

ILGA-Europe's key demands for the recognition of diverse families¹

ILGA-Europe's vision is of a world freed from any form of discrimination on the grounds of sexual orientation, gender identity and/or gender expression; a world where the human rights of all are respected and everyone can live in equality and freedom.

Position on partnership and parenting

ILGA-Europe strives for equality in law, public policies and practices relating to any form of partnership (including marriage, registered partnership and cohabitation) and parenting (reproductive rights, adoption, fostering and parental responsibility). ILGA-Europe particularly strives for the elimination of restrictions on the rights and responsibilities of partners and parents based on sexual orientation, gender identity or gender expression. Furthermore, ILGA-Europe supports an inclusive understanding of family that is not dependent only on the legal status of marriage or partnership but also on the recognition of *de facto* family links. Most importantly, the rights of the child are at the core and guiding ILGA-Europe's demands for recognition of diverse families.

Key demands

A. PARTNERSHIP

In relation to partnerships, ILGA-Europe calls for:

- The removal of any provisions in marriage legislation that directly or indirectly limit certain couples' ability to enter into a marriage due to their sexual orientation and/or the gender identity of one or both of the partners.
- The removal of all discrimination on grounds of sexual orientation, gender identity or gender expression in national laws governing other forms of legally recognised partnerships including registered partnership and *de facto* cohabitation.
- Domestic recognition of all marriages and registered partnerships celebrated in other jurisdictions around the world without distinction or discrimination.
- The removal of any provisions in other laws or administrative practices that directly or indirectly govern specific rights of families, their children and other family members that may have a disparate negative impact on certain families due to sexual orientation, gender identity or gender expression.
- Compensatory measures should be introduced when the principle of irretroactivity of law perpetrates past unequal treatment based on the grounds of sexual orientation or gender identity.
- The provision of choice in the forms of legal recognition of partnerships that are equally available to all couples without distinction or discrimination.

¹ This position was adopted in October 2006 by ILGA-Europe's Executive board. It was revised in September 2012 and September 2014 by the Board.

- The removal of any remaining restrictions on the right to marry of trans people in compliance with the decision of the European Court of Human Rights in *Goodwin & I v UK* (2002).
- The removal of any obligation on trans people to divorce existing spouses/registered partners as a precondition for legal recognition of their gender identity.
- Specific consideration of criteria that could hinder the legal recognition of intersex people's partnerships.
- The removal of any exclusion or discrimination in the legal definition of family (should such a definition exist) irrespective of civil status and the sexual orientation, gender identity or gender expression of the partners.
- The removal of any remaining cisnormative² and heteronormative³ linguistic and cultural bias that may be found in law, policies and/or practices which could result in direct or indirect discrimination on the basis of sexual orientation, gender identity or gender expression.
- The removal of any symbolic distinctions in the conduct of civil registration/marriage (e.g. place of registration) or ability for public officials to object to registering certain couples on the basis of their sexual orientation, gender identity or gender expression.
- Access to international protection and family reunification for third country nationals should be extended to include their spouse, registered partner or unmarried partner.

B. PARENTING

In relation to parenting, ILGA-Europe calls for:

- The elimination of restrictions on the rights and responsibilities of parents based on their sexual orientation, gender identity or gender expression.
- Laws and policies on adoption and fostering that are based on the needs and rights of children, and the suitability of prospective adopters/foster parents to parent without discrimination on the civil status or the grounds of sexual orientation, gender identity or gender expression of the parent/s.
- The ending of discrimination in access to fertility treatment and assisted reproduction.
- The abolishment of the sterilisation requirement in laws that regulate the recognition of trans people's gender identity in the process for change of name and/or legal gender.
- The provision of the possibility of preservation of the gametes of trans people that chose to undergo gender reassignment surgery.
- The removal of any discrimination in judicial decisions regarding the custody of children.
- The removal of unequal treatment in parenting based on sexual orientation, gender identity and gender expression (e.g. in the setting up of adoption priority lists etc).
- The possibility of adoption of a child by its co-parent, without discrimination based on the child's birth status, the parents' civil status, or the parents' sexual orientation, gender identity or gender expression.
- The recognition of both lesbian mothers as the legal parents of a child born within their relationship should follow the established parental recognition procedures without discrimination on the ground of sex, gender and/or sexual orientation.

