

**Shadow/Alternative Report on CEDAW Article 16:
Lesbian Childbearing and Adoption under Social Discrimination**

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1. Preface to Lesbian Childbearing and Adoption under Social Discrimination

Lesbian families are one among many varied family arrangements. The sources of children and the ways the families have been constructed appear in diverse forms; for example, a lesbian or her partner bear children through assisted reproductive technology (ART), or children have been born in previous marriages, etc. Lesbian families have long been present in Taiwan society. Judicial Yuan Interpretation No. 554 by the Justices of the Constitutional Court states:

“Marriage and family serve as the foundation on which our society takes its shape and develops and are thus institutionally protected by the Constitution”

But at present the official determination that marriage is limited to a union between one husband and one wife, that is, between one man and one woman, confines “family” to the narrow image of marriage and consanguinity.

Because of this, lesbian families do not yet enjoy the institutional protection extended to marriage and family, and thus they suffer from lack of access to assisted reproduction as well as multiple obstacles to adoption of children. Moreover, the welfare system takes traditional family and marriage as its standard requirement, so in practice it affects the economic rights of lesbians and their families.

2. Main Appeals and Final Opinions from the Public

Lesbian families are still subject to discrimination on many levels, discrimination that does not just affect the marriage rights for lesbian partners that would allow them to form unions, but even more seriously affects their ability to bear children and adopt children; because the country has legal and welfare systems that usually take the married couple as a precondition for recognition of family, and so the lesbian family meets with extremely unfair treatment in all kinds of rights.

This report addresses CEDAW Article 16(1) (d),(e),and(f) and makes the following main appeals:

2.1 Same-sex partners’ adoption of children should not be discriminated against; and one partner in a same-sex union should be able to adopt the children of the other partner and legally become a second parent.

2.2 Equal rights in assisted reproduction should be permitted, such that unmarried persons and lesbians in partnerships can legally utilize assisted reproduction technology.

2.3 All systems and welfare organs of the country should affirm the protection of economic rights for non-traditional families, such as lesbian families, with protections equivalent to those for heterosexual families.

We suggest that our government should recognize the reality that lesbian families have been deprived of their rights to bear and adopt children, and based on the suggestions above, it should take concrete measures to improve the environment for lesbian families.

3. Analysis of the Current Legal Systems and Background

3.1 Adoption

The Protection of Children and Youths Welfare and Rights Act (referred to in brief below as the Child Protection Act) stipulates that domestic adoptions must be carried out through the auspices of adoption matching services agencies, and after being entrusted with the request for adoption, the adoption service shall carry out visits and investigations and produce an assessment report, provide appropriate counseling, and assist with the procedures related to the transfer of the child in adoption. In requesting the courts to approve the adoption, it must attach the evaluation report.

3.1.1 The evaluation methods of the adoption services are confined to the mode of thinking of heterosexual marriage.

Most adoption services in our country are lacking in imagination of same-sex partner families. Aside from the problem that some adoption services have not set up transparent or concrete indices for the evaluation process, the design of the evaluation indices of most adoption services are confined to the mode of thinking of heterosexual marriage, and these indices cannot appreciate the contemporary situation of same-sex double parents, and from this understanding seek and obtain the approval of the courts.

On August 31, 2013 Taiwan LGBT Family Rights Advocacy convened a forum entitled Exploring the Application of CEDAW Regulation: The Current Situation in Practice of Taiwan Lesbian Parenting. In a speech by Ms. Bai Lifang, section head of the Child Welfare League Foundation, entitled “What Same-Sex Parents Should Know Before Seeking Adoption: The Current Situation in Domestic Adoption of Children”, she pointed out the following:

In the Permit and Management Regulations for Children and Youth Adoption Service Providers there is a clause, No. 10, which states “...there shall not be discriminatory limitations towards the adopters,” and the discrimination mentioned refers to

“discrimination including that concerning marriage situation, sexual orientation, sexual identity, and gender style, etc.”

But Section Head Bai also pointed out that same-sex parent adoption presently still meets with four obstacles:

- a. Application for adoption can only be made as a single parent.
- b. Adoption agencies generally lack understanding of same-sex couples.
- c. The birth parents often do not want to choose same-sex couples as adopters.
- d. The courts are still suspicious of same-sex couples.

