



**2017
Taiwan
LGBTI
Rights
Policy
Review**



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Collective LGBTI movements have been developing in Taiwan since the 1990s. Today, awareness of gender equity has taken root while visibility and acceptance of the LGBTI community has increased in the Taiwanese society. In the meantime, human rights organizations and women and gender organizations have improved legal and policy protections for the LGBTI community through advocacy, lobbying and applying political pressure. However, living in today's Taiwan, LGBTI individuals still constantly face discriminations, violations of rights and lack of protection in various aspects of their life.

As Taiwanese Constitutional Court's interpretation on same-sex marriage is likely to contribute to its legalization in two years, Taiwan Tongzhi (LGBTQ+) Hotline Association wishes to expand our work on LGBTI equity to aspects other than marriage equality. These issues have been the focuses of LGBTI movements in Taiwan for years. It is expected that through a comprehensive analysis of LGBTI-related policies, which is completed by literature reviews, interviews and focus group discussions, this report would help navigate the map of the current LGBTI rights and relevant legal regulations and policies. The report examine LGBTI issues in the following aspects: life and body, equal legal treatment, work, education, health, partnership, recreation, and space. We would also propose suggestions for future policy making and advocacy in Taiwanese LGBTI movements.

Taiwan's Background

Cultural and Social Changes¹

- △ Compared to western Christianity, a traditional Han society shows a more tolerant attitude towards LGBTI². Traces of same-sex couples living together could even be found in historical materials.
- △ In the 1910s, as the Taiwanese society absorbed psychoanalytic theories and positivism from the western world, people started to understand LGBTI individuals using the psychiatric concepts of "natural" and "abnormal"³.
- △ In the 1920s, it became a trend in Taiwan for highly-educated females to choose cohabitation without getting married. In the 1930s, shortly before the Second World War, public opinions started to viciously criticize lesbians and single females.
- △ In the 1980s, due to the appearance of HIV/AIDS, sex between men caught the attention of the public health system, and became a target of negative representations in the media. Meanwhile, the sexuality of lesbians was further marginalized.
- △ In the 1990s, clinical psychiatric theories holding a friendlier attitude towards LGBTI and the spirit of fighting for equal rights for the LGBTI community in western societies became common in Taiwan, which contributed to the development of collective LGBTI movements.

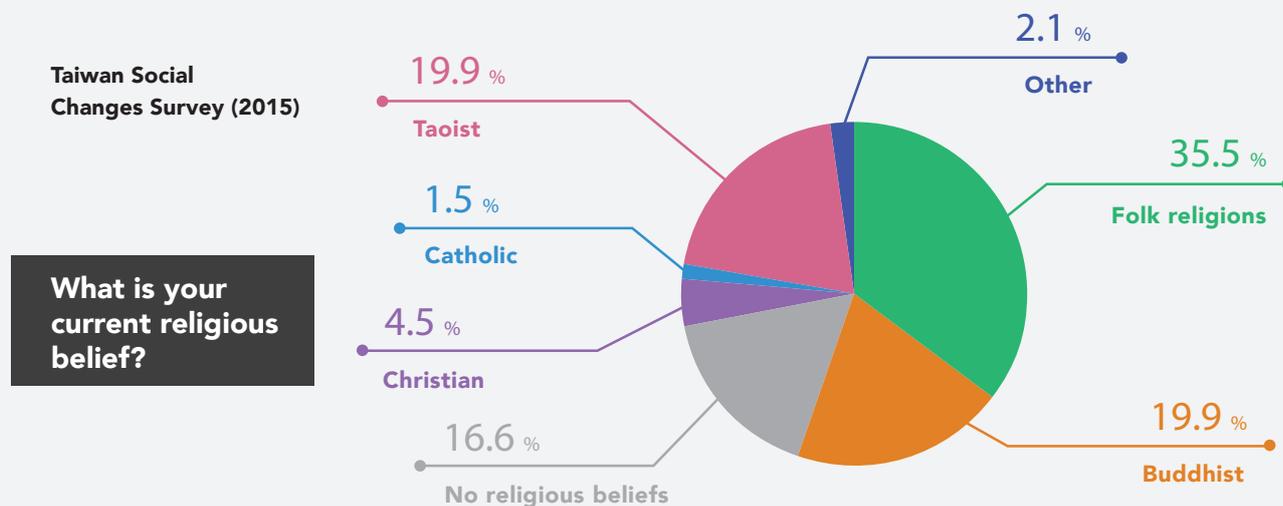
¹ See: Lin, S.F. (2008). The Legal and Historical Denial of Female Same-sex Intimate Relationship in Taiwan History (Master thesis). National Taiwan University.

² Lin, C.P. (2014). Employment Discrimination Based on Sexual Orientation and Positive Action: The Incomplete Mission of the Act of Gender Equality in Employment (Master thesis). National Cheng-Chi University. P.75.

³ The "criminal code" at the time also adopted a definition that referred sexual behaviors between heterosexuals as "sexual intercourse" and sexual behaviors between homosexuals as "obscenity." Only when an amendment was made to the Criminal Code in 1999, the distinction between "sexual intercourse" and "obscenity" became "whether penetration occurs."

Religious Beliefs

- △ According to the “Taiwan Social Change Survey” conducted by the Institute of Sociology, Academia Sinica in 2015, 35.5% of Taiwanese believed in folk religions, 19.9% were Buddhist, 16.6% Taoist, 4.5% Christian, 1.5% Catholic and 19.9% had no religious beliefs⁴.



- △ Among all religions, Buddhism, Taoism and folk beliefs hold a relatively mild attitude towards LGBTI. For example, the Taiwanese folk religion of “Tu’er Ye (Rabbit God),” which appeared more than a decade ago, is considered as the Yue Lao (the god of marriage) for LGBTI individuals. In recent years, LGBTI individuals and groups have also participated in religious rituals related to Mazu (a Chinese sea goddess⁵). In 2012, Shih Chao-Hwei, a Buddhist master, performed a wedding ceremony for two women, which was the first Buddhist same-sex wedding in Taiwan⁶.
- △ On the other hand, Christian churches have more conflicts with the LGBTI community. In 2000, Christian groups opposed to Taipei City Government’s decision to allocate its budget for the event “LGBT Civil Rights Movement—Taipei LGBT Fun Festival.” In 2011, “True Love Alliance,” whose members are mainly Christian groups, protested against the implementation of curriculum guidelines for gender equity education. Since 2013, Christian churches have been an important counterforce against same-sex marriage⁷.
- △ Nevertheless, there are still LGBTI-friendly Christian churches, such as Tong-Kwang Light House Presbyterian Church, True Light Gospel Church, Church Alive in Kaohsiung, and Christian Church of Divine Providence in Taichung. On October 22, 2000, Tong-Kwang Light House Presbyterian Church held its first “non-binding blessing ceremony for same-sex couples⁸.”

⁴ Fu, J.C., Chang, Y.H., Tu, S.H., & Liao, P.S. (Ed.) (2016). 2015 Taiwan Social Change Survey (Round 7, Year 1). Research Center for Humanities and Social Sciences, Academia Sinica. P.168.

⁵ Such as Marriage Equality Coalition Taiwan, “Dajia Mazu Welcomed by Rainbow.” Retrieved from: <http://equallove.tw/videos/39>, last viewed on 2017/07/27. Members of the “Marriage Equality Coalition Taiwan” include Taiwan Tongzhi Hotline Association, Taiwan LGBT Family Rights Advocacy, Awakening Foundation, Pridewatch Taiwan and the Queermosa Award.

⁶ See: Shi, G.D. (2013). LGBTI Buddhists Who Rebuild Confidence for Life in Their Belief- the Example of the Buddhist Lesbian Wedding in 2012 (Master thesis). Hsuan Chuang University.

⁷ Lu, Y.R. (2016/12/26). Why Does the Main Opposition to Same-sex Marriage Come from Christian Churches? The Initium. Retrieved from: <https://theinitium.com/article/20161226-taiwan-same-sex-marriage/>, last viewed on 2017/07/27.

⁸ See the collection of news reports on the “Blessing Ceremony for Same-sex Couples” prepared by Gender/Sexuality Rights Association Taiwan on: http://gsrat.net/news/newsclipDetail.php?ncdata_id=734, last viewed on 2017/07/27.

- △ Among the total population in Taiwan, there are approximately 50,000 to 60,000 LGBTI Christians⁹. However, the aforementioned churches are only able to reach about 1000 people. Other LGBTI Christians either hide themselves in other regular churches, or are completely excluded.
- △ The clash between religious freedom and LGBTI rights within Christian institutions is likely to be a problem we will have to face in the following years. In terms of educational rights, in 2014, a pastor letter was issued by the Presbyterian Church in Taiwan regarding its stance on same-sex marriage¹⁰. Shortly after that, Tainan Theological College and Seminary, which hadn't officially registered itself with the Ministry of Education then, turned down the application of an LGBTI student¹¹. At present, as Tainan Theological College and Seminary is officially registered, the question whether the "Gender Equity Education Act" should be applied to it and prohibit the college from rejecting LGBTI students awaits the explanation of the Ministry of Education. In terms of employment rights, there have also been cases in which clergymen were fired due to their homosexuality. Furthermore, many private welfare organizations entrusted with governmental projects have affiliation with Christian churches and therefore adopt a passive or even discriminating attitude towards LGBTI issues. For example, World Vision Taiwan dismissed an openly gay board member Frank Wang in 2008¹².

Indigenous Cultures

- △ The Paiwan (or Payuan) tribe in Tjadridrik used to refer to male same-sex couples as "qaliquali" and female same-sex couples as "langilangi," and allow same-sex couples to live together. With the tribe's approval, Lafu and Wuban, a lesbian couple of the Rukai (or Drekey) tribe in Pingtung, formed a family in 2007 in the sense of a "sworn sisterhood/brotherhood," a practice of which could be found within the traditional culture. The couple adopted the child they'd been raising in 2015, following the tribe's traditional customs¹³.
- △ However, cases of indigenous same-sex couples forming an official family with traditional rituals are exceptions. As a large indigenous population is Christian, Christianity, together with its homophobic discourses, has become the dominant culture in tribes. Also, the close interpersonal relations within indigenous tribes also cause LGBTI individuals to face pressure from both their church and tribe. Some people are excluded by their tribe due to their transgender identity, while others are forced to leave the tribe or enter a heterosexual marriage because they can't come out¹⁴.

⁹ Kao, Y.C. (2016/05/18). LGBTI Christians: Those Wounds and Beauty. The Initium. Retrieved from: <https://theinitium.com/article/20160518-opinion-kaoyingchou-lgbt/>, last viewed on 2017/07/27.

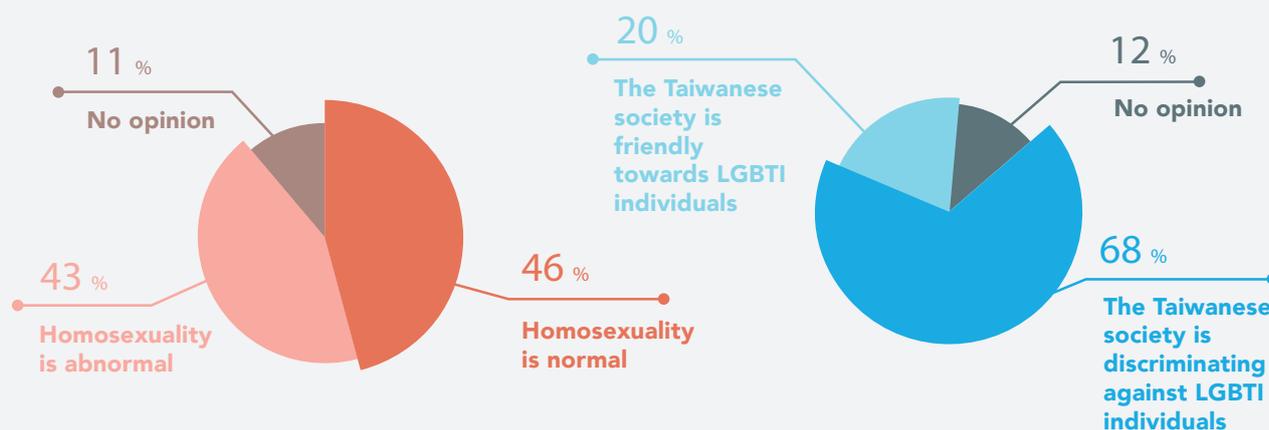
¹⁰ LGBTI Support Group of the Presbyterian Church in Taiwan (2014/01). Pastor Letter on Same-sex Marriage Issues of the Presbyterian Church in Taiwan. Retrieved from: http://www.pct.org.tw/ab_doc.aspx?DocID=118, last viewed on 2017/07/27.

¹¹ Yeh, Y.C. (2015/03/20). Rejected by Theological College, LGBTI Student: My Tears Dropped Immediately. The Storm Media. Retrieved from: <http://www.storm.mg/article/44416>, last viewed on 2017/07/27.

¹² Wang, T.Y. (2016/12/30). That year, I was forced to resign from the board of director of World Vision Taiwan due to my homosexuality (Blog post). Retrieved from: <http://tywangster.blogspot.tw/2016/12/blog-post.html>, last viewed on 2017/07/27.

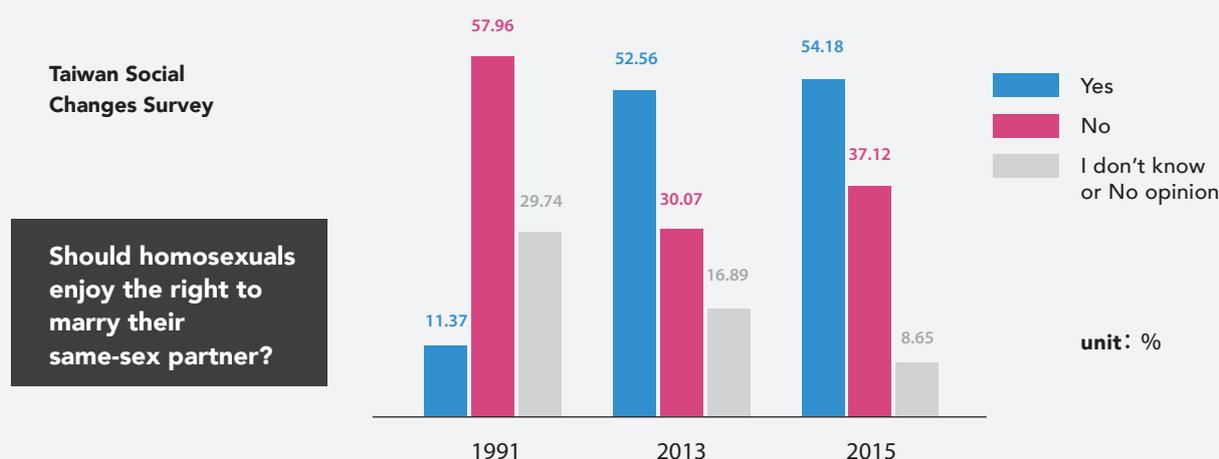
¹³ Taiwan Women. Sworn Sisterhood- Lesbian Weddings in Rukai Tribe. Retrieved from: http://women.nmth.gov.tw/information_48_39687.html, last viewed on 2017/07/27.

¹⁴ Danubak Matalaq (2012/10). Practicing Jesus' Love as a LGBTI. The New Messenger, 132, p. 33-37; Danubak Matalaq (2015/10). Learning about Gender in Indigenous Tribes within Contexts. Forum in Women's and Gender Studies, 103, p.18-37.



Public Acceptance

- △ Acceptance of homosexuality: According to a survey conducted by the TV channel TVBS in 2012¹⁵, more than 85% of the respondents said they could accept being colleagues or friends with homosexuals. Also, 46% of the respondents considered homosexuality to be normal, while 43% abnormal. Overall, 68% of the respondents believed that the Taiwanese society was discriminating against LGBTI individuals, and only 20% considered the Taiwanese society friendly towards LGBTI. In this survey, respondents who knew LGBTI individuals showed a significantly higher acceptance of homosexuality.
- △ Acceptance of same-sex marriage: According to the “Taiwan Social Change Survey” conducted by the Institute of Sociology, Academia Sinica, there is a significant change in attitude toward whether “homosexuals should have the right to marry.” In 1991, 11.37% of the respondents agreed while 57.96% did not; in 2013, 54.2% of the respondents agreed, while 37.1% did not¹⁶. In addition to the surveys of Academia Sinica, there have been many other public surveys regarding the support level for same-sex marriage in recent years in Taiwan. Unfortunately, some surveys were not carried out with a strict research methodology, resulting in drastic variations in the results¹⁷.



¹⁵ TVBS Poll Center (2012/04). National Survey on Opinions about Homosexuality. Retrieved from: http://www1.tvbs.com.tw/FILE_DB/PCH/201204/5lge5lexqf.pdf, last viewed on 2017/07/27.

¹⁶ Chu, H.Y. (Ed.) (1991). 1991 Taiwan Social Change Survey (Round 2, Year 2). Research Center for Humanities and Social Sciences, Academia Sinica. P.389; Fu, J.C., Chang, Y.H., Tu, S.H., & Liao, P.S. (Ed.) (2014). 2013 Taiwan Social Change Survey (Round 6, Year 4). Research Center for Humanities and Social Sciences, Academia Sinica. P.308; Fu, J.C., Chang, Y.H., Tu, S.H., & Liao, P.S. (Ed.) (2016). 2015 Taiwan Social Change Survey (Round 7, Year 1). Research Center for Humanities and Social Sciences, Academia Sinica. P.168.

Current LGBTI Rights and Policies

International Regulations

Signature of International Treaties

- △ The UN human right treaties that Taiwan has rectified, domesticated and drawn up an implementation act include: "International Covenant on Civil and Political Rights," "International Covenant on Economic Social and Cultural Rights" (ICCPR and ICESCR, together often referred to as "The Two Covenants"), "The Convention on the Elimination of all Forms of Discrimination Against Women" (CEDAW), "Convention on the Rights of the Child" (CRC), and "Convention on the Rights of Persons with Disabilities" (CRPD).
- △ Among all, respectively two and three international reviews of the national report on "The Two Covenants" and on CEDAW have been carried out. In their conclusions and suggestions, experts suggested several times that the Taiwanese government should pursue to eliminate discriminations against the LGBTI community on aspects of education, medical care, media and personal identity system¹⁸.

Designated Authority for Gender Equity

- △ The main legal reference for gender equity for executive departments is CEDAW. Internally, government officials' gender awareness is to be improved based on the "gender mainstreaming" policy, while externally, gender equity policies are implemented following the "Gender Equality Policy Guidelines"¹⁹.
- △ Since 2005, all 38 departments in the Executive Yuan (the executive branch of the government of Taiwan) have implemented the "gender mainstreaming" policy, incorporating gender awareness into all policies. Meanwhile, a designated authority has been established in the administration, with the hope to achieve gender justice. However, among the six major instruments of gender mainstreaming, namely, gender statistic, dedicated budget for gender issues, evaluation on gender impact, gender analysis, empowerment of gender awareness, and a dedicated working group for gender equity, the most effort is still put only in equity between two sexes and women's rights. In recent years, the focus has been expanded to LGBTI rights and some effects have been seen, but more efforts are still needed.

¹⁷ Critical responses such as: Yeh, K.H. & Chen, M.H. (2016/12/26). A Polling Trick Taught by Yu Ying-Lung. Street Corner Sociology. Retrieved from: <https://twstreetcorner.org/2016/12/26/yapkohua-5/>, last viewed on 2017/07/27.

¹⁸ See website "Human Rights in Taiwan" maintained by the Ministry of Justice at: <http://www.humanrights.moj.gov.tw>, last viewed on 2017/07/27; see also "Conclusive Opinions and Suggestions on The Second International Review of The Second Two Covenants in Taiwan: Women and Gender Issues" at: <http://www.cedaw.org.tw/tw/en-global/news/detail/239>, last viewed on 2018/1/21.