² *Cisnormativity* refers to the practices and institutions that legitimise and privilege those who are comfortable in the gender belonging to the sex assigned to them at birth. On the other hand, this norm systematically disadvantages and marginalises all persons whose gender identity and expression do not meet social expectations.

³ *Heteronormativity* refers to cultural and social practices where people are led into believing and behaving as if heterosexuality was the only conceivable sexuality. It also implies the positioning of heterosexuality as the only way of being 'normal' and as the key source of social reward.

- Rights and responsibilities vested in parents in *de facto* relationships should be provided without discrimination on grounds of sexual orientation, gender identity or gender expression.
- Legal, financial and work-related benefits to be made available to all families without discrimination based on a child's filiation or the parent's sexual orientation, gender identity or gender expression.

On surrogacy

ILGA-Europe recognises that there is no consensus in Europe, including within the human rights and LGBTI equality movements, on surrogacy. From a legal point of view, surrogacy is governed by very different national frameworks, from criminalisation to the total absence of legal regulation. ILGA-Europe acknowledges that there is no consensus within civil society as regards to the way public authorities should regulate this practice.

Surrogacy is not specific to LGBTI people or families, or to one sub-community of the LGBTI umbrella, and it is most common for different-sex couples. In this context, ILGA-Europe is primarily concerned with surrogacy as it relates to the human rights of LGBTI people and their families.

ILGA-Europe does not have a position on surrogacy but believes that the following minimum principles have to be safeguarded in any discussion and position on this issue. These principles are consistent with ILGA-Europe's positions on family and with the protection of the best interest of the child. They are also consistent with our approach based on equal rights for all families, irrespective of the parents' or prospective parents' sexual orientation or gender identity.

- *Principle 1:* The rights of the child, which are paramount, include the right of the child to have a legal status and to have their family situation recognised and protected.
- *Principle 2:* A human rights based approach should always be adopted in the development and implementation of legislative frameworks on surrogacy
- *Principle 3:* Where they exist, legislative frameworks on surrogacy should never directly or indirectly discriminate against individuals or couples on the basis of sexual orientation or gender identity.

C. CHILDREN AND OTHER FAMILY MEMBERS

In relation to children and other family members, ILGA-Europe calls for:

- Equal treatment of children, regardless of: (i) the civil status of their parent/s; (ii) whether they are adopted or fostered; and (iii) whether they share a biological link with their parents.
- The best interests of the child should guide all measures aimed at children and therefore children should be protected against discrimination based on the sexual orientation, gender identity or gender expression of their parent/s and in accordance with the *UN Convention on the Rights of the Child (1989)*.
- Children should not experience any discriminatory restrictions on their ability to travel to or enter into a country due to their non-biological ties to their parents.
- All of the children's social parents should be able to have their parental responsibility recognised.

- Children should never be separated from their families on the basis of the sexual orientation, gender identity or gender expression of their parent/s.
- Access to international protection and family reunification for third country nationals should be extended to include: (i) any children for whom the migrant shares parental responsibility; (ii) any children of the migrant's spouse, registered partner or unmarried partner; and (iii) any other dependant relative of the migrant.

D. ADDRESSING DISCRIMINATION

Beyond formal equality in law, policies and practices, ILGA-Europe calls for:

- Comprehensive anti-discrimination legislation that does not contain exceptions based on marital and/or civil status.
- Measures that address institutional LGBTIphobia as well as the heightened vulnerability to discrimination that same-sex/same-gender couples and their children may experience due to their visibility and their mismatch with cisnormative and heteronormative notions of family.
- Mainstreaming of LGBTI/rainbow families in formal education, and public information materials thus addressing invisibility and promoting the notion that all families have equal value.
- Visibility of LGBTI/rainbow families (with or without children) should be included in the media and elsewhere in society among other family forms.