In the future because of the stipulations of the Hague Convention and the Child Protection Act, domestic adopters will receive preference over international adopters. If increased domestic adoption provides a more favorable environment for same-sex couple adopters, it might allow the prospects for adopting as a single parent to improve; or if same-sex marriage is legalized, then same-sex couples may be able to adopt children.

3.1.2 The adoption matching services agencies and courts still hold some discrimination and prejudice.

The central point in the practice of law on the adoption of children is that the best interests of the child must determine the substantive examinations. Because of this, aside from the problem that the adoption matching services agency may make an assessment report that is damaging to the interests of same-sex parent adopters, judicial personnel, inhibited by or closed within the current stigma on homosexuality, will also cite evaluation reports that are discriminatory to same-sex parent families, and replicate the negative appraisal. This affects the approval of adoption by same-sex parents, as illustrated in the following judgment.

Taoyuan District Court, Taiwan, in 2007 issued judgment Yang Sheng No. 81 concerning an application for adoption, citing the home visit evaluation carried out by the Taiwan Fund for Children and Families, a registered non-profit foundation; evaluation as follows:

“Although the social welfare personnel have determined that the external conditions of the adopters meet the qualifications for adoption, but if this case is approved the adoptee may face confusion concerning gender roles and definitions, and to the adoptee this must more or less create anxiety and a deleterious impact. So should this case of adoption be approved? It is still suggested that the judge determine this case according to the principle of the best interests of the child.”

The judgment goes on to say,

“In the future the child must associate with others at school and with peers, and if the child’s gender identity, gender performances, role definitions, and social prospects are different from those of the general majority, it can be anticipated that the child will be subject to great pressure (such as pranks or ridicule from classmates). And this must all be faced by the child alone, not something that can be warded off at all times by the presence of adults. Should not the adults contemplate that they cannot, just for the sake of satisfaction of their psychological needs for a complete family and cultural expectations, place a child without the capacity for thinking, refusing, or choosing in a position where it can be anticipated that he/she will be subjected to an environment of negative pressures from school or peers? This is really unfair to the child. ...Therefore at the discretion of the court concerning this application, it is considered that this application for adoption cannot be approved.”

Hsinchu District Court in 2010 in a civil case issued judgment Yang Sheng No. 20 that adopted a similar view.

3.1.3 The law indirectly erodes the right of present same-sex couples to a family

Same-sex partners still do not, to the present time, have the right to marriage and the right to partnership under the law. And in effect the regulations concerning giving up and adopting children hinder same-sex couples from creating their own families. For example, according to Article 1075 of the Civil Code, “Except when being adopted by a husband and wife, a person shall not be simultaneously adopted by two persons.”. This means that same-sex partners have no way to jointly adopt children. In actuality, there has been no shortage of examples of this predicament among same-sex couples. If only one of the partners holds a parent relationship with the child, then the other partner is merely the same as a stranger; because in the eyes of the law the other partner has no responsibility for the child and can at any time because of alteration in the partner relationship relinquish the care relationship with the child. And this is not beneficial for the child.

Moreover, if same-sex couples are allowed to adopt the children born to their partners, then the relationship to the children should be the same as that of husband or wife adopting the birth children of the partner, if it is to be meaningful; that is, the parent right of the birth parent is not affected. The complication in this is because Article 1077(2) of the Civil Code specifies that adopted children lose the rights and duties in the relationships with their birth parents, as well as the birth parents’ relatives, as long as the relationship with the adopted parents is in effect. Presently only in the case that a husband or wife adopts the birth children of the partner is the original relationship with the birth parent not affected by the adoption. Since same-sex partners still do not have the right to marriage and the right to partnership under the law, they are likewise not eligible to be the second parent in adopting a child.