¹⁹ In the "Guiding Principles for R.O.C. Social Welfare Policy," it is stated that "the government should intervene actively, preventing and eliminating all forms of discrimination, exploitation, abandonment, abuse, harm, and injustice that citizens may possibly encounter as results of their differences in age, gender, race, religion, sexual inclination, physical and mental statuses, marriage, SES, and geographical environment, to avoid social exclusion. Also, the government should respect the differences across cultures, building a friendly and inclusive social environment for family patterns consisting of different sexual inclinations, races, marital relationships, and family sizes and structures. To achieve the above-mentioned objectives, the government should integrate relevant departments, such as those concerning social welfare, health and medical care, civil affairs, household registration, labor affairs, education, agriculture, judicature, construction, and indigenous people affairs, strengthening cross-departmental integration and performance management, to better provide whole-person, whole-course, all-around service so as to enhance the efficiency of resource utilization (p.3)." However, as the guiding principles do not have any legal force, or an auditing mechanism similar to a gender equity committee, they have very little impact on the execution and implementation of gender equity.

- △ In 2011, the Women's Right Promotion Committee (the predecessor of the Gender Equality Committee) of the Executive Yuan issued the "Gender Equality Policy Guidelines"²⁰. Although the guidelines center on the equality between males and females, paragraphs that address the needs of different gender minorities can still be found in each chapter:
- + Employment, economic and welfare: To integrate issues of social welfare and support for labor participation, reinforce the referral and consultation service provided by labor and social service authorities, and design appropriate programs on job placement, support for entrepreneurs and welfare services particularly for various groups such as women in rural areas and fishing villages, indigenous people, immigrants, female victims of domestic violence, persons with HIV/AIDS, and individuals with different sexual orientations.
 - + Demography, marriage and family: To face the current situation and trends of families and diverse social developments. The government should deliberate upon welfare services for members of a non-traditional family, such as cohabitating couples, LGBTI individuals, single households, single parents, skipped-generation families, blended families and step families, in order to strengthen their family functions. It should also encourage the public to value gender rights, and actively discuss and promote protections for and improvements of legal provisions on the rights of same-sex couples.
 - + Education, culture and media: To improve and provide gender equality awareness and empowerment for different minority groups (such as women in rural areas and fishing villages, indigenous people, immigrants, female victims of domestic violence, and individuals with different sexual orientations), and to actively encourage men to participate in gender equity education.
 - + Physical security and justice: To reinforce support programs for victims of different ethnic groups, cultures, sexual orientations and ages and to develop a diverse intervention model, so that they could enjoy equal and professional treatments. Individuals involved in relevant services should be equipped with cultural and gender sensitivity, in order to be able to respond to the service needs of individuals of different ethnic groups and sexual orientations.
- △ However, examining the implementation of the "Gender Equality Policy Guidelines" by various departments²¹ with data collected by the Executive Yuan, the equity between men and women has still been the main focus, and few actual actions have been taken to promote the equal rights of LGBTI.
- △ In 2012, the Women's Right Promotion Committee was expanded to the Gender Equality Committee of the Executive Yuan, and the Department of Gender Equality was established, serving as the aid to the Committee. Its major tasks have been to implement the "Gender Equality Policy Guidelines" and to promote gender mainstreaming²². Each government department has also established its own gender equality taskforce, which is responsible for promoting gender mainstreaming within the department.

²⁰ See: Gender Equality Committee, Executive Yuan. (2017). Gender Equality Policy Guidelines. Retrieved from: <http://www.gec.ey.gov.tw/cp.aspx?n=363DC330E476B467><http://www.gec.ey.gov.tw/cp.aspx?n=363DC330E476B467>, last viewed on 2017/07/27.

²¹ See: Gender Equality Committee, Executive Yuan. (2017). Implementation of the Gender Equality Policy Guidelines. Retrieved from: <http://www.gec.ey.gov.tw/News.aspx?n=E1FDE30A840442F2&sms=A2790260857AA541>, last viewed on 2017/07/27.

²² Gender Equality Committee, Executive Yuan. (2014/02/06). About Us. Retrieved from: <http://www.gec.ey.gov.tw/cp.aspx?n=EA49F59ED5EDCFE9>, last viewed on 2017/07/27.

- △ Furthermore, according to the “Gender Equity Education Act,” “Act of Gender Equality in Employment,” “Domestic Violence Prevention Act” and “Sexual Assault Crime Prevention Act,” a designated agency such as a gender equality committee has been formed not only in the central government but also on local levels.

Our suggestions

- △ When collecting gender-related statistic, government departments on all levels should include questions regarding sexual orientation and sexual identity under suitable survey subjects.
- △ The six major instruments of gender mainstreaming should be supplemented with contents and items regarding sexual orientation and sexual identity, so that the gender mainstreaming policy could be properly extended to the LGBTI community and their rights could be improved.
- △ More comprehensive protections for the rights of various gender groups should be added in the “Gender Equality Policy Guidelines.”

Life and Body

Hate Crimes

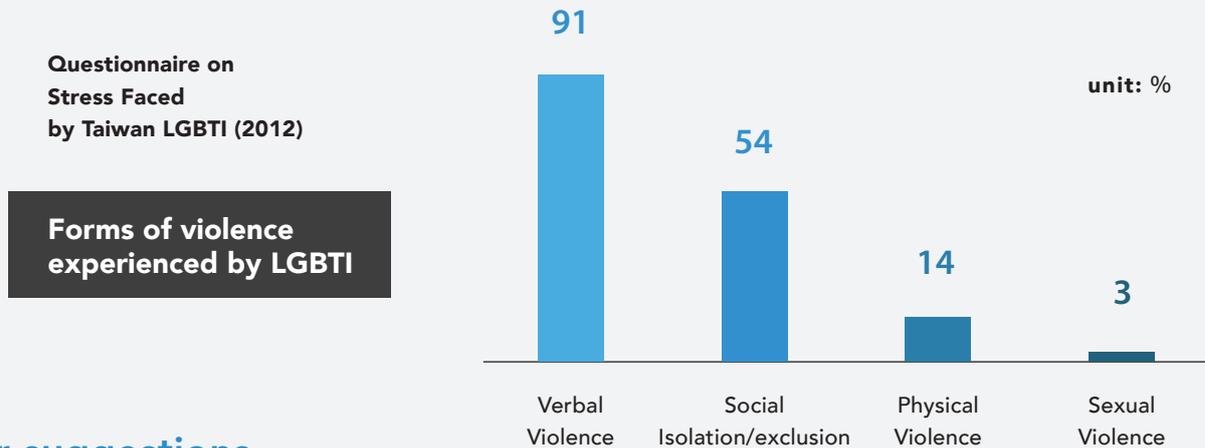
In 2005, a group of gay males visited the Honeymoon Bay in Yilan County, and two of them were thrown stones at when kissing each other. Police officers soon arrived, but dealt with the issue in a very passive manner.²³

- △ Right now, the academic community still lacks evidence-based research data about LGBTI individuals’ experiences of violence. Some scholars believe that LGBTI individuals in Taiwan are more likely to face institutionalized discrimination, and less direct physical violence²⁴.
- △ An online survey targeting at LGBTI individuals in 2012²⁵ found that 58% of the respondents stated that they had been harmed by others, among whom 91% experienced verbal violence, 54% had been socially isolated or excluded, 14% suffered from physical violence, while 3% sexual violence.

²³ Internet Users Recreate Honeymoon Bay Incident, Urging Protection of LGBTI Human Rights. (2012/10/18). Apple Daily. Retrieved from, <http://www.appledaily.com.tw/realtimenews/article/new/20121018/147554/>, last viewed on 2017/07/2.

²⁴ Chung, D.C. (2011/04). Violence and Harms Faced by LGBTI. Forum in Women’s and Gender Studies. 94, p. 2-15.

²⁵ Taiwan-Friendly Alliance (2012/04). Questionnaire on Stress Faced by Taiwan LGBTI. The survey recruited a total of 2785 respondents, among which 35% were lesbian, 39% gay, 20% bisexual, 2% transgender and 4% unknown. Members of the Taiwan-Friendly Alliance include: Taiwan Tongzhi Hotline Association, Gender/Sexuality Rights Association Taiwan, Taiwan Gender Equity Education Association, Taiwan LGBT Family Rights Advocacy, Taiwan Adolescent Association on Sexualities, Taiwan LGBT Pride, Taiwan Alliance to Promote Civil Partnership Rights, Tong-Kwang Light House Presbyterian Church, Taiwan Transgender Rights Action Solidarity, Uniform Alliance of High School Students, ALL My Gay!!!, and Lai Cheng-Che.



Our suggestions

- △ Regarding hate crimes, hate speeches and behaviors, the Taiwanese government should actively invest resources in conducting evidence-based studies on relevant legal regulations and policies in other countries, so as to deliberate upon how to achieve in an organized manner the prevention (on an active level) and intervention (on a passive level) of such violence.

Asylum for LGBTI Refugees

In 2012, Eliana, a Columbian transgender, traveled to Taiwan for her PhD study and applied for asylum as she faced murder threats in her home country. However, since a mechanism of refugee recognition was not available in Taiwan, she traveled to Hong Kong, but experienced serious insults, temporary imprisonment and even sexual harassment by the Customs and Excise Department. In the end, she was granted asylum by the UN and has lived in New Zealand.²⁶

In 2016, Taiwan Association for Human Rights was contacted by an individual from an African country, who wasn't able to return due to his/her sexual orientation. The individual is still unable to legally seek asylum in Taiwan.

- △ A draft of the "Refugee Act" has already passed the initial review at the Legislative Yuan's committees of internal affairs, foreign affairs and national defense, and awaits the second and third reading at the moment. Article 3 states that "any foreign national or stateless person, who belongs to a specific social group or possesses specific political opinions due to his/her race, religion or nationality, leaves the state of nationality or residence, fears based on sufficient, reasonable reasons the possibility of being prosecuted, and therefore, is unable to be protected by the state, or is unwilling to return to the state due to fear, is entitled to apply for refugee recognition in Taiwan." According to an attached resolution, gender, sexual orientation and gender identity should be included in the category of "social group".²⁷

²⁶ International Amnesty (2016/05/01). Eliana, a Transgender Refugee, Who Traveled from Columbia to Taiwan, but Was Put through Difficulties in Hong Kong. The News Lens. Retrieved from: <https://www.thenewslens.com/article/28604>, last viewed on 2017/07/27; Chen, R.Y. (2013/11/27). Seeing Sexuality Refugee? Gender/Sexuality Refugees in Taiwan. Taiwan Association for Human Rights. Retrieved from: <https://www.tahr.org.tw/node/1321>, last viewed on 2017/07/27.

²⁷ See the Official Gazette of the Legislative Yuan, 105: 64, No. 4361, p.1-29.

Laws and Equal Treatment in Law Enforcement

Anti-Discrimination Law

△ As a historical coincidence, a sodomy law that criminalizes homosexuality does not exist in Taiwan. On the other hand, although the principle of universal equality²⁸ is available in the Taiwanese Constitution, which is similar to an anti-discrimination law in foreign countries, Taiwanese citizens rarely bring up lawsuits based on it. At present, anti-discrimination regulations targeting at gender and sexual orientation mostly scatter in labor and education laws, such as "Long-Term Care Services Act"²⁹, "Employment Service Act"³⁰, "Act of Gender Equality in Employment"³¹, "Gender Equity Education Act"³² and "The Act of the Cooperative Education Implementation in Senior High Schools and the Protection of Student Participants' Right"³³. However, due to the indifference of government authorities, the implementation of the aforementioned anti-discrimination articles has not been satisfactory.

²⁸ Article 7 of the Constitution: "All citizens of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law." Subparagraph 6 of Article 10 of the Additional Articles of the Constitution of the Republic of China: "The State shall protect the dignity of women, safeguard their personal safety, eliminate sexual discrimination, and further substantive gender equality."

²⁹ Subparagraph 2 of Article 1 of the "Long-Term Care Service Act:" "Providers of long-term care services shall not discriminate against service recipients on the ground of their gender, sexual orientation and gender identity, marital status, age, disability, disease, social class, race, religious belief, nationality and residing area."

³⁰ Subparagraph 1 of Article 5 of the "Employment Service Act:" "For the purpose of ensuring national's equal opportunity in employment, employer is prohibited from discriminating against any job applicant or employee on the basis of race, class, language, thought, religion, political party, place of origin, place of birth, gender, gender orientation, age, marital status, appearance, facial features, disability, or past membership in any labor union; matters stated clearly in other laws shall be followed in priority."

³¹ Article 6-1 of the "Act of Gender Equality in Employment:" "The scope of labor inspection of the competent authorities shall include the items for prohibition of gender or sexual orientation discrimination, prevention and correction of sexual harassment, measures for promoting equality in employment of the Act." Article 7: "Employers shall not discriminate against applicants or employees because of their gender or sexual orientation in the course of recruitment, screening test, hiring, placement, assignment, evaluation and promotion. Article 8: "Employers shall not discriminate against employees because of their gender or sexual orientation in the case of holding or providing education, training or other related activities." Article 9: "Employers shall not discriminate against employees because of their gender or sexual orientation in the case of holding or providing various welfare measures." Article 10: "Employers shall not discriminate against employees because of their gender or sexual orientation in the case of paying wages. Employees shall receive equal pay for equal work or equal value. However, if such differentials are the result of seniority systems, award and discipline systems, merit systems or other justifiable reasons of non-sexual or non-sexual-orientation factors, the above-mentioned restriction shall not apply. Employers may not adopt methods of reducing the wages of other employees in order to evade the stipulation of the preceding paragraph." Article 11: "Employers shall not discriminate against employees because of their gender or sexual orientation in the case of retirement, discharge, severance and termination. Work rules, labor contracts and collective bargaining agreements shall not stipulate or arrange in advance that when employees marry, become pregnant, engages in childbirth or child care activities, they have to sever or leave of absence without payment. Employers also shall not use the above-mentioned factors as excuses for termination. Any prescription or arrangement that contravenes the stipulations of the two preceding paragraphs shall be deemed as null and void. The termination of the labor contract shall also be deemed as null and void."

³² Article 12 of the "Gender Equity Education Act:" "The school shall provide a gender-fair learning environment, respect and give due consideration to students, faculty, and staff with different gender, gender temperaments, gender identity, and sexual orientation. Moreover, it shall establish a safe campus environment. The school should establish and publicly announced implementation regulations for gender equity education." Article 13: "The school shall not discriminate against a prospective student during recruitment or evaluation of applications for admission on the basis of his or her gender, gender temperaments, gender identity or sexual orientation. With the approval of the competent authority, this requirement will not apply to schools, classes and curricula with a specific historical tradition, special education objectives, or other reasons unrelated to gender." Article 14: "The school shall not discriminate against students on the basis of their gender, gender temperaments, gender identity, or sexual orientation in its instruction, activities, assessments, rewards and penalties, benefits, or services. This requirement does not apply to matters suitable only to persons of a specific gender, gender temperaments, gender identity, or sexual orientation. The school shall proactively provide assistance to students who are disadvantaged due to their gender, gender temperaments, gender identity, or sexual orientation with the aim of improving their circumstances."

- △ Since 1993, the government and civil organizations have proposed several drafts for a universal anti-discrimination law. For example, in 1993, the “Anti-Discrimination Act Draft” was introduced by the “New Congress Office” of the Democratic Progressive Party (DPP), and the hearing was participated by LGBTI groups. In 2003, the Presidential Office Human Rights Consultative Committee issued a draft version of the “Basic Law on the Guarantees of Human Rights,” and Kuomintang (the Nationalist Party) legislator Cheng Li-Wen proposed a draft of the “Equity Act” in 2010. However, up to now, none of the bills has made any progresses in the legislative procedure.
- △ In 2017, the J.Y. Interpretation No. 748 made by the Justice Yuan officially announced: “The five classifications of impermissible discrimination set forth in Article 7 of the Constitution are only exemplified, neither enumerated nor exhausted. Therefore, different treatments based on other classifications, such as disability or sexual orientation, shall also be governed by the right to equality under the said Article.” This interpretation has confirmed the effect of the article of anti-discrimination based on sexual orientation on the Constitutional level.

Our suggestions

- △ For the anti-discrimination provision in all current and future legal regulations and policies, the concept of anti-discrimination based on sexual orientation gender identity should be incorporated.

Exercise of Police Power

- △ At the end of the 1990s, several cases of police force abusing its power and harassing LGBTI social spaces with raids took place one after another, such as the Changde St. Incident in 1997³⁵, the AG Fitness Center Incident in 1998³⁶, and the incident at Corner’s Bar in Gongguang in 1999³⁷. In 2001, the Constitutional Court made the J.Y. Interpretation No. 535, which announced that provisions in the “The Police Service Act” regarding police checks were flawed. Since then, the police force’s power to exercise checks has been limited, and the situation of excessive checks has been gradually improved.
- △ However, between 2014 and 2015, a gay bathhouse located in Taipei City, Aniki, was raided by local police officers with an excessive frequency of “4 times in 8 days, 26 times in 6 month” and with at least 10 police officers during each check³⁸. As the number of checks

³³ Article 27 of the “Act of the Cooperative Education Implementation in Senior High Schools and the Protection of Student Participants’ Right:” “During the course of the training, partner institutions shall not discriminate against student participants on the basis of their gender or sexual orientation, and shall prevent the occurrence of any sexual harassment. Upon becoming aware of any incident of sexual harassment, the partner institutions shall take effective corrective action and remedial measures immediately. During the course of the training, if the students suffer sexual harassment or discrimination due to their gender identity or sexual orientation, the filing of complaints, its legal requirements, and the partner institutions’ liability to pay compensation for damage shall be based mutatis mutandis on the Act of Gender Equality in Employment and relevant regulations.”

³⁴ See Anti-Discrimination Agreements (2000/06). Taipei: Tongshueiguang Publishing.

³⁵ In order to drive out LGBTI visitors, the police department introduced curfew for Taipei New Park (the current 228 Peace Memorial Park), where they often gathered. Police officers also organized a large-scale road check on Changde Street (where LGBTI activities often took place), and brought 40 to 50 people back to the police station. Some were illegally put under detention, interrogated overnight, forced to have their photos taken, and threatened that their family members were to be notified. See: Shen, G. (2016/03/17). Live from Taiwan LGBTI Movements: That Night on Changde Street. Age of Queer. Retrieved from: <http://ageofqueer.com/archives/9223>, last viewed on 2017/07/28.

conducted was extremely high and the duration very long in this case, it raised concerns about a disproportional exercise of police power. Yet, the Police Department of Taipei City unilaterally announced that its action followed the principle of proportionality and refused to provide any concrete standards for police checks.

△ Friendliness of police force

+ When LGBTI individuals enter a judiciary procedure, law enforcement personnel's (including police officers, prosecutors and judges) level of understanding of LGBTI issues is highly likely to affect their attitude towards the cases (for example, some police officers would treat LGBTI individuals with mockery and sarcasm), and whether they are able to empathize with the situation of the individuals involved (for instance, whether they could understand that LGBTI individuals may have concerns about coming out of the closet).

△ Under the gender mainstreaming policy, the National Police Agency organizes training courses on gender equity. However, statistics provided by the government cannot point out the percentage of courses on LGBTI issues that are available in the formative education and in-service training for police officers³⁹. Reviewing the number of speeches Taiwan Tongzhi Hotline Association delivered in 2016, only 6 of them were targeting at police officers, with a total of 380 participants.

+ Meanwhile, facing crimes triggered by a homophobic and transphobic atmosphere in the society, such as hate crimes, badger games and extortion, the police system has not actively sought to protect the safety of LGBTI individuals on a policy level, but only dealt with these cases in a passive manner.



³⁶ Police officers broke into the gay gym "AG Fitness Center" in the name of a police check, forced customers to perform obscene actions when being photographed, and brought them back to the station for detention. The gym manager and customers were charged with the crime of "intention of seducing others to perform obscenity" and the crime of "public obscenity" respectively. In February 2000, a ruling of not guilty was made in the first instance. The ruling was confirmed in June. In the end, AG Fitness Center was closed down due to the burden caused by multiple police checks. See: Shen, G. (2016/05/19). Live from Taiwan LGBTI Movements: Who Ripped the Clothes off from LGBTI? – The AG Fitness Center Incident. Age of Queer. Retrieved from: <http://ageofqueer.com/archives/10522>, last viewed on 2017/07/28.

