Gender Diversity?"] *The Active* (12 April 2023)] (Thai) <<https://theactive.net/data/lgbtqna-rights-policy/>>.

III. ANALYZING KEY PROVISIONS: GENDER-NEUTRAL ELIGIBILITY, BINARY PARENT TERMS, AND RELIGIOUS OPPOSITION

There were four draft bills to compile and submit to the 2nd and 3rd readings. The Ad Hoc Committee (AHC) for Drafting the Marriage Equality Law was using the cabinet draft as a baseline for the compilation of the drafts based on the MPs' vote in favor from the 1st reading.²⁸ This section will focus on the most significant similarities and differences among all draft bills, especially the criteria for marriage contracts, such as the change in the eligible age from 17 to 18 years old to end child marriage in Thailand, the obligations between legal spouses, and the parentage status, which are the most critical points throughout the debate within the AHC. It will address the point of view from the draft submitted by the Rainbow Coalition for Marriage Equality, which proposes an inclusive solution for parentage status that aligns with SOGIESC rights.

A. The Shift to Gender-Neutral Language (“Person”) and the Eligible Age for Marriage Eligibility

The amendment of section 1448,²⁹ which changes the legal criteria for entering a marriage contract from male and female to “person” and resultantly designates them as legal spouses instead of husband and wife, appears to focus not only on diverse sexual orientations, but also on being gender-identity inclusive. This aligns with the aim to create a law that provides equal marriage rights to all individuals, using gender-neutral terms such as “person” and “legal spouse,” that respect all sexual orientations and gender identities. Simultaneously, the amendment raises the eligible age for entering a marriage contract from 17 years to 18 years, addressing the issue of child marriage. This change brings Thailand in line with the prevention of harmful practices through forced marriage, as outlined in the United Nations Convention on the Rights of the Child (UNCRC) and the joint general recommendation No. 31 of the Committee on the Elimination of Discrimination Against Women, as well as general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices.³⁰

²⁸ บันทึกการประชุม คณะกรรมาธิการวิสามัญพิจารณาร่างพระราชบัญญัติแก้ไขเพิ่มเติมประมวลกฎหมายแพ่งและพาณิชย์ (ฉบับที่ ..) พ.ศ. สภาผู้แทนราษฎร 3 มกราคม B.E. 2567 ประชุม ครั้งที่ 1 [“Minutes of the meeting of the Ad Hoc Committee for Considering the Draft Act to Amend the Civil and Commercial Code (No. ..) B.E.” House of Representatives (3 January 2024) Meeting No. 1] (Thai) <<https://web.parliament.go.th/view/282/บันทึกการประชุม/TH-TH#>>.

²⁹ ร่างพระราชบัญญัติแก้ไขเพิ่มเติมประมวลกฎหมายแพ่งและพาณิชย์ (ฉบับที่ ..) พ.ศ. สภาผู้แทนราษฎร B.E. 2567 มาตรา 13] [“Draft Act Amending the Civil and Commercial Code (No. ...) B.E.” House of Representatives (2024) s 13] (Thai) <https://www.senate.go.th/document/Lawdraft/Ext5/5986_0001.pdf>.

³⁰ Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination Against Women, General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices (CEDAW/C/GC/31/Rev.1–CRC/C/GC/18/Rev.1) United Nations (8 May 2019), para 7, 20–25 and 83 <<https://undocs.org/CEDAW/C/GC/31/Rev.1>>.

However, the controversial issue of an individual's gender marker for legal identification purposes in criminal and civil law remains, particularly for transgender and non-binary individuals.³¹ Transgender people who cannot legally amend their gender marker to align with their gender identity face conflicts with societal norms.³² The lack of legal gender recognition can lead to discrimination and exclusion, and the UN IESOGI report recommends ensuring marriage equality for transgender people and revising existing laws and regulations, accordingly.³³

Access to family inclusion is a fundamental human right that should be granted to everyone, as it is essential for ensuring an individual's autonomy, self-respect, and liberty.³⁴ Raising the eligible age for marriage to 18 years and using gender-neutral language in the law are crucial steps towards promoting family inclusion and protecting the rights of all individuals, regardless of their sexual orientation or gender identity.

