

# Lesbian Parenting in Taiwan: Legal Issues and the Latest Developments

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## INTRODUCTION

Article 7 of the Constitution of the Republic of China (Taiwan) states that, “all citizens of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law.”<sup>1</sup> The Grand Justices of the Judicial Yuan elaborate that, “[t]he principle of equality prescribed by Article 7 of the Constitution does not mean a formal equality in an absolute and mechanical sense. Rather, it aims to guarantee the substantive equality among the people in the sense of equal protection under law.”<sup>2</sup> Whether the term “substantive equality” has been properly interpreted and enforced by the courts has long been questioned.<sup>3</sup> This paper will use the example of lesbian parenting<sup>4</sup> in Taiwan to further critique the court’s interpretation and enforcement of “substantive equality” for “all citizens of the Republic of China.”

According to a recent survey of over 1,523 lesbians in Taiwan, 66.5 percent said that they wish to have a child or that they would seriously consider the possibility.<sup>5</sup> Since gestational surrogacy is not allowed,<sup>6</sup> the only feasible ways for Taiwanese lesbians to have children

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<sup>1</sup> ZHONGHUA MINGUO XIANFA (中華民國憲法) [Constitution of the Republic of China] art. 7 (1947) (Taiwan). The official translation adopted here is by Judicial Yuan, available at [http://www.judicial.gov.tw/constitutionalcourt/en/p07\\_2.asp?lawno=36](http://www.judicial.gov.tw/constitutionalcourt/en/p07_2.asp?lawno=36) (last visited Oct. 8, 2012).

<sup>2</sup> Dafaguan Jieshi (大法官解釋) [Grand Justices Interpretations] No. 485 (JIESHI May 28, 1995). Official translation of this Grand Justices Interpretation is provided by Judicial Yuan, available at [http://www.judicial.gov.tw/constitutionalcourt/EN/p03\\_01.asp?expno=485](http://www.judicial.gov.tw/constitutionalcourt/EN/p03_01.asp?expno=485) (last visited Dec. 8, 2012).

<sup>3</sup> Dafaguan Jieshi (大法官解釋) [Grand Justices Interpretations] No. 571, Concurring Opinion from Grand Justice Lin Tzuyi (林子儀) (JIESHI Jan. 2, 2004). See also Chen Chaoju (陳昭如), *Jiaochalukou yu Loushang Louxia—Fanqishifa Zhong de Jiaocuo Wenti* (交叉路口與樓上樓下一反歧視法中的交錯問題) [Crossroads and Upstairs/Downstairs—Intersectionality in Anti-Discrimination Laws], YUEDAN FAXUE ZAZHI (月旦法學雜誌) [THE TAIWAN LAW REVIEW] 51, 52 (Feb. 2011).

<sup>4</sup> For the purposes of this article, “lesbian parenting” will refer to both the process of becoming a parent and the process of parenting a child through life.

<sup>5</sup> *Nütongzhi Jiankangxingwei Diaochabaogao Fabiao* (女同志健康行為調查報告發表) [Press Release of Lesbian Health Conducts Survey], TAIBEISHI NÜXING QUANYI CUJINHUI (台北市女性權益促進會) [TAIPEI ASSOCIATION FOR THE PROMOTION OF WOMEN’S RIGHTS], available at [http://www.tapwr.org.tw/research\\_artical.asp?artid=77&artcatid=4&artcat2id=10&nouse=2137](http://www.tapwr.org.tw/research_artical.asp?artid=77&artcatid=4&artcat2id=10&nouse=2137) (last visited Jul. 12, 2012) [hereinafter “Survey”].

<sup>6</sup> Surrogacy reproduction was explicitly banned by Article 7 of the RENGONG XIEZHUSHENGZHI JISHU GUANLIBANFA (人工協助生殖技術管理辦法) [REGULATIONS OF TECHNOLOGIES OF ASSISTED REPRODUCTION] (repealed on Sep. 10, 2007), which states, “no medical institute shall practice assisted reproduction technologies under the following situations . . . as when surrogacy reproduction is involved.” RENGONG

are through birth or adoption. However, same-sex marriage is not yet legal in Taiwan.<sup>7</sup> Marriage is currently defined as “a legal and permanent union of a man and a woman,”<sup>8</sup> and this restriction influences every aspect relating to lesbian parenting, including adoption and assisted reproduction.

This article will analyze three options for lesbian parenting in Taiwan and the laws regarding each. Part I will discuss having children through former heterosexual relationships. Part II will focus on lesbian parenting through adoption. Part III, will elaborate on issues of lesbian access to assisted reproductive medicine. Part IV will introduce the latest developments in legal reform that may help to overcome the legal barriers to lesbian parenting described in the preceding sections. This will be followed by a call to action in the Conclusion.

#### I. LESBIAN PARENTING THROUGH FORMER HETEROSEXUAL RELATIONSHIPS

In many cases of lesbian parenting, children living with same-sex couples are the biological offspring of one member of the couple through an earlier marriage or relationship; however, the Taiwanese legal system rarely recognizes this child-parent relationship for both lesbian partners.<sup>9</sup> This section will analyze the definition of “parents” under Taiwanese law to show that lesbian mothers still face clear legal barriers to “substantive equality.”

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SHENGZHIFA (人工生殖法) [TAIWAN ARTIFICIAL REPRODUCTION ACT] (effective since Mar. 21, 2007) art. 2, ¶ 1(3) defines recipients of assisted reproduction technologies as “husband and wife . . . , where the wife’s uterus can carry a fetus and give birth to a child.” The translations of TAIWAN ARTIFICIAL REPRODUCTION ACT adopted in this article is provided by the Ministry of Justice, *available at* <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=L0070024> (last visited Dec. 9, 2012)

<sup>7</sup> “An agreement to marry shall be made by the male and the female parties in their own [con]cord.” MINFA (民法) [TAIWAN CIVIL CODE] art. 972. All translations of TAIWAN CIVIL CODE in this paper are adopted from the official translation provided by the Ministry of Justice, *available at*: <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=B0000001> (last visited Dec. 7, 2012)

<sup>8</sup> *Id.*

<sup>9</sup> Lin Shihfang (林實芳), *Bainianduidui, Zhihen Kanbujian: Taiwan Falüjiafengxia de Nünü Qinmiguangxi* (百年對對，只恨看不見：台灣法律夾縫下的女女親密關係) [The Legal and Historical Denial of Female Same-sex Intimate Relationship in Taiwan History] 208 (2008) (Unpublished Master Thesis, Department of Law, National Taiwan University) (copy on file with the Department of Law, National Taiwan University). The original author provided an English title for the thesis, but all the other parts of this thesis are written in Chinese.

A. *The Definition of “Parents” in the Eyes of the Law*

Who is the parent in the eyes of the law? According to the Taiwan Civil Code, the legal mother is officially defined as the person “who gives birth to the child,”<sup>10</sup> instead of the one “who is genetically connected to the child.”<sup>11</sup> The reason is that in 1930, when the Civil Code was enacted, it was simply unthinkable that the gestational and the genetic mother of one child could be different people. Additionally, for the convenience of proof, pregnancy and labor were apparent facts that rendered it easy and certain to establish the identity of the mother.<sup>12</sup>

Similarly, legal fatherhood is established through something more apparent than biological connection: the mother’s marital status. The mother’s legal spouse at the time the child is conceived is presumed to be the father by law.<sup>13</sup> In cases where the mother’s husband is not the biological father of her child, the presumption of marriage in the law nevertheless provides the child with legitimacy and a legal father who is required by law to provide care and support.<sup>14</sup>

Currently, the husband, the wife, or even the child may bring an action to disavow the father-child legal connection.<sup>15</sup> Once the disavowal petition is granted by the court, the child would be rendered legally fatherless. Then, the mother or child may file a paternity suit to establish legal parentage between the child and the biological father.<sup>16</sup> If the biological father is willing to assume legal paternity, he can do so simply through an oral acknowledgement, by providing child support, or through the action of registering the child into his household.<sup>17</sup> The Taiwan Civil Code is extremely lenient to biological fathers who wish to assume legal fatherhood, compared to many other international jurisdictions, which require a paternity suit rather than mere oral acknowledgement of the biological father.<sup>18</sup> The roots of these paternity laws may be traced back to

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<sup>10</sup> DAI YANHUI (戴炎輝) ET AL., QINSHUFA (親屬法) [FAMILY LAW] 294 (14<sup>th</sup> ed. 2007).

<sup>11</sup> *Id.*

<sup>12</sup> TAIWAN CIVIL CODE art. 1063, ¶ 1 (“Where the wife conceives during the continuance of a marriage relationship, a child so born is presumed to be legitimate.”). Article 1063, along with Article 1062 of TAIWAN CIVIL CODE, which defines the way to determine the period of conception, establish that the recognition of legal motherhood should be established through the fact of conception and bearing of the child. *See also* DAI ET AL., *supra* note 10, at 295-6.

<sup>13</sup> TAIWAN CIVIL CODE art. 1063, ¶ 1.

<sup>14</sup> *Id.* art. 1061.

<sup>15</sup> *Id.* art. 1063, ¶ 2.

<sup>16</sup> *Id.* art. 1067, ¶ 1.

<sup>17</sup> *Id.* art. 1065, ¶ 1.

<sup>18</sup> DAI ET AL., *supra* note 10, at 308-09.

the patriarchal traditions of Taiwanese society.<sup>19</sup> The influence of Taiwanese paternity laws on lesbian parenting are especially noticeable in cases involving acquaintance sperm donors,<sup>20</sup> as discussed in detail in Part III of this article.