³⁷ On November 7th, 1999, police officers conducted a random check at the gay bar "Corner's" on the ground that "the business items were inconsistent with the registration." Police officers asked the bar patrons to provide their ID cards and they left after getting a record of the names. During the check, a police officers shout aloud: "One can tell this is a gay bar right away. These are all perverts!" Corner's business was suspended for 3 weeks, and had to re-apply for a business license. On November 29th, Corner's reopened, but was again picked on by the police department for the same reason that "the business items were inconsistent with the registration." On December 1st, the police department organized a check for the third time, and forced the bar owner to sign a document with the content concealed. The checks only stopped after inference by lawyers and local council representatives.

³⁸ Kuo, A.C. & Chen, E.H. (2015/03/31). Receiving 26 Checks by the Police Department, Customers of Gay Gym Completely Exposed. Liberty Times. Retrieved from: <http://news.ltn.com.tw/news/society/paper/867603>, last viewed on 2017/07/28.

³⁹ In its report on the implementation of Gender Equality Policy Guidelines, the National Policy Agency mentioned that it organized in 2015 a total of 412 sessions of "Courses on Gender Issues, Law Enforcement and Gender Mainstreaming." with 51,551 participants, and 1 dedicated session about gender equity education, with 112 participants. In addition, shelters for human trafficking victims organize for their employees every month training courses to help them respond to the service needs of individuals with different ethnicities and sexual orientations.

△ Entrapment by the police force

- + The "Child and Youth Sexual Exploitation Prevention Act" was announced and put into effect in 1995, with the intention of child prostitution prevention. Article 40 states (Article 29 in the old version): "Any person who distributes, sends, publishes, or posts messages that are deemed to be sufficient to seduce, arrange, suggest, or cause a child or youth to engage in sexual intercourse in exchange for monetary gains shall be subjected to imprisonment for not more than three years." Due to an unclear legal concept provided in this article along with the performance pressure shouldered by lower-ranking police officers, this article had been excessively abused by the police force before 2007.
- + This article's impact on the LGBTI community lies in how police officers often take advantages of the fact that some LGBTI individuals are unable to come out, thus the police would subject such LGBTI individuals who violated the article to multiple subpoenas, entrapment and compulsory interrogations.
- + Since LGBTI teenagers may not be able to acquire sufficient LGBTI-friendly resources in their family and school, they tend to look for such resources online. However, as the law defines the underage as victims, an LGBTI teenager who violated this article had been forcibly placed in a correctional institution for two months and thus had to come out to their family and in school. (The new law has deleted the provision of compulsory out-of-home placement.)
- + Facing the challenges from non-governmental organizations, the authority issued in 2008 the "Guidelines and Flow Chart for Investigating and Prosecuting Cases according to Article 29," which laid out detailed standards for investigations of such cases. Since then, the number of cases of violating this article has significantly reduced.
- + However, police officers continue to use entrapment to arrest and prosecute individuals who violate the "Narcotics Hazard Prevention Act" and Article 235 of the Criminal Code. In the former cases, police officers often ask gay men online to meet in person, and then bring the individuals back to the station for interrogation. In the latter cases, police officers use entrapment to look for gay men who are suspected of "openly distributing pornographic materials."

Our suggestions

- △ The gender equity training provided for law enforcement personnel should include courses about LGBTI in order to improve law enforcement agents' understanding of and friendliness towards LGBTI individuals.
- △ The police system should actively promote relevant policies in response to crimes triggered by a homophobic and transphobic atmosphere in the society, rather than simply passively dealing with the cases.
- △ With cases of possessing a small volume of drugs and distributing pornographic images, the National Police Agency should limit the use of entrapment, and clearly lay out a reasonable standard for such use. In addition, the National Police Agency should also reform the current policy that pursues achievements on crime prevention with performance requirements.

Correctional Interventions

- △ According to the Ministry of Justice⁴⁰: “Starting from March 2015, when an individual is able to provide documents that clarify the identity of his/her same-sex partner, correctional facilities should grant them the rights to visitation, communication and delivery of food and other daily essentials.” Nevertheless, correctional facilities still tend to adopt a rather strict standard when it comes to the recognition of same-sex couples. For example, only a household registration certificate is accepted as proof of legal relationship, while a proof of cohabitation is insufficient, which makes prisoners unable to see their same-sex partner⁴¹.
- △ Prisoners infected with HIV are placed in an individual cell⁴² and are not allowed to attend the continuing school within the facility, to participate in sport competitions between prisoners, and to work in factories. Their life is also completely isolated from other prisoners who are not HIV-positive. Furthermore, as they cannot work in factories but only carry out some manual labor in their own cell, they are likely to contribute to a lower output value, and therefore, receive a lower income⁴³.

Our suggestions

- △ The Ministry of Justice should clearly explain the criteria for recognizing same-sex couples.
- △ Daily contacts do not cause the transmission of HIV virus, and therefore, it is not necessary to separate prisoners with HIV completely from others. Relevant guidelines for the management of correctional facilities should be revised.

⁴⁰ Ministry of Justice (2016/04). 2nd National Report on International Covenant on Civil and Political Rights. P.35, No. 163.

⁴¹ Wang, C.M. (2016/04/24). Looking at the Hypocrisy, Arbitrariness and Irresponsibility of the Ministry of Justice from Rights of Same-sex Couples (Blog post). Retrieved from: <http://mypaper.pchome.com.tw/miss33lin/post/1366804192>, last viewed on 2017/07/28.

⁴² For example, Subparagraph 2 of Article 3 in the “Guidance and Management Principles for Prisoners Infected with HIV in Kao-hsiung Women’s Prison.”

⁴³ Wu, J.Z., Deputy Director of Taiwan Alliance to End the Death Penalty (2017/04/28). Personal Interview.

Work

In 2003, an English teacher working in a private institute was laid off without any notice for the reason that “his outfit is too gender-neutral, the hairstyle is neither masculine nor feminine, and he wears a ring like a girl.” In response, the Committee of Gender Equality in Employment in Taipei City made the first ruling that discrimination against sexual orientation is also a form of gender discrimination.⁴⁴

In 2007, a private junior high school in Chiayi requested a teacher who was about to receive a sex reassignment surgery to leave the job with the reason that “it contaminates the spirit of students.”⁴⁵

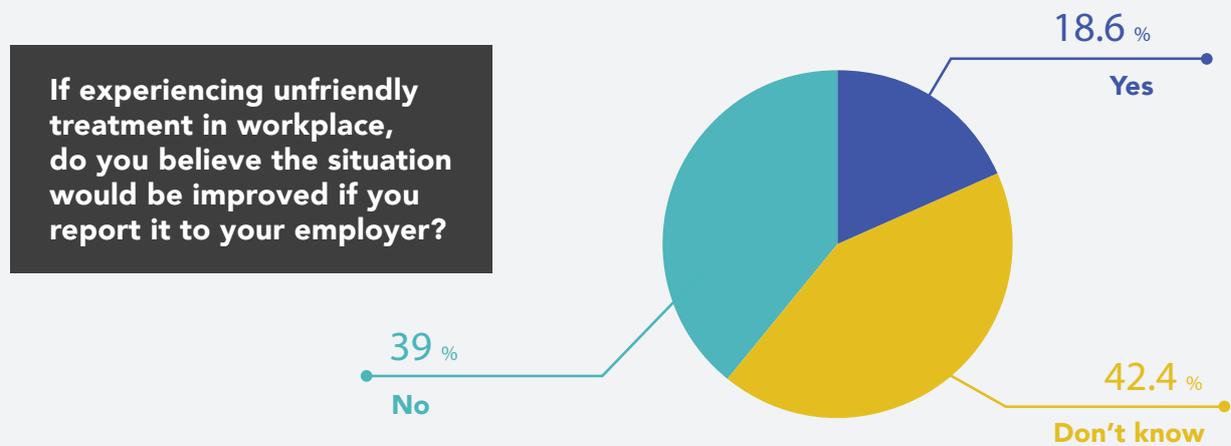
In 2011, Taipei Mackay Memorial Hospital prohibited a male employee named Chou Yi-Ren from wearing female outfits and forced him to leave the job. The case was ruled by the Committee of Gender Equality in Employment in Taipei City as gender discrimination and the hospital was fined 50,000 NTD for violating the “Act of Gender Equality in Employment.” In the following year, Taipei District Court also ruled that the employment relationship existed and thus his employment should be continued.⁴⁶

In 2015, Yeh Chi-yuan, a male police officer who served under the Second Special Police Corps was dismissed after incurring 18 reprimands because of wearing long hair, which was a breach of police officers’ grooming standards stipulated in the Code of Conduct for Police Personnel. After protests, the National Police Agency retracted the decision.⁴⁷

- △ The “Act of Equal Employment for Men and Women” was first enacted in 2002, and a modification was proposed by DPP legislators in 2008 to change its name to the “Act of Gender Equity in Employment” and to include language that prohibits discrimination based on sexual orientation. This is the most important legal basis for the equal rights of LGBTI in employment. According to Article 5, authorities on each governmental level shall set up a committee on gender equality in employment. Meanwhile, Article 7 to 11 state that employers shall not discriminate against applicants or employees because of their gender or sexual orientation in the course of recruitment, screening test, hiring, placement, assignment, evaluation and promotion, retirement, discharge, severance and termination, as well as in the case of holding or providing education, training or other related activities, various welfare measures, and wages. Employers who breach the said articles should be fined.
- △ Article 1 of the “Code of Conduct for Appearance and Housekeeping of Police Officers,” which was published in 2003, states: “Male police officers should have no perms, no hair on the temples or covering the forehead. The hair on the sides and the neck’s backside should be cut thin diagonally and the diagonal length should not be more than 1 center-meter. Female police officers should not have their hair braided or past shoulder length. If their hair

passes shoulder length, they should wear the hair in a coil and only use black ornaments.” Such different regulations for male and female police officers are clearly a breach of the spirit of the “Act of Gender Equality in Employment” to that aims to eliminate gender discrimination.

- △ According to a survey among LGBTI citizens in Taipei City conducted by the Department of Civil Affairs of Taipei City Government in 2012⁴⁸, “92.7% of the LGBTI respondents said their workplace did not offer any LGBTI-related gender education. When facing unfriendly treatments in workplaces, only 18.6% of the respondents said the situation could be improved if they complained to their employer, while 39% thought the situation could not be improved, and 42.4% of the respondents were unsure. When the complaints were filed to the Department of Labor, only 8.6% of the respondents believed the situation could be improved, while 52.7% didn’t⁴⁹.”



⁴⁴ Taiwan Tongzhi Hotline Association et al. (2007/01/10). Please Support the Amended Provision in the Employment Service Act to Ban Discrimination based on Sexual Orientation. Retrieved from: <http://www.cooloud.org.tw/node/506>, last viewed on 2017/07/28.

⁴⁵ Male Teacher at Famous School Forced to Leave Job Due to Gender Alteration. (2007/01/17). Apple Daily. Retrieved from: <http://www.appledaily.com.tw/appledaily/article/headline/20070117/3187190/>, last viewed on 2017/07/28.

⁴⁶ Dismissing Transvestite Male Employee, Mackay Hospital Fined 50,000 NTD. (2011/05/18) Apply Daily. Retrieved from: <http://www.appledaily.com.tw/appledaily/article/headline/20110518/33395191/>, last viewed on 2017/07/28; Dismissed Transvestite Male Employee Resumes Post. (2012/08/22). Apply Daily. Retrieved from: <http://www.appledaily.com.tw/appledaily/article/headline/20120822/34457318/>, last viewed on 2017/07/28.

⁴⁷ Liang, C.W. (2016/09/26). As Hsiao and Yeh Resume Their Posts, National Association for Firefighters’ Rights Calls for Retraction of Hsu Gou-Yao’s Dismissal. Events in Focus. Retrieved from <http://www.eventsinfocus.org/news/1070>, last viewed on 2017/07/28.

⁴⁸ Hsu, W.Y. (Ed). (2012/12). Study on LGBTI Rights Protection in Taipei City. Department of Civil Affairs, Taipei City Government. Subjects of this survey included Taipei citizens above the age of 20, and LGBTI individuals residing in Taipei metropolitan, with a valid sample size of 2415 and 627 people respectively.

⁴⁹ This survey also found: “89.5% of the LGBTI respondents said they had not been isolated or excluded due to their LGBTI identity while looking for employment, and 90.4% of the respondents said they had not lost opportunities for vocational training or promotion.” However, it is worth noting that the survey did not make a distinction between LGBTI individuals who had come out in workplace and who had not. Therefore, it might have resulted in a larger error.

- △ An online survey conducted by Taiwan Tongzhi Hotline Association in 2016 found out that⁵⁰ although 51.1% of the respondents had come out in their workplace, 48.9% of them had not. Whether LGBTI respondents chose to come out or not depended on the type of industry, the friendliness level of their workplace and their position. More than 40% of the respondents believed that coming out in workplace could affect their promotion and career development, one fourth of them worried that coming out could directly or indirectly cause them to lose their job, 40% were concerned that their colleagues or supervisor would make work difficult for them once they came out, 40% were worried about being bullied, 35% feared that their identity would be exposed to their family members or friends, and another 60% were worried that coming out (whether actively or passively) could affect their interpersonal relationships in workplace.
- △ A study conducted in 2016 by the Intersex, Transgender and Transsexual People Care Association and other organizations⁵¹ also showed that among transgender respondents, 56% of them had been harassed in workplace due to their gender or sexuality, and as a result, 35% of them left the job or were dismissed. Among respondents who experienced workplace discrimination, only 21% reported it to their employer, and merely 2% to the Department of Labor.
- △ In recent years, several international companies have been actively introducing internal policies that promote the equal treatment and inclusion of LGBTI employees. Some private organizations are also devoted to promoting LGBTI-friendly corporates. For example, both Pridewatch Taiwan⁵² and the Queermosa Award hosted by Taiwan International Queer Film Festival⁵³ have announced lists of LGBTI-friendly corporates. However, the unclear attitude of the government towards LGBTI issues could cause companies' concerns and therefore unwillingness to openly support the LGBTI community or provide the same benefits for LGBTI employees as for their heterosexual counterparts⁵⁴.

Our suggestions

- △ The government should create indicators for a gender-friendly workplace and assist domestic companies in to improve gender friendly environment in workplace.
- △ The government should create a mechanism to assess whether the system of workplace complaints, labor inspection, and designated authorities are equipped with gender awareness and a friendly attitude towards LGBTI individuals.
- △ Government projects or courses that support new entrepreneurs should include the concept of gender diversity and equity.

⁵⁰ Taiwan Tongzhi Hotline Association (2016/10/22). LGBTI's Pain and Gain in Workplace: Press Conference for Survey on LGBTI Individuals' Experiences in Workplace in Taiwan. Retrieved from: <https://hotline.org.tw/news/1000>, last viewed on 2017/07/28. This survey collected a total of 865 responses. ⁴⁵ Tsai, B.H. (2016/11/20). Discrimination Is Everywhere. 30% of Transgender Have Been Forced to Leave Job or Dismissed. ETNEWS. Retrieved from: <http://sports.ettoday.net/news/814842>, last viewed on 2017/07/28.

⁵¹ Tsai, B.H. (2016/11/20). Discrimination Is Everywhere. 30% of Transgender Have Been Forced to Leave Job or Dismissed. ETNEWS. Retrieved from: <http://sports.ettoday.net/news/814842>, last viewed on 2017/07/28.

⁵² Pridewatch. Friendly Corporates. Retrieved from: <http://www.pridewatch.tw/friendlycorporates>, last viewed on 2017/07/28.

⁵³ Taiwan International Queer Film Festival (2016). Nominees and Winners of the First Queermosa Award. Retrieved from: <https://www.queermosa.com/finallist/2016>, last viewed on 2017/07/28.

⁵⁴ Liu, P.C., Chairperson of LGBTI-Friendly Community of Foreign Banks (2017/05/03). Personal Interview.

Education

On April 20th, 2000, Yeh Yung-Chih, a student of Kaoshu Junior high school in Pingtung County, who was often bullied by his classmates due to his feminine gender expressions and thus dared not to use the school restroom during breaks, went to the restroom during class and was later found by his classmates lying in a puddle of blood. He was declared dead after brought to a hospital.⁵⁵

On October 30th in 2011, Yang, a student of Lujiang junior high school in New Taipei City, committed suicide by jumping off the roof of his home. Yang was shy and skinny and was thus often picked on and mocked as a “sissy” by male classmates in elementary and junior high school.⁵⁶

In August 2017, Liu Yu-Hao, a teacher at Ganghe elementary school in Kaohsiung City, gave a lecture about gender equity using a fake penis and condoms after acquiring the permission of students’ parents. However, he was reported by opponents to the authority for an offense against sexual morality. In response to the accusation, the Education Bureau of Kaohsiung City Government openly expressed its support for the teacher in legally offering lectures, and promised to pay the lawsuit costs.⁵⁷

Sexual Bullying on Campus

- △ Compared to the hate crimes commonly seen in western countries, the violence LGBTI teenagers in Taiwan face most often is negligence within the educational system, and verbal/relationship bullying from teachers and other students. For example, some scholars have pointed out that there are still incidents of students looking down on LGBTI peers and teachers trying to change students’ homosexual orientation in schools⁵⁸.
- △ According to a survey among LGBTI citizens in Taipei City conducted by the Department of Civil Affairs of Taipei City Government in 2012⁵⁹, 12.4% of the respondents had personally experienced, 13.9% had personally witnessed and 40% had heard of bullying or harassment targeting at LGBTI students on campus.

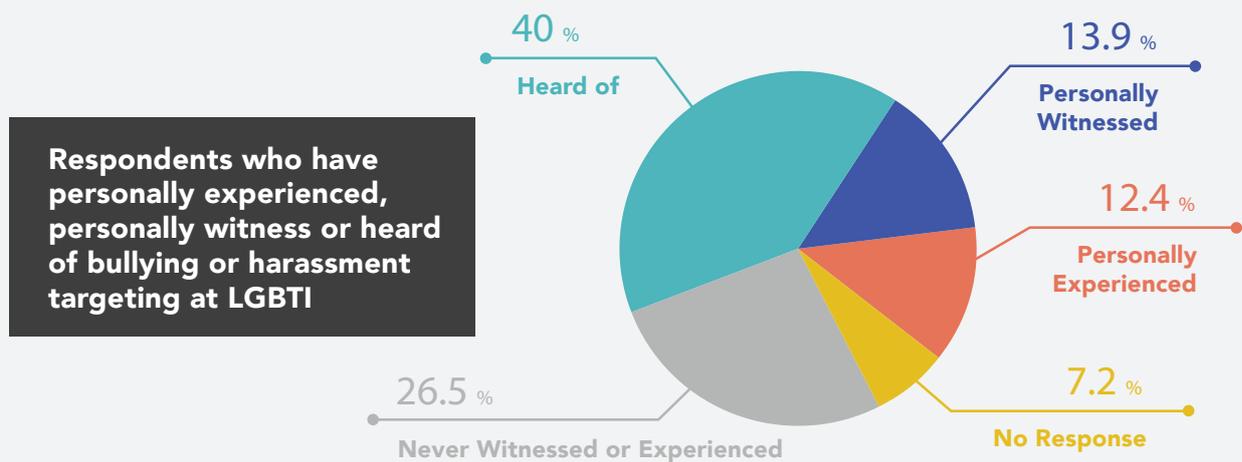
⁵⁵ See: Taiwan Gender Equity Education Association (2016). *Embracing the Rose Boy*. Taipei: Fembooks ⁴⁹ Wang, C.W. (2011). *LGBTI, Yes! Violence, Bye-bye! Violence Experiences of LGBTI Teenagers on Campus and How to Improve*. Forum in Women’s and Gender Studies, 94, p. 26-34.

⁵⁶ See a collection of news reports on “60 People Pay Their Respect for Boy Who Jumped off a Building after Sexually Bullied While Alive” prepared by Gender/Sexuality Rights Association Taiwan on: http://gsrat.net/news/newsclipDetail.php?ncdata_id=8710, last viewed on 2017/08/28.

