

Submission to the UN Committee on Economic, Social and Cultural Rights

Ireland

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GLEN- Gay and Lesbian Equality Network

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(I). Background and Framework

GLEN – Gay and Lesbian Equality Network - welcomes the opportunity to contribute to the UN Committee on Economic, Social and Cultural Rights as Ireland makes its report on the ICESCR.

GLEN 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 lesbian, gay and bisexual (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 organizations which provide detailed analyses of the issues faced by LGB people and indicate key areas for further reform¹ in order for lesbian, gay, and bisexual people to achieve their full economic, social and cultural rights. We have highlighted the progress which Ireland has made to date as well as examining outstanding issues which need to be addressed.

(II) Promotion and Protection of the Economic, Social and Cultural rights of the Irish LGB community

Implementation of the international Covenant of Economic, Social and Cultural Rights

The issues and recommendations set out in this submission focus on key areas critical to LGB people in the context of the ICESCR; (i) employment, (ii) the status and protection of same-sex headed families within Irish law, (iii) health services (iv) education (v) the inclusion of LGB people in central aspects of Irish cultural life, as dealt with in Article 6, 7(c), 10, 11, 12, 13 and 15 of the ICESCR.

GLEN's contribution to the shadow report to the UN covenant on Economic, Social and cultural rights, focusing specifically on issues effecting LGB people within Ireland, seeks to achieve the following;

- Obtain equality amongst citizens in regards to all Economic, Social and Cultural rights regardless of sexual orientation
- The right to equality and non-discrimination
- The right to equal recognition before the law
- The right to work and equal employment
- The right to found a family.²

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

² Adapted from the Yogyakarta principles, 2006.

The Right to Work³

State Report paragraphs 91-143

LGBT People and Employment

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

- Unfair Dismissals (Amendment) Act 1993 which protects employees from dismissal on the ground of sexual orientation.
- Employment Equality Act (EEA) 1998 and 2004 prohibits direct and indirect discrimination in the workplace across nine grounds, including sexual orientation and civil status (including civil partnership)
- 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.

Together these offer comprehensive protections to lesbian, gay and bisexual people in employment in Ireland. There are also protections for trans people which have emerged through case law and which provide protections to a person who is transitioning or has transitioned.

However there remains an exemption in the Employment Equality Act (EEA) which, at the very least, gives rise to a 'chill factor' for LGBT (lesbian, gay, bisexual and transgender) people working in religious run workplaces. Section 37 of the EEA provides exemptions for religious, medical or educational institutions run or directed by religious bodies. This allows them to give favorable 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 and by GLEN and other LGBT organization as contributing to discrimination or fear of discrimination among LGBT teachers as schools are predominantly controlled by religious denominations.

The exemptions or the threat posed by the exemptions of Section 37 of the EEA, imply that LGBT employees (or those employees who do not conform to the religious ethos of the employer) would be subject to unfavorable treatment in employment, notwithstanding the provisions of the Unfair

³ Referring to Article 6 (1) and 7(b) of the ICESCR; "The states parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right" and Article 7 (c) of the ICESCR; "The states parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence"

Dismissals Act. This includes different treatment in recruitment, in promotion and in other work related practices, on the basis of sexual orientation. Furthermore it has acted to prevent very many teachers and other employees in religious run workplaces from being open about their sexual orientation.

Recommendation:

- ***Amendment of Section 37 of the Employment Act 1998 to ensure that all workers in all workplaces have equal rights of participation and employment, regardless of sexual orientation, gender identity, civil status, family status or other equality ground.***

The Right to Social Security⁴

State Report Paragraphs 170-197

LGBT People and Social Security

Ireland has undergone a marked legislative improvement with regard to LGB people's rights to social security via the enactment of the Social Welfare and Pensions Act 2010. The passing of this act has ensured that all same sex couples in a Civil Partnership are entitled to the same rights and obligations to social security as married opposite sex couples. It also ensures that same sex cohabitant couples have the same rights to social security as opposite sex cohabitant couples.