Our organization dealt with a case involving this problem, as follows. “Da-Kui” and her partner in a lesbian family agreed two years ago to jointly have children, and went abroad for her partner to receive artificial insemination. Before the artificial insemination they already had a plan for how to deal with the subsequent adoption, that Da-Kui would adopt one of the twins borne by her partner. But in the process of dealing with the domestic regulations, they were refused by the local government on the basis that this case violated the Child Protection Act, for two reasons. The first was that under the current laws it violated the provision that “The person giving away the child in adoption shall not designate the person taking in the child in adoption.” The other was that “Almost the same peer within six degrees of kinship of relatives and five degrees of kinship of relatives by marriage,” and “either husband or wife can adopt the children of the other partner” cover the designations of an adopter that are permitted to the child giver. All others giving or seeking a child for adoption must be dealt with by an adoption service provider.

Another objection was that the case “was not consistent with the necessity for adopting out a child”. The government was of the opinion that even if the adoption were carried though, the child would still be in the same family environment, and there was no need for giving up the child in adoption. In actuality, in a lesbian family the birth mother and her partner jointly live with the daily experience and the demands of raising the children, the same as when a spouse adopts the children of his/her partner. And when lesbian partners jointly agree to bear or adopt children this is analogous to the agreement of heterosexual partners. But the government, as in the past, classifies lesbian partner adoption of the children as “stranger adoption”, and overlooks the difficulty for lesbian families that they cannot avail themselves of the option of adopting as joint parents.

3.2 Artificial Reproduction

3.2.1 The current law refuses to allow application of the assisted reproductive technology to single persons and same-sex couples.

The current law in our country on assisted reproduction, the Artificial Reproduction Act, restricts its use to those with the qualification of “infertile husbands and wives”², which renders lesbians, physiologically female but with a different sexual orientation, unable to utilize this technology. This deprives them of their autonomy in reproduction, which in effect constitutes a double discrimination against gender and sexual orientation, and a direct discrimination as well.

² See Article 2, 11, and 12 of the Artificial Reproduction Act which stipulates that eligibility for ART users is limited to “infertile husbands and wives”.

Professor Wu Chia-ling of the Institute of Sociology, Academia Sinica, in Taipei gave a talk entitled “Excluding unmarried men and women? Sex and gender management in the technology of assisted reproduction” at an earlier seminar on the contemporary situation in parenting for lesbians in Taiwan. She pointed out that because of the restrictions in the law, there have been lesbians who have entered into fake marriages with homosexual men in order to practice their right to reproduction, and have subsequently received artificial insemination. But all the same they often must face the division of labor between mother-in-law and daughter-in-law³, often a tense relationship in Chinese society, as well as heavy responsibility in the burden of motherhood under a patriarchal society.

Then there is the phenomenon of “reproductive exile”, persons in the LGBT community going abroad in order to obtain legal assisted reproduction. But this entails substantial financial capacity, social capital, and cultural resources. Even when birth is successfully achieved, there are still many ensuing issues, such as that for those marrying abroad and their partners using assisted reproduction, after they return to Taiwan the parent relationship of the partner who is not related by blood will still not be recognized.

3.2.2 The restrictions under the law are not beneficial to the practice of parenting, and damage the best interests of the child

According to unofficial sources, in Taiwan there are over eight hundred lesbians who have utilized self-insemination as a reproductive resource⁴, since the law does not forbid producing the next generation through conceiving with injection of sperm. If the qualifications for utilizing assisted reproduction are not broadened, families who are forced to resort to conceiving through injection of sperm will continue to encounter many obstacles even if they happily give birth to their babies. Aside from the risk that the sperm donor might suddenly appear and demand custody of the child, the lesbian partner is not allowed to accompany the pregnant woman in prenatal clinics, participate in expectant mother classrooms, attend parenting education, or enter the delivery room, and is not eligible for paternity leave. If the birth mother by chance passes away, her partner, although also the mother, holds no blood relationship to the child and so has no kinship rights in law; the child may be taken away by relatives or even by the social welfare bureau. And there are a plethora of other problems such as social welfare

³ In traditional Chinese society the daughter-in-law was expected to submit to her mother-in-law in all matters. The daughter-in-law was estranged from her natal family, and as an outsider she could expect little or no sympathy from her new family. Women today don't usually end up in this situation, and young women often have their own employment and feminist expectations. But with the generation gap, there may still be a tense relationship between daughter-in-law and mother-in-law.

