

Submission to the United Nations Periodic Review: Ireland

Twelfth Session of the Working Group on the UPR 6th October 2011

GLEN - Gay and Lesbian Equality Network

March 2011

(I) Background and Framework

GLEN ~ Gay and Lesbian Equality Network ~ is a national policy and strategy focused NGO working for equality for lesbian, gay and bisexual (LGB) people, including equality in civil marriage, and for protection from all forms of discrimination. Established in 1988, GLEN has contributed significantly to the rapid progress that has taken place in Ireland for LGB people over the last 20 years.

The following submission is based on GLEN's work in advancing progress and on the substantial body of policy documentation, including major Government, state agency policy reports, GLEN commissioned research and research by other organisations which provide detailed analyses of the issues faced by LGB people and indicate key areas for further reform¹.

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(II) Promotion and Protection of Human Rights on the Ground

B. Implementation of International Human Rights Obligations.

Issues and recommendations in this submission focus on 4 areas critical to LGB people in the context of the UPR. These are 1) Rights of the Child; 2) Right to marriage and family life; 3) Right to work and to just and favourable conditions of work; 4) Right to education and to participate in the cultural life of the community.

1. Rights of the Child

The enactment of the Civil Partnership and Certain Rights of Cohabitants Act 2010 is a major reform and provides same-sex couples who register as civil partners with many of the rights and obligations of civil marriage. However, the Act is largely silent on the growing number of children being parented by same-sex couples. This can significantly disadvantage children living in these situations. For example:

- Under the Civil Partnership Act, children living with civil partners will not be able to claim against the partner who is not their biological parent for maintenance in the event of dissolution, nor will the child have any claim against their non-biological parent's estate on the death of that partner.
- Protections provided to civil partners in respect of the shared home make no reference to the accommodation needs of children as a relevant criterion.
- Civil partners, unlike married couples, are not eligible to jointly adopt a child. Nor are there any other means through which the non-biological parent can acquire guardianship rights, except where guardianship is specifically willed by their partner in the event of their death.

¹ See Resources section of GLEN website www.glen.ie

Lack of legal recognition of children in the civil partnership legislation has been highlighted by GLEN and other organisations including the Irish Human Rights Commission (IHRC) which welcomed the Government's intention to legislate for civil partnership but noted the gaps on children and recommended that:

“In any legislation on adoption, guardianship, custody and/or access, the best interests of the child should be the primary consideration. Children raised within a civil partnership should be treated equally with other children raised within opposite-sex relationships”.²

Recommendations

Important new opportunities have opened up to provide for legal recognition of children being parented by same sex couples and for addressing the gaps identified in existing legislation. Critical in this respect are the following recommendations which GLEN fully supports:

- The commitment by the new Irish Government in the Programme for Government 2011 to “amend the Civil Partnership and Certain Rights and Obligations of Cohabiting Couples Act 2010 to address any anomalies or omissions, including those relating to children.” (Government for National Recovery 2011, page 56).
- The recommendation by Ireland's Law Reform Commission to extend legal guardianship of children to the civil partners or married spouses of the biological parents of a child.³
- The inclusion of same-sex headed families in broader reforms of family law and lesbian and gay people in proposals to regulate Assisted Human Reproduction. The Government has committed in the Programme for Government to “reform and modernise aspects of family law”.

2. Right to Marriage and Family Life

The right to marry is a critical issue for LGB people and a key goal for GLEN. The significance of marriage was highlighted in the report of the Government Working Group on Domestic Partnership (referred to as the ‘Colley’ Working Group after its chair, Anne Colley) in 2006 when it stated that:

“The introduction of civil marriage for same-sex couples would achieve equality of status with opposite sex couples and such recognition that would underpin a wider equality for gay and lesbian people”⁴.

Colley stated that should marriage be vulnerable to Constitutional challenge, the only other option for Government is Full Civil Partnership, giving equivalent rights and obligations of marriage to same sex couples. This would address many issues for same-sex couples – although it falls short of equality as it excludes same-sex couples and their families from the protection given to families under the Constitution.

² Irish Human Rights Commission 2008. Discussion Document on the Scheme of the Civil Partnership Bill.

³ Law Reform Commission, 2010. *Legal Aspects of Family Relationships*. Available at www.lawreform.ie

⁴ Department of Justice, Equality and Law Reform 2006. *Options Paper Presented by Working Group on Domestic Partnership*. Available at www.justice.ie

Groups such as the Irish Council for Civil Liberties have also drawn attention to the negative impact on diverse families more broadly (including for example, on single parents), of 'family' being defined in the Constitution as being solely based on marriage.

Recommendations

The constitutional issues pertaining to marriage for same-sex couples, including the issue of a referendum, may be further clarified by the Supreme Court appeal in Zappone/Gilligan case⁵.

In this context GLEN recommends that:

- Taking account of the options paper prepared by the Colley group and the pending Supreme Court appeal in Zappone/Gilligan, the Government should address the issue of civil marriage for same-sex couples in provisions in family law reform and in wider constitutional change.

3. Right to work and to Just and Favorable Conditions of work

Ireland has some of the most comprehensive employment protection for LGB people in the world. These legislative protections include:

- Unfair Dismissals (Amendment) Act 1993 which deems dismissal from employment to be automatically unfair if it is attributable to a range of grounds, including sexual orientation.
- Employment Equality Act (EEA) 1998 and 2004, prohibits direct and indirect discrimination in the workplace across nine grounds, including sexual orientation.
- The Civil Partnership and Certain Rights of Cohabitants Act 2010 provides for equal treatment between same-sex civil partners and married couples in pensions, employment benefits and in provisions for immigration.