⁴ Article 9 of the ICESCR –“The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.”

The Right to Protection and Assistance to the Family⁵

State Report paragraphs 217-264

LGBT headed families

There has been very significant progress over recent years in terms of recognition of lesbian and gay couples and the provision of marriage-like rights and obligations for lesbian and gay couples. This has been provided by successive Governments through the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010⁶, the Social Welfare and Pensions Act 2010 (which treats same sex couples the same as opposite sex couples in the social welfare system) and the Finance (No. 3) Act 2011 (which treats civil partners the same as married opposite sex couples in all tax systems, including in inheritance tax for children being parented by civil partners) and in the extension of Citizenship and immigration rights to civil partners on the same basis as for married opposite-sex couples.

However children were excluded from the Civil Partnership legislation. The impact of this exclusion of children carries significant consequences, and was set out in a GLEN submission to the Law Reform Commission⁷. In a nutshell, while there are some exceptions, a child's relationship with the civil partner of his or her parent is not generally recognised in law. This means that the child is denied certain important rights in respect of the parent's civil partner that he or she would otherwise have in respect of a parent.

The Government have published Heads of a Children and Family Relationships Bill which would address the exclusion of children being parented by civil partners, provide for guardianship, custody and access for civil partners, address parenting in cases of assisted human reproduction and allow civil partners to apply to jointly adopt a child.

Recommendations:

- ***GLEN strongly supports the enactment into law of the proposed 'Children and Family Relationship Bill 2014' by the Irish Government. Enactment of this bill is seen as a priority issue for LGBT people and families as it would provide recognition for the diversity of family types in Ireland, including families with children that are headed by lesbian and gay couples, providing them to the same rights and obligations as other families.***

⁵ Article 10, ICESCR; "The states Parties to the present Covenant recognize that: 1. the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it, is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses".

⁶ Act Number 24 of 2010, 'Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010'.

⁷ See GLEN Submission to the Law Reform Commission on Legal Aspects of Family Relationships 2010:

http://www.glen.ie/attachments/Submission_to_the_Law_reform_commission_on_legal_aspect_of_family_relationships.pdf

The Right to the enjoyment of the highest attainable standard of physical and mental health⁸

State report paragraphs 312-387

The mental and physical health of LGBT people

Irish LGBT people, being a minority group, are at a heightened risk of experiencing some form of mental illness at some point during their lives⁹. GLEN have commissioned extensive research in the area of the mental health of LGBT people, supported by the National Office for Suicide Prevention (NOSP) titled; *Supporting LGBT lives: A study of the Mental Health and well being of Lesbian, Gay, Bisexual and Transgender people*¹⁰. Further research explored the experiences of older LGBT people: *Visible lives; identifying experiences and needs of older Lesbian, Gay, Bisexual and Transgender people in Ireland*¹¹. These provide detailed accounts of the key issues affecting the mental health and well being of LGBT people in Ireland. Key findings include:

- 58% reported homophobic bullying in their schools (*Supporting LGBT Lives*)
- 80% had been verbally abused because of their LGBT identity (*Supporting LGBT Lives*)
- 27% had self harmed and 85% of those did so more than once (*Supporting LGBT Lives*)
- 18% had attempted suicide and 85% saw their first attempt as related in some way to their LGBT identity (*Supporting LGBT Lives*)
- 26% of LGB people are not out to any of their healthcare providers, often because of fears of a negative reaction to their LGB identity (*Visible Lives*)
- 33% of respondents have had a mental health problem at some point in their lives (*Visible Lives*)
- Only 1 in 3 believe healthcare professionals have sufficient knowledge about LGBT issues and only 43% feel respected as an LGBT person by healthcare providers (*Visible Lives*)

⁸ Article 12, ICESCR; 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
(b) The improvement of all aspects of environmental and industrial hygiene;
(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness

⁹ See 'Minority Stress' in *Visible Lives; Identifying the experiences and needs of older Lesbian, Gay, Bisexual and Transgender people in Ireland*. A study commissioned by GLEN and funded by Age and Opportunity and the Health Executive programme (HSE)

¹⁰ Mayock, Bryan, Carr, Kitching, 2009. *Supporting LGBT lives; A study of the Mental Health and well being of Lesbian, Gay, Bisexual and Transgender people*. GLEN, BelongTo.