⁴ Press Releases of Taiwan LGBT Family Rights Advocacy, “Be underground using assisted reproductive technology, no protection for LGBT families!”, 2009/05/10.

eligibility, insurance, medical treatment, and inheritance; it is obvious that this is not beneficial to the practice of parenting and is inimical to the best interests of the child.

3.2.3 For most of the partners in the lesbian family who are not related by blood to the child, they can only legally establish a weak relationship as a “member of the household”⁵, not as a family relative⁶ (i.e. relatives by blood, spouse, and relatives by marriage).

Because the law does not recognize the partner in a same-sex relationship, difficulties arise in the process, from the partners deciding together to rear children, to establishing the family, and to developing the emotional connection in jointly caring for them. This arises from the fact that in the eyes of the law the child can only hold a family member relationship with the partner who is related by blood, not with the partner who is not related by blood and who can thence only be seen as a member of the household. The partner who is not related by blood cannot serve as a legal proxy, cannot claim the rights of a parent, and the children cannot be their legally-designated heirs. If one day the partners separate or one dies, the relationship with the child will be broken.

At present some lesbian couples, in order to allow both partners to have a parent relationship with the child, will go abroad and use an ovum from the ovaries of one partner, fertilize it by assisted reproduction, and implant it in the uterus of the other partner. This huge expense and preparation is just for the purpose of dealing with the remote possibility that if one parent dies, then the other parent can use a DNA check to confirm the parent relationship and continue a joint life with the child.

3.3 The family welfare system and its legal design

Our country’s system of welfare takes the family household as the basic unit; or it can also be constituted by application on the basis of particular family member relationships. Both stipulations prevent same-sex couple families from utilizing opportunities for welfare measures, and thus yield a heavier family economic burden for same-sex unions than for married

⁵ Persons who live in the same household with the object of maintaining the common living permanently are deemed to be the members of the household, including relatives and non-relatives. See Article 1122 of the Civil Code: “A house is a community of relatives who live in the same household with the object of maintaining the common living permanently.” and Article 1123(3) of the Civil Code: “Persons who are not relatives but who live in the same household with the object of maintaining the common living permanently are deemed to be the members of the house.”

⁶ See Article 967 of the Civil Code: “The lineal relative by blood is the relative by blood of a person from whom that person is descended or he who is descended from that person. The collateral relative by blood is the nonlineal relative of a person who is descended from the same common ancestor as that person himself is. “and Article 969 of the Civil Code: “The relative by marriage of a person includes the spouse of his relative by blood, the relative by blood of his spouse and the person who is married to the relative by blood of his spouse.”

heterosexual families, i.e. the former are subject to disadvantageous economic treatment. For example, some governmental systems that use restrictions based on spousal qualification are as follows⁷:

Qualification/Condition	Benefits
Social provisions, social services	Reproductive provisions, allowances, subsidies ⁸ ; funeral subsidies under government labor insurance ⁹ ; retirement pay ¹⁰ ; additions to unemployment payments ¹¹ ; survivor annuities ¹² ; housing subsidies ¹³ ; marriage education and counseling ¹⁴ .
Vacations from work	Delivery-accompaniment vacation ¹⁵ ; marriage vacation; bereavement vacation ¹⁶ .
Special family roles in medical treatment	Proxy signatures for surgical procedure consent forms ¹⁷ ; palliative hospice medical treatment consent ¹⁸ .
Special standing in taxation	Individual tax allowances; standard and special deductions ¹⁹ ; reductions in inheritance and gift taxes ²⁰ .
Alien status	Citizenship naturalization, qualification for long-term residence ²¹ .

⁷ Chao-Ju Chen(陳昭如), Marriage is the legal patriarchy and privilege of heteronormativity, *Journal of Women's and Gender Studies*, 2010/12

⁸ See Article 24 and 31 of the Labor Insurance Act, and Schedule 8 of “key points in paying government military personnel, employees and teachers”.

⁹ See Article 62 of the Labor Insurance Act.

¹⁰ See Article 27 of the Labor Pension Act, and Article 13-1 of the Civil Service Retirement Act.

¹¹ See Article 19-1 of the Employment Insurance Act, and disability pension benefit according to Article 54-2 of the Labor Insurance Act.