However:

- Section 37 of the EEA provides exemptions for religious, medical or educational institutions run or directed by religious bodies. This allows them to give favourable treatment to people on the religious ground or permits actions to prevent an employee or prospective employee from undermining the religious ethos of the institution.
- The precise scope of Section 37 has not yet been tested in case law and it is not certain whether discrimination against an LGB person could be construed as a reasonable or lawful action to protect the religious ethos of an institution.
- Regardless of this lack of clarity, Section 37 has been identified by all the teacher unions in Ireland as contributing to discrimination or fear of discrimination among LGB teachers as schools are predominantly controlled by religious denominations.

⁵ Katherine Zappone and Ann Louise Gilligan are parties to a legal married in Canada. They are seeking through the Courts to have their marriage recognised in Ireland. The High Court granted the couple permission to take judicial review proceedings. The case was not successful in the High Court in 2006 and is being appealed to the Supreme Court.

Recommendations

- Amendment of Section 37 of the Employment Act 1998 to ensure that minority groups, including LGBT people, have equal rights of participation and employment in the education system.

4. Right to Education and to Participate in the Cultural Life of the Community

Supporting LGBT Lives, a major study on lesbian, gay bisexual and transgender (LGBT) in 2009⁶ confirmed previous findings of significant problems faced by young LGB and transgender people in schools. In particular, the report, commissioned by GLEN and BeLongTo Youth Service found that:

- 57% of respondents were aware of homophobic bullying by students in school.
- 34% were aware of homophobic comments by teachers at schools.
- 72% of respondents felt they could not be themselves at school.
- 59% felt there was no teacher or adult they could talk to in school about issues they faced.
- 76% felt they would be uncomfortable talking to a teacher on LGB and transgender issues.
- 85% said they would be uncomfortable talking to the school principal about LGB and transgender issues.

The legislative and policy context for promoting equality of access and participation by young LGB people in schools is positive. For example, the Equal Status Act (ESA) 2000-2004 – includes education and sexual orientation as a ground for protection. The ESA also contains a specific duty for schools management (no exemptions) to prevent discrimination and harassment across the nine grounds (including sexual orientation).

At a policy level, in 2009, the Minister for State in the Department of Education and Skills (DoES) launched the first DoES guidelines on sexual orientation issues in schools. This was the *DoES/GLEN Guidelines for School Principals and School Leaders* developed in partnership with GLEN. The Guidelines were endorsed by all school management bodies, including the Catholic school management bodies.

However, there continue to be significant challenges in ensuring that national policies to protect young LGB are translated into effective policies and action across all schools. For example, there is some evidence that the Department of Education and Skills (DoES) *Relationships and Sexuality Education (RSE)* curriculum is not being implemented in all schools. There is also evidence that teachers find homophobic bullying more difficult to deal with than bullying in general. Related to this is a lack of teacher education in LGB issues and the absence of inclusive policies in schools (see GLEN report *Valuing Visibility 2009* at www.glen.ie).

Recommendations

- GLEN strongly supports the commitment in the new Programme for Government for Government to “encourage schools to develop anti-bullying policies and in

⁶ Mayock, P., A. Bryan, N.Carr, K.Kitching (2009). *Supporting LGBT Lives: A Study of Mental Health and Well-being of Lesbian, Gay, Bisexual and Transgender People*. Dublin: GLEN and BeLongTo Youth Service

particular, strategies to combat homophobic bullying to support students". (Government for National Recovery 2011, page 42).

The success of anti-bullying measures however, will depend on broader reforms to make schools safe, supportive and inclusive for all LGB students. To do this GLEN recommends:

- Leadership and support from the Department of Education and Skills to implement the *Lesbian, Gay and Bisexual Students in Post Primary Schools: Guidelines for School Principals and School Leaders* in all schools.

(III) Achievements and Challenges

In 2010, the Civil Partnership and Certain Rights of Cohabitants Act was enacted with support from all political parties in both houses of the Oireachtas (Irish parliament). Under the Act, civil partners will be treated the same as married couples in pensions, maintenance, shared home protections, residential tenancies, succession, refugee law, immigration, next of kin and protections under Irish equality legislation.

Taxation and Social Welfare on a par to married couples had to be provided through separate Finance and Social Welfare Bills. This has been done in relation to social welfare, but changes to taxation were deferred for the general election 2011. All parties are committed to passing a new Finance Bill post election to give effect to tax changes and a commitment to do this is also included in the Programme for Government 2011.

The Civil Partnership legislation builds on almost two decades of legal progress for LGB people in Ireland. This has included:

- Unfair Dismissals 1993. The inclusion of sexual orientation as a protected ground in the Unfair Dismissals (Amendment) Act 1993.
- Decriminalisation 1993. Equality based reform of laws which had criminalised sex between men.
- Refugee Act 1996. Inclusion of sexual orientation as a ground for seeking asylum in Ireland.
- Power of Attorney Act 1996. Widened person to be granted power of attorney to include partner.
- Employment Equality Acts 1998 and 2004. Inclusion of sexual orientation as a protected ground in employment.
- Equal Status Acts 2000 and 2004. Inclusion of sexual orientation as a protected ground in the provision of goods and services.

Key outstanding legislative and policy reforms have been outlined in the sections above. Giving effect to positive legislative and policy changes does require ongoing work to ensure the implementation of equality on the ground and the full participation of LGB people in all aspects of Irish society. This requires building on the existing work of all government departments and state agencies (including successful partnerships with LGB organisations such as GLEN). The leadership of Government, which has been critical to the major progress that has happened, will continue to be critical to ensure that legislative and policy gains impact directly and positively on all LGB people.