⁵⁷ Hung, C.H. & Hung, T.H. (2017/08/04). *Accused of Public Obscenity for Sex Education, Liu: I Will Continue to Teach about This*. Liberty Times. Retrieved from: <http://news.ltn.com.tw/news/life/breakingnews/2152856>, last viewed on 2017/09/04.

⁵⁸ Wang, C.W. (2011). *LGBTI, Yes! Violence, Bye-bye! Violence Experiences of LGBTI Teenagers on Campus and How to Improve*. Forum in Women’s and Gender Studies, 94, p. 26-34.

⁵⁹ Hsu, W.Y. (Ed). (2012/12). *Study on LGBTI Rights Protection in Taipei City*. Department of Civil Affairs, Taipei City Government.



- △ According to an online survey conducted by the Taiwan-Friendly Alliance in 2011⁶⁰, 18.9% of the respondents had experienced sexual bullying during the last two years of elementary school, while 33.9% of them in junior high school. Respectively 43% and 76.9% of the respondents had witnessed sexual bullying during the last two years of elementary school or in junior high school, but the numbers might have been underestimated.
- △ Yen et al. (2016) found that among 205 homosexual or bisexual males between the age of 20 and 56, 38.5% had experienced bullying in a traditional form due to their non-conforming gender expressions (among which 36.6% experienced social and verbal bullying and 9.3% physical bullying), and 34.1% had been bullied online in childhood and adolescence. Meanwhile, 22.0% of the respondents had experienced bullying in a traditional form due to their sexual orientation (among which 21.0% experienced social and verbal bullying and 3.4% physical bullying), 28.3% had been bullied online⁶¹.
- △ Surveys conducted by the Social and Family Affairs Administration under the Ministry of Health and Welfare in 2010 and 2014⁶² both showed that approximately 1% of the teenagers were troubled by issues related to sexual orientation.

Gender Equity Education Policy

Gender Equity Education Act: In 2000, the case of Yeh Yung-chih contributed to the shift of focus of the "Gender Equity Education Act," the draft of which was under deliberation, from a two-sex model to gender diversity. In 2004, the "Gender Equity Education Act" was passed, becoming the first law that includes the subject of diverse genders. Later in 2010, language regarding gender expressions and gender identity was added.

⁶⁰ Taiwan-Friendly Alliance (2011/05/12). Post-Conference Press Release of Taiwan-Friendly Alliance: Responding to Rumors and Slanders by the True Love Alliance. Retrieved from: <https://hotline.org.tw/news/230>, last viewed on 2017/07/31.

⁶¹ Yen, C.F. & Cheng, M.H. (2016). Experiences of Being Bullied in Childhood and Adolescence of Males with a Minority Sexual Orientation – From Quantitative and Qualitative Studies to Intervention Research. 14th Conference on Gender and Health.

⁶² Social and Family Affairs Administration, Ministry of Health and Welfare (2015/12). 2014 Living Condition Survey on Child and Youth in Taiwan: Youth Report.

According to the "Gender Equity Education Act," schools shall not discriminate against students on the basis of their gender, gender temperaments, gender identity, or sexual orientation in its recruitment, instruction, activities, assessments, rewards and penalties, benefits, or services. When in violation of the said article, schools should be fined. However, in practice, the "Gender Equity Education Act" is more often used only to deal with cases of sexual assault or sexual harassment.

△ Gender Equity Education Committee

- + According to Article 5 and 6 in the "Gender Equity Education Act," schools, local authorities and the central government shall all establish a gender equity education committee to be in charge of tasks such as implementing gender equity education.
- + In 2014, the Gender Equity Education Committee under the Ministry of Education, members of which are selected by the Minister of Education, recruited two members who had openly expressed anti-LGBTI opinions or joined an anti-LGBTI organization. The incident aroused criticisms from civil groups.⁶³ It was only made clear later in the "Regulations for the Open Recommendation of Members of Gender Equity Education Committee," issued by the Ministry of Education in June 2017, that the recommended committee members should "be equipped with the awareness of gender equity, conduct no behaviors of gender discrimination under the definition of the Gender Equity Education Act, as well as no devaluation or sexual bullying of others on the basis of sexual orientation or gender identity." However, as the selection power of the Minister of Education is still not regulated, whether this regulation could solve the aforementioned problem requires further observations.

△ Friendly Campus Reconstruction Program: In response to the appeal for friendly campuses from civil organizations, the Ministry of Education initiated the "Friendly Campus Reconstruction Program" in 2004, which integrated student counselling, gender equity education, human rights education and life education. Concrete plans for implementing gender equity education included the following:

- + To properly execute the "Gender Equity Education Act," allocate corresponding budgets according to the law, draft implementation plans for gender equity education, set annual goals and plans, promote gender equity education and create an educational environment without any gender discrimination.
- + To gradually establish organizations for gender equity education and their work model, and develop teachers as well as professional talents for gender equity education.
- + To enrich the content of gender equity curriculums, encourage research on gender equity education and develop informational services.
- + To further promote the concept of gender equity and corresponding measures, improve personal safety on campus and gender awareness, and protect the right to education of pregnant students.

⁶³ Lin, W.F. (2015/11/17). Gender Equity Committee Members Made Gender Discriminating Speeches, Civil Organizations Urge the Ministry of Education Not to Continue the Employment. The Storm Media. Retrieved from: <http://www.storm.mg/article/74040>, last viewed on 2017/07/31.

△ Gender equity curriculum guidelines

- + According to Article 13 of the "Enforcement Rules for the Gender Equity Education Act," gender equity education "should cover courses on affective education, sex education, and gay and lesbian education in order to enhance students' gender equity consciousness." The Grade 1-9 Curriculum Guidelines for elementary and junior high schools that were put into effect in 2011 set up four "major issues," and gender equity education was one of them, with a total of 69 performance indicators. Among them, there were two indicators for creating education to promote knowledge of and respect for the LGBTI, including "learning about diverse sexual orientations" for elementary students in an upper grade and "respecting diverse sexual orientations" for junior high school students.
- + Within the current curriculum guidelines for vocational high schools, the theme of "psychology, society and culture" is included in the subject of Civics and Society. Under this theme, "gender relation and an equal society" introduces the difference between sex and gender (biological and social definition), gender equity (equal treatment and acceptance of different genders and sexual orientations), and respect for the diverse gender/sexual relationships in a modern society. The subject of Health and Nursing also includes contents with regards to learning about and accepting homosexuals, as well as respecting and accepting individuals with different sexual orientations⁶⁴.
- + The curriculum guidelines for the 12-year compulsory education, which is scheduled to take effect in 2017, is currently being reviewed by the Curriculum Council. Different from the Grade 1-9 Curriculum Guidelines, which have independent course guidelines for major issues, the 12-year guidelines choose to incorporate all major issues into individual subjects. Also, the division between "major issues" and "newly emerging issues" is diminished, so that all 19 issues are equally important. However, several committee members who claimed to be "parent representatives" have been arguing for a deletion of contents related to gender equity education.

△ Heteronormativity in sex education: Resources for sex education provided by the Taiwanese government, such as courses, websites and organizations⁶⁵, still focus on the hetero-normative two-sex relationship and reproductive health, neglecting the existence and needs of LGBTI.

△ On-job teacher training regarding gender equity

- + In 2001, with the support of the Department of Education of both Taipei City and Taipei County (now New Taipei City) Government, Taiwan Tongzhi Hotline Association organized its first "Getting to Know LGBTI- Teachers' Workshop." The attending elementary, junior high and senior high school teachers were able to receive a certificate. It was the first LGBTI-related course that was approved by the educational authority⁶⁶.

⁶⁴ See Ministry of Education's "Report on the Implementation of Gender Equality Policy Guidelines in 2015."

⁶⁵ For example, "Happy E-Campus," a teenager sex education website by the Group for Women's and Children's Health under the Health Promotion Administration, Ministry of Health and Welfare, supply contents mostly limited to subjects about two sexes, and rarely addresses homosexuality. The website propagates stereotypes and tends to problematize homosexuality. For example, "the combination a dominant and over-protective mother and a weak, powerless and hostile father is especially likely to result in the lack of appropriate male models that a boy could identify himself with." Retrieved from: https://young.hpa.gov.tw/mail_04_txt.asp?qkey=23, last viewed on 2017/08/14.

⁶⁶ See the collection of news reports on "Getting to Know LGBTI- Teachers' Workshop" prepared by Gender/Sexuality Rights Association Taiwan on: http://gsrat.net/news/newsclipDetail.php?ncdata_id=961, last viewed on 2017/07/31.

- + According to Article 15 of the “Gender Equity Education Act,” gender equity education shall be included in pre-service training of staff members, orientation training of new staff members, in-service education program and preparation program for educational administrators, the same in professional teacher training programs in colleges and universities.
- △ While examining the proposal of the Taipei LGBT Civil Rights Movement in 2010, the Civil Affairs Committee of Taipei City Council demanded Taipei City Government to “deliberate on how to prevent school clubs (in senior high schools, vocational high schools and others) from recruiting students to participate in social activities for LGBTI, in order to protect their natural and appropriate development⁶⁷.” In response, the Department of Education issued an official order to all junior high, senior high and vocation schools in the city, to request school authorities to prevent LGBTI student clubs⁶⁸. Later, facing protests from LGBTI organizations, the Commissioner openly apologized⁶⁹. Taipei City Government also proposed “Taipei City’s Implementation Plan for Creating a LGBTI-Friendly Environment⁷⁰,” which included concrete measures such as:
 - + Organizing training courses on gender equity for educational personnel, the public and civil servants.
 - + Creating gender-friendly environments, including friendly workplaces, friendly medical institutions, organizing LGBTI civil right movements, and convening network meetings for LGBTI-related affairs.
 - + Implementing gender equity education.
- △ Interference of anti-LGBTI groups
 - + Working with some politicians, anti-LGBTI groups have applied pressure on practitioners of gender equity education through city/county council interpellation, expressing concerns about administrative affairs, and parents’ intervention.
 - + Since March, 2011, the “True Love Alliance,” composed of mostly religious groups, has started to spread misleading information regarding gender equity education: “We believe that no father, mother and teacher would like to see their underage children learning about dozens of “sexual positions!” “Ridiculous! Do you think junior high and elementary school students are equipped with clear judgements? Subjects of pedophilia and bestiality are both included in the materials!” They also started a petition against LGBTI education. The K-12 Education Administration of Ministry of Education was therefore swayed, and applied minor adjustments to the performance indicators regarding gender equity education included in the guidelines. In the meantime, among the three teachers’ handbooks that were supposed to be distributed, “Teaching Gender” (designed for junior high school teachers) and “We Can Teach Gender like This” (for elementary school teachers) also had to be revised by scholars and experts, result-

⁶⁷ Taipei City’s Official Letter Ren Ko No. 09930418200, issued by the Department of Civil Affairs, Taipei City, on January, 28th, 2000.

⁶⁸ Taipei City’s Official Letter Chiao Zhi No. 09932563100, issued by the Department of Education, Taipei City, On February 6th, 2000.

⁶⁹ Wang, Y.F. (2010/03/03). Department of Education of Taipei City Government Clarifies and Apologizes for Homophobic Official Letter that Oppresses LGBTI Teenagers. Coolloud. Retrieved from: <http://www.coolloud.org.tw/node/50764>, last viewed on 2017/07/31.

⁷⁰ See: “Special Section for Creating LGBTI-Friendly Environments” on the website of the Department of Civil Affairs, Taipei City, at: <http://ca.gov.taipei/ct.asp?xltem=109337517&ctNode=80755&mp=102001>, last viewed on 2017/07/31.

ing in the postponed implementation of the gender equity course materials, which were supposed to be put into effect in August 2011. In the end, each school only received one handbook⁷¹.

- + In 2014, the Control Yuan accused the sex education film made by Taiwan Gender Equity Education Association “Shall We Swim” of failing to be properly censored while “involving plots about exploring erogenous zones, sexual orgasm and sexual behaviors, which might be a violation of the prohibition of seducing children and teenagers to engage in sexual or obscene behaviors and cause parents’ panic as well as public criticism,” and therefore, corrected the Ministry of Health and Welfare for sponsoring the making of this film and Taipei City Government for sharing this film⁷².
- + Recently, in the names of “parenting,” anti-LGBTI groups such as “Alliance of Supervising Inappropriate Teaching Materials” have incited local council representatives to launch a proposal aiming to “remove inappropriate gender education materials out of campus.” They did this by removing contents from their contexts and mismatch them on purpose. For example, Changhua County Council passed a proposal in October 2016, which suggested that the county government should not “include materials regarding ‘the ideology of gender diversity’ into the guidelines⁷³.” In June 2017, a Taipei City Council representative also proposed that parents should have the highest right to make the “final decision” about the gender equity education their child should receive. In the end, Taipei City Council decided that the contents of gender education should still be determined by the Gender Equity Education Committee of each school, but parents should be well informed before their implementation⁷⁴. In September 2017, parent groups and council representatives again requested the Department of Education of Taipei City to revise the “Regulations for Assembling the Gender Equity Education Committee,” and to increase the number of seats for parent representatives from one seat to four. Up to now, the proposal has not been passed yet.

Our suggestions

- △ Facing the interference in gender equity education from anti-LGBTI groups, the Ministry of Education should defend resolutely its professional stance on gender equity education and actively provide the public with accurate information and social education through the media.
- △ For the promotional activities for gender equity organized in all levels of schools, the Ministry of Education should break away from a top-to-bottom, standardized, propaganda-like pattern of planning and increase activities that are designed with students as the education subject.
- △ The formative education for teachers in the country should add gender education courses that are based on the awareness of gender equity and include LGBTI issues.

Family Education

- △ Authorities responsible for family education is the Department of Lifelong Education in the central government and Family Education Center on local levels. The legal basis is the “Family Education Act.” Although it is regulated that family education should include gender equity education, as no penalties are specified, the Act does not have any legal force.
- △ Based on the implementation plan of gender mainstreaming and the “White Paper for Gender Equity Education,” progresses and results of the implementation and execution of gender equity education within family education should be reported in meetings with the Gender Equity Special Taskforce and the Gender Equity Education Committee, which are hosted by the Minister of Education.
- △ Among academics, experts in family education have not discussed much about gender equity and LGBTI education. Practitioners also rarely have the chance to receive relevant trainings. As a result, organizations in the field have failed to provide parents with adult education and social education concerning LGBTI issues, or parental education and discussions about parenting issues when their children are LGBTI⁷⁵.
- △ Services and resources for LGBTI parents are also scarce. The government rarely plans and sets up agencies or projects that could provide services for parents of LGBTI individuals on a policy level. Nor does it try to comprehensively and systematically improve the professional capacity of most social welfare organizations serving children, teenagers and their parents to face issues regarding LGBTI parenting.

Our suggestions

- △ All family education policies, related services and activities implemented by the government should include the concept of diverse families to include families with one or several LGBTI members.

⁷¹ See the collection of “Major Events with the True Love Alliance” prepared by Taiwan Gender Equity Education Association on: http://www.tgeea.org.tw/download/voice_130131-2.pdf, last viewed on 2017/07/31.

⁷² Control Yuan (2014/04/03). “Inappropriate Broadcast of Sex Ed Video “Shall We Swim,” Control Yuan Corrects Ministry of Health and Welfare and Taipei City Government’ Press Release. Retrieved from: http://www.cy.gov.tw/sp.asp?xdUrl=../di/message/message_1.asp&ctNode=903&msg_id=4874, last viewed on 2017/07/31.

⁷³ Chen, Y.H. (2016/10/05). Deception before Election? Homophobic Proposal Introduced in Changhua County Council. NowNews. Retrieved from: <https://www.nownews.com/news/20161005/2260637>, last viewed on 2017/07/31.

⁷⁴ City Council Rules That Decisions about Gender Equity Education Materials and Courses Should Return to School Committee of Gender Equity. (2017/06/20). Apple Daily. Retrieved from: <http://www.appledaily.com.tw/realtimenews/article/new/20170620/1144041/>, last viewed on 2017/07/31.

⁷⁵ Huang, H.H. (2014). Promotion of Gender Issues in Family Education. *Gender Equity Education Quarterly*, 67, p.57-61.

Social Education

- △ Traditional etiquettes and customs in the Han culture do not have the concept of LGBTI, and they often adopt a clear definition and division of the obligations and rights of males and females. In response to the funeral customs that grant unequal treatments for different genders and completely ignore the rights of LGBTI to a proper funeral and burial, the Ministry of Interior set up the “Taskforce to Study and Improve Funeral and Burial Customs and Etiquettes” in 2010 and published the book “Modern Funeral Ceremonies” in 2012, both of which have been devoted to promoting the awareness of gender equity in funeral and burial customs as well as discussed the rights of LGBTI to funeral and burial ceremonies⁷⁶. In 2014, the Ministry of Interior published “Modern Weddings: Equal Union, Mutual Help, and Tolerance,” within which same-sex marriage and weddings were mentioned.⁷⁷
- △ The major legal basis for social education is the “Lifelong Learning Act,” and authorities are the Ministry of Education in the central government and the local government in each region. According to Article 10 in the “Lifelong Learning Act,” each city and county is entitled to establish community colleges. At the moment, there are a total of 83 community colleges in the country, with more than 200,000 enrolled students every year, which have become an important channel of social education.⁷⁸ However, gender equity is not a major topic in community colleges. Even when a community college puts its emphasis on women’s issues, such as Chuchin Community College in Hsinchu City,⁷⁹ the courses still involve mostly aspects of equality between males and females.⁸⁰

Our suggestions

- △ Community colleges should offer more courses related to gender equity and include the concept of gender equity into other courses.

⁷⁶ Ministry of Interior (2012/06). *Modern Funeral Ceremonies*. Taipei: Ministry of Interior.

⁷⁷ Ministry of Interior (2014/12). *Modern Weddings: Equal Union, Mutual Help, and Tolerance*. Taipei: Ministry of Interior.

⁷⁸ Chen, Y.C. (2013/12). Theories and Practice of Designing Gender-related Courses at Community Colleges – The Example of Courses at a Community College in Northern Taiwan. *Community Development Quarterly*, 144, p.323-336.

⁷⁹ Its predecessor was Hsinchu Women’s Community College, and “Women’s Academy” before that, which offered mostly courses on personal growth of women.

⁸⁰ Personal interview on 2017/09/07.



In 1986, the 22-year-old Tien Chi-Yuan was admitted by National Taiwan Normal University, but while he receiving mandatory military training in Chenggong Ling Training Center, he was found to be infected with HIV in a physical examination. National Taiwan Normal University therefore retracted his admission. As pressure from the public increased, the university agreed for Tien to attend correspondence courses. Tien is a gay man, the first HIV-positive individual who came out on the media, and an activist in human rights movements for people living with HIV/AIDS.⁸¹

In January 2004, police officers broke into a home party held by gay males on Noonan Street, allowed reporters to take photos freely and brought 93 attendants back to the station for a compulsive blood and urine test. Afterwards, 28 of them were found to be HIV-positive. As the legal elements of the crime of intentional transmission were not fulfilled, they were acquitted. This incident was heavily and negatively reported by the media.⁸²

In 2005, Taiwan Harmony Home Association, an association that shelters people and children living with HIV, moved into Zaihsin Community in Taipei City. In the same year, the management committee of the community revised its resident agreement, prohibiting residents from sheltering individuals with a transmittable disease and requested Harmony Home Association to move out. This case resulted in a revision of the “HIV Infection Control and Patient Rights Protection Act” (often referred to as the HIV Act) by the Legislative Yuan, and Harmony Home Association also won the lawsuit against it in the second instance because of it.⁸³

In 2010, a homosexual male donated blood without knowing he was HIV-positive, causing a receiver to be infected with HIV. The male was therefore charged by the prosecutor with mayhem caused by negligence according to Article 284 of the “Criminal Code.” As this crime is only indictable upon complaint, the court dismissed the charge.⁸⁴

In 2011, due to procedural negligence, National Taiwan University Hospital and National Cheng Kung University Hospital transplanted organs of HIV-positive homosexual donors to five patients. This incident aroused public panic over HIV/AIDS again, and provoked a clamor that one’s HIV-positive status should be recorded on his/her health insurance IC card.⁸⁵

In 2011, a draftee named Xiaojien applied for the exemption from military service on the ground of HIV infection. However, the district office delivered the notification of his physical status to his family, which was unsealed and printed with “reported HIV-positive

case,” exposing his HIV-positive status. Hence, Xiaojien brought a charge against the state for compensation and won the lawsuit in 2013.⁸⁶

In 2012, a teacher named Feng in Taipei City continued having sexual intercourses with others after learning about his positive HIV status. Although with a stable use of medication, the viral load within Feng’s body was already too low to be detected, and his sexual partners were mostly people already living with HIV, the judge still sentenced Feng to 13 years of imprisonment based on Article 21 of the “HIV Act,” on the ground of potential “cross-infection.” Feng filed a motion for constitutional interpretation in June 2016.⁸⁷ In the same year, a HIV-positive student of National Defense University was expelled due to “moral issues.” National Defense University was therefore fined 1 Million NTD by the Ministry of Health and Welfare.⁸⁸

In 2014, an openly gay male Chen Yu-Ren sought medical care at Kaohsiung Medical University Chung-Ho Memorial Hospital, and was tested for HIV without being informed and giving his consent. The hospital was therefore fined 30,000 NTD by the Department of Health of Kaohsiung City according to Article 15 of the “HIV Act.”⁸⁹

△ Although HIV/AIDS is not a disease exclusive to the LGBTI community, since its appearance, HIV/AIDS has always be closely connected to and intertwined with the stigma attached to gay men. For example, early HIV prevention campaigns often listed gay men and sex workers as the “high risk groups.” Therefore, this present report also examines issues and policies regarding the rights of people living with HIV/AIDS.