¹² See Article 40 and 15 of the National Pension Act, and Article 63 of the Labor Insurance Act.

¹³ See Article 37-2 of the Public Housing Act.

¹⁴ See Article 2 of the Family Education Law.

¹⁵ See Article 15 of the Act of Gender Equality in Employment.

¹⁶ See Article 2 and 3 of the Regulations of Leave-Taking of Workers.

¹⁷ See Article 63 of the Regulations of Medical Care Act.

¹⁸ See Article 7 of the Hospice Palliative Care Regulation.

¹⁹ See Article 13 and 17 of the Income Tax Act.

²⁰ See Article 28-2 of the Land Tax Act, Article 17 and 20 of the Estate and Gift Tax Act.

²¹ See Article 4 of the Nationality Act, Article 8 to 10, 23, 25, and 31 of the Immigration Act.

4. Responses to the Governmental Report on CEDAW Article 16(1), (d), (e), and (f)

4.1 The governmental report overlooks the diversity of family forms and discriminates against same-sex couple adoption of children

The government report section on “equal enjoyment of parental rights” deals but lightly in passing with parental rights, and concerning the conditions for their application in lesbian families we do not see any substantial content. The law does not forbid same-sex couple adoption of children, but because the partnership relationship is not recognized under the law, the courts treat adoption of one partner’s children by the other partner as stranger adoption, and then use the rationale of “no need to adopt out”, etc., as explained above, to refuse the application for adoption. Moreover, the evaluation standards used by adoption matching services agencies are framed within the thinking for heterosexual marriages, and thus are not conducive to adoption by same-sex couples. Adoption is subject to court approval, and judges make decisions based on stereotypical impressions or because of the real stigma on homosexuality; this influences approval of same-sex couple adoption and reproduces discrimination based on sexual orientation, further harming the rights of children and violating CEDAW Article 16(1)(f).

4.2 Lesbians are deprived of the use of assisted reproductive technology

In the government report section on “equality in reproductive freedom”, there is not a word concerning the rights of LGBT’s to reproduction. This is not an unintentional oversight, but an obvious refusal, and it disingenuously excludes unmarried and same-sex couple partners, possibly in violation of CEDAW Article 16(1)(e).

The utilization of assisted reproductive technology in law is limited to infertile couples, and every occasion of its use requires a statement of consent by both husband and wife, which totally excludes single persons and unmarried couples, as well as refusing assisted reproduction to unmarried transsexuals who may have stored their frozen sperm or ova in advance. Actually this is the consequence of the ineligibility to marry under the law and obtain spousal consent; it makes lesbian partners, single persons, and unmarried transsexuals ineligible as well for accessible assisted reproduction technology to help them have children, and it thus robs them of their reproductive autonomy.

4.3 The debate on surrogate mother policy should incorporate the opinions of the LGBT community.

In the government report section on “equality in reproductive freedom”, concerning concrete measures, there is mention of the debate on policy towards surrogate motherhood. In our country we have already had lesbian partners who have gone abroad in order for one of them to provide ova for in vitro fertilization and implantation in the uterus of the other partner. There have also been male homosexual partners who have gone abroad to reproduce by means of surrogate mothers. Therefore, the government should incorporate the needs of the LGBT community into the issue of surrogate motherhood.

4.4 The government’s considerations are circumscribed within the present legal framework and neglect protection of women’s economic rights within the diversity of family forms.

In CEDAW Article 29 under General Recommendations has already requested ratifying nations to acknowledge and secure that the economic rights of women shall be protected in their relationships²², no matter whether these are actual marriages, partner relationships, or registered marriages. But our country only acknowledges the family member relationships generated by marriage recognized under the law. Only in the section on “equality in reproductive freedom” for the diversity of family forms is the issue of homosexual partners mentioned, and in the section on “equal enjoyment of parental rights” what is referred to is actual husbands and wives. This completely ignores the other rights and equalities for homosexual partners, such as property allocation, obtaining legal rights for migration or residence, work rights, visitation during medical procedures, etc. For all the social systems which require the qualification of a marriage relationship, lesbian partners cannot yet utilize the options provided to heterosexual married couples, because they are not permitted to enter the marriage system.