B. The Debate on the Legal Term for Parenthood

The debate on the legal term for parenthood is further complicated by the discussion within the AHC over the term “บุพการี,” which refers to ascendants in section 28 of the current CCC. The RCfME proposed using the gender-neutral term “บุพการีลำดับแรก” or “primary parent” for parenthood to clearly distinguish that the ascendants mentioned in section 28 of the CCC,³⁵ which include parents, grandparents, and great-grandparents, are not applicable for the parentage status in the context of marriage equality. This led to the proposal of the term “parent” or “primary parent” being reserved for the minority committee (AHC representative from RCfME) to convince all MPs during the second reading. Although the House of Representatives voted to pass the marriage equality draft law through all three readings, the equal marriage law that was passed focuses only on amending Chapter 3 on the relationship between spouses, and Chapter 4 on property between spouses. However, it excludes the proposed provisions defining the parent-child relationship and adoption, to conform

³¹ Christopher Hutton, “Legal Sex, Self-classification and Gender Self-Determination” (2017) 11(1) Law and Humanities 66 <<https://doi.org/10.1080/17521483.2017.1320037>>.

³² “Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law” *United Nations, & Office of the High Commissioner for Human Rights* (2019) (2nd ed) <https://www.ohchr.org/sites/default/files/Documents/Publications/Born_Free_and_Equal_WEB.pdf>.

³³ United Nations General Assembly (12 July 2018). Report of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity (A/73/152), para 78(a).

³⁴ “Measuring LGBTI Inclusion: Increasing Access to Data and Building the Evidence Base” *United Nations Development Programme* (2016) <<https://globalphilanthropyproject.org/wp-content/uploads/2016/11/Measuring-LGBTI-Inclusion-Research-Paper-July-5-submitted-for-Montevide....pdf>>.

³⁵ Civil and Commercial Code of Thailand, s 28, “Application for Declaration of Incapability or Insanity of a Person.”

with the rights and duties of parents and children, which were proposed by the RCfME.³⁶

Just as the proposed amendments change “male” and “female” to “person,” and “husband” and “wife” to “legal spouse,” building a family inevitably involves the relationship between the child and the biological, adoptive, and surrogacy parents. The term “บุพการีลำดับแรก” or “primary parents” is a gender-neutral term that respects all sexual orientations and gender identities. It allows for the determination of the relationship between the child and the biological, adoptive, or surrogacy parents to be based on the principle of self-determination, granting individuals the right to establish a family under this law. In order to enforce the marriage equality law under the CCC in relation to other laws that address the obligations between husband and wife, such as in the National Mental Health Act B.E. and The Criminal Procedure Code and etc., the AHC agreed to establish a new section 67, which acts as a kind of temporary provision until other laws are amended to recognize the status of LGBTIQAN+ spouses. However, section 67, paragraph two, contains contradictory language that prohibits the application of the law in cases where laws or ministerial regulations are issued to protect the rights and duties of husband and wife in particular.³⁷

C. The Shortcoming of Retaining Binary “Father/Mother” Terms

However, the AHC representatives from the cabinet, including the Office of the Council of State (OCS) and the Ministry of Justice (MoJ), strongly opposed this idea, asserting that it might create confusion among legal practitioners in defining responsibilities and obligations between children and parents, whether from bloodline, adoption, or surrogacy.³⁸ Furthermore, they argued that it would create additional workloads and be time-consuming for parliamentarians, related government agencies, and the Juvenile and Family Court to amend all the related laws.³⁹ The RCfME representative countered that if parenthood could not be included in the draft and only father/mother terms remained, it would limit this bill to being

³⁶ การเสนอร่างพระราชบัญญัติแก้ไขเพิ่มเติมประมวลกฎหมายแพ่งและพาณิชย์ (ฉบับที่ ...) พ.ศ. ... สำนักงานเลขาธิการสภาผู้แทนราษฎร 27 พฤศจิกายน B.E. 2566 [“Draft Act Amending the Civil and Commercial Code (No. . . .) B.E. . . .” *Office of the Secretariat of the House of Representatives* (27 November 2023) ss 48–66] (Thai) <https://www.senate.go.th/document/Lawdraft/Ext5/5814_0001.pdf>.