### B. *The Disadvantaged Lesbian Parent*

Under the definition of father and mother in the current Taiwan Civil Code, lesbian mothers in Taiwan face difficult situations. For instance, assume that mother A and father B were married when mother A gave birth to her daughter D. After a few years, mother A divorced father B and moved in with lesbian partner C. Mother A's legal parentage will not change, but her visitation and custody rights could be affected because some courts in Taiwan consider a parent's homosexuality a sufficient reason to restrict visitation and custody rights, even without a showing of adverse effect on the child.<sup>21</sup> In other words, mother A could lose her visitation and custody rights with daughter D due to her sexual orientation and identity.

Assume further that partner C became attached to daughter D and told everyone that daughter D was her daughter. Several years later mother A and partner C have separated and partner C petitions the court for liberal visitation rights with daughter D. According to the Taiwan Civil Code, only the legal mother and father have standing to petition for visitation or

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<sup>19</sup> For example, the establishment of legal parent-child relationship between a child born out of wedlock and the natural father was merely and deliberately decided by the natural father's will: "a child born out of wedlock has no legal parent-child relationship with the natural father, unless the child has been acknowledged by the father, or has been presumably acknowledged." *Zuigao Fayuan 43 Niandu Taishangzi di 1180 hao Panli* (最高法院四十三年度台上字第一一八〇號判例) [Sup. Ct., Dec. 24, 1954], *MINSHI HUIBIAN* 486, 1195. Also, the Grand Justices decided that "the law which disqualifies a natural father from bringing an action for disavowal from his child presumed to be born in wedlock is intended to prevent damage to marital stability, family harmony, and the right of a child to education and nurture, and is thus not contrary to the Constitution," and this could be deemed as a way that the patriarchal family structure weighs in the Grand Justices' view. *Dafaguan Jieshi* (大法官解釋) [Grand Justices Interpretations] No. 587 (JIESHI Dec. 30, 2004). Official translation of this Grand Justices Interpretation is provided by Judicial Yuan, available at [http://www.judicial.gov.tw/constitutionalcourt/EN/p03\\_01.asp?expno=587](http://www.judicial.gov.tw/constitutionalcourt/EN/p03_01.asp?expno=587) (last visited Dec. 9, 2012).

<sup>20</sup> If a lesbian, who is not in a legal marriage with any man, received sperm from an acquaintance donor and conceived with it without any artificial reproductive technology by a medical care institution, the donor could claim legal paternity of the child through TAIWAN CIVIL CODE art. 1067, ¶ 1, because the child was born out of wedlock.

<sup>21</sup> *Yemeigui de Chuntian* (野玫瑰的春天) [Spring Bloom of a Wild Rose], *LAMABAO* (拉媽報) [THE LAMANNEWS] (Sep. 30, 2006), [http://blog.yam.com/la\\_ma\\_news/article/6505237](http://blog.yam.com/la_ma_news/article/6505237) (last visited Aug. 3, 2012).

custody rights with a child.<sup>22</sup> Partner C's requests for visitation would most likely be denied because partner C is considered neither a legal mother nor a birth mother in the eyes of the law.<sup>23</sup>

To avoid the previous scenario, partner C may wish to become a legal parent and adopt daughter D during her cohabitation with mother A. However, according to the Taiwan Civil Code, "second parent adoption" allows an individual to legally adopt a spouse's child only when there is consent from both parents of the child, or simply from one parent if the other is not available.<sup>24</sup> Unfortunately, this adoption provision only applies to married couples, not to cohabitated partners.<sup>25</sup> Since same-sex marriage is not legally recognized in Taiwan, it is not permissible for partner C to adopt daughter D, even with mother A and father B's consent.<sup>26</sup> As a result, even if partner C has long performed parenting functions, and performed them well, she cannot be deemed a legal parent, and therefore has no substantive rights toward daughter D.

## II. LESBIAN PARENTING THROUGH ADOPTION

Although adoption by a same-sex couple is infeasible, adoption by a single member of a same-sex couple is possible. In accordance with the Taiwan Civil Code, a single person is not prohibited from adopting children and creating a single-parent family.<sup>27</sup> Therefore, when it comes to same-sex couples in Taiwan, who are still not entitled to marriage, adoption is a theoretically appropriate way for them to acquire legitimate parenthood if one member of the couple files for adoption as an individual.<sup>28</sup> To clarify the situation faced by lesbian adopters in Taiwan, the following section will introduce the procedures for adoption and

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<sup>22</sup> TAIWAN CIVIL CODE art. 1055, ¶ 5.

<sup>23</sup> Visitation is phrased as "huimian jiaowang" (會面交往) [meeting and communicating] in Article 1055, ¶ 5 of the TAIWAN CIVIL CODE. It is deemed part of the rights of legal parents awarded by the court as a post-divorce arrangement. *Id.*

<sup>24</sup> *Id.* art. 1076-1, ¶ 1 ("When the child is adopted, the consent of the parents shall be obtained except when one of the following conditions is met: (1) where one or both of the parents, who shall but can not exercise the rights and assume the duties in regard to the child or did not protect the interests of the child, refuses to consent; or (2) where one or both of the parents in fact cannot make the declaration of intention and accept the declaration of intention.").

<sup>25</sup> A married couple should always adopt a child jointly, except where one member of the couple adopts the other party's child. *Id.* art. 1074. One child shall not be simultaneously adopted by two people, except when the two persons are a married couple. *Id.* art. 1075.

<sup>26</sup> *Id.* art. 1074, ¶ 1(1).

<sup>27</sup> *Id.* art. 1074 (law requiring joint adoption where the adopter is married, but does not prohibit single persons from adoption).

<sup>28</sup> *Id.* art. 1072.

analyze a recent court case in order to infer the attitudes of Taiwan's judicial system toward lesbian adopters.

A. *The Taiwan Civil Code and Adoption Practices in Taiwan*

To adopt a child in Taiwan, the prospective adoptive parent(s) must first meet certain statutory conditions. First, the adopter must be at least twenty years older than the adoptee.<sup>29</sup> Second, two people cannot adopt either a child or an adult together, unless the two people comprise a married couple.<sup>30</sup> Once the above criteria are fulfilled, a written adoption agreement must be executed<sup>31</sup> and the biological parents or the guardian must provide written consent.<sup>32</sup> The adoption agreement must then be filed with the court for approval.<sup>33</sup> When the adoptee is younger than eighteen-years-old, a court will usually permit the adopter to live with the adoptee for a period of time to help the court determine whether the adoption should be granted.<sup>34</sup> The court may even order child and adolescent welfare institutions to conduct home interviews in order to provide the court with further evaluations and suggestions.<sup>35</sup>

Utilizing the home visit reports, the court will make its final decision after considering the personalities, financials, and family conditions of the adopter, to ensure that the adoption is in the best interests of the minor adoptee.<sup>36</sup> If a petition for adoption is granted, the adoptive parent obtains full legal parental rights and the adoptee is entitled to all of the rights enjoyed by a biological child, including child support and the rights to an inheritance.<sup>37</sup>

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<sup>29</sup> *Id.* art. 1073.

<sup>30</sup> *Id.* art. 1075.

<sup>31</sup> *Id.* art. 1079, ¶ 1.

<sup>32</sup> *Id.* arts. 1076-1, ¶ 2, 1076-2.

<sup>33</sup> *Id.* art. 1079, ¶ 1. ERTONG JI SHAONIAN FULI YU QUANYI BAOZHANGFA (兒童及少年福利與權益保障法) [THE PROTECTION OF TAIWAN CHILDREN AND YOUTHS WELFARE AND RIGHTS ACT] art. 19. All translations of articles from THE PROTECTION OF TAIWAN CHILDREN AND YOUTHS WELFARE AND RIGHTS ACT are adopted from the official translation provided by Ministry of Justice, available at <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=D0050001> (last visited Dec. 8, 2012).

<sup>34</sup> THE PROTECTION OF TAIWAN CHILDREN AND YOUTHS WELFARE AND RIGHTS ACT, *supra* note 33, art. 14, ¶ 3.

<sup>35</sup> *Id.* art. 14, ¶ 4.

<sup>36</sup> TAIWAN CIVIL CODE art. 1079-1; THE PROTECTION OF TAIWAN CHILDREN AND YOUTHS WELFARE AND RIGHTS ACT, *supra* note 33, art. 14, ¶ 1.

<sup>37</sup> TAIWAN CIVIL CODE art. 1077, ¶ 1.

### B. *The Taoyuan Case of Lesbian Adoption*

In 2007, the Taiwan Taoyuan District Court rejected a petition filed by a lesbian to adopt the daughter of her sister.<sup>38</sup> This is the first and the only case of adoption in Taiwan in which the adopter was openly homosexual.<sup>39</sup> This decision is important because it will likely have a lasting affect the future holdings in similar cases.

#### 1. The Facts of the Taoyuan Case of Lesbian Adoption

Ms. Lin<sup>40</sup> was the petitioning adopter in this case. She was twenty-seven-years-old and had been in a relationship for over eight years with her partner, Ms. Wu, when she filed her petition for adoption. Both Lin and Wu had come out as lesbians to their families, and both families had accepted their sexual identities and their relationship with each other. Though they did not have a legal marital status, Lin and Wu had lived together and represented themselves as a married couple.<sup>41</sup> To them, the only missing piece for a happy family life was a child of their own.<sup>42</sup>

In April 2007, Ms. Lin's younger sister gave birth to a baby girl. It appears that the sister and her husband did not have sufficient financial resources to parent the newborn child. Meanwhile Lin and Wu were not able to have a child of their own under Taiwanese regulations. After

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<sup>38</sup> Taoyuan Difang Fayuan 96 Niandu Yangshengzi di 81 hao Caiding (桃園地方法院九十六年度養聲字第八一號裁定) [Taoyuan Dist. Ct., Aug. 27, 2007]; *See also* Chen, *supra* note 3, at 66.