The government lacks a critical consciousness of the fact that same-sex couple families are faced with difficulties in obtaining social resources because social welfare benefits are only applied to families with heterosexual marriages. The various provisions/subsidies/allowances provided for raising children, such as the Labor Insurance Act, still require that the partner be in a formal marriage relationship in order to apply for reproductive benefits²³. Moreover, all the various plans under the policy to encourage fertility, such as the “Help You Have a Good Pregnancy” program, direct their subsidies only to those who are married. For example, the “Government Housing Subsidies for the Youth”²⁴, a program started in 2009 and intended to

²² CEDAW/C/GC/29, para.24

²³ See Article 31(2) of the Labor Insurance Act, and Schedule 8 “Government Employees’ Wedding, Death, Childbirth Subsidy Table” of “key points in paying government military personnel, employees and teachers”.

²⁴ Conditions and restrictions of household income in the project of Government Housing Subsidies for the Youth, Real Estate Information Platform, Ministry of the Interior: <http://pip.moi.gov.tw/upload/news/I120120925--634841988232360166.doc>

encourage youth to start families by providing mortgages for house purchase at zero interest and subsidies towards rent, also discriminates against single heterosexual youth as well as homosexuals who are unable to marry.

5. Issues Brought up by Civil Organizations

5.1 There has been a lack of deliberation on alternative family forms in the process of preparing revisions to the law and policy planning; the statistics of the governmental report do not show material addressing LGBT concerns.

According to the detailed chart on concrete action measures under the Gender Equality Policy Guidelines²⁵, the government has already protected alternative families of diverse form, a task which is listed as one of the items for policy and work actions. But in actuality deliberations for legal reforms and policies on protecting the rights of same-sex couples only remain in the stage of research²⁶; for one, research on laws in other countries, and, for another, research on and survey of public opinion towards homosexual marriage. No investigation has been carried out on the domestic conditions for same-sex couple families and their needs.

However, it is outrageous that a human rights issue such as homosexual marriage should be dealt with according to whether or not the public opinion found in a survey approves of it. The research on laws and regulations in other countries has already been completed for a year and a half, and the Ministry of Justice is still inert in the face of the imminent needs for protection of the rights of alternative families, with the excuse that more research is in progress and they are waiting for a social consensus.

In October 2013 the government invited persons from religious spheres, same-sex civil organizations, representatives from human rights committees, etc., to discuss the rights of same-sex partners, with the results merely to be provided for the reference of the Ministry of Justice in formulating policy. On another front, the government has already established means for calculating statistics and generating materials on gender, in order to respond considering the fact that gender has become a mainstream issue, but these statistics are generally limited to reporting

²⁵ The division table of specific action and measures in the Gender Equality Policy Guidelines: “Paragraph Population, Marriage and Family; ... Section 2, Promote gender equality in the marriage; Subsection 5, Encourage the community to focus on gender and human rights, and promote actively the discussion of non-marital cohabitation partners’ right protection and regulation training;... Section 3, Construct a mechanism for holistic health care; Subsection 8, Face the current situations and trends in family and social pluralism: For cohabitation families or nontraditional families, including cohabiting couples, LGBT groups, and single people..., the government should develop the implementation plan of their welfare, interests and so on.”

²⁶ The report on *A Comparative Study of Civil Union in Germany, France, and Canada*, 2012/05.; <http://www.moj.gov.tw/ct.asp?xItem=277083&ctNode=29656&mp=001>

according to physiological sex, i.e. males versus females, so there is a lack of official statistics relevant to LGBT. These statistics are rough to the point that they only include “already married” and “never married” as items for choice (or variables) in surveys; they may lack even “heterosexual partner, unmarried”, much less “homosexual partner”, as items.

5.2 Carry out education for gender equality; end social and family discrimination against same-sex and alternative families.

For 2013, the Ministry of Education has been advocating family values and promoting the Year of the Family²⁷; it only mentions the family generated by a married husband and wife. The uniform image of family presented in this program highlights how the official authorities have long overlooked alternative families with same-sex partners and with children.

