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# SAME-SEX MARRIAGE IN THAILAND

## TWO BILLS - JULY 2020

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# SAME-SEX MARRIAGE IN THAILAND

**TWO BILLS - JULY 2020**

# 1. THE CIVIL CODE AMENDMENT BILL INTRODUCED IN PARLIAMENT BY THE MOVE FORWARD PARTY

A bill was introduced in the Thai parliament in June, 2020, to change the language on marriage in the **Civil and Commercial Code**, making its provisions gender neutral. This would open Thai marriage law to same-sex couples. The bill was introduced by Tunyawat Kamolwong, one of the four LGBT members of the **Move Forward Party**, the second largest opposition party in the lower house of Thai parliament.
The legislative proposal explains that the current law violates the equality provisions in Section 27 of the Thai Constitution.

Late 2019, the **Move Forward Party** announced that it had drafted the bill and stated its intention to introduce it in parliament. It rejected the **Life Partnership bill** that had been given preliminary approval by the Thai cabinet in December, 2018.

In accordance with the requirements of Section 77 of the **Constitution**, on July 2nd, 2020, the parliament posted the **Civil Code** amendment bill on a parliamentary website, inviting comments from the public. As of July 9th there had been 51,637 responses.

*Thailand Legal Experts Consultation on LGBTQI Human Rights, 16 December 2019, Bangkok*

# 2. EARLIER ATTEMPTS TO DRAFT A CIVIL UNIONS OR REGISTERED PARTNERSHIP BILL

The drafting of a registration law to give some legal recognition to same-sex couples began in Thailand in 2013 with five hearings of the **Committee on Legal Affairs, Justice and Human Rights** of the Thai parliament. Oddly, there was no policy commitment on the part of any of the political parties. The **Rights and Liberties Protection Department**, a unit within the **Ministry of Justice** was, over time, the leading force in the following years of off-and-on-again drafting.

The first draft of a registered partnership/civil unions bill was criticized *(a)* for an unequal age for registration compared to marriage, *(b)* no provisions for custody or adoption of children or assisted reproduction, *(c)* concerns about visiting rights and medical authorizations at hospitals and *(d)* nothing on spousal employment benefits and tax provisions for couples.

Initial promises of full equality by the drafters were compromised, when for example, the Ministry of Finance said the reform should not increase government expenditures – ruling out spousal benefits for partners of civil servants and joint tax returns. Fear of opposition from sectors of the public led to the decision to avoid any provisions on custody or adoption of children.

Two competing drafting processes worked in parallel, the second involving the **Law Reform Commission of Thailand**. Both came to an end with the military coup in 2014. Government legal resources were shifted to drafting a new constitution and new organic laws. Dealing with same-sex relationship recognition was not rejected. It simply suddenly dropped from any priority or attention.

The **Rights and Liberties Protection Department**, with some LGBTI civil society allies, notably **Rainbow Sky Association of Thailand**, persisted, developing a 'new strategy' of a very limited reform – *(a)* no benefits, *(b)* nothing on children, *(c)* focus on asset management and inheritance.

Things were happening elsewhere. In 2015 the US Supreme Court extended equal marriage to same-sex couples as a constitutional right. In 2016 the United Nations appointed Thai law professor Vitit Muntarbhorn to monitor LGBT human rights issues internationally. Strongly influenced by these developments, the Constitutional Court in Taiwan supported equal marriage in 2017. The first legal same-sex marriages in Asia began in Taiwan in May, 2019. Judicial decisions in Hong Kong increasingly recognized same-sex couples for purposes of immigration, spousal benefits and governmental programs. In Asia Pacific, New Zealand opened marriage in 2013 and Australia in 2017.

**FOR-SOGI**, an important national grouping, had been promoting an innovative registration law, but shifted to supporting **Civil Code** amendment. In August 2019, **Future Forward Party** (now **Move Forward Party**), **FOR-SOGI, Thai Transgender Alliance** and almost 80 other organizations and individuals published an open letter calling for **Civil Code** change.

The **Rights and Liberties Protection Department** pressed ahead with a 'limited rights' registration bill, In November, 2018, it released its **Life Partnership** bill, and quickly held regional hearings, all within ten days. Comments were received, and two changes were made: a registered partner would have hospital access and could take responsibility for funeral arrangements.

This amended "limited reform" was approved by the cabinet on December 25, 2018. The draft was sent to the Council of State for review *(a basic part of the Thai legislative process)*.

The Council of State clearly took its role very seriously, calling for more public input and conducting what seems to have been negotiations with the various parties, both governmental and civil society. We will probably never have an account of that process. But the end result was a bill that eliminated many of the basic objections that had been heard as far back as 2013. Age for eligibility to register or marry was made equal. Rights to adopt were made equal. Employment benefits were not included.

*Professor Douglas Sanders*
*Photo Cr: 1448 For All*

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# 3. THE CIVIL PARTNERSHIP BILL APPROVED BY THE THAI CABINET ON JULY 8TH, 2020

On July 8, 2020, the Thai cabinet approved the new **Civil Partnership** draft bill. The next steps will be *(a)* submission to parliament and *(b)* consideration by a parliamentary committee, presumably together with the **Civil Code** bill, which is already on the parliamentary agenda. Public comments can be made until August 17th. A competing hashtag is **#SayNoToPartnershipBill**.

## What are the elements of the Civil Partnership proposal?

1. It provides civil partnership registration for same-sex couples, separately from **Civil Code** marriage. One can ask: Why is a separate law required? Is the only consequence of having a 'partnership' status that is separate from 'marriage', the avoidance of spousal employment benefits? Is there any other significant difference?
2. Couples eligible to register must have the same sex at birth. *(This parallels the requirement for marriage that eligible couples have different birth sexes. Thailand does not recognize change of 'sex' for transgender individuals, and that refusal is recognized and confirmed in this provision. A male-to-female transgender can marry a female or register a partnership with a man. Furthermore, there is no third option for designating the sex of intersex individuals in Thai law, so a binary understanding of 'sex' continues.)*
3. 17 is the minimum age for registration *(the same as for marriage)*.
4. At least one party must be a Thai national *(not the same as for marriage)*.
5. There are provisions on property management. *(Details not available.)*
6. There will be equal inheritance rights to married couples.
7. There will be equal adoption rights to married couples.
8. Divorce can occur if one partner treats a third person as a civil partner. Post divorce maintenance ends if the receiving party enters a new civil registration. *(Some variance from Civil Code provisions.)*
9. No provision for equal spousal employment benefits *(such as health insurance or pensions)*.

The Civil Code will also be amended to prevent individuals with an existing registration or marriage from remarrying without a divorce *(treating registration and marriage as equivalents)*.

The only court decision considering whether the denial of "marriage" is a denial of equality, when there is a registration law that provides completely equal rights, was made in December 4th, 2017 by the Constitutional Court of Austria. That court is a lineal grandmother of Thailand's Constitutional Court, as the first and oldest constitutional court in the world. Registered partnerships for same-sex couples were in place in Austria. The decision opened both marriage and the registration system to all couples. The Court said that having separate systems of legal recognition created occasions in which the sexual orientation of an individual would be disclosed "in situations in which it is not and must not be relevant". This led to the "highly likely" possibility of discrimination. Being able to list one's civil status as married or as in a registered partnership would no longer disclose one's sexual orientation.

We could also say that 'separate' is not 'equal' following the decision on school desegregation by the United States Supreme Court in 1954.

*We are united in advocating for issues around HIV and those that advance the rights, health and well being of people of diverse sexual orientation, gender identity, gender expression and sex characteristics.*

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