³⁷ การเสนอร่างพระราชบัญญัติแก้ไขเพิ่มเติมประมวลกฎหมายแพ่งและพาณิชย์ (ฉบับที่ ...) พ.ศ. ... สำนักงานเลขาธิการสภาผู้แทนราษฎร B.E. 2567 [“Draft Act Amending the Civil and Commercial Code (No. ...) B.E. . . .” *Office of the Secretariat of the House of Representatives* (2024) s 13] (Thai) <https://www.senate.go.th/document/Lawdraft/Ext5/5986_0001.PDF>.

³⁸ บันทึกการประชุม คณะกรรมาธิการวิสามัญพิจารณาร่างพระราชบัญญัติแก้ไขเพิ่มเติมประมวลกฎหมายแพ่งและพาณิชย์ (ฉบับที่ ...) พ.ศ. ... สภาผู้แทนราษฎร 21 กุมภาพันธ์ B.E. 2567 ประชุม ครั้งที่ 8 [“Minutes of the Meeting of the Ad Hoc Committee for Considering the Draft Act to Amend the Civil and Commercial Code (No. ...) B.E. . . .” *House of Representatives* (21 February 2024) Meeting No. 8] (Thai) <<https://web.parliament.go.th/view/282/บันทึกการประชุม/TH-TH#>>.

³⁹ *ibid.*

merely same-sex marriage instead of truly achieving equality for all people with diverse SOGIESC status.⁴⁰

D. The Hostility from a Religious-Based Political Party and MPs

During the 1st reading of all draft bills and throughout the legislative procedure to pass the amendment of the CCC for marriage equality, Muslim MPs, led by the Prachachat Party and conservative Muslim MPs from the Democrat Party, took action against the proposed changes. They argued that marriage should only be allowed between individuals who were assigned male and female at birth, asserting that this is a sacred rule in the Quran.⁴¹ These MPs called for the prohibition of all bills or demanded that the bill include a specific provision to exempt all Muslim citizens from the application of this law, especially in the three deep-south provinces of Thailand. They also contended that their constitutional right to freedom of religion would be violated if marriage equality were to prevail over their claimed rights. Additionally, they raised concerns about a potential decrease in population over the next 30 years if the law were to pass.⁴²

While Thailand is officially a secular state, religious institutions such as Buddhism, Islam, and Christianity undeniably play crucial roles in shaping attitudes towards LGBTIQAN+ acceptance or unacceptance in various aspects of life, including the recognition of SOGIESC rights within the Thai legal system. In modern Western states, religious morality and secular morality are often separated. However, Kan Sangthong and Bhasrah Boonyarhiti's study demonstrated that the overlap between state authority and Buddhism in Thailand has created ambiguity in administrative power.⁴³ Islam, as the second-largest religious institution legally recognized in Thailand,⁴⁴ also takes advantage of this type of intervention, as evidenced by religious MPs' debates against marriage equality, claiming that the same principle of "equality before the law" enshrined in Article 27 of the Thai constitution prevails and opposing the passage of the marriage equality bill.

⁴⁰ *ibid.*

⁴¹ Matichon TV, "(FULL VERSION) วันประวัติศาสตร์ สภาโหวตรับหลักการ ร่าง กฎหมายสมรสเท่าเทียม : Matichon TV" [Matichon TV, "Short Cut of 1st Reading Debate on Marriage Equality Law" *YouTube* (21 December 2023)] (Thai) <https://www.youtube.com/watch?v=O67cPv_Wc3U>.