<sup>39</sup> After searching with the keywords "Tongzhi (LGBTQ people)" and "Tongxinglian (homosexual)" in the database of the Judicial Yuan and collecting case documents dating back to 2000, there is no other adoption case in which the adopter has come out as a homosexual. This case is reported by the media as the first case of adoption by homosexuals in Taiwan. *See, e.g.*, Tongjiahui Huiying Taoyuan Diyuan Shijian Shengminggao (同家會回應桃園地院事件聲明稿) [Statement from Taiwan LGBT Family Rights Advocacy], LAMABAO [THE LAMANNEWS] (Nov. 6, 2007), *available at* [http://blog.yam.com/la\\_ma\\_news/article/12457792](http://blog.yam.com/la_ma_news/article/12457792) (last visited Oct. 9, 2012). For further reference, the first case of a transsexual adopter had been decided years before the Taoyuan case. *See* Jiayi Difang Fayuan 90 Niandu Yangshengzi di 111 hao Caiding (嘉義地方法院九十年度養聲字第一一一號裁定) [Jiayi Dist. Ct., Oct. 17, 2001].

<sup>40</sup> In the author's experience, family law cases in Taiwan are not public information. Only the family names of the parties involved are shown in the files of judicial databases and news coverage.

<sup>41</sup> "A lesbian couple, who recognize themselves as husband and wife, wishes to adopt a baby girl and fulfill their dream of having a happy family." Nütongzhi Shouyang Xiaohai, Fayuan Buzhun (女同志收養小孩, 法院不准) [The Court Rejected Lesbian Adoption], LIANHEBAO (聯合報) [UDN NEWSPAPER], Sep. 07, 2007, at A14.

<sup>42</sup> *Id.* (stating that "Ms. Lin testified to the Court that she and Ms. Wu have been in love for over eight years and are living together now, the senior members in their family have embraced the couple's homosexual identity, and the couple wishes to complete their life through the adoption of this baby.").



discussions in family meetings, the household decided to let Lin adopt her niece. Lin's partner Wu promised to substantially help Lin raise the child, despite the fact that she could not obtain legitimate parenthood status. Following the family's decision, Lin and her sister, who was the birth mother and the legal representative of her baby girl,<sup>43</sup> executed an adoption agreement on April 12, 2007,<sup>44</sup> and filed a petition in the Taiwan Taoyuan District Court for approval.

In adherence to the law,<sup>45</sup> the court requested that the Taoyuan Branch of the Taiwan Fund for Children and Families ("TFCF", a non-governmental organization for children's welfare) assign social workers to perform home visits and evaluations.<sup>46</sup> The social workers from TFCF filed their report on May 18, 2007, including an assessment of the following four aspects and resulting recommendations.

First, the social workers assessed the aspect of Lin's financial condition. The TFCF found that the petitioning adopter, Lin, worked as a night-shift operator with an income of more than 30,000 New Taiwan ("NT") dollars per month.<sup>47</sup> The adopter's partner and father also held jobs and did not require financial support from Lin.<sup>48</sup> Lin was not in any debt and had savings. The visiting social workers considered Lin able to offer the adoptee a financially stable life if she could sustain her current position at work.<sup>49</sup>

Second, the social workers reviewed Lin's physical and psychological conditions. The company Lin worked for required its employees to receive a health examination every six months, and Lin had been in good health.<sup>50</sup> However, the social workers noted that Lin had a

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<sup>43</sup> TAIWAN CIVIL CODE arts. 1076-2, ¶ 1, 1086.

<sup>44</sup> Taoyuan Dist. Ct., *supra* note 38, at ¶ 1.

<sup>45</sup> ERTONG JI SHAONIAN FULIFA (兒童及少年福利法) [Children and Youth Welfare Act] art. 14, ¶ 4. (May 12, 2010) (amended and renamed "THE PROTECTION OF CHILDREN AND YOUTHS WELFARE AND RIGHTS ACT" after Nov. 30, 2011) ("Before recognizing the adoption of children or teenagers, a court should require a proper authority or children welfare institutions to conduct home visits and investigation in order to file reports with recommendations. The adopter or an interested party may also provide relevant information or evidence to the court for the discretion.").

<sup>46</sup> Fuwu Dashiji (服務大事紀) [Chronicle of Services Provided by T. F. C. F.], TAIWAN ERTONG JI JIATING FUZHU JIJINHUI (台灣兒童暨家庭扶助基金會) [TAIWAN FUND FOR CHILDREN AND FAMILIES], <http://www.ccf.org.tw/02service/01-9.htm> (last visited Jul. 17, 2012).

<sup>47</sup> Taoyuan Dist. Ct., *supra* note 38, ¶ 3, lines 6-7.

<sup>48</sup> Judging from the judicial documents, it is the author's opinion that it can be reasonably assumed that Lin and Wu lived with Lin's parents.

<sup>49</sup> Taoyuan Dist. Ct., *supra* note 38, ¶ 3, lines 5-9.

<sup>50</sup> *Id.* ¶ 3, lines 11-12.

masculine appearance, which could make her easily mistaken for a man. Due to -this appearance and the fact that Lin is a lesbian, the TFCF concluded that the child's gender identity and expression could be a concern in the future, if the petitioner was allowed to adopt the child.<sup>51</sup>

Third, the social workers reviewed the support from family, friends, and others.<sup>52</sup> According to the social workers, Lin's mother, who was aware of Lin's lesbian identity and had a good relationship with Wu, was a strong source of family support. The mother explained to the social workers that she would be willing to take care of the child when Lin was at work. Wu also declared that she wanted to adopt the child as her own daughter.<sup>53</sup> As a result, the social workers recognized that Lin had sufficient support to raise the child.<sup>54</sup>

Finally, the social workers reviewed Lin's incentives for adoption. Lin wanted to provide the child with a loving home, which is considered an acceptable incentive. However, according to the social workers, Lin and the child were aunt and niece, and to transfer them into a parent-child relationship might confuse the child.<sup>55</sup> In addition, the biological mother would remain present in the child's life. This could lead to issues in parenting and produce other potentially negative effects on the child.<sup>56</sup>

The social workers concluded that, although Lin qualified in some aspects, there remained issues regarding the impact her sexual identity might have on the child. The social workers were concerned that Lin's lesbian identity might confuse the child, leading to future harm.<sup>57</sup> The final decision to grant or deny the adoption belonged to the court, in accordance with the best interest doctrine.<sup>58</sup>

## 2. The Best Interest Doctrine and Adoption Cases

The best interest doctrine, which is applied to family law cases, has been integrated into the Taiwan Civil Code since the 1996 Amendment.<sup>59</sup> Before the 1996 Amendment, the father's rights were the first priority in

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<sup>51</sup> *Id.* ¶ 3, lines 9-14.

<sup>52</sup> *Id.* ¶ 3, line 14.

<sup>53</sup> *Id.* ¶ 3, lines 16-17.

<sup>54</sup> *Id.* ¶ 3, lines 14-20.

<sup>55</sup> *Id.* ¶ 3, line 26.

<sup>56</sup> *Id.* ¶ 3, lines 20-26.

<sup>57</sup> *Id.* ¶ 3, lines 26-29.

<sup>58</sup> *Id.* ¶ 3, lines 29-30.

<sup>59</sup> LIFAYUAN GONGBAO (立法院公報) [COMMUNIQUE FROM LEGISLATIVE YUAN] COL. 85 VOL. 40 NO. 2862 YUANHUI JILU (院會紀錄) [CONGRESS MINUTES] 256 (Sep. 6, 1996).

post-divorce arrangements.<sup>60</sup> Divorced fathers automatically received custody unless they willingly gave up the child.<sup>61</sup> But after the amendment, the gender equal principle and the best interest doctrine replaced the father-centered practice in the Taiwan Civil Code.<sup>62</sup> Specifically, Article 1055 of the Taiwan Civil Code requires mutual agreement between the divorcing parties on custody issues.<sup>63</sup> When failing to reach agreement, courts will make the decision in line with the best interests of the child.<sup>64</sup> Article 1055-1 of the Taiwan Civil Code provides the standards for the best interest doctrine by identifying the following aspects for the judge to consider: the intent and age, sex, number of the children, and health conditions of the child; the intent and age, occupation, character, health, economic conditions, and life style of the parents; and the bond between family members.<sup>65</sup>

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<sup>60</sup> *Id.* at 277.

<sup>61</sup> TAIWAN CIVIL CODE art. 1051 (Dec. 3, 1930) (repealed on Sep. 6, 1996) (“The husband will have the custody of the children after a mutual consent divorce unless both divorce parties agree to assign the custody otherwise.”).

<sup>62</sup> LIFAYUAN GONGBAO, *supra* note 59, at 265.

<sup>63</sup> TAIWAN CIVIL CODE art. 1055, ¶ 1 (“After the husband and the wife effect a divorce, one party or both parties of the parents will exercise the rights or assume the duties in regard to the minor child by mutual agreement. If the mutual agreement did not or could not be done, the court may decide by the applications of the husband or the wife, the authorities concerned, the social welfare institution or any other interested person, or may decide by its authority.”).

<sup>64</sup> TAIWAN CIVIL CODE art. 1055, ¶ 2 (“If the mutual agreement is unfavorable to the child, the court may change the agreement upon the applications of the authority concerned, the social welfare institution or any other interested person or by its authority in regard to the interests of the minor child.”).