⁸¹ Persons with HIV/AIDS Rights Advocacy Association of Taiwan (1997). HIV Fighter Tien Chi-Yuan. Retrieved from: http://www.praatw.org/right_2_cont.asp?id=52, last viewed on 2017/08/01.

⁸² Song YY (2014/01/29). Important Timelines of Noonan Street Home Party. Retrieved from: <http://www.songyy.org.tw/archives/2760>, last viewed on 2017/08/01.

⁸³ Taiwan High Court Civil Decision Yi No. 1012 in 2006.

⁸⁴ Persons with HIV/AIDS Rights Advocacy Association of Taiwan (2011/04/11). Homosexuals’ Blood Is Not Toxic. The Responsibility of Transfusion Safety Lies on the State. Our Position on the Prosecution of Gay Man Who Donated Blood. Retrieved from: http://www.praatw.org/right_2_cont.asp?id=207, last viewed on 2017/08/01.

⁸⁵ NTU Hospital Gets into Trouble for Accidental Transplant of Organs of HIV-Positive Donor. (2011/08/28). Apple Daily. Retrieved from: <http://www.appledaily.com.tw/appledaily/article/headline/20110828/33628889/>, last viewed on 2017/08/01.

⁸⁶ District Office Fined for Revealing Draftee’s HIV Status When Delivering Military Service Notification. (2013/07/04). Apple Daily. Retrieved from: <http://m.appledaily.com.tw/appledaily/article/headline/20130704/35126541>, last viewed on 2017/08/01.

⁸⁷ Wang, H.W. (2015/04/04). The Weight of Speed (Amphetamine) – Story of a HIV-Positive Teacher. PNN. Retrieved from: <http://pnn.pts.org.tw/main/2015/04/04/%E7%85%99%E7%9A%84%E9%87%8D%E9%87%8F%EF%BC%9A%E4%B8%80%E4%BD%8D%iv%E6%95%99%E5%B8%AB%E7%9A%84%E6%95%85%E4%BA%8B/>, last viewed on 2017/08/01; Huang, T.M. (2013). The Emotional Governance of a Stigmatized Disease: Aids Ngos and the Cultural Politics of Shame. Sponsored by the Ministry of Science and Technology, No. NSC100-2410-H008-065-MY3.

⁸⁸ Tsai, Y.H. (2016/08/15). National Defense University Discriminates against HIV-Positive Student, CDC Fines 1 Million NTD for the First Time. Up Media. Retrieved from: http://www.upmedia.mg/news_info.php?SerialNo=2296, last viewed on 2017/08/01.

⁸⁹ Chen, B.H. & Huang, C.L. (2014/06/18). First Case in the Country/Kaohsiung Medical University Hospital Fined for HIV-Test without Patient’s Permission. Liberty Times. Retrieved from: <http://news.ltn.com.tw/news/life/paper/788344>, last viewed on 2017/08/01.

- △ In 1984, the first local case of HIV appeared in Taiwan. In 1997, the Highly Active Anti-Retroviral Therapy (HAART) developed by Dr. David Ho, which is often referred to as the “cocktail therapy,” was introduced into Taiwan. HAART significantly extended the life expectancy of people with HIV/AIDS, turning HIV/AIDS from a fatal illness to a chronic disease. Between 1984 and September 2017, the accumulated number of people infected with HIV reached a total of 36,515 people (including foreigners). Taiwanese nationals infected with HIV reached a total number of 35,414 people, with a surviving population of 29,494 people. Among the infected, the largest portion was infected through unsafe sex between men, accounting for 61.94% (21,934 people)⁹⁰.
- △ Competent authority: HIV/AIDS related affairs are superintended by the Centers of Disease Control (CDC) under Ministry of Health and Welfare, and the Committee for HIV Prevention and Protection of Rights of People Living with HIV/AIDS (HIV Right Protection Committee) is set up based on the “Ministry of Health and Welfare’s Regulations for Setting up the Committee for HIV Prevention and Protection of Rights of People Living with HIV/AIDS,” which consists of representatives from governmental agencies, the academia and civil organizations.
- △ Legal regulations
 - + The “HIV Infection Control Act” (HIV Act) was passed by the Legislative Yuan in 1990, the main spirits of which included: HIV prevention, protection of the privacy of individuals living with HIV/AIDS, and criminal sentences for individuals intentionally transmitting the virus⁹¹.
 - + Anti-discrimination provision (Article 4 of the current act): In 1997, the law was revised to include articles that protect the right to education, medical care and employment of people living with HIV/AIDS. In 2005, former Legislator Ho Shui-Sheng and others proposed to delete this article, so as to “prevent this act from becoming a law that protects HIV/AIDS,” but the proposal was not passed⁹². In 2007, the “HIV Infection Control Act” was renamed the “HIV Infection Control and Patient Rights Protection Act,” and the protection it provides has been extended to “education, medical care, employment, long-term care and housing.”
 - + Financial source (Article 6 of the current act): Since 2006, HIV-related medical costs have no longer been paid by the National Health Insurance scheme but rather by the administrative budgets of the Department of Health (predecessor of the Ministry of Health and Welfare). Due to the lack of budgets, medical care for people living with HIV/AIDS has been limited and a self-payment policy was proposed. According to an online survey conducted by Taiwan Lourdes Association in 2012⁹³, “78% of the respondents

⁹⁰ Centers of Disease Control, Ministry of Health and Welfare (2017/08). HIV/AIDS Monthly Statistics. What is worth noting is that even though there is a higher percentage of men engaging in unprotected sex with other men among all HIV-affected individuals, this is a mere statistical fact and should not be interpreted as the cause of HIV. Attention should be paid to social structural factors, such as the social exclusion of LGBTI and the lack of same-sex safer sex education on campus, rather than to attributing a disease to a specific group of people.

⁹¹ Legislative Yuan (1987/11). Agenda Related Documents of the 14th Sitting in the 80th Session of the 1st Term.

⁹² Legislative Yuan (2005/03). Agenda Related Documents of the 2nd Sitting in the 1st Session of the 6th Term.

⁹³ Taiwan Lourdes Association (2012/09/27). Statement Prepared for the Public Hearing for Strategies in Response to the Continuous Expansion of Medical Expenses of People Living with HIV/AIDS. Retrieved from: http://www.lourdes.org.tw/list_1.asp?id=2129&menu1=4&menu2=23, last viewed on 2017/08/02.

worried that self-payment would lead to an expansion of the epidemic; 70% were in favor of re-including HIV/AIDS in the national health insurance scheme; 95% considered the Taiwanese society still unfriendly towards people with HIV/AIDS.” Since February 4th 2017, medical costs of people infected with HIV who have been on medication for at least two years have been paid by the national health insurance. Subjects qualified for the aforementioned reimbursement are HIV-infected individuals who are granted a “National Health Service Card” according to the “Regulations Governing Subsidies for Treatment Expenses of HIV-Infected Persons”

- + Intentional transmission (Article 21 of the current act): Drafted in 1990, the “HIV Act” already included penalties for intentional transmission. In 1997, penalties for attempted offenders were added. Revisions made in 2007 observed the extent of penalty applied for mayhem in the “Criminal Code” and changed the sentence of imprisonment up to seven years to between five to twelve years. However, this article has raised concerns about piling up on the existing penalty for mayhem in the “Criminal Code” and has often become a revenge tool used against HIV-infected individuals⁹⁴.
- △ Foreigners infected with HIV/AIDS: In 2015, the “HIV Act” deleted the regulations that used to allow authorities to revoke or repeal the visa or resident permit of a foreign person infected with HIV. Until the end of 2014, a total of 954 foreign persons infected with HIV had been deported under this regulation⁹⁵.
 - + Reporting and tracking: According to Subparagraph 1 of Article 13 of the “HIV Act,” medical personnel, upon detection of the infected, shall report to the local competent authorities within 24 hours. Upon receiving such reports, local departments of health should launch a case management mechanism to assist individual cases and track down individuals the infected person has had contact with⁹⁶. However, whether the state control and long-term tracking of people with HIV/AIDS are necessary is not without debate. In addition, before public health personnel establishes a trusting relationship with the infected individuals, tracking is a very difficult task.
- △ Treatment policy: in the past, treatment was initiated when a patient’s CD4 level⁹⁷ dropped under 200. Later, the treatment guidelines drafted by Taiwan AIDS Society suggested to start treatment when CD4 is lower than 500⁹⁸. Now it is recommended to start treatment as early as possible. In the 5-year 6-phase prevention plan, it is expected to achieve the target of “90-90-90” in 2020, which refers to that 90% of the infected persons are aware of their infection, 90% of the patients who are aware of their status are taking medication, and 90% of the patients who are taking medication can successfully oppress their viral load⁹⁹.

⁹⁴ Persons with HIV/AIDS Rights Advocacy Association of Taiwan (2016/12/15). 2016 Survey on Rights Violation of People Living with HIV/AIDS in Taiwan; Wang, C.M. (2016). On the Criminal Liability for HIV Transmission—Through Unprotected Sex without Disclosure of HIV-Positivity (Master thesis). Soochow University. ⁷⁷ Significant Improvement of Human Rights! Taiwan Will Grant Legal Residence for HIV-Positive Foreigners (2015/01/08). Apply Daily. Retrieved from: <http://www.appledaily.com.tw/realtime-news/article/new/20150108/538294/>, last viewed on 2017/08/02.

⁹⁵ Significant Improvement of Human Rights! Taiwan Will Grant Legal Residence for HIV-Positive Foreigners (2015/01/08). Apply Daily. Retrieved from: <http://www.appledaily.com.tw/realtime-news/article/new/20150108/538294/>, last viewed on 2017/08/02.

⁹⁶ Centers of Disease Control, Ministry of Health and Welfare (2016). Handbook for HIV/AIDS Prevention.

⁹⁷ CD4 cell count could be used as an indicator to assess the immunity of people with HIV/AIDS.

⁹⁸ 2013 HIV Testing and Treatment Guidelines published by the Centers of Disease Control, Ministry of Health and Welfare: “Referring to the latest guidelines of WHO published in 2013, it is recommended to advance the initiation of treatment. We recommend that patients whose CD4 count is < 500 cells/μl should start treatment with Anti-Retroviral Therapy.”

- △ HIV/AIDS case management project: in October 2005, a small-scale pilot project of HIV/AIDS case management was launched. Since January 2007, a comprehensive HIV/AIDS case management project has been put into effect¹⁰⁰, with case managers for HIV/AIDS patients allocated in designated hospitals. In addition, since 2011, case managers have also been employed for local health authorities, while information such as spouse disclosure rate, spouse tracking rate, sex partner tracking rate and treatment rate have been quantified and included as performance indicators. In order to help case managers to achieve these indicators, LGBTI-related courses have been included in their training to improve the service quality for individual cases.
- △ 5-Year 6-Phase HIV Prevention Plan: The Executive Yuan approved of the 5-Year 6-Phase HIV Prevention Plan in 2016, which is to be implemented between 2017 and 2021, with the main focus such as de-stigmatizing HIV, expanding multiple testing channels, and promoting the idea of “treatment as prevention¹⁰¹.” In the past, the CDC rarely focused HIV public education on de-stigmatization and anti-discrimination. Although this plan has included the aspect of de-stigmatization, how effective the implementation would be awaits further observations.
- △ HIV education: An attached resolution was passed when the “HIV Act” was revised in 2015, which states that teachers and administrative personnel in schools, students, community colleges and personnel responsible for relevant affairs (such as police officers, fire fighters and medical professionals) should receive HIV education. The courses should cover the following contents: 1) basic HIV knowledge and prevention; 2) awareness of disease and gender diversity; 3) how to interact with people living with HIV/AIDS; 4) experiencing the life of being HIV-positive. After the act was passed, the Ministry of Education issued an official letter to inform schools of all levels to organize such courses¹⁰². Compared to the past, HIV education has been paid more attention to, but the actual implementation still varies among schools due to differences in personnel attitudes and available resources.

⁹⁹ Centers of Disease Control, Ministry of Health and Welfare (2016/05/03). Press Release: Great Benefits of HIV Medication, Taiwan Joins Developed Countries in June. Retrieved from: <http://www.cdc.gov.tw/pda/Info.aspx?treeid=45da8e73a81d-495d&nowtreeid=1bd193ed6dabae6&tid=A5A80A4E91A853EC>, last viewed on 2017/09/15. In the press release, it was mentioned “in order to achieve the goal to end HIV epidemic by 2030, the United Nations and WHO have clearly declared the goal of 90-90-90 for 2020. At the moments, these three numbers in Taiwan are respectively 75%, 79% and 85%.

¹⁰⁰ Chiu, C.M., Huang, Y.F., Yang, C.H., Chen, Y.H., & Lin, T. (2010/02). The “HIV Case Management Program” in Taiwan: A Discussion Based on Experience with HIV Case Management in the United States. *Taiwan Journal of Public Health*, 29:1.

¹⁰¹ Centers of Disease Control, Ministry of Health and Welfare (2016/09). 5-Year 6-Phase HIV Prevention Plan.

¹⁰² Ministry of Education. Official Letter Tai-Chiao-Tsung (5) No. 1040015858.

- △ HIV testing projects
 - + Since 2009, the CDC has implemented the policy of “HIV test for all citizens,” and used the number of tests given as a performance indicator for local health authorities. It has resulted in cases that the Department of Health in local governments simply try to give as many tests as possible without fulfilling the necessary obligations, such as informing test recipients about the standard testing procedure and consultation¹⁰³.
 - + The CDC has implemented testing projects such as “I-Check” and “We-Check” since 2013, attempting to increase the number of people tested through strategies such as setting up free anonymous testing stations and encouraging the public to “get tested as a group”¹⁰⁴.
- △ Since the launch of “I-Check,” the CDC has also offered oral HIV home test kits. Such a home saliva test is able to reach more people, particularly those who do not dare to be openly tested. On the other hand, some concerns also exist, such as lack of health education and consultation, difficulty of following up, and the possibility of a false-positive or false-negative test result. PrEP (Pre-exposure Prophylaxis): PrEP is a new HIV prevention tool in addition to condoms. Taiwan is one of the few countries in Asia that provide their citizens with self-paid PrEP drugs. The CDC carried out a “PrEP Pilot Project” between November 2016 and August 2017, which sponsored five hospitals and provided drug reimbursement for 1000 people¹⁰⁵. However, because the project can at most reimburse one-third of the medication cost in a year, and individuals would have to self-pay 12,000 NTD per month after the reimbursed period¹⁰⁶, the high cost has resulted in a lower accessibility. Meanwhile, anti-LGBTI groups have described PrEP as a “hook-up pill,” and continued to criticize this policy.
- △ Refuting misleading information related to HIV/AIDS: during the fight for marriage equality between 2016 and 2017, anti-LGBTI groups had spread a large volume of rumors regarding HIV/AIDS online. In response, The CDC created a section on its website to refute these rumors on behalf of the government. Meanwhile, the CDC has also been maliciously attacked by anti-LGBTI groups for being in charge of HIV/AIDS policy¹⁰⁷.

¹⁰³ Persons with HIV/AIDS Rights Advocacy Association of Taiwan (2009/12/01). Post-Conference Press Release Prepared for “Urging CDC to Re-Evaluate the Universal HIV Testing Policy” Press Conference. Retrieved from http://www.praatw.org/right_2_cont.asp?id=103, last viewed on 2017/08/02.

¹⁰⁴ Centers of Disease Control, Ministry of Health and Welfare (2017/04/11). “Home HIV Testing Project Launched! HIV Testing is Easy, Picking up the Testing Kit from Convenient Stores is Convenient” Press Release. Retrieved from: <http://www.cdc.gov.tw/professional/info.aspx?treeid=CF7F90DCBCD5718D&nowtreeid=F94E6AF8DAA9FC01&tid=10082A56D4EC8BE4>, last viewed on 2017/08/02.

¹⁰⁵ Centers of Disease Control, Ministry of Health and Welfare. Q & A for PrEP (Pre-exposure Prophylaxis) Pilot Project. Retrieved from: <http://www.cdc.gov.tw/qa.aspx?treeid=511907c7a9f3653c&nowtreeid=e2d2a24f5139ab68>, last viewed on 2017/08/02.

¹⁰⁶ There are a brand drug and generic drugs. The brand drug is “Truvada” developed by the US pharmaceutical company Gilead, the price of which is very high, costing 12,000 NTD per month. The generic drugs include TENO-EM manufactured by the pharmaceutical company GPO and RICOVIR-EM by Mylan, both of which cost significantly less, only 1000-2000 NTD per month. See: Introducing PrEP. (2016/08/19). Age of Queer. Retrieved from: <http://ageofqueer.com/archives/11811>, last viewed on 2017/08/02.

¹⁰⁷ PrEP Becomes Hook-Up Pill? CDC Clarifies. (2017/07/01). Apple Daily. Retrieved from: <http://www.appledaily.com.tw/realtimenews/article/new/20170701/1152265/>, last viewed on 2017/09/04.

¹⁰⁸ Persons with HIV/AIDS Rights Advocacy Association of Taiwan (2011/08/31). “Opposing to the Policy of Recording HIV-Status on Health Insurance IC Card” Post-Conference Press Release. Retrieved from: http://www.praatw.org/right_2_cont.asp?id=246, last viewed on 2017/08/02.

¹⁰⁹ Persons with HIV/AIDS Rights Advocacy Association of Taiwan (2016/12/15). 2016 Survey on Rights Violation of People Living with HIV/AIDS in Taiwan.

¹¹⁰ Taiwan Lourdes Association (2016/04/18). 2015 Report on the Living Condition of People with HIV/AIDS in Taiwan.

△ Medical privacy of people living with HIV/AIDS

- + In 2002, the Bureau of National Health Insurance recorded patients' medical history on their insurance IC card without their permission, causing concerns of HIV-infected individuals that their status may be made public. "Personal Information Protection Alliance of Taiwan" was formed by several civil organizations as a response to the raised concerns regarding data protection and privacy, and the Alliance called for suspension of the card¹⁰⁸. Later on, the Bureau issued an official order that stated individuals infected with HIV should have the right to determine whether their HIV status should be recorded on the IC card.
- + According to a survey conducted by Persons with HIV/AIDS Rights Advocacy Association of Taiwan in 2016, 67.8% of the HIV-infected respondents had experienced harms to their intimate relationship and reproductive right, including threats and attacks in an intimate relationship due to their HIV status. 58.3% of the respondents had experienced violations of their right to medical care, including unfriendly treatment or refusal to offer medical services by medical professionals. 30.1% of the respondents had had their privacy violated¹⁰⁹.
- + A survey conducted by Taiwan Lourdes Association in 2015 also found out that medical privacy was the biggest concern for many HIV-infected individuals: "More than 60% of the respondents are concerned about privacy issues raised by the "PharmaCloud System" and "My Health Bank;" close to 50% of the respondents are worried that their HIV-related medical histories on their insurance card would be accessed; more than 40% of them do not dare to disclose their HIV status to medical professionals¹¹⁰."
- + Since July 2013, medical professionals have been able to access patients' medication record up to three months prior to the access date using the PharmaCloud System, and therefore, to find out whether patients are HIV positive or not based on the drugs they have used. It has caused situations where some HIV-infected individuals were rejected by medical professionals or refused to seek medical help due to fear of exposing their HIV status¹¹¹.