⁴² ประชาชาติยืนยันไม่รับสมรสเท่าเทียม ชี้ขัดหลักอิสลาม บอกต้องเป็นชาย-หญิงเท่านั้น หวั่น 30 ปีข้างหน้ามีแต่ผู้สูงอายุ *The Standard* 21 ธันวาคม B.E. 2566 ["Prachachat Party Confirms Not Accepting Marriage Equality, Pointing Out That It Contradicts Islamic Principles, Saying It Must Be Only Between Men and Women, Fearing that in 30 Years There Will Be Only Elderly People" *The Standard* (21 December 2023)] <<https://thestandard.co/equal-marriage-law-211266-2/>>.

⁴³ กันต์ แสงทอง ภัสสร บุญยฤทธิ์ รัฐกับศาสนา: ความไม่ชัดเจนของรัฐไทยในความเป็นรัฐโลกาวิสัยหรือรัฐศาสนา [Kan Sangthong & Bhasrah Boonyarhiti, "State and Buddhism: The Ambiguous State Between Secularism and Religion" (*Journal of Social Sciences and Humanities* (2018) 1 Mahamakut Rajavidyalaya University 81) (Thai) <<https://soo4.tci-thaijo.org/index.php/JSSMBU/article/view/248737/169021>>.

⁴⁴ Administration of Islamic Organisations Act B.E. 2540.

The tension between religious liberty and LGBTQAN+ rights, particularly in the context of anti-discrimination laws, presents a significant challenge in modern society. Balancing the protection of religious freedom with the prevention of discrimination against LGBTQAN+ individuals requires careful legal and moral consideration, as exemptions based on religious beliefs can potentially undermine the compelling governmental interest in ensuring equal rights and dignity for all citizens.⁴⁵ A secularist movement is essential to prevent religious ethics from impeding constitutional rules and fundamental rights, especially regarding sexual and reproductive rights.⁴⁶ There are empirical studies proving that Thai LGBTQAN+ persons are particularly vulnerable to violence and discrimination based on SOGIESC,⁴⁷ making it imperative to protect their rights through legal frameworks.⁴⁸ Conflicts between religious beliefs and civil rights, particularly concerning LGBTQAN+ rights, highlight the need for clear legal protections and the resolution of value conflicts in legislation. International Human Rights Law plays a significant role in advocating for the rights of LGBTQAN+ individuals, emphasizing the discrepancies between state policies and international human rights standards.⁴⁹

IV. CONCLUSION

After the draft marriage equality bill passed the lower house on 27th March 2024, the importance of using gender-neutral legal terminology was brought into question by Associate Professor Arnon Manmout from Thammasat University's Faculty of Law in his article "Can LGBTQAN+ Individuals Be "Parents" To Someone?"⁵⁰ He argues that the question of who can become a legal "parent" is very significant, especially within the Thai cultural context where parenthood is highly revered and reflects a valuable

⁴⁵ Chai R. Feldblum, "Protecting LGBTQ Liberty and Religious Liberty" (2022) 47(1/2) Human Rights Magazine <https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/intersection-of-lgbtq-rights-and-religious-freedom/protecting-lgbtq-liberty-and-religious-liberty/>.

⁴⁶ Woodard King Mott, "Queer Politics: Re-Shaping the Politics of Church and State (2022) 13(7) Religions 663 <<https://doi.org/10.3390/rel13070663>>.

⁴⁷ Timo T. Ojanen, James Burford, Adisorn Juntrasook, Athita Kongsup, Titikarn Assatarakul, and Nada Chaityajit, "Intersections of LGBTI Exclusion and Discrimination in Thailand: The Role of Socio-Economic Status" (2019) 16(4) Sexuality Research and Social Policy 529–42 <<https://doi.org/10.1007/s13178-018-0361-x>>.

⁴⁸ "The Role of the United Nations in Combatting Discrimination and Violence Against Lesbian, Gay, Bisexual, Transgender and Intersex People" *United Nations Office of the High Commissioner for Human Rights* (2019) <https://www.ohchr.org/sites/default/files/Documents/Issues/Discrimination/LGBT/UN_LGBTI_Summary.pdf>.