<sup>65</sup> *Id.*

When the court makes the jurisdiction in the Article of 1055, it should be decided in accordance with the best interests of the minor child, considering all the conditions and the visiting reports of the social workers, especially check the following contents:

- (1) The age, sex, numbers and healthy condition of the minor child.
- (2) The willing of the minor child and the need of personality development.
- (3) The age, occupation, character, health condition, economical ability and the life style of the parents.
- (4) The parent's willing and attitude of protecting and educating the minor child.
- (5) The emotional feelings between the parents and the minor child or between the other persons living together and the minor child. *Id.*

The courts did not apply the best interest doctrine to adoption cases until after the 2007 Amendment of the Taiwan Civil Code.<sup>66</sup> Since 2007, the courts have decided cases of adoption based upon the child's best interests,<sup>67</sup> considering all of the criteria mentioned in Article 1055-1 for this purpose.<sup>68</sup>

### 3. The Results of the Taoyuan Case of Lesbian Adoption

Despite the best interest doctrine's requirement that a court evaluate all of the factors in Article 1055-1 of the Taiwan Civil Code to determine what is in a child's best interest, it seems that the court in the Taoyuan case denied the petition for adoption based primarily on Lin's sexual orientation. The court acknowledged that the personality of a child is established through imitating and learning from her caretakers.<sup>69</sup> Since parents are the closest people to a child, they are likely to be viewed as role models for gender identity, gender performance, role definition, and interpersonal relationships.<sup>70</sup> The court then proclaimed itself to hold a positive and open attitude toward homosexual relationships, recognizing them as a personal freedom where two same-sex adults with mature personalities choose to enter into a romantic relationship with each other.<sup>71</sup> However, the court, after considering social and cultural factors, found that homosexual people do bear a stigma and social pressure within Taiwan, and that there is still a long way to go before Taiwanese society accepts homosexual people.<sup>72</sup>

The court acknowledged that adoption was a legal, available method for homosexuals to fulfill their wish of parenting, but also

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<sup>66</sup> Since the 1996 Amendment to Taiwan Civil Code, the best interest doctrine had been explicitly required in custody cases. See LIFAYUAN GONGBAO COL. 85 VOL. 40 NO. 2862 YUANHUI JILU 255-56 (Sep. 6, 1996), *supra* note 59. When it comes to adoption cases, however, the Taiwan Civil Code only required that, "the court should not grant an adoption case if facts shown that adoption would be against the children's interests." See Taiwan Civil Code art. 1079, ¶ 5(2). (May 24, 1985). But after the 2007 Amendment, Article 1079-1 of Taiwan Civil Code explicitly states that, "when considering a proposed adoption, the court shall base the judgment on the adopted minor's best interest" and thereafter requires application of the best interest doctrine to adoption cases. See LIFAYUAN GONGBAO (立法院公報) [COMMUNIQUÉ FROM LEGISLATIVE YUAN] COL. 96 VOL. 38 NO. 3561 YUANHUI JILU (院會紀錄) [CONGRESS MINUTES] 179 (May 4, 2007).

<sup>67</sup> TAIWAN CIVIL CODE art. 1079-1.

<sup>68</sup> TAIWAN CIVIL CODE art. 1083-1 ("The court may apply *mutatis mutandis* to the Article 1055-1 when the court rules pursuant to...the Article 1079-1 . . . ).

<sup>69</sup> Taoyuan Dist. Ct., *supra* note 38, ¶ 3, lines 32-33.

<sup>70</sup> *Id.* ¶ 3, lines 33-36.

<sup>71</sup> *Id.* ¶ 3, lines 36-39.

<sup>72</sup> *Id.* ¶ 3, lines 39-41.

considered it “foreseeable”<sup>73</sup> that the child would be under a lot of pressure in school and among peers. The court presumed that a child adopted by homosexuals would be mocked by classmates due to his or her gender identity, gender expression, or role definition, which could be different from the majority of the society.<sup>74</sup> The court reasoned that because all of this pressure would be placed on the child, adoption by Lin could not be in the best interest for the child.<sup>75</sup>

Since the birth parents of the child might not be able to provide her with financially stable conditions, the court suggested that Lin and the family help to financially support the biological parents and the child to lessen the burden.<sup>76</sup> The court concluded that it was in the best interest of the child to stay with her biological parents, and denied the adoption.<sup>77</sup> Although financial difficulties have no bearing on a legal parent’s right to parent their child, the court did not take into account the financial difficulties of the biological parents in determining the best interest of the child.<sup>78</sup>

No further appeal was made by Lin or her family after the judicial decision. Yet, according to the biological mother, the whole family decided to let Lin and her partner assume parental roles in caring for the child, even without legal recognition.<sup>79</sup>

### C. *Reflections on the Taoyuan Case and Lesbian Adoption*

According to the Taiwan Civil Code, approval of an adoption should be based on the best interests of the minor adoptee.<sup>80</sup> However, it is doubtful that the court’s decision in the Taoyuan case was actually based upon the best interest doctrine.

In this case, the court assumed that the child will likely adopt her sexual orientation and gender identity from her parents,<sup>81</sup> thus being raised

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<sup>73</sup> *Id.* ¶ 3, lines 47-48.

<sup>74</sup> *Id.* ¶ 3, lines 46-49.

<sup>75</sup> *Id.* ¶ 3, lines 50-53.

<sup>76</sup> *Id.* ¶ 3, lines 53-56.

<sup>77</sup> *Id.* ¶ 3, lines 57-58.

<sup>78</sup> The financial condition of the adopter is one criterion for the court to take into consideration when deciding an adoption case. *See* CHILDREN AND YOUTH WELFARE ACT art. 14, ¶ 1 (May 12, 2010).

<sup>79</sup> *See supra* note 41 (“The birth mother of the baby girl, who is also a younger sister of Ms. Lin, claims that . . . she would not appeal. And despite the decision made by the court, the family already reached their consensus that, the baby girl would be raised by her sister [Ms. Lin in this case].”).

<sup>80</sup> TAIWAN CIVIL CODE art. 1079-1.

<sup>81</sup> Taoyuan Dist. Ct., *supra* note 38, ¶ 3.

by lesbian parents would confuse the child's understanding of gender.<sup>82</sup> The court did not refer to any theoretical grounds for such concerns; instead, it based its rationale on speculation and prejudices. The concept that children obtain their sexual orientation and gender identity from their parents is groundless and unreasonable. The majority of lesbian, gay, bisexual, transgender ("LGBT") individuals are raised by heterosexual parents.<sup>83</sup> In fact, empirical research shows the irrelevance of a parent's sexual orientation to the sexual orientation of their children.<sup>84</sup> To look at it another way, would a child's understanding of "gender" be confused if he or she were raised by homosexual parents? No, in fact, children raised by homosexual parents seem to be generally well-educated in gender issues.<sup>85</sup> Studies suggest that children who grow up in families with same-sex parents would be more likely to be taught by their parents to respect other people and to value diversity.<sup>86</sup>

In the Taoyuan case, the court made the decision based on gender stereotypes rather than on the best interest doctrine. The court had a picture of heterosexual normativity in mind when it made its decision, but it tried to "call it something else"<sup>87</sup> to conceal the fact that heterosexual hegemony is haunting the courtroom. The court disregarded all of the other aspects of the social worker's evaluation, and made its decision based solely on the sexual orientation of the petitioning adopter. Ironically, the court rejected the adoption petition simply because of the adopter's lesbian identity, while simultaneously declaring that it had no prejudice against homosexuals. In its verdict, the court proclaimed that its disapproval of the adoption would prevent the child from foreseeable discrimination in society. This widespread discrimination against LGBT people in Taiwan might be a fact, but as one commentator responded to the ruling, the right thing to do is to change such a bitter fact, rather than yield to it.<sup>88</sup>

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<sup>82</sup> *Id.* ¶ 3, lines 27-28.

<sup>83</sup> See *Zhaobudao Weizhi de Jia* (找不到位置的家) [*HOME WHERE NOWHERE I CAN FIT IN*], in Qinai de Bama, Wo Shi Tongzhi (親愛的爸媽，我是同志) [Parents of Lesbians and Gays Talk About Their Experiences] 185, 192-93. (Zheng Zhiwei eds., 2003). This book is published in Chinese, but an English title is provided by the editor.

<sup>84</sup> JEFFREY WEEKS, BRIAN HEAPHY, AND CATHERINE DONOVAN, *SAME SEX INTIMACIES: FAMILIES OF CHOICE AND OTHER LIFE EXPERIMENTS* 178-79 (2001).

<sup>85</sup> SUZANNE M. JOHNSON & ELIZABETH O'CONNOR, *THE GAY BABY BOOM: THE PSYCHOLOGY OF GAY PARENTHOOD* 81-82 (New York University 2002).

<sup>86</sup> *Id.*

<sup>87</sup> ALLEN G. JOHNSON, *PRIVILEGE, POWER, AND DIFFERENCE* 21 (2006). See also Chen, *supra* note 3, at 67-68.

<sup>88</sup> Tongjiahui Zhendui Taoyuandiyuan Panjue Tongzhi Buzhun Shouyang Xiaohai de Huiying (同家會針對桃園地院判決同志不准收養小孩的回應) [Response to the Rejection on Lesbian Adoption], TAIWAN TONGZHI JIATING QUANYI CUJINHUI (台

In an attempt to protect the child's best interests, the court failed to follow the principle established by the Constitution of the Republic of China—that all citizens, irrespective of sex, shall be equal before the law. The court also failed to perform its duty in expressing the State's distaste of sex-based discrimination.<sup>89</sup> It is true that the standards and criteria regarding a child's "best interests" are far from clear and often shaped by the judge's personal values and biases. However, in deciding petitions for adoption, the courts should apply all of the standards provided by Taiwan Civil Code Article 1055-1 with respect to the child's best interest. The petitioner's sexual orientation, gender identity, and gender expression should only be regarded as one of many factors, not the sole deciding factor.

### III. LESBIAN PARENTING THROUGH REPRODUCTIVE TECHNOLOGIES

This section will discuss current regulations on assisted reproduction faced by lesbians in Taiwan. According to the Taiwan Artificial Reproduction Act, single women and lesbian couples are not allowed to receive treatments for assisted reproductive technologies ("ART") because the Taiwan Artificial Reproduction Act reserves that right to married couples.<sup>90</sup> Despite this substantive legal obstacle, lesbians in Taiwan continue to try various ways to give birth to children of their own.