△ Regulations for blood donation for men who have sex with men: According to Subparagraph 4 of Article 5 of the "Health Standards for Blood Donors," men who have sex with other men are permanently disallowed to donate blood. In September 2016, a proposal was made on the "Public Participation Platform for Public Policy" maintained by the National Development Council, which argued that "the regulation that "men who have sex with men shall never donate blood" is discriminating and should be revised based on medical evidences." The proposal was passed with 5138 people seconding the motion¹¹². The HIV Right Protection Committee responded in February 2017 that: "The restriction should be gradually loosened. The original life-long ban on blood donation for men having sex with men should be altered to "men who have not had sex with other men in five years shall be entitled to donate blood." However, whether this revision would be realized is not yet clear.

¹¹¹ Lin, H.C. (2017/07/18). PharmaCloud System Causes Hospitals to Refuse Services, Information of People with HIV/AIDS Will Not Be Completely Accessible. Liberty Time. Retrieved from: <http://news.ltn.com.tw/news/focus/paper/1119645>, last viewed on 2017/08/17.

¹¹² Proposal: "The regulation that "men who have sex with men shall never donate blood" is discriminating and should be revised based on medical evidences." (2016/09/28). Public Participation Platform for Public Policy, National Development Council. Retrieved from: <https://join.gov.tw/idea/detail/409066b7-d780-45c3-a541-3c7337a4d5cc>, last viewed on 2017/08/02.

△ LGBTI community health center

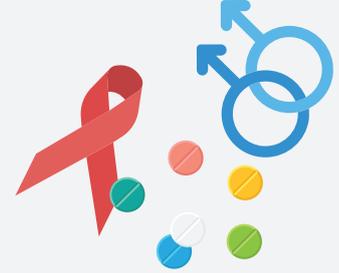
- + Since 2010, the CDC has entrusted civil organizations to establish several LGBTI community health centers, including Rainbow Queer, Gay Community Center Taipei, Gisney Land in Hsinchu, Taichung GDI¹¹³ and Sunshine Queer, while others are authorized by local governments, such as South Rainbow Street 6 and Gisney Land in Chiayi. Main services provided include HIV prevention, health education and consultation, testing for HIV and other sexually-transmitted diseases, as well as out-patient consultation, which target at men having sex with other men. Since 2014, each city and county has been demanded to establish a local LGBTI community health center to carry out tasks such as health education, testing services, promotion of safe sex and HIV prevention¹¹⁴.
- + LGBTI community health centers are one of the few friendly policies the government has implemented to create a space for LGBTI to engage in social activities and networking. However, as the funding mostly comes from the CDC and rarely from other government agencies and due to the requirements and restrictions concerning HIV prevention, most LGBTI community centers target only at services for local gay communities, designing their services and events based on the sexual health issues of gay men. Only a few have expanded their focus to other needs of gay men and the needs of other LGBTI individuals.

Our suggestions

- △ Article 21 of the “HIV Act,” which concerns intentional transmission, should be deleted and the definition used in existing executive orders of the “scope of unsafe sex” should be modified, in order to be consistent with the international medical and scientific trend.
- △ The public health system should be adjusted and focus mainly on providing supports for people living with HIV, instead of disease control and tracking.
- △ The discriminating regulation stated in Subparagraph 4 of Article 5 of the “Health Standards for Blood Donors” that prohibits men who have sex with other men from donating blood for life should be deleted. Instead, restrictions should be based on risky behaviors and the window period of blood tests, rather than on specific groups.
- △ The Ministry of Health and Welfare should face and actively deal with the problem caused by the PharmaCloud System that HIV-infected individuals are refused medical services.
- △ In terms of the current channels for HIV-infected individuals to file complaints when their rights are infringed, the channels’ accessibility and friendliness should be improved. The complaint mechanism should be listed as an evaluation indicator for health authorities.

¹¹³ Its predecessor was Rainbow Heaven.

¹¹⁴ Huang, Y.F., Chen, C.H., Huang, S.T., Liu, P.L., Tsai, H.Y., & Huang, R.C. (2015). Evaluation on the Management Model and Service Utilization of LGBTI Health Centers. Centers of Disease Control, Ministry of Health and Welfare, Project No. MOHW104-CDC-C-315-000303. However, CDC removed establishing LGBTI Health Centers from the indicators for local departments of health in 2015. It also cut funding for local health authorities for LGBTI health centers, making it difficult for the policy to be continued.



Recreational Drugs

- △ The culture of chemsex (referring to the phenomenon of using drugs in a sexual context) can be seen in the Taiwanese society. However, compared to heterosexuals, the stigma attached to homosexual sex, drugs and HIV/AIDS are often intertwined, which often becomes a target of anti-LGBTI groups' attack. In the meantime, Taiwan Tongzhi Hotline Association often assists gay men in dealing with drug-related questions during our telephone counselling and HIV testing service. Thus, this report also reviews drug-related policies in Taiwan.
- △ Taiwan tends to use severe punishments to intimidate its citizens from using recreational or hard drugs, and see drug addicts as criminals rather than patients. According to the "Narcotics Hazard Prevention Act," persons convicted of possessing or using category one and two narcotics shall be punished with imprisonment. Persons convicted of using category one narcotics shall be punished with a maximum five-year fixed-term imprisonment.
- △ In practice, drug users are often sentenced to addiction treatment or rehabilitation. The former is a disposition of deferred prosecution with additional conditions, which demands offenders to receive regular treatments and tests at a hospital. The latter is a rehabilitative measure that orders offenders to go into a rehabilitation center for observation or rehabilitation for a period between one to two months. If offenders undergoing observation and rehabilitation exhibit the tendencies of continuing to use narcotics, they would be ordered to take part in a compulsory rehabilitation program at a rehabilitation center for more than six months but less than one year¹¹⁵.
- △ In the "2017 Project to Improve Service Quality at Designated HIV/AIDS Hospitals," the CDC grants reimbursement for addiction treatments for HIV-infected individuals who also use amphetamines, ketamine, ecstasy and other new drugs¹¹⁶. Meanwhile, the narcotics hazard prevention center in each county and city has developed different subsidy schemes for treatments.
- △ In August 2016, DPP Legislator Koo Li-Hsiun proposed a draft amendment to the "Narcotics Hazard Prevention Act," designating "addiction treatment" as a prerequisite for observation and rehabilitation, and compulsory rehabilitation. However, this proposal was misunderstood as an attempt to "decriminalize drugs," and therefore provoked public criticism¹¹⁷.

Our suggestions

- △ The government should invest more funding and resources in helping domestic medical and social institutions to develop and provide more services for drug users, and addiction treatments should be reimbursed by the national health insurance.

¹¹⁵ Subparagraph 3 of Article 20 of the "Narcotics Hazard Prevention Act:" "The first two Paragraphs of this Article are applicable to offenders committing the offenses described in Article 10 without 5 years of being released from completion of an observation, rehabilitation or a compulsory rehabilitation." Namely, offenders who re-commit the offense within less than 5 years are not to be sentenced to rehabilitation but prosecuted directly.

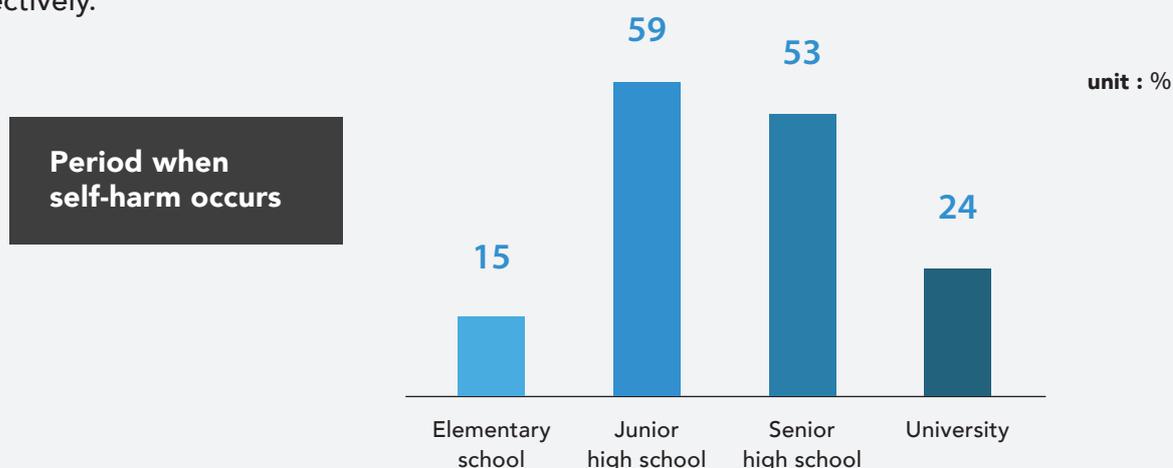
¹¹⁶ Centers of Disease Control, Ministry of Health and Welfare (2017/07). 2017 Project to Improve Service Quality at Designated HIV/AIDS Hospitals.

¹¹⁷ Lin, W.F. (2016/08/03). Refuting Chu Hsueh-Heng, Koo Li-Hsiun: Prerequisite Medical Intervention Does Not Mean Decriminalizing Drugs. The Storm Media. Retrieved from: <http://www.storm.mg/article/149644>, last viewed on 2017/08/23.

△ In addition to existing hospitals and rehabilitation centers that are governed by the judiciary authority, the government should establish service centers for drug users that are highly accessible, commonly available within communities and could refer drugs users to proper resources.

Mental Health¹¹⁸

△ Mental health: According to an online survey in 2012¹¹⁹, 29% of the respondents had thought about committing suicide because of being LGBTI, and 18% of them had attempted suicide. Self-harm mostly occurred during junior high school (59%) and senior high school (53%), while percentages of self-harm in elementary school and university were 15% and 24% respectively.



△ Conversion therapy: in 2016, a non-governmental organization received a complaint from an individual that a medical professional treated homosexuality (diverse sexual orientations) as a disease and conducted conversion therapy, causing the person both physical and psychological harms. On May 17th in the same year, the Gender Equality Committee in Taichung City passed a bill that all forms of “conversion or reparative therapy” are illegal, and suggested the Ministry of Health and Welfare to include conversion therapy as one of the “prohibited treatments” listed in Subparagraph 1 of Article 28-4 of the “Physicians Act.” The Ministry of Health and Welfare announced in January in 2017 a draft bill stating that “conversion/reparative therapy is a medical practice prohibited by Subparagraph 1 of Article 28-4 of the Physicians Act¹²⁰.” Based on this draft bill¹²¹, medical institutions or psychiatrists who conduct conversion/reparative therapy shall be fined, suspended or even have their practice license cancelled. Should Individuals who are neither physician nor psychiatrist conduct conversion/reparative therapy and claim it is effective, they could be prosecuted for the crime of “fake physicians” based on the Criminal Code¹²².

¹¹⁸ It is worth noting that Taiwan Society of Psychiatry published a statement in December 2016 that expressed its support for equal rights of minority groups of different genders and sexual orientations as well as for same-sex marriage. It also emphasized that “as long as the rights and equality of the homosexual, bisexual and transgender community are protected, the prevalence of mental illness within the communities would drop.” See Taiwan Society for Psychiatry (2016/12/26), Position Statement on “Supporting Equal Rights for the LGBTI Community and Same-Sex Marriage.”

¹¹⁹ Taiwan-Friendly Alliance (2012/04). Questionnaire on Stress Faced by Taiwan LGBTI.

¹²⁰ Taichung City’s Official Letter Wei Yi No. 1050043364, issued by the Department of Health, Taichung City.

¹²¹ Executive Yuan (2016/12/30). Official Gazette, 22: 247.

LGBTI-friendly Medical Care

- △ According to an online survey among lesbians by Taiwan Tongzhi Hotline Association in 2011¹²³, among respondents who had seen a gynecologist before, 13% of them said that they had unpleasant experiences because of the lack of gender awareness of the physicians or the nurses. 37% of them believed that “sexual experiences with an individual of the same sex” reduced their willingness to see a gynecologist, while 34% thought that “gender expressions/roles” reduced their willingness to see a gynecologist.
- △ When having symptoms related to their sexual orientation, LGBTI patients face the dilemma whether they should come out or not. According to a small-scale anonymous online survey, only 28% of lesbians were willing to come out when seeing a physician¹²⁴.
- △ The Taiwanese government has not constructed a local databases that collects LGBTI’s experiences with health and medical care. Studies in public health and epidemiology are also not aware of the existence of the LGBTI community.
- △ Education, training and studies conducted by medical professionals lack understandings of diverse genders¹²⁵. Medical professionals tend to assume patients are heterosexual and refer to them based on the conventional assumption of sexes. In terms of hardware, patient forms and restrooms also define gender as two biological sexes, lacking the perspective of gender diversity.
- △ In terms of the medical needs of gay males, the focus is mostly on prevention of sexually transmitted diseases such as HIV, and there is a lack of more comprehensive considerations for other health-related issues that may concern gay males (such as prostate cancer, testicular cancer, liver diseases, lung diseases and high blood pressure)¹²⁶.
- △ Health policies and resources regarding assisted reproductive technology, cervical Pap smear, female-friendly medical care and geriatrics have all failed to include the perspective of gender diversity and neglected the LGBTI community’s needs for these services. For example, Pap smear is mostly promoted among married females, resulting in a low test rate among lesbians.

Our suggestions

- △ The government should entrust scholars who have devoted themselves to this field for a long time to conduct local epidemiological and demographical studies on the physical and psychological health of the LGBTI community.
- △ The government should conduct studies on the medical behaviors in the LGBTI community, so as to learn about the difficulties LGBTI individuals face in a medical environment, and to propose suggestions to improve the medical care services.

¹²² Deng, G.F. (2017/08/14). Conversion Therapy is Officially Banned! Penalty for Violation Is up to 500,000 NTD. UDN. Retrieved from: <https://udn.com/news/story/7266/2642096>, last viewed on 2017/08/15.

¹²³ Taiwan Tongzhi Hotline Association (2011). Online Survey: “No Restrictions, 100 Questions about Lesbian Sex.”

¹²⁴ Hsiao, M.C. (2012). LGBT-related Health and Medical Issues. *Journal of Health Care Quality*, 6, p.90-94.

¹²⁵ Wei, H.T., Chen, M.H., & Ku, W.W. (2015). Fostering LGBT-Friendly Healthcare Services. *The Journal of Nursing*, 62, p.22-28.

¹²⁶ Chung, D.C. (2012). A Survey on Lesbians and Gay Men’s Health and Health Care Needs. Sponsored by the Ministry of Science and Technology, No. NSC101-2629-H031-001.

- △ Although at present, medical professionals are required to obtain gender-related credits in their vocational training, the content usually only involves a narrow scope of subjects such as the prevention of sexual assault and sexual harassment. We suggest to include issues related to gender diversity as an independent mandatory course, in order to improve medical professionals' knowledge and capacity in terms of gender friendliness. Curriculums in medical schools should also include courses related to gender diversity, gender-friendly campus and LGBTI-friendly medical environment.

Long-Term Care

- △ Article 1 of the "Long-Term Care Service Act" states that, "providers of long-term care services shall not discriminate against service recipients on the ground of their gender, sexual orientation and gender identity."
- △ Nevertheless, whether long-term care providers would really be able to recognize and respect LGBTI groups is still a question. For example, same-sex couples may not be able to live together in a double room in a long-term care facility as a couple, and elderly LGBTI care recipients may not dare to come out due to fear of being discriminated against.
- △ Lesbians are often treated as single women and become the caretaker in their family. In addition, the lack of public long-term care services and the unfriendly attitude in the society towards LGBTI make it more difficult for lesbians to receive external resources or family support once they become the family caretaker¹²⁷.

Our suggestions

- △ Under its long-term care policy, the government should collect statistic about sexual orientation and gender identity and conduct relevant studies, in order to design future projects.
- △ The government should assist long-term care facilities in providing services that integrate the concept of gender diversity such as not limiting cohabitation to spouses and not excluding people with HIV/AIDS from their services. Service providers should also receive regular trainings on sensitivity to gender diversity.

¹²⁷ Awakening Foundation (2013/11/13). Caretakers' Wishes/Complaints- Examining Long-term Care Policy from the Perspective of Gender Equity: Forum Summary.

Family and Intimate Relationships

Domestic Violence

In 2008, a teenager named Yeh was found out to be gay, and was thus discriminated against by his teachers and classmates in school; in the meantime, he received inappropriate treatments at home, such as being grounded, kept under surveillance and deprived of access to cellphone and internet. As he could no longer endure the domestic violence, the teenager left home. After being reported, he was, however, talked into returning home by a social worker from the Domestic Violence and Sexual Assault Prevent Center in New Taipei City, who emphasized her own role as a mother. The experience made it difficult for the teenager to trust the Prevention Center again.¹²⁸

- △ The central authority responsible for the prevention of domestic violence and intimate partner violence is the Department of Protective Service under the Ministry of Health and Welfare. The major legal basis is the "Domestic Violence Prevention Act."
- △ Compared to LGBTI teenagers in Northern American or European countries, who are more likely to be kicked out of home and become homeless, it is more common for LGBTI teenagers in Taiwan to be subject to home confinement, deprivation of freedom and financial control.
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- △ Compared to LGBTI teenagers in Northern American or European countries, who are more likely to be kicked out of home and become homeless, it is more common for LGBTI teenagers in Taiwan to be subject to home confinement, deprivation of freedom and financial control.
- △ Reviewing the number of phone calls made to the counselling hotline of Taiwan Tongzhi Hotline Association in 2015 and 2016, among LGBTI teenagers between the age of 13 and 18, who called to consult about "family issues," 25% of them faced parental violence to a certain degree, such as being forbidden to go out or making friends¹²⁹.
- △ Within the existing system of domestic violence prevention or child and youth protection, evidence-based data and services concerning LGBTI children and teenagers are lacked. In addition, the aforementioned forms of emotional violence are more difficult for social workers to evaluate. Furthermore, since the mechanism of network meetings for high-risk child and youth protection cases is not available, no high-intensity services targeting cases with a higher level of risks have been provided.
- △ Settlement institutions may not be equipped with the ability to provide services for LGBTI clients, or could even demonstrate a homophobic, discriminating atmosphere.

¹²⁸ Shih, C.L. (2008/07/24). The Cake Prince Comes Out: I Almost Had Nowhere to Go. Coolloud. Retrieved from: <http://www.coolloud.org.tw/node/75707>, last viewed on 2017/08/03.

¹²⁹ There were 2 phone calls out of 8 in 2015, and 3 out of 12 in 2016, both accounting for 25%.

Intimate Partner Violence in LGBTI Relationships

- △ In March 2007, an amendment to the “Domestic Violence Prevention Act” was passed, which expanded the definition of “family members” to “cohabit and share properties” and also same-sex partners. In 2016, another amendment was passed to grant couples who do not live together the right to apply for a restraining order.
- △ Nevertheless, many LGBTI individuals are still not aware that they could use this law to protect themselves when experiencing violence. According to the “Survey on Intimate Partner Violence among Same-Sex Couples” conducted by Taiwan Tongzhi Hotline Association and Modern Women’s Foundation in 2012, 58% of the respondents were not aware that the Domestic Violence Prevention Act had already expanded its protection to same-sex couples. 35% of the respondents had experienced intimate partner violence, among which 42% had sought help from informal systems such as family members and friends, while only 11% had sought help from a formal system like police or a social welfare agency. Moreover, 55% had never sought help, and reasons included: “feeling it would be useless to ask for help” (73%), “worrying that the formal systems would not be friendly” (62%) and “fearing their identity as LGBTI would be known by others” (47%)¹³⁰.
- △ At present, the checklist used in cases of intimate partner violence does not ask about individuals’ gender identity and sexual orientation, so statistic about intimate partner violence among LGBTI is not available. Also, there are insufficient studies on the causes and interventions, and the government could only refer to the experiences of non-profit organizations. As caseloads are unclear, it is very difficult to invest resources¹³¹.
- △ Social workers who work on intimate partner violence cases are in general friendly towards LGBTI individuals. However, they may overlook the special situations LGBTI victims of intimate partner violence are in, because they do not fully understand the culture in the LGBTI community, such as problems regarding coming out and difficulties in seeking help, which makes them unable to provide more delicate services. In addition, there is a regional gap in terms of social workers’ understanding of the LGBTI community. Right now education about gender diversity for social workers in the field of intimate partner violence is mainly provided by civil organizations¹³².