⁴⁹ Paula Gerber and Joel Gory, "The UN Human Rights Committee and LGBT Rights: What Is It Doing? What Could It Be Doing?" (2014) 14(3) Human Rights Law Review 403–39 <<https://doi.org/10.1093/hrlr/ngu019>>.

⁵⁰ อานนท์ มาเฝ้า LGBTQIA+ จะเป็น 'บุพการี' ของใครสักคนได้ไหม [Manmout, A., "Can LGBTQIA+ Individuals Be "Parents" To Someone?" *The Standard Media* (8 April 2024)] (Thai) <<https://thestandard.co/opinion-lgbtqia-parenting/>>.

interpersonal relationship deserving of respect. While not directly addressing the legal terminology, Arnon posits that preventing LGBTIQAN+ people from being legally recognized as “parents” may perpetuate symbolic inequality within the Thai legal system, despite the passage of the marriage equality law. This highlights the crucial need to employ inclusive, gender-neutral language that accurately reflects the diversity of parental roles and family structures.⁵¹

Before the Ad Hoc Committee (AHC) submitted the completed compilation of all draft bills, the Senate prepared the Senate Ad Hoc Commission with the commitment to pass the law by ensuring the draft law would be considered under “The Rule of Law and the Protection of the Right to Family Establishment.”⁵² This directly relates to the perspective of international human rights principles, which stipulate the state’s duty to protect, respect, and fulfill human rights, as well as to uphold equality and human dignity of LGBTIQAN+ people as equal human beings.

In concluding this Commentary, the state’s responsibility to create family inclusion significantly influences LGBTIQAN+ individuals not only to be protected, respected, and have their human dignity fulfilled, but also to widen their overall well-being and social acceptance, making it a crucial determinant of inclusion in various aspects of life.⁵³ At the end, the priority for the amendment of the Civil and Commercial Code for marriage equality is to provide legal recognition and protection to advance SOGIESC rights. Thus, the state must consider human dignity before economic benefits that LGBTIQAN+ individuals could bring to national income and GDP increases from the celebration of love and commercialization efforts, such as promoting Thailand to be the World Pride 2030 host country.⁵⁴

Suggested Bibliographic Citation:*

Nada Chaiyakit. “Analyzing Thailand’s Amendments to the Civil and Commercial Code on Marriage Equality: Progress, Shortcomings, and the Struggle for LGBTIQAN+ Rights to Family Establishment.” *Thai Legal Studies*, vol. 4, no. 1, July 2024, pp. 60–71. <https://doi.org/10.54157/tls.274227>.

⁵¹ *ibid.*

⁵² ลุ้น #สมรสเท่าเทียม เข้าสู่สภา วาระสอง 27 มี.ค.นี้ [“Looking Forward to #EqualMarriage Entering the House of Representatives for the Second Term on 27 March” *The Active* (19 March 2024)] (Thai) <<https://theactive.net/news/gender-sexuality-20240318/>>.

⁵³ Peter A. Newman, Luke Reid, Suchon Tepjan, and Pakorn Akkakanjanasupar, “LGBT+ Inclusion and Human Rights in Thailand: A Scoping Review of the Literature” (2021) 21 *BMC Public Health*, Article 1816. <<https://doi.org/10.1186/s12889-021-11798-2>>.

⁵⁴ ‘อุ๊งอิ๊ง’ หวังไทยเป็นเจ้าภาพ World Pride 2030 [“Ung Ing, Head of Pheu Thai Party Hopes Thailand Will Be the Host Country for the World Pride 2030” *Komchadluek* (14 May 2024)] (Thai) <<https://www.komchadluek.net/news/politics/574718>>.

* **Indexing Thai names.** “Although family names are used in Thailand, Thais are normally known by their given names, which come first, as in English names. The name is often alphabetized under the first name, but practice varies.” *The Chicago Manual of Style* (17th edn, University of Chicago Press 2017) §16.85.