#### A. *The Legal Recognition of Parenthood Through Assisted Reproductive Technologies*

Even though ARTs are available for married couples in Taiwan, other requirements must also be fulfilled. For example, at least one party must have healthy reproductive cells,<sup>91</sup> and the wife must be able to carry a child to term because no services for gestational surrogacy are allowed.<sup>92</sup> Assuming that the recipient couple has healthy gametes, they may undergo

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灣同志家庭權益促進會) [TAIWAN LGBT FAMILY RIGHTS ADVOCACY] (Aug. 9, 2007), available at [http://www.lgbtfamily.org.tw/events\\_content.php?id=23&page=1](http://www.lgbtfamily.org.tw/events_content.php?id=23&page=1) (last visited Jul. 20, 2012).

<sup>89</sup> Dafaguan Jieshi (大法官解釋) [Grand Justices Interpretations] No. 694, Concurring Opinion from Grand Justice Ye Baixiu at 14, n. 31 (JIESHI Dec, 30, 2011).

<sup>90</sup> "Recipient couple: refers to a husband and wife receiving artificial reproduction, where the wife's uterus can carry a fetus and give birth to a child." TAIWAN ARTIFICIAL REPRODUCTION ACT art. 2, ¶ 1(3) ("Recipient couple: refers to a husband and wife receiving artificial reproduction, where the wife's uterus can carry a fetus and give birth to a child."). The definition of "artificial reproduction (mentioned as "ART" in this article)" in this statute and in context of Taiwan laws is "the use of artificial means not involving sexual intercourse to achieve conception and birth with assistance from reproductive medicine." TAIWAN ARTIFICIAL REPRODUCTION ACT art. 2, ¶ 1(1).

<sup>91</sup> TAIWAN ARTIFICIAL REPRODUCTION ACT art. 11.

<sup>92</sup> TAIWAN ARTIFICIAL REPRODUCTION ACT art. 2, ¶ 1(3).

the treatment for artificial insemination or in vitro fertilization (“IVF”) to achieve fertilization.<sup>93</sup> The husband and wife are deemed legal parents of the resulting child.<sup>94</sup> In cases where one parent is diagnosed with a major hereditary disease, or is unable to produce healthy gametes, parents can use donated gametes<sup>95</sup> to create embryos through IVF. The resulting embryos are then implanted into the wife’s womb, and one or more children are delivered.<sup>96</sup> Although the child is not biologically related to one parent, he or she will be legally recognized as the marital child of the couple, provided that both parents consented to the use of ART.<sup>97</sup>

As previously discussed, if the legally presumed father, usually the birth mother’s husband, is in fact not biologically connected to the child, a lawsuit of disavowal may be brought by the husband, the wife, or the child.<sup>98</sup> Once the disavowal petition is granted, the legal father-child relationship is severed. This means the husband is not legally responsible for providing the child with support and the child is disinherited on the paternal side.<sup>99</sup> Only at this point can the biological father legally acknowledge the child as his own and assume legal fatherhood with all of the attendant responsibilities and rights. If the biological father refuses to proceed with legal recognition, either the mother or the child may bring a paternity suit against him.<sup>100</sup> There must be sufficient evidence to prove the genetic connection.<sup>101</sup>

However, in the context of ART, when a sperm donor is used, the recipient husband would naturally have no biological connection with the resulting child. The husband’s parental right is established through his express consent for his wife to use donated sperm.<sup>102</sup> If the recipient husband can prove that his consent was acquired through fraud or

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<sup>93</sup> In vitro fertilization (“IVF”) is the joining of a woman’s egg and a man’s sperm in a laboratory dish. In vitro means “outside the body.” Fertilization means the sperm has attached to and entered the egg. Medline Plus, A Service of the US National Library of Medicine, NIH National Institutes of Health (Sep, 27 2012), *available at* <http://www.nlm.nih.gov/medlineplus/ency/article/007279.htm> (last visited Oct. 14, 2012).

<sup>94</sup> TAIWAN CIVIL CODE art. 1061.

<sup>95</sup> TAIWAN ARTIFICIAL REPRODUCTION ACT art. 23, ¶ 1.

<sup>96</sup> *Id.* art. 16, ¶ 1(6). According to the law, implantation of five or more embryos at time is prohibited. *Id.*

<sup>97</sup> *Id.* art. 23.

<sup>98</sup> TAIWAN CIVIL CODE art. 1063, ¶ 2.

<sup>99</sup> *See* DAI ET AL., *supra* note 10, at 300 & 306. Since the legal parent-child relationship is severed, the husband and the child become unrelated under the law. Thus no rights or responsibilities emerge from the legal parent-child relationship. *Id.*

<sup>100</sup> TAIWAN CIVIL CODE art. 1067, ¶ 1.

<sup>101</sup> *Id.* art. 1067, ¶ 1.

<sup>102</sup> TAIWAN ARTIFICIAL REPRODUCTION ACT art. 23, ¶ 1.



coercion, he may petition to disavow his parental rights and be freed from parental responsibilities.<sup>103</sup> Unlike biological fathers who are entitled to legally acknowledge non-marital children, sperm donors in Taiwan are not allowed such rights.<sup>104</sup> Even when the ART child is rendered fatherless, after the recipient husband successfully disavows his parentage, neither the recipient wife, the resulting child, nor the sperm donor may file a petition to establish legal parentage between the donor and the child.<sup>105</sup>

In Taiwanese family law, the birth mother is deemed the legal mother.<sup>106</sup> Since traditional motherhood is the combination of genetic connection, gestation, and rearing, mothers have no right to disavow motherhood of the child she gives birth to.<sup>107</sup> However, in ART cases where donor eggs are used, the Taiwan Artificial Reproduction Act follows the traditional notion of motherhood and uses gestation as the key element in deciding legal motherhood.<sup>108</sup> Consequently, egg donors are not deemed legal mothers, even though egg donation is a much more medically intrusive procedure with a substantially higher risk to the donor's health than the risks associated with sperm donations.<sup>109</sup> To protect the birth mother's autonomy in reproduction, her consent to carry a child to term by using ART procedures with donor eggs is emphasized by the law.<sup>110</sup> As a result, the law allows her to petition for disavowal of her parental rights

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<sup>103</sup> *Id.* art. 23, ¶ 2.

<sup>104</sup> *Id.* art. 23, ¶ 3.

<sup>105</sup> *Id.*

<sup>106</sup> *See supra* note 12.

<sup>107</sup> TAIWAN CIVIL CODE art. 1063, ¶ 2. Birth mothers may disavow legal fatherhood but not motherhood. *Id.*

<sup>108</sup> TAIWAN ARTIFICIAL REPRODUCTION ACT art. 24, ¶ 1.

<sup>109</sup> To donate oocytes, a woman has to take more invasive procedures than a male sperm donor. She has to take ovulation drugs and follistim injections, and when the ovulation is due, vaginal ultrasound and laparoscopy are used to retrieve the oocytes. *See* Wu Jialing (吳嘉苓), Taiwan de Xin Shengzhikeji yu Xingbie Zhengzhi, 1950-2000 (台灣的新生殖科技與性別政治) [New Reproductive Technology and Gender Politics in Taiwan, from 1950 to 2000], TAIWAN SHEHUI YANJIU JIKAN (台灣社會研究季刊) [TAIWAN: A RADICAL QUARTERLY IN SOCIAL STUDIES], No. 45 March 2002. (The original author provided an English title for the paper, but all the other parts of this paper are written in Chinese.) Furthermore, due to the treatment in the donation process, "about 1-10 [percent] of oocyte donors may have ovarian hyper-stimulation syndrome ("OHSS"), ascites, chest effusion, or anesthesia complications, infection, and bleeding." Xingzhengyuan Weishengshu Xinwengao (行政院衛生署新聞稿) [Press Release from Department of Health, Executive Yuan] (Jun. 24, 2005), available at [http://www.doh.gov.tw/CHT2006/DM/DM2\\_p01.aspx?class\\_no=25&now\\_fod\\_list\\_no=7369&level\\_no=2&doc\\_no=41537](http://www.doh.gov.tw/CHT2006/DM/DM2_p01.aspx?class_no=25&now_fod_list_no=7369&level_no=2&doc_no=41537) (last visited Oct. 14, 2012).

<sup>110</sup> *See supra* note 108.

toward the child only if convincing evidence is shown that her consent was obtained through fraud or coercions.<sup>111</sup>

Since same-sex marriage is not yet legalized in Taiwan, lesbian couples are prohibited from accessing ART.<sup>112</sup> Lesbians wishing to become parents through ART are finding ways to circumvent the legal barriers, though these are far from perfect solutions.

#### B. *Circumvention of the Barriers to Legal Parentage Through ART*

Due to the prohibition of performing ART on unmarried persons, most licensed institutions and doctors will not risk sanctions for serving lesbian couples.<sup>113</sup> In addition to the risk of breaking the law, some doctors refuse to perform ART treatment on lesbians due to personal bias or religious conflicts about LGBT issues.<sup>114</sup> Some lesbians in Taiwan have found doctors willing to perform ART,<sup>115</sup> but the procedures often cost ten times more than the regular price because the doctor risks legal punishment.<sup>116</sup>

The high costs and legal consequences of official medical ART procedures have lead many lesbians in Taiwan to practice self-

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<sup>111</sup> TAIWAN ARTIFICIAL REPRODUCTION ACT art. 24, ¶ 2.

<sup>112</sup> *Id.* art. 2, ¶ 1(3).