¹³⁰ Lee, T.C., Peng, C.L., & Lu, H.C. (2013). Scars in the Closet: Gay and Lesbian Couples Intimate Violence Investigation of the Practical Experience Sharing. *Community Development Quarterly*, p.202-213.

¹³¹ See Note 130.

¹³² Lee, T.C., Director of Education and Advocacy of Modern Women’s Foundation (2017/05/19). Personal Interview.

- △ In situations involving physical injuries, victims may seek help from the police. However, the current police force lacks systematic trainings regarding gender diversity.
- △ According to the experiences of Modern Women's Foundation, less than 10% of LGBTI victims have applied for a restraining order, which is significantly lower than the 40-50% among heterosexual counterparts.
- △ Among the existing protective services for intimate partner violence victims, no shelters for male homosexual victims are available. Only some cities and counties with more resources may arrange for them to stay in a hotel temporarily. It may also be impossible for transgender victims to be placed in a shelter.

Our suggestions

- △ In terms of education, competent authorities should actively develop universal LGBTI education for the public, parenting education for LGBTI families, and expand the content and service resources of the current family education.
- △ The government should invest more resources into education and advocacy of LGBTI's experiences with domestic and intimate partner violence. Meanwhile, the promotional materials should avoid labeling the LGBTI community.
- △ The sensitivity training on gender diversity should be included in the primary and secondary specialized courses for social workers in the field of domestic violence as well as child and youth protection. Alternatively, a checklist that reviews workers' ability to respond to diverse cultures should be developed, to help workers stop treating their clients with a heterosexuality-centered mentality. The government should assist domestic violence organizations in setting up a regular consultation station internally in order to accumulate practical experiences in and knowledge of providing services for LGBTI clients and to support their staffs.
- △ Sexual orientation and gender identity should be included as variables for intimate partner violence statistics, so that a comprehensive survey on the status quo of intimate partner violence among LGBTI could be conducted. Also, the approach that emphasizes "how much social cost could be saved if friendly services and a support system are provided" should be integrated.
- △ Local governments' performance on dealing with intimate partner violence cases among LGBTI should be included in the bi-annual social welfare appraisal.
- △ In response to the current situation where LGBTI victims of domestic and intimate partner violence (especially gays and transgenders) severely lack shelter possibilities, the government should alter the restriction imposed by many shelters that only biological females could be admitted, or create shelters that are designed specifically for LGBTI victims (especially for LGBTI teenagers).

Legal Status of Same-Sex Couples

In 2000, Chi Chia-Wei was the first person who filed a petition for constitutional interpretation on the matter of same-sex marriage. In May 2001, the Grand Justices dismissed the motion on the ground that “in his statement, he made his complaints about the existing marriage institution based on personal opinions, rather than pointing out in concrete details how the laws or regulations applied to the said ruling conflict with the Constitution.”

In March 2001, Article 24 of the proposed “Basic Law on the Guarantees of Human Rights” drafted by the Ministry of Justice stated, “the state should respect the rights of homosexual individuals. Two individuals of the same sex should be granted the right by law to form a union and adopt children.”¹³³ Unfortunately, this drafted bill was not able to go through the legislative procedure.

In 2006, DPP Legislator Hsiao Bi-Khim introduced a draft of the “Same-Sex Marriage Act.” However, the bill was not passed by the Procedural Committee of the Legislative Yuan.

In 2013, the drafted “Amendment to the Civil Code for Marriage Equality” introduced by Taiwan Alliance to Promote Civil Partnership Rights passed the first reading. However, the bill failed to go through deliberations in the competent committee before the end of the term.

In October 2015, presidential candidate Tsai Ing-Wen produced a promotional short film during her campaign that announced “I am Tsai Ing-Wen, and I support marriage equality.”

In 2016, the amendment to the “Civil Code” to legalize same-sex marriage was again introduced in the Legislative Yuan. It passed the committee examination and entered the stage of party caucus negotiation.

On March 24th, 2017, the Grand Justices had oral arguments regarding the petition filed by both Chi Chia-Wei and Taipei City Government for a constitutional interpretation of the regulation that “a legal marital relationship cannot be formed between two persons with the same sex.” The J.Y. Interpretation No. 748 was officially made public on May 24th, which announced that the provision of the Civil Code that did not allow two persons of the same sex to create a permanent union was in violation of both the people’s freedom of marriage and the people’s right to equality protected by the Constitution. If relevant laws are not amended or enacted within two years, regulations of the “Civil Code” should directly apply.

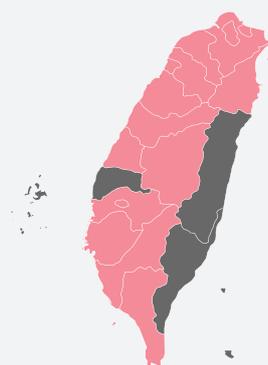
△ Current status of the rights of same-sex couples

- + Within current Taiwanese laws, there are approximately 498 rights and obligations exclusive to spouses, which Marriage Equality Coalition Taiwan categorized into ten types¹³⁴:
 - // Labor rights: Many benefits offered in workplaces, such as marital leave, compassionate leave, annuity, and financial compensation are all highly connected to the kindred defined in the "Civil Code." Same-sex couples who are not allowed to get married and thus, not considered as spouses are often not entitled to enjoy these benefits.
 - // Social welfare: Many social benefits such as financial support for low- and middle-income households, people with disabilities, indigenous people and transitional justice, disaster relief and compensation are also limited to family members defined by the "Civil Code," which excludes same-sex couples, who are not allowed to get married.
 - // Taxation: Regulations regarding joint declaration of income tax and tax reduction or exemption do not apply to same-sex couples as they are not legal spouses.
 - // Legal proceedings: Rights and obligations of spouses in legal proceedings, such as the standing to sue and the right to refuse testimony, are not applicable to same-sex couples, who are not allowed to get married.
 - // Receipt of award for civil servants: Usually only family members defined in the "Civil Code" are entitled to receive a posthumous award or medal on behalf of a civil servant.
 - // Military service and correctional facilities: Regulations regarding physical status, military service exemption and leaves of draftees, as well as the right to leaves and visitation of prisoners are all affected by the definition of kindred in the "Civil Code."
 - // Recusal upon conflicts of interest and property declaration: Many current obligations that civil servants should fulfill, such as recusing oneself upon conflicts of interest and declaring one's property, do not apply to same-sex couples either, as a marital union does not exist between them.
 - // Succession: Succession to properties, lands, farmlands and specific occupations is also limited to the kindred defined in the "Civil Code."
 - // Entry and exit of the country, the obtainment, loss, and changes of immigrant status: The identity of a legal spouse is also a consideration for applications for visit, residence, permanent residence, and naturalization, thus excluding same-sex partners.
- + Health care surrogate and approval of medical measures
 - // According to Article 63 and 64 of the "Medical Care Act," before conducting a surgical operation and invasive treatment, medical care institutions should obtain a signed letter of consent from the patient or his/her legal agent, spouse, kin, or an interested party.

¹³³ In 2003, it was amended as the "Basic Law for Human Rights" by the Presidential Office Human Rights Consultative Committee. Article 26 stated: "People have the right to marry and form family following their free will. Same-sex families can adopt children according to the law."

¹³⁴ Marriage Equality Coalition Taiwan (2017/03). LGBTI Life Stories- An Unfinished List of Rights: Opinions of Amicus Curiae.

- // According to the “Guidelines for Medical Care Institutions to Obtain Patients’ Consent to Surgical Operation and Anesthesia,” in principle, an interested party refers to “a person with a particularly close relationship with the patient, such as a cohabitant or best friend, or a person who shoulders the obligation to protect the patient based on a legal or contractual relationship.” The Ministry of Health and Welfare also emphasizes that, the recognition of an interested party does not require the provision of an official document (such as a registration document of same-sex couple), nor would it be affected by whether the official document is issued by a local authority¹³⁵.
- // However, the legal effect and priority of such an “interested party” is unclear, and disputes are often caused in practice. In practice, when conducting a surgical operation or invasive treatment, some medical care institutions accept a consent form signed by the “interested party” while others still require a signature from a family member¹³⁶.
- // According to Article 5 of the “Hospice Palliative Care Act,” a person may designate a medical surrogate agent in advance, who may sign on his/her behalf when expression of his/her will becomes impossible. The said agent needs not to be legal kin to the person, and could be one’s same-sex partner as well. However, in practice, many LGBTI individuals are unaware of this regulation, so medical surrogate agents are very often still legally-bound family members.
- // The “Patients’ Self-determination Right Act,” which was announced in January 2016 and would take effect in January 2019, also states that a person may designate a medical surrogate agent. However, Article 10 says other than legal heirs, any party who would be benefited because of the decease (including bequeathment) is not allowed to be the medical surrogate agent, which could exclude same-sex partners.
- + Although the Ministry of Justice claims that a same-sex partner is entitled to be deemed as a house member following Subparagraph 3, Article 1123 of the “Civil Code,” the legal effect of a house member and a spouse is still very different¹³⁷.
- + Up to June 2017, a total of 11 cities and counties in Taiwan had implemented the same-sex couple registration system¹³⁸, and a total of 2142 same-sex couples have registered themselves up to May, 2017¹³⁹. However, such system has a larger politically symbolic meaning than practical effects. Since such registration is different from an official household registration and rights that are not already defined by the laws cannot be newly created, individuals’ legal rights and obligations would experience no changes after the registration.



**Up to November, 2017
4 cities/counties in Taiwan
haven't implemented the
same-sex couple registration
system.**

Our suggestions

- △ There are still many issues of gender inequality that await improvement within the existing marriage institution in the country. In order to create a more democratic and equal legal protection for its citizens' intimate relationship, the government should introduce a civil partnership act that would be applicable to everyone regardless of his/her gender, sexual orientation and gender identity.

Parental Rights¹⁴⁰

- △ Artificial Reproduction
 - + Currently, the "Artificial Reproduction Act" is only applicable to infertile heterosexual couples. Although some single females, lesbians and transgender couples also have the need of In Vitro Fertilization (IVF) or Intrauterine Insemination (IUI), their access to such technologies are limited by existing regulations. Some lesbians therefore choose "self-insemination," but no legal protection is available for such practice. Other lesbians choose to have IVF or IUI in a foreign country, the cost of which is much higher compared to that in Taiwan.
 - + Homosexual males rely on surrogates for reproduction. However, surrogates are not yet legalized in Taiwan¹⁴¹. Some gay men choose to look for a surrogate privately, but protection is lacked for all parties. Meanwhile, other gay men choose to look for a surrogate in the USA, India or Cambodia, but the cost is also very high¹⁴².
 - + Due to the lack of legal status of same-sex couples, even when a same-sex couple has children together, only one party could be the legal parent. The other party could only practice his/her parental rights through entrusted custody.

Our suggestions

- △ The application scope of the "Artificial Reproduction Act" should be extended to single women, lesbian couples and transgender couples.
- △ The government should initiate more discussions about the system of surrogacy.

¹³⁵ Ministry of Health and Welfare. Official Letter Yi No. 1051667240.

¹³⁶ Hsu, C.Y. (2016/11/05). Obstacles and Difficulties in Implementing Legal Provision Regarding Medical Surrogate Agents and Interested Party in Medical Settings. Taiwan Tongzhi Hotline Association. Retrieved from: <https://hotline.org.tw/blog/1015>, last viewed on 2017/08/03.

¹³⁷ Ministry of Justice. Official Letter Lu No. 10503510300.

¹³⁸ The same-sex couple registration system implemented by several cities and counties is a non-legally binding instrument that allows same-sex couples to mark their partner in civil documents for reference purposes. As neither same-sex marriage nor civil union is yet legalized in Taiwan, rights offered by this registration system are very limited.

¹³⁹ Chiu, T.W. (2017/06/07). 2142 Same-sex Couples Completed Same-Sex Couple Registration Nationwide. UDN. Retrieved from: <https://udn.com/news/story/6656/2510334>, last viewed on 2017/08/03.

¹⁴⁰ Among existing Taiwan laws, provisions that are more likely to be directly revised to include same-sex couples and their children are adoption-related regulations within the "Civil Code" and the "Artificial Reproduction Act." Therefore, this report focuses its discussions on the current situation of artificial reproduction and adoption. Whether other provisions may be possible once same-sex marriage is legalized is not yet clear.

¹⁴¹ Health Promotion Administration under the Ministry of Health and Welfare organized a citizen deliberative meeting on this issue and proposed a draft bill of the "Artificial Reproduction Act" that included the system of surrogacy. The bill is currently still undergoing revision. However, within the draft bills introduced in the past, only heterosexual couples were allowed to look for a surrogate.

¹⁴² Tsai, S.W., Board Member of Taiwan LGBT Family Rights Advocacy (2017/05/03). Personal Interview.

Adoption

A same-sex couple Wang Shu-Yi and Chou Shu-Chi had IUI in Canada in 2011 and afterwards, Chou gave birth to two children. Wang petitioned the court for adoption, but was ruled against by the Supreme Court.¹⁴³

- △ Except when a child is adopted by someone within the fourth degree of kinship or when one party in a couple adopts the other party's children, all adoptions need to go through the matching process by a competent agency. A person who wishes to adopt needs to apply to the agency first, attend parenting courses and receive home visits, before the agency starts the matching process. After a social worker pays the applicant a home visit, the court would determine whether the applicant is eligible for adoption based on the social worker's visitation report.
- △ Same-sex couples are not allowed to adopt together at the moment. Although it is allowed for single persons to adopt children in Taiwan, according to the "Survey on LGBTI's Attitude towards Adoption" conducted by Taipei City Adoption Resource Center, among 3019 LGBTI respondents, 32.9% of them thought that existing regulations forbid single persons to adopt. Meanwhile, 33.6% of the respondents did not know about any relevant regulations. Namely, approximately more than 60% of the LGBTI respondents were not aware of the regulation regarding single persons' adoption.
- △ Although Taipei City Adoption Resource Center has been developing a guideline for LGBTI adoption in recent years, current evaluations conducted by matching agencies still center on heterosexual families, and do not demonstrate sufficient cultural capacity for providing services for LGBTI families. In the meantime, social workers, families looking for an adopter, foster families and judges may not have sufficient understandings about LGBTI, and thus, are likely to deny LGBTI individuals' the opportunity for adoption. For example, they are likely to overlook the support LGBTI adopters have other than birth family, social workers may hold the stereotype that the relationship of LGBTI couples is less stable, families looking for an adopter may consider a heterosexual family as their first choice, and judges are less likely to approve LGBTI individuals' application for adoption¹⁴⁴.
- △ At present, approximately 300 Taiwanese children are adopted each year, among which 50% are adopted by a foreign family¹⁴⁵. So far only two cases of successful adoption by openly LGBTI individuals are known.
- △ Similar to the aforementioned situation regarding having children, existing laws only allow same-sex couples to adopt a child as a single person, and the adopted child can only form a legally binding relationship with one person in couple, while the other party can barely exercise his/her parental rights. This is likely to put LGBTI families with adopted children in a vulnerable situation.

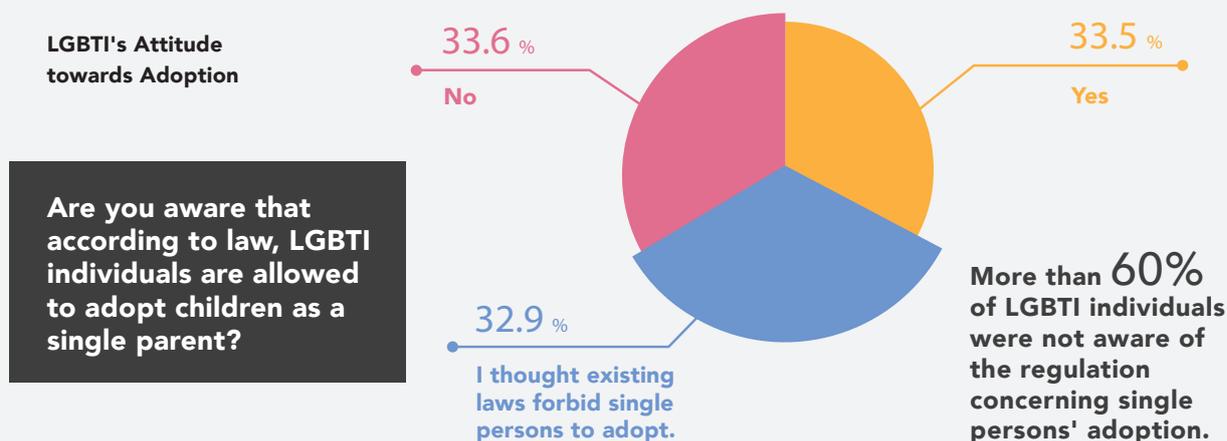
¹⁴³ Lai, P.H. (2017/05/26). Difficulty Faced by Same-Sex Couples, Adoption Applications Continue to Be Dismissed by Court. UDN. Retrieved from: <https://udn.com/news/story/7321/2487134>, last viewed on 2017/08/03.

¹⁴⁴ Tsai, S.W., Board Member of Taiwan LGBT Family Rights Advocacy (2017/05/03). Personal Interview.

¹⁴⁵ Social and Family Affairs Administration, Ministry of Health and Welfare. 2016 Service Overview of Adoption Agencies for Child and Youth.

Our suggestions

- △ As soon as same-sex marriage is legalized, the government should create indicators to evaluate adoption agencies' friendliness towards LGBTI individuals. The Social and Family Affairs Administration under the Ministry of Health and Welfare should review if the social welfare policies and services currently being implemented are including LGBTI families and make necessary revisions.
- △ The sensitivity to LGBTI cultures and professionalism of social workers and judges responsible for adoption affairs should be improved. Experts with the awareness of gender diversity and gender equity should be included in the committee that reviews adoption applications.
- △ Promotion and education about single-person adoption and LGBTI adoption should be provided for the public and the LGBTI community, so that more interested individuals would have the opportunity to become an adopter, and the success rate of domestic adoption could increase.
- △ Considering the "best interests of children"¹⁴⁶, the government should amend the Chapter of Family in the "Civil Code," so as to grant LGBTI families the same and equal protection of rights as heterosexual families.
- △ The government should actively invest resources in assisting adoption agencies in providing their staffs with professional trainings regarding single-person adoption and LGBTI adoption, as well as in accumulating practical experiences, so that the agencies could establish an adoption service procedure and a model that are sensitive to the cultures of LGBTI families.



¹⁴⁶ See UNICEF (2014). Eliminating Discrimination Against Children and Parents Based on Sexual Orientation and/ or Gender Identity.