Through education the stigma against homosexuals and diverse family forms can be reversed, but Taiwan’s gender equality education is still facing a backlash from conservative religious groups, in the form of the opinions of parents’ groups. The Ministry of Education should indeed carry through on the Gender Equality Education Act, and on the basis of results in evaluation of performance penalize or subsidize, or use other administrative means, to compel all schools to comply with the Act. It should also request all schools to provide equal exposure to multiple perspectives on issues of marriage and gender, independent of religious beliefs. Both in setting educational policy and executing it, the Ministry of Education should reflect the international tide of human rights, and so should provide a perspective accepting the diversity of family forms, and should establish school and social education towards a consciousness in which the sexes have equal rights.

5.3 Build a policy for public child care and old age care that will bring justice in gender relations

Taiwan is facing a precipitous drop in fertility. An important reason for this is that there is a dearth of safe and affordable child care services; one of the parents must leave the workforce in order to care for the child. Moreover, in the eyes of the natal family of a lesbian woman, she has not entered into marriage and is thus always considered single, so she is designated as the one who should take on the burden of care for the older generation. In the past the country pushed the responsibility for long-term care on to the family, for the individual to shoulder, and neglected the needs of caregivers and those cared for, which sacrificed the options of the caregivers and the possibilities for their career planning. There should be active arrangements on

²⁷ See the website: <http://moe.familyedu.moe.gov.tw/front/bin/ptdetail.phtml?Part=12120044&PreView=1>

the issue of making care services into a public system, to break the pattern that lesbian women are once again subject to loss of their economic rights under an inappropriate system.

6. Concrete Recommendations

6.1 Concrete suggestions concerning adoption

6.1.1 Article 20 of the Permit and Management Regulations for Children and Youth Adoption Service Providers should be revised to require that the professional training includes a certain number of hours of classes of gender education related to same-sex couple families. Article 10 in the same regulations concerning “the anti-discrimination clause” should be revised. The original text is too vague; it is suggested that it be clearly stated in the content that discrimination against same-sex couple families is not allowed, and furthermore, penalties should be established in Article 13.

6.1.2 Review and remove heterosexual-centered content from the adoption evaluation indices of the adoption matching services agencies. Annually evaluate the number of cases of adoption by same-sex couples, and if there is a clear indication of an unreasonable proportion of cases being refused, there should be concrete discussion on how to improve acceptance rates.

6.1.3 Revise the content of Civil Code and the Child Protection Act to allow same-sex couple families to jointly adopt children, such that the children of a partner can be adopted, with the adopter having the status of a second parent; or speedily pass laws and regulations allowing same-sex couple marriage and family formation, such that they shall enjoy rights of adoption equal to those of heterosexual families.

6.2 Concrete suggestions concerning artificial reproduction

6.2.1 Remove the restrictions on persons who are qualified to be served under the Artificial Reproduction Act, such that same-sex partners and single persons are allowed to utilize assisted reproduction technology.

6.2.2 Allow the same rights to children born by assisted reproduction to same-sex couples, as those enjoyed by the children of heterosexual marriages, including that of having two parents in the eyes of the law.

6.3 Concrete suggestions concerning recognition of the parent-child relationship

6.3.1 Whether or not the partners have entered into marriage, for children conceived during the period of continuation of the partner relationship, both parents (including partners without relation by blood to the child) should jointly raise the children and equally carry the burden of rights and duties towards the child, including serving as the legal representative of the child.

6.3.2 A partner without relation to the child by blood has the duty to raise and support minor children, and this is not affected by whether or not the partner relationship is sustained.

6.4 Concrete suggestions concerning design of the national welfare system/laws

6.4.1 The welfare system and its design should avoid assuming the married family as the basic unit, or using a marriage relationship as a qualification or condition such that alternative family forms receive differential treatment because they cannot enter into the marriage system.

6.4.2 The design of future laws concerning same-sex couple relationships must consider the best interests of the child and the tight family network within the parental relationship, as well as equal treatment of contributions to the joint operation of livelihood, and seek the balance of the economic rights of the two partners. Same-sex marriage or partnership systems should be commensurate with heterosexual marriage in terms of protections for caring for and supporting minor-age children; this will maintain equality and secure the child's interests.