<sup>113</sup> Yishi Pabeifa, Nütongzhi Qiuzimeng Nanyuan (醫師怕被罰, 女同志求子夢難圓) [Doctors Won't Risk Breaking the Law, Lesbians Fail to Have a Baby], LIANHEBAO (聯合報) [UDN NEWSPAPER], Feb. 20, 2003, at B4. Article 35 of the Taiwan Artificial Reproduction Act demands that a doctor who performs artificial reproduction technologies on recipients other than infertile married couples be subject to disciplinary sanctions by the Medical Association and Department of Health, in accordance with Article 25 of the TAIWAN PHYSICIAN ACT. In addition to the sanctions, the recipients and the doctor will be fined between 100,000 New Taiwan ("NT") dollars and 500,000 NT dollars, according to Article 33 of the TAIWAN ARTIFICIAL REPRODUCTION ACT.

<sup>114</sup> Li Huishan (李惠珊), Nütongzhi Jiating Qinziguanxi Fazhi zhi Yanjiu (女同志家庭親子關係法制之研究) [Study on the Laws of Parent-Child Relationship in Lesbian Family] 18 (2008) (Master Thesis, Institute of Law for Science, Technology, National Tsinghua University, 2008) (copy on file with Main Library, National Tsinghua University). The original author provided an English title for the thesis, but all the other parts of this thesis are written in Chinese.

<sup>115</sup> Xingfu Lantuxia de Xishengpin (幸福藍圖的犧牲品) [Sacrifices for a Blueprint of Happiness], LAMABAO [THE LAMANNEWS] (Jul. 2006), available at [http://blog.yam.com/la\\_ma\\_news/article/6282342](http://blog.yam.com/la_ma_news/article/6282342) (last visited Jul. 14, 2012).

<sup>116</sup> Li, *supra* note 114, at 18. The cost of one cycle of artificial reproduction treatment might cost about 170,000 NT dollars. See Rengongshengzhi Liucheng ji Jiage (人工生殖流程及價格) [Process and Price of Artificial Reproduction], Taida Yiyuan (台大醫院) [National Taiwan University Hospital] (Oct. 8, 2012), available at <http://www.ntuh.gov.tw/IMSC/services/items1/%E4%BA%BA%E5%B7%A5%E7%94%9F%E6%AE%96%E6%B5%81%E7%A8%8B%E5%8F%8A%E5%83%B9%E6%A0%B>C.aspx (last visited Oct. 9, 2012).

insemination.<sup>117</sup> This “do-it-yourself” insemination is mostly performed with a Pasteur pipette containing sperm<sup>118</sup> that is often donated by a male friend.<sup>119</sup> As mentioned in part I-A of this article, for birth fathers willing to assume fatherhood, mere oral acknowledgement is all that is required to establish paternity with a non-marital child whenever he sees fit.<sup>120</sup> Lesbian couples that would prefer to keep the family simple may try to avoid the expected risk of custody lawsuits from an acquainted sperm donor, in case of a change of mind. After all, according to Taiwan Artificial Reproduction Act, Articles 23 and 24, only married couples who use anonymous donor's gametes via infertility clinics are deemed legal parents of the resulting child. In all other circumstances, such as receiving sperm from a friend, recipients are not protected by the said Act and the donor can sue for custody any time he wishes. Yet, because the commercialization of human gamete is prohibited in Taiwan, chances are slim that a lesbian can acquire sperm through a clinic or sperm bank.<sup>121</sup>

The possibility of conception through self-insemination is not very high, and this adds to the impetus for lesbians who are able to afford the treatment to seek the assistance of ART in licensed hospitals.<sup>122</sup> Lesbian couples with sufficient financial resources can even choose to fly to other countries for ART procedures.<sup>123</sup> Although legal and safe, this method costs more and requires more effort on the lesbian couple's side due to

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<sup>117</sup> For instance, a lesbian mother, who had her first child through artificial reproduction and her second child through self-insemination, said that “in comparison to artificial reproduction, using self-insemination doesn't require the pulling of a string to find a doctor abroad to help you with the technology, and doesn't cost me hundreds of thousands [of NT dollars]. It's more inexpensive and convenient.” See Guocheng Zhong de Diandi (過程中的點滴) [Trivia in the Process (of Having Children)], LAMABAO (拉媽報) [THE LAMANNEWS] (Oct. 1, 2008), [http://blog.yam.com/la\\_ma\\_news/article/18174744](http://blog.yam.com/la_ma_news/article/18174744) (last visited Oct. 9, 2012).

<sup>118</sup> Lazi Shouyun DIY, Xiangyao Baobao Zijilai (拉子受孕 DIY, 想要寶寶自己來) [Lesbian DIY conception, Make the Baby by Yourself], LAMABAO (拉媽報) [THE LAMANNEWS] (Jan. 2007), available at [http://blog.yam.com/la\\_ma\\_news/article/7864689](http://blog.yam.com/la_ma_news/article/7864689) (last visited Jul. 20, 2012).

<sup>119</sup> Diguan Qujingshouyun, Nütongzhi Shengwa (滴管取精受孕, 女同志生娃) [Self-Inseminated by Pipette, Lesbian Got Her Child], LIANHEWANBAO (聯合晚報) [UDN EVENING NEWSPAPER], Oct. 9, 2006, at A11.

<sup>120</sup> TAIWAN CIVIL CODE art. 1065, ¶ 1.

<sup>121</sup> TAIWAN ARTIFICIAL REPRODUCTION ACT art. 13.

<sup>122</sup> Julien S. Murphy, *Should Lesbians Count as Infertile Couples? Antilebian Discrimination*, in ASSISTED REPRODUCTION IN QUEER FAMILIES, QUEER POLITICS 182, 184 (Mary Bernstein & Renate Reimann eds., 2001).

<sup>123</sup> Yige Nüsheng, Shengxiaohai (一個女生, 生小孩) [One Girl Only, to Bear a Child], LAMABAO (拉媽報) [THE LAMANNEWS] (Mar. 2006), available at [http://blog.yam.com/la\\_ma\\_news/article/5807088](http://blog.yam.com/la_ma_news/article/5807088) (last visited Jul. 20, 2012).

having to make arrangements for travel and lodging, and having to find suitable doctors in a foreign country.<sup>124</sup> However, having ART procedures conducted abroad entails the same problems for lesbian mothers as other approaches: while the birth mother would be recognized as the legal mother under Taiwanese law, her lesbian partner would still not be deemed a parent, even if she is actually the egg donor.<sup>125</sup> Hence a common picture of planned lesbian motherhood in Taiwan shows two mothers sharing the responsibilities of parenting the same child, even though the non-birth mother is merely a stranger to the child in the eyes of the law.<sup>126</sup>

Another option lesbians in Taiwan pursue in order to be legally entitled to receive ART procedures by a licensed hospital or clinic is that one partner enters into a sham marriage with either a gay man<sup>127</sup> or a heterosexual man.<sup>128</sup> Both approaches usually involve a male acquaintance, and may be expected to cause complicated interpersonal and legal issues regarding custody.

With grassroots groups advocating for same-sex marriages in Taiwan, there may yet be a silver lining that allows lesbian couples to receive ART procedures legally in the future. Countries around the world are legalizing same-sex marriage and partnerships at a steady pace.<sup>129</sup> Activists in Taiwan are working to promote family rights for LGBT individuals and advocate for change.<sup>130</sup> In 2005, an MSN<sup>131</sup> group named

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<sup>124</sup> *Id.* It normally costs lesbian mothers hundreds of thousands of NT dollars to go abroad to receive treatments of artificial reproduction technologies.

<sup>125</sup> Murphy, *supra* note 122, at 185-6.

<sup>126</sup> Rengongshengzhi Dixiahua, Tongzhijiating Meibaozhang (人工生殖地下化, 同志家庭沒保障) [Illegal Artificial Reproduction, LGBT Families Without Protection], TAIWAN TONGZHI JIATING QUANYI CUJINHUI (台灣同志家庭權益促進會) [TAIWAN LGBT FAMILY RIGHTS ADVOCACY] (May 10, 2009), available at [http://www.lgbtfamily.org.tw/events\\_content.php?id=26&page=1](http://www.lgbtfamily.org.tw/events_content.php?id=26&page=1) (last visited Jul. 20, 2012).

<sup>127</sup> Li, *supra* note 114, at 18.

<sup>128</sup> TAIWAN ARTIFICIAL REPRODUCTION ACT art. 2, ¶ 1(8).

<sup>129</sup> Same-sex Marriage Around the World, CBC NEWS (Feb. 07, 2012), available at <http://www.cbc.ca/news/world/story/2009/05/26/f-same-sex-timeline.html> (last visited June 29, 2012).

<sup>130</sup> These activists are the Taiwan LGBT Family Rights Advocacy (formerly the Alliance of Lesbian Mothers) and Taiwan Alliance to Promote Civil Partnership Rights (“TAPCPR”). For an introduction of the former institute, see *infra* note 126; for the latter institute, see *infra* note 153.

<sup>131</sup> “MSN Messenger Service is an instant messaging program that tells you when your friends are online so that you can send an instant message to a friend or “talk” with several friends at once.” See Description and Availability of MSN Messenger Service, Microsoft, available at <http://support.microsoft.com/kb/240063/en-us> (last visited Dec. 25, 2012).

“the Alliance of Lesbian Mothers,” comprised of members ranging from ages twenty to sixty, was founded in Taiwan with the goal of helping lesbian mothers and those who wished to become lesbian mothers.<sup>132</sup> The Alliance of Lesbian Mothers issues an online newsletter, titled “LaMaNews” (short for “Newsletter for Lesbian Mothers” in Mandarin), which shares information about adoption, assisted reproduction, and parenting skills with its members.<sup>133</sup> The Alliance of Lesbian Mothers renamed themselves the “Taiwan LGBT Family Rights Advocacy” in 2007 and registered as a civil association with the goal of promoting equal rights for established families.<sup>134</sup>

If same-sex marriage is legalized, whether lesbian couples could receive IVF or artificial insemination depends on the courts’ interpretation of the definition of infertility in Article 1 of the Taiwan Artificial Reproduction Act.<sup>135</sup> It seems that this act focuses on the infertility of the *couple*, rather than the *individual*. Such a “relational diagnosis” could result in two people being considered fertile apart and infertile together.<sup>136</sup> Thus, if a lesbian couple is viewed by the courts as “relationally infertile,” there is the possibility that the Artificial Reproduction Act could be read to allow lesbians to receive ART legally.<sup>137</sup> The legalization of same-sex marriage,<sup>138</sup> and amending the law to adopt a broader definition of infertility could open the gate for lesbian couples to acquire legal parenthood through ART in the future.