Censorship of Sexual Speeches

In 2005, the owner of an LGBTI bookstore “Gin Gin Store” was sentenced 50 days of detention for distribution of obscene materials based on Article 235 of the “Criminal Code.”¹⁴⁷

In 2007, a gay male was arrested after leaving messages online to ask for exchanges of pornographic disks. Afterwards, based on the principle of proportionality, Taipei District Court considered that the use of entrapment by the police for a crime that only infringed legal interests mildly rendered the evidences collected inadmissible. As a result, the defendant was found not guilty.¹⁴⁸

- △ According to Article 235 of the “Criminal Code,” a person who distributes, broadcasts, sells, publicly displays, or shows by other means an obscene writing, picture, audio record, video record, or other objects shall be sentenced to imprisonment for not more than two years. The case of Gin Gin Store contributed to the J.Y. Interpretation No. 617 made by the Grand Justices in 2006, which ruled that Article 235 of the Criminal Code was constitutional. However, the ruling refrained the definition of “obscenity” to “something that, by objective standards, can stimulate or satisfy a prurient interest, whose contents are associated with the portrayal and discussion of the sexual organs, sexual behaviors and sexual cultures, and that may generate among average people a feeling of shame or distaste, thereby offending their sense of sexual morality and undermining social decency.” In recent years, there have been fewer cases of individuals within the LGBTI community prosecuted for violation of Article 235¹⁴⁹.
- △ Article 43 of the “Protection of Children and Youths Welfare and Rights Act” states that no one shall spread or broadcast materials and articles to children and youth that may cause harm to their physical and mental health, such as pornography. Article 46-1 states no one shall spread or transmit content that is harmful to the physical and mental health of children and youth on the internet, or allow children and youth to obtain or watch such content without taking clear and workable protective measures or conforming to the protective measures of internet platform providers. Penalties for violation of the said article include fines, suspension or license abolishment.

¹⁴⁷ See the collection of news reports on “Owner of Gin Gin Store Is Sentenced Guilty for Selling Male Pornographic Magazines” prepared by Gender/Sexuality Rights Association Taiwan on: http://gsrat.net/news/newsclipDetail.php?ncdata_id=2192, last viewed on 2017/08/03.

¹⁴⁸ Wang, S.L. & Chen, C.S. (2007/11/10). Exchanging Pornography Online, Gay Physician Accused Police Officers of Mockery during Interrogation. UDN.

¹⁴⁹ In addition to law enforcement agencies’ choice, changes in internet tools used by the LGBTI community (for example: from public chatrooms to one-on-one App), and that people are more aware of self-protection (for example: not sharing naked images on a public page, and publishers tend to seal the publications about LGBTI sexuality) are also possible reasons.

- △ Its filial law, the “Regulations for the Classification of Publications and Video Program Tapes,” also notes in Subparagraph 4 of Article 5 that a publication should be classified as restricted when an inappropriate display of sexual behaviors, obscenity, or sexual organs is included, which is harmful to the physical and psychological health of children and youth, and individuals under the age of eighteen should not have access to it.
- △ For LGBTI children and teenagers, information regarding sex and sexuality is a very important source for them to create their identity¹⁵⁰. However, because of the said regulations for child and youth protection, Taiwan Tongzhi Hotline Association has been demanded by the public and the government several times to classify its website and printed materials designed for promoting knowledge about safe sex, self-protection and prevention of sexually transmitted diseases as restricted contents, or to include a warning sign that says “children and teenagers are recommended to view these contents together with their parents.” Such demands completely overlook the need of underage LGBTI to obtain sexual knowledge while unable to come out. The ambiguity and over-expansion of such child and youth protection laws, together with the abuse of the complaint mechanism, oppress the opportunity for children and teenagers to receive proper sex education as well as to have access to accurate and positive ideas about sex and sexuality.

Our suggestions

- △ The concept of “child and youth protection” has been developed for a long time in Taiwan, and is leaning heavily towards protectionism. Regulations that govern various life aspects of children and teenagers have resulted in the excessive surveillance of sexuality and desire in the society. On the other hand, sex-positive values have not been fully explored, and as a result, neither the social atmosphere nor the executive and legislative authorities have been able to face different sexual issues with a positive, healthy and natural attitude. Child and youth protection and sex positivity should not be two mutually exclusive concepts. However, in Taiwan, an imbalanced situation, in which regulations related to child and youth protection manage to oppress sex-positive speeches, has been seen. The government should reconsider its priority on each legislative and executive level, in order to achieve a balance between the two sides.

¹⁵⁰ Studies of developmental psychology have proved that, awareness of sexual desire is an important aspect of forming one’s identity. See: Papalia, D., Olds, S. & Feldman, R. (2009). Human Development. New York: McGraw-Hill. P.395. Also, based on Hotline’s experiences in organizing LGBTI youth groups, questions most often raised by underage gay participants include: “Does it bring any pleasure being bottom?” and “How does anal sex work?”

Media

In 1992, Chu Mei-Feng, a journalist from “TTV World News,” sneaked into a lesbian bar and made footages using a concealed camera, causing a huge discussions. Lesbian group “Between Us” issued a statement condemning the behavior, while artists and cultural workers also expressed their support by publishing “A Letter Calling for Respect for LGBTI.” The Taiwan News Council asserted that the report was inappropriate.

In 1998, a journalist on behalf of the segment “Special Searching Party” of “CTS’ Late Night News” made video footages in a lesbian bar using a concealed camera, and broadcasted the images without the customers’ knowledge or consent. Lesbian group “Between Us” started a petition and protest.

In 1998, a person fell off the roof of gay bar “TATTOO,” and the media reported the incidents at length, using headlines such as “Wrong Love- Gay University Student Dead after Falling off Building” and “Homosexual Love: Passionately in Love for Three Months, No Grain of Sand Is Allowed between Them.” Those coverages reinforced the public’s negative impressions of LGBTI and caused much pressure to the community.¹⁵¹

In 2001, a naked corpse in a suitcase was found in Jingmei, Taipei City, and investigations of law enforcement officials led to a gay suspect. During the period of investigation, the mass media made numerous speculations, and even called Taiwan Tongzhi Hotline Association to ask questions such as “whether dating a homosexual person is more dangerous.” Hotline and Gender/Sexuality Rights Association Taiwan made a joint statement with the headline “Let facts be facts; we shall not take the effect as cause and stigmatize homosexuality,” urging that the media should stop making rash speculations, should not attribute the incident to homosexuality and should not reinforce the negative stereotypes of homosexuals.¹⁵²

- △ The competent authority for printed press and publications is the Ministry of Culture, while the authority for broadcast media is the National Communications Commission (NCC). The former believes that neither censorship beforehand nor interventions afterwards should be made for media content; the latter contends that while censorship beforehand should not be allowed, interventions and penalties afterwards should be possible.

¹⁵¹ Shen, G. (2016/04/21). Live from Taiwan LGBTI Movements: Who Killed Homosexuals? About TATTOO Incident. Age of Queer. Retrieved from: <http://ageofqueer.com/archives/10092>, last viewed on 2017/08/03.

¹⁵² Shen, G. (2016/08/18). Live from Taiwan LGBTI Movements: The Corpse in Box in 2001: Overwhelming Stigma in the Media. Age of Queer. Retrieved from: <http://ageofqueer.com/archives/11657>, last viewed on 2017/08/03.

- △ NCC passed the “Guidelines for Production of Gender-related Contents for Broadcast Media” in 2012. It is recommended that broadcast media should introduce within its own self-disciplinary and ethical regulations detailed execution plans in response to the principles of “avoiding biases, discriminations, objectification, stereotypes and false ideas about gender,” and “presenting gender roles in positive, active and diverse manners.” In addition, the guidelines also suggest that “broadcast media operators should provide their staffs with educational trainings related to gender equity and inclusion of diverse genders, together with case comparisons and analysis, in order to improve staffs’ awareness of gender equity.” Although the guidelines do not include any penalties, they are used as a reference by the NCC for performance evaluation and license renewal. In public discussions about this issue in Taiwan, some have criticized that NCC’s restrictions on media content could result in the tightened freedom of speech, and thus argue that media’s self-discipline of media would be more ideal.
- △ Online media is currently not governed by any regulations. If online media platforms distribute false information, it is difficult to check.

Our suggestions

- △ Freedom of speech is the foundation of gender equity, and the basis minority groups rely on to assemble and speak up. At present, major mainstream news platforms are being invaded by different political power, religious groups and commercial forces that massively produce fake news reports with misleading headlines, or, as a result of conflicts of interest, use tid-bits to distract viewers from the truly important issues. Trapped in the fight for domination among different forces, freedom of speech in Taiwan is in grave danger and is constantly being oppressed. The press is thus gradually losing its function as the fourth estate. The government should actively create an independent environment for media management rather than joining other forces in the control of and interference with media management. Media should not be influenced or invaded by external forces so that the fourth estate could bring its effects into full play.

Sports

In December 2012, fitness center World Gym refused to grant membership to a transgender women who did not have her male sexual organs removed. The reason of refusal was that “when you enter the area for female or male guests, if you accidentally drop your towel, other members would be troubled.”¹⁵³

- △ Due to the worship of masculine quality and expressions, the sport culture in Taiwan is less welcoming towards LGBTI individuals. It is difficult for professional LGBTI athletes to come out, while those who do come out are likely to be scolded by their coach or bullied by colleagues. A coach of a high school female basketball team had demanded the players to wear long hair in order to conform to the stereotype of their biological sex. There have been more and more such cases. Moreover, among cases of coaches sexually harassing their students, some have originated in the coaches' attempt to convert the homosexual tendency of students of the opposite sex¹⁵⁴.
- △ Concerning gender equity education, following the "Gender Equity Education Act," sport colleges and universities have started offering gender equity courses related to LGBTI issues. However, these courses could only reach ordinary students who major in sports, but not professional athletes. In addition, although PE teachers in junior high schools and full-time sport coaches are required to receive educational trainings on gender equity for a fixed number of hours, contents of these trainings may only focus on the prevention of sexual harassment and sexual assault. Meanwhile, this regulation does not apply to coaches of professional athletes.
- △ The Department of Sports in Taipei City demands employees of sport centers to receive courses on gender-inclusiveness, and conducts surveys to find out their level. However, the space in sport centers is usually divided based on biological sexes, so transgender users often feel lost. Upon receiving complaints from other users about transgender individuals' use of space, centers often have no ideas how to respond¹⁵⁵.
- △ There are no clear standards or relevant policies regarding transgender athletes' participation in sport events. Some universities choose on their own to adopt the standards implemented by the International Olympic Committee (IOC) or National Collegiate Athletic Association (NCAA).
- △ In the "White Paper for Promoting Female Participation in Sports" the Sports Administration entrusted National Taiwan Normal University to draft, only working females and elder females are mentioned, but the needs for sport participation of females of different sexual orientations and gender expressions are not taken into consideration.

Our suggestions

- △ The educational trainings on gender equity provided for PE teachers in junior high schools and full-time sport coaches should include LGBTI education. During their formative education, coaches of professional athletes should also receive gender equity courses that include LGBTI-related issues.
- △ With regards to the traditionally gendered spaces such as restrooms and locker rooms, sport centers should take into consideration the needs of different gender groups and redesign the space..

¹⁵³ Intersex Accuses Fitness Center for Discrimination (2012/12/02). Apple Daily.

Retrieved from: <http://www.appledaily.com.tw/appledaily/article/headline/20121202/34679497/>, last viewed on 2017/09/06.

¹⁵⁴ Chiang, Y.F., Board Member of Taiwan Gender Equity Education Association (2017/05/15). Personal Interview

¹⁵⁵ See Note 153.

Space

In May 2017, a student of National Taiwan University, whose biological sex is male but who identifies herself as female, filed a request to be transferred to a female dormitory. However, the university demanded her to provide a physician's report, to find three roommates on her own, and to obtain a letter of consent from her own and the roommates' parents. After the student prepared all necessary documents, her application was still denied. Facing the protest of the student association, the university in the end decided to create a "gender-friendly zone" in the dormitory. However, the "gender-friendly zone" still divides students based only on their biological sex."¹⁵⁶

△ Gender dichotomy in space

- + Many transgender persons avoid entering gendered spaces or places where they need to show their ID, such as swimming pools, gyms, and hospitals. Oppressions caused on transgender persons by gendered spaces such as restrooms and dormitories have been gradually paid attention to in recent years.
- + Article 12 of the "Gender Equity Education Act" states that schools shall provide a gender-fair learning environment and establish a safe campus environment. Article 9 of the "Enforcement Rules for the Gender Equity Education Act" further regulates that when establishing a safe campus environment, schools shall plan the space in accordance with the principles of gender unbiasedness, safety, friendliness and fair allocation.
- + LGBTI student groups from 10 universities in Taiwan made a joint statement in May 2009, urging that gender-neutral restrooms should be installed on university campus. Shih Hsin University transformed two male restrooms into gender-neutral restrooms for the first time in 2011, which was considered a milestone of gender-friendly campus environment¹⁵⁷.
- + In 2016, the Department of Education of Taipei City launched a pilot project for gender-friendly restrooms, encouraging elementary, junior high and senior high schools to install gender-friendly restrooms. However, the project soon faced opposition from "parent groups." The Deputy Minister therefore responded that "schools should first form a consensus with parents before launching the project"¹⁵⁸.
- + Facing transgender students' housing needs, major universities mostly deal with each individual case separately. During the process, the attitude of the supervisor in charge often has more impact than policies do¹⁵⁹.

¹⁵⁶ Wu, P.M. (2017/05/24). NTU Plans a Gender-Friendly Dormitory, Student Association Criticizes: Fake Friendliness, True Discrimination. UDN. Retrieved from: <https://udn.com/news/story/7266/2483425>, last viewed on 2017/08/03.

¹⁵⁷ Peng, Y.W., Lin, S.Y., & Bi, H.D. (2013/06). Options Other Than Male and Female Restrooms. *Journal of Women's and Gender Studies*, 32, p.43-96.

¹⁵⁸ Lin, C.C. (2016/12/11). Parents Oppose Gender-Friendly Restrooms on Campus, Ministry of Education: Consensus Should be Reached First. *China Times*. Retrieved from: <http://www.chinatimes.com/realtimenews/20161211002721-260405>, last viewed on 2017/08/03.

¹⁵⁹ Tsai, Y.C., Secretary General of Taiwan Tongzhi Hotline Association (2017/05/08). Personal Interview.

Our suggestions

- △ The government should introduce an active and comprehensive plan to promote the prevalence of gender-friendly or unisex restrooms.
- △ With regards to gendered spaces such as dormitories and locker rooms, competent government authorities should take into consideration the needs of LGBTI and redesign the space.

Transgender

- △ Alternation of legal sex status
 - + Since 2008, according to an executive order issued by the Ministry of Interior¹⁶⁰, when requesting to alter one's legal sex status, one needs to present a medical certificate showing the assessment result of two psychiatrists and a certificate issued by a qualified medical institution that shows the person has already removed his/her sexual organs. Among others, when transitioning to males, females need to remove breasts, uterus and ovaries, while males who wish to transition to females need to remove their penis and testicles¹⁶¹.
 - + In 2015, responding to the demand from private groups for the right to alter one's sex status without surgeries, the Ministry of Interior introduced a draft of the "Operation Directions for Application and Registration of Alteration of Legal Sex Status." Although the new regulation removed the requirement of surgery, new conditions were added for one to alter his/her legal sex status. For example, the cases need to be reviewed by a "consultation committee" composed of the Ministry of Interior, Health and Welfare, and Justice; a psychiatric evaluation needs to be made on applicants; applicants should sign an affidavit to agree to "a life-long ban on second-time alteration;" applicants need to be at least 20 years old, currently not involved in a marriage and have no children (applicants who were married in the past but are now divorced and without children could also be approved). This draft grants the "consultation committee" the authority to examine applicants' case, and has been criticized for making it more difficult for applicants to alter their legal sex status. The draft is currently put on hold.
 - + With regards to ID photos, the Department of Civil Affairs of Taipei City had previously stated in an official letter that "it is a personal behavior when a male chooses to dress himself in clothes that is not consistent with his true sex"¹⁶². However, when applying for the national identity card, one should submit a photo that shows an appearance aligned with one's biological sex." After petitioning to the Presidential Office, the case was resolved. At present, household registration offices accept the use of photos that accords with one's gender identity and expressions.

¹⁶⁰ Ministry of Interior. Official Letter Nei Shou Chung Hu No. 0970066240.

¹⁶¹ In the "Gender Alteration Procedure" issued in 2005, FtM transgender individuals were not only required to have their sexual organs removed, but also to reconstruct a penis and urinal tract. The regulations were only changed to the current one after gender organizations' protests and advocacy.

¹⁶² See the collection of news reports on "Taiwan Refuses Transgender ID Photos" prepared by Gender/Sexuality Rights Association Taiwan on: http://www.gsrat.net/news/newsclipDetail.php?ncdata_id=1448, last viewed on 2017/08/03.

- △ Marital status after alteration of sex status
 - + According to an administrative rule by the Ministry of Justice¹⁶³, “when one party in a continuing marital relationship alters his/her sex, the marital status shall not be influenced.” Meanwhile, as his/her child is a blood relative, the relationship shall also not be affected. In July 2012, a MtF (male transitioned to female) transgender couple Wu Yi-Ting and Wu Chi-Yi both altered their sex. Wu Yi-Ting changed her legal sex status first, before the two registered themselves as a married couple in October. Afterwards, Wu Zhi-Yi also altered her legal sex status to female. In June 2013, their marriage was considered a violation of the Civil Code and thus, revoked by the Ministry of Interior. In August, a cross-department meeting was held by the Ministry of Interior, and it was concluded that a marriage is valid as long as the legal sex statuses shown on the ID card of the two parties when the union is formed are male and female respectively¹⁶⁴.
- △ Military service: MtF (male transitioned to female) transgender individuals are usually exempted from the obligatory military service on the ground of “psychosexual abnormality” after physical examination. On the other hand, FtM (female transitioned to male) transgender individuals would receive a notice of military service after gender alteration. In most cities and counties, they may be exempted from the service on the ground of “abnormal sexual characteristics” after physician examination, while in some cities and counties, the exemption could be already granted upon a proof of sex alteration. There is no standard procedure in the country¹⁶⁵.
- △ While the hair standards in junior high schools have already been cancelled, most student uniforms are still gendered, which is a troubling concern for transgender students.
- △ Transgender individuals who have sought to alter their sex through medical procedures are likely to be denied services by insurance providers due to their medical records, and therefore, experience difficulties in purchasing commercial insurance, especially medical or life insurance.

Our suggestions

- △ Criteria for alteration of legal sex status should be loosened, and requirements such as psychiatric evaluation and gender reassignment surgery should be abolished, so that individuals would be able to alter their legal sex status freely. For transgender individuals who wish to receive a gender reassignment surgery, social welfare services such as a reimbursement for medical expenses should be provided.
- △ The gender difference in ID numbers could be removed, and a third gender option in addition to male and female should be added. In addition, it should be individuals’ own decision whether or not their gender is to be shown on the ID card.
- △ All levels of schools should abolish the rule that requires students to wear gendered uniforms.

¹⁶³ Ministry of Justice. Official Letter Lu No. 05375, issued in 1994.

¹⁶⁴ See website: “Taiwan couple Wu’s marriage been force revoked event.” Retrieved from: <http://wumarrriage.tumblr.com/>, last viewed on 2017/08/03.

¹⁶⁵ Wang, Y.F. (2010). Examples, Analysis and Reflections upon Transgender Community’s Living Condition in Taiwan, *Taipei Bar Journal*, 14:5, p.23-36.

Intersex

- △ Since 1994, the option of “unclear” for one’s sex in addition to male and female has been added on the Taiwanese birth certificate for newborns whose sex is unable to be determined. According to the official statistic, only 11 people had chosen “unclear” between 1994 and 2004. Household registration offices require a registration of newborn infants within 60 days, and one could only choose male or female for one’s sex at the registration.
- △ Parents of many intersex individuals follow physicians’ suggestions and decide for their intersex children at an early age to remove their gonad, to receive correctional surgery on their sexual organs and to accept hormonal therapy.
- △ There is a lack of regulations and polices for the protection of rights of intersex individuals in Taiwan. President of the Control Yuan Sun Ta-Chuan and a Yuan member Gao Fehng-Shian initiated an investigation on this matter in March 2017.
- △ Some intersex individuals may wish to alter their sex after coming of age, but fail to fulfill the criteria to be granted access to gender reassignment surgery. In response, an official letter issued by the Department of Household Registration has clarified that individuals whose biological sex is different from their registered sex status could alter their sex status based on Article 22 of the Household Registration Act.

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We are truly thankful for all the help everyone provided us during the making of this report. Taiwan Tongzhi Hotline Association is to take the full responsibility of statements made in this report.

Supported by  **OPEN SOCIETY
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GRAPHIC DESIGN
Aki YJ Chen / thejjs.com



Published by
Taiwan Tongzhi Hotline Association