#### IV. THE LATEST LAW-MAKING ACTIVITIES IN TAIWAN

The call for improving human and reproductive rights for LGBT people in Taiwan is growing stronger, and the right to form a legally recognized family is one of the most frequently discussed issues.<sup>139</sup> Two

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<sup>132</sup> *About Us*, Taiwan Tongzhi Jiating Quanyi Cujinhui (台灣同志家庭權益促進會) [Taiwan LGBT Family Rights Advocacy], *available at* [http://www.lgbtfamily.org.tw/index\\_en.php](http://www.lgbtfamily.org.tw/index_en.php) (last visited Jul. 11, 2012).

<sup>133</sup> The LaMaNews was published from 2006 to 2011, and all issues are collected in a blog, *available at* [http://blog.yam.com/la\\_ma\\_news](http://blog.yam.com/la_ma_news) (last visited Oct. 7, 2012).

<sup>134</sup> *About Us*, *supra* note 132.

<sup>135</sup> Article 1 of Taiwan Reproduction Act states that “This Act is enacted for the purpose of . . . protecting the rights and interests of infertile couples . . . .” TAIWAN REPRODUCTION ACT art. 1. When same-sex marriage is legalized in Taiwan, married lesbian couples will have the chance to be included in the Taiwan Reproduction Act.

<sup>136</sup> Murphy, *supra* note 122, at 190.

<sup>137</sup> *Id.* at 182.

<sup>138</sup> Although same-sex marriage is not recognized by the law, the advocacy of same-sex marriage legalization in Taiwan is steadily moving forward. *See infra* Part IV.B.

<sup>139</sup> *See Survey*, *supra* note 5.

important legislative efforts are especially noteworthy: (1) the drafting of the Basic Law for Gender Equality (“Basic Law”) and (2) the drafting of an amendment to the Taiwan Civil Code proposed by the Taiwan Alliance to Promote Civil Partnership Rights (“TAPCPR”)

#### A. *The Basic Law for Gender Equality*

Although gender mainstreaming and gender equality have been advocated for years in Taiwan, there has been no department at the central government level charged exclusively with designing, carrying out, and assessing gender policies.<sup>140</sup> Instead, policies that concern gender issues are handled by scattered government departments with no comprehensive framework to guide their decisions.<sup>141</sup> For instance, there are already various gender related laws in place such as the Sexual Harassment Prevention Act, Gender Equity Education Act, Domestic Violence Prevention Act, and Gender Equality in Employment Act. These laws, and others like them, may have enhanced the awareness of gender issues in Taiwanese society, but there is currently no overarching gender policy to reconcile these laws and policies when they conflict with each other or leave unintentional gaps.<sup>142</sup>

In response to this lack of an overarching policy, the Taiwan L Legislative Yuan (“Congress”) demanded that the Basic Law<sup>143</sup> be drafted to establish the Gender Equality Bureau of Taiwan Executive Yuan (“Cabinet”), a new department in the central government responsible for gender policies.<sup>144</sup> After a year of research, using the methodologies of comparative law, interviews with various advocates and scholars, and focus group interviews, the author, as the project investigator, and Professor Li-Li Huang of National Tsing Hua University,<sup>145</sup> as the associate investigator, completed the draft of the Basic Law.<sup>146</sup>

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<sup>140</sup> LIN YUNHSIEN (林昀嫻) & HUANG LILI (黃曬莉), XINGBIEPINGDENG JIBENFA WEITUOYANJIUAN QIMOBAGAO (性別平等基本法委託研究案期末報告) [FINAL REPORT OF COMMISSIONED RESEARCH PROJECT ON THE BASIC LAW FOR GENDER EQUALITY] 137 (2012).

<sup>141</sup> *Id.* at 135-6.

<sup>142</sup> *Id.* at 135.

<sup>143</sup> *Id.* at 1.

<sup>144</sup> Xingzhengyuan Xingbiepingdengchu Yibailingyinian Yiyueyiri Chengli (行政院性別平等處一百零一年一月一日成立) [The Gender Equality Bureau of Executive Yuan Has Been Established since Jan. 1, 2012], XINGZHENGYUAN XINGBIEPINGDENGHUI [THE GENDER EQUALITY COMMITTEE OF EXECUTIVE YUAN], available at [http://www.gec.ey.gov.tw/News\\_Content.aspx?n=4F80950EF52341B3&sms=4ABB9A64AF5D421F&s=590BDAB7F2102F32](http://www.gec.ey.gov.tw/News_Content.aspx?n=4F80950EF52341B3&sms=4ABB9A64AF5D421F&s=590BDAB7F2102F32) (last visited Aug. 04, 2012).

<sup>145</sup> Professor Li-Li Huang (黃曬莉) is currently the Director of the Institute of Learning Science, National Tsing Hua University, Taiwan. Professor Huang mainly publishes in the fields of Chinese psychology, social psychology, and gender and

The Basic Law is based on Article 7 of the Constitution of the Republic of China and the general ideas contained within the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”).<sup>147</sup> The Basic Law has two primary goals. The first goal is to establish the Gender Equality Bureau and equip it to become the highest authority in Taiwan in charge of gender related issues.<sup>148</sup> To this end, the Basic Law requires local governments to set up departments to collaborate with the Gender Equality Bureau and to carry out its policies.<sup>149</sup> The Basic Law also requires that the Gender Equality Bureau work to enhance gender awareness among government employees,<sup>150</sup> cultivate tools for gender mainstreaming,<sup>151</sup> and perform gender assessments before enforcing major policies.<sup>152</sup>

The second goal of the Basic Law is to set principles for gender equality in various aspects of civil life, such as political participation, employment, family relations, education, safety, media and culture, health care, social and economic benefits, technological developments, and in the judiciary and police.<sup>153</sup> Regarding LGBT equal rights, the Basic Law explicitly broadens the definition of “sex discrimination” to include different treatment, exclusion, or limitation based on gender, sexual orientation, or gender identity that would deny equal rights in any sphere of life.<sup>154</sup>

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psychology. She has received numerous awards for academic achievements and has been the editor of many academic journals in Taiwan and internationally. See Huang Lili (黃曬莉), Institute of Learning Science, National Tsing Hua University, available at <http://ils.nthu.edu.tw/files/14-1082-12095,r1368-1.php> (last visited: Dec. 26, 2012)

<sup>146</sup> LIN & HUANG, *supra* note 140, at 2.

<sup>147</sup> *Id.* at 195.

<sup>148</sup> The Draft of TAIWAN BASIC LAW FOR GENDER EQUALITY art. 5 (copy on file with Ministry of Interior). See LIN & HUANG, *supra* note 140, at 198.

<sup>149</sup> The Draft of TAIWAN BASIC LAW FOR GENDER EQUALITY art. 10 (copy on file with Ministry of Interior). See LIN & HUANG, *supra* note 140, at 199.

<sup>150</sup> The Draft of TAIWAN BASIC LAW FOR GENDER EQUALITY art. 11 (copy on file with Ministry of Interior). See LIN & HUANG, *supra* note 140, at 199.

<sup>151</sup> The Draft of TAIWAN BASIC LAW FOR GENDER EQUALITY art. 12 (copy on file with Ministry of Interior). See LIN & HUANG, *supra* note 140, at 199-200.

<sup>152</sup> The Draft of TAIWAN BASIC LAW FOR GENDER EQUALITY art. 13 (copy on file with Ministry of Interior). See LIN & HUANG, *supra* note 140, at 200.

<sup>153</sup> The Draft of TAIWAN BASIC LAW FOR GENDER EQUALITY art. 15 - art. 26 (copy on file with Ministry of Interior). See LIN & HUANG, *supra* note 140, at 200-03.

<sup>154</sup> The Draft of TAIWAN BASIC LAW FOR GENDER EQUALITY art. 2, ¶ 1, subparagraph 3 (copy on file with Ministry of Interior). See LIN & HUANG, *supra* note 140, at 197.

Article 18 of the Basic Law would specifically protect equal rights for same-sex couples who wish to create their own family. According to Article 18, alternative families shall be afforded the same rights as traditional families, and measures shall be taken to support alternative families and ensure that they function well.<sup>155</sup> With a broadened concept of gender equality, which includes sexual orientation and gender identity, the Basic Law sets the foundation and opens the possibilities for future legislation on gender issues.<sup>156</sup> Resonating with the draft of the Basic Law is a proposed amendment to the Taiwan Civil Code on issues concerning same-sex families, which will be introduced in the following section.<sup>157</sup>

### B. *The Proposed Amendment to the Taiwan Civil Code*

Founded in 2009, TAPCPR is composed of several organizations advocating for LGBT rights. The primary goal of TAPCPR is to promote same-sex marriages and partnerships, and to make both institutions equally available to heterosexual and homosexual couples.<sup>158</sup> To achieve this goal, TAPCPR proposed an amendment to the Division of Domestic Relations of the Taiwan Civil Code. A preliminary draft was released in September 2011 that included thirteen provisions pertaining to legal partnerships on adoption and legal parenthood.<sup>159</sup> After further comparative investigation with domestic and foreign laws, the final draft was delivered on July 31, 2012,<sup>160</sup> and is currently scheduled to be sent to Congress in September 2013.

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<sup>155</sup> The Draft of TAIWAN BASIC LAW FOR GENDER EQUALITY art. 18 (copy on file with Ministry of Interior). “The Government should promote gender equality within families, protect the rights of alternative families and strengthen their functions, and build a social support system for such families.” LIN & HUANG, *supra* note 140, at 201-02.

<sup>156</sup> The Preamble of Draft of TAIWAN BASIC LAW FOR GENDER EQUALITY (copy on file with Ministry of Interior). See LIN & HUANG, *supra* note 140, at 195.

<sup>157</sup> For example, the Draft of the Amendment to TAIWAN CIVIL CODE arts. 972, 1122, 1058-1 to 1058-13. See *infra* Part IV.B The Proposed Amendment to the Taiwan Civil Code.

<sup>158</sup> About TAPCPR, TAIWAN BANLÜQUANYI TUIDONGLIANMENG [TAIWAN ALLIANCE TO PROMOTE CIVIL PARTNERSHIP RIGHTS], <http://tapcpr.wordpress.com/%E9%97%9C%E6%96%BC%E4%BC%B4%E4%BE%B6%E7%9B%9F/> (last visited Jul. 20, 2012).

<sup>159</sup> Taiwan Banlüquanyi Tuidonglianmeng Banlüzhidu, Shouyang, Duorenjiashu Caoan (台灣伴侶權益推動聯盟伴侶制度, 收養, 多人家屬草案) [Draft for Partnership, Adoption, Alternative Family Dependents (Sep. 30, 2011)], TAIWAN BANLÜQUANYI TUIDONGLIANMENG (台灣伴侶權益推動聯盟) [TAIWAN ALLIANCE TO PROMOTE CIVIL PARTNERSHIP RIGHTS], <http://tapcpr.files.wordpress.com/2011/11/e58fb0e781a3e4bcb4e4beb6e6ac8ae79b8ae68ea8e58b95e881afe79b9fe4bcb4e4beb6e588b6e5baa6e38081e694b6e9a48ae38081e5a49ae4babae5aeb6e5b1ac.pdf> (last visited Jul. 15, 2012) [hereinafter *Taiwan Alliance September Draft*].

<sup>160</sup> Taiwan Banlüquanyi Tuidonglianmeng Banlüzhidu, Shouyang, Duorenjiashu



According to the preamble, TAPCPR's proposed amendment to the Taiwan Civil Code focuses on the specific aspects. First, the draft proposes to change any terms used in the Taiwan Civil Code to gender neutral terms.<sup>161</sup> For example, the amendment changes the legal terms "husband" and "wife" to "spouse" and the terms for "father" and "mother" to "parent." Using gender neutral phraseology in the Taiwan Civil Code would allow the term "marriage" to be interpreted by the courts as a legal status available to both homosexual and heterosexual people.<sup>162</sup>

Second, the amendment proposes a broader definition of family members to include those who become family dependents through mutual consent.<sup>163</sup> The traditional elements of a family—such as marriage and genetic connection—are not required by the amendment.<sup>164</sup>

Third, the draft proposes the addition of a chapter for civil partnerships to the Taiwan Civil Code.<sup>165</sup> The thirteen provisions in the new chapter about civil partnerships make clear who may form such a partnership, what the requirements and procedures are, which rights and obligations are involved, and the property issues.<sup>166</sup> Furthermore, the proposed amendment explicitly extends the right to adopt children to same-sex couples, whether in same-sex marriages or in civil partnerships.<sup>167</sup>

According to TAPCPR's proposed amendment, in cases of same-sex marriage, legal parenthood is presumed as long as the child is conceived during the marriage.<sup>168</sup> When it comes to civil partnerships, a child conceived during the partnership would not automatically become

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Caoan (台灣伴侶權益推動聯盟伴侶制度, 收養, 多人家屬草案) [Draft for Partnership, Adoption, Alternative Family Dependents (Jul. 31, 2012)], TAIWAN BANLÜQUANYI TUIDONGLIANMENG (台灣伴侶權益推動聯盟) [TAIWAN ALLIANCE TO PROMOTE CIVIL PARTNERSHIP RIGHTS], <http://tapcpr.files.wordpress.com/2012/07/20120731e4bcb4e4beb6e79b9fe6b091e6b395e4bfaee6ada3e88d89e6a188.pdf> (last visited Aug. 01, 2012) [hereinafter *Taiwan Alliance July Draft*].

<sup>161</sup> *Id.* at 9.

<sup>162</sup> The Draft of the Amendment to TAIWAN CIVIL CODE art. 972 (copy on file with author). See *Taiwan Alliance July Draft*, *supra* note 160, at 10.

<sup>163</sup> TAIWAN CIVIL CODE art. 1022-8.

<sup>164</sup> The Draft of the Amendment to TAIWAN CIVIL CODE art. 1122 (copy on file with author). See *Taiwan Alliance July Draft*, *supra* note 160, at 70.

<sup>165</sup> Draft of the Amendment to TAIWAN CIVIL CODE arts. 1058-1 to 1058-13 (copy on file with author). See *Taiwan Alliance July Draft*, *supra* note 160, at 32-46.

<sup>166</sup> *Id.*

<sup>167</sup> *Taiwan Alliance July Draft*, *supra* note 160, at 8.

<sup>168</sup> TAIWAN CIVIL CODE art. 1061.

the legitimate child of the non-birth parent<sup>169</sup> until the non-birth parent chooses to adopt the child<sup>170</sup>—this is similar to the law allowing second-parent adoption in a marriage.<sup>171</sup> Additionally, while married couples are required to adopt a child jointly,<sup>172</sup> a lesbian couple in a civil partnership may choose to adopt a child either jointly or independently under the TAPCPR draft amendment.<sup>173</sup> Should a partner decide to adopt a child, her partner's consent for the adoption is not required.<sup>174</sup>

To eliminate sex-based discriminations, TAPCPR also proposes that an anti-discrimination clause be added to the Taiwan Civil Code<sup>175</sup> that would explicitly prohibit judges from making decisions based on prejudices towards sex, sexual orientation, gender identity, or gender expressions.<sup>176</sup> The anti-discrimination clause will make adoptions by lesbians objective and fair, free from judges' homophobia.<sup>177</sup> Unlike the draft Basic Law for Gender Equality, whose primary goal is to set out general principles, TAPCPR has proposed detailed legislation that would give substantive rights to same-sex couples who wish to create a family.

#### CONCLUSION

Since the obstacles that lesbians who wish to parent their own children face are mainly constructed by the law, the most efficient way for a country with a civil law tradition to change is through legislation. This article has discussed the three current scenarios for the possibility of lesbian becoming parents in Taiwan: obtaining children through former heterosexual relationships, obtaining children through adoption, and obtaining children through the Artificial Reproduction Act. Existing laws were discussed in-depth to provide background about the legal barriers

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<sup>169</sup> The Draft of the Amendment to TAIWAN CIVIL CODE art. 1058-7 (copy on file with author). See *Taiwan Alliance July Draft*, *supra* note 160, at 39-40.

<sup>170</sup> The Draft of the Amendment to TAIWAN CIVIL CODE art. 1058-8 (copy on file with author). See *Taiwan Alliance July Draft*, *supra* note 160, at 40.

<sup>171</sup> TAIWAN CIVIL CODE art. 1074.

<sup>172</sup> *Id.*

<sup>173</sup> The Draft of the Amendment to TAIWAN CIVIL CODE art. 1058-8, ¶ 1 (copy on file with author). See *Taiwan Alliance July Draft*, *supra* note 160, at 40.

<sup>174</sup> *Id.*

<sup>175</sup> The Draft of the Amendment to TAIWAN CIVIL CODE art. 1079-1, ¶ 2 (copy on file with author). See *Taiwan Alliance July Draft*, *supra* note 160, at 52-53.

<sup>176</sup> The Draft of the Amendment to TAIWAN CIVIL CODE art. 1079-1, ¶ 21 (copy on file with author). See *Taiwan Alliance July Draft*, *supra* note 160, at 53-54.

<sup>177</sup> The anti-discrimination clause would benefit all lesbian, gay, bisexual, transgender, intersex, queer ("LGBTQ") people who wish to adopt, but the phrasing here is intended to keep the theme of this article focused on lesbian mothers.

faced by lesbian individuals and couples in Taiwan who wish to become parents.

Against this background, this article detailed two recent law-making activities introduced as possible solutions to lesbian's hardships in becoming parents. First, the draft of the Basic Law for Gender Equality broadens the definition of sex-based discrimination to include sexual orientation, gender identity, and gender expression. It declares a general policy of non-discrimination toward alternative families. Second, TAPCPR's proposed amendment to the Taiwan Civil Code, as a substantive law, would clearly define the rights of lesbian parents and provide ways for those rights to be validated. Both of these proposed legislative actions have clear potential to counter the current legal barriers to lesbian parenting.

However, family law in Taiwan has long been entangled with the traditional notion that some family types are superior to others and with the traditional ideas for what constitute a child's best interests. As seen in the Taoyuan case, it is clear that merely changing the terms and content of the law may not be sufficient to guarantee that a judge's decision is unprejudiced toward alternative families when interpreting and enforcing the law. As a result of this prejudice, any proposed legal reform in family law is destined to confront deeply entrenched cultural and social norms.

In Taiwan, LGBT people are still invisible in the legal framework of family relations. Their human and reproductive rights and their need to establish and maintain their own families are ignored. However, there is hope—the latest law-making activities may finally loosen and begin to change Taiwan's long standing ideas about the heterosexual nuclear family. These legal reforms would afford lesbian couples the right to enter marriages or civil partnerships, the right to adopt children, and the right to access ART. These legal reforms may help to achieve broader social change towards a more open-minded and tolerant society. Yet, rewriting the law is only the beginning of change; the process of reform must go beyond the legal system.