¹¹ *Visible lives; Identifying the experiences and needs of older Lesbian, Gay, Bisexual and Transgender People in Ireland*, 2011. GLEN.

The National Office for Suicide Prevention has resourced GLEN to support the implementation of the recommendations from *Supporting LGBT Lives*.

Recommendation:

- ***LGBT people and issues should be mainstreamed across in policy and practice across the health and mental health sector, including across the HSE and cross the community and voluntary sector, to ensure that services are responsive to the needs of LGBT people.***

In addition to the work conducted around the area of mental health, there has been substantial research carried out in the area of sexual health

Publications such as “*Men who Have Sex with Men: HIV Prevention among those who are HIV Positive: A Resource Paper*”, the “*HIV and AIDS prevention plan 2008-2012*” as well as the annual *HIV Report* published by the HSE, provide comprehensive information on the issue of HIV and AIDs amongst the LGBT community as well as the steps being taken to combat the spread of sexually transmitted diseases amongst the Irish population. From this research and subsequent publications we know that;

- In 2013 there were 344 new cases of HIV diagnosed in Ireland, of which 159 were men who have sex with men (MSM).
- Among the 159 cases of HIV contracted by MSM in 2013, 10% were co-infected with gonorrhoea and 8% were co-infected with Chlamydia.¹²
- However, the rate of HIV infection amongst men who have sex with men dropped from 49% in 2012 to 46% in 2013.¹³

Recommendation:

- ***GLEN acknowledges the work that the Health Service Executive (HSE) has done to date in improving the existing health service infrastructure and hopes that in light of the “HIV and AIDS prevention plan 2008-2012” and the ‘HIV Report 2013’ there will be a continued improvement in sexual health services. This can be done via the GIPA principle, which relies on the increased involvement of people living with HIV (PLHIV) in the successful implementation of all HIV education and prevention activity. Additionally GLEN would encourage closer coordination of the HSE with NGO’s working in the area of LGBT welfare, as well the improved access to HIV testing services throughout the country. A new HIV and AIDS prevention plan needs to be drawn up in order to sustain and replicate the success which Ireland has experienced in combating HIV and other sexually transmitted infections.***

¹² HSE. Health Protection Surveillance Centre. HIV in Ireland, 2013. Dublin: Health Protection Surveillance Centre; 2014

¹³Ibid.

The Right to Education¹⁴

State Report Paragraphs 408-443

LGBT people's access to Education

Supporting LGBT Lives, a major study of lesbian, gay bisexual and transgender (LGBT) people in 2009¹⁵ confirmed previous findings of significant problems faced by young LGBT 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).

Article 13 of the ICESCR states: 1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

¹⁵ 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

However, there continue to be significant challenges in ensuring that national policies to protect young LGBT students 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 and transphobic bullying more difficult to deal with than bullying in general. Related to this is a lack of teacher education in LGBT issues and the absence of inclusive policies in schools (see GLEN report *Valuing Visibility* 2009 at www.glen.ie).

In September 2013, following extensive consultation with relevant education partners, the Department of Education and Skills issued *Anti-Bullying Procedures for Primary and Post-primary schools*. These new procedures replaced the existing *1993 Guidelines on Countering Bullying Behaviour in Primary and Post-Primary Schools*.

The purpose of the procedures was to provide direction and guidance to school authorities and school personnel in;

- preventing and tackling school based bullying behaviour amongst its pupils and,
- dealing with any negative impact within school of bullying behaviour that occurs elsewhere.

The procedures broaden the definition of bullying to include identity based bullying, such as homophobic and transphobic bullying and racist bullying.

A significant proportion of bullying in schools is not merely behavioural, but is rooted in lack of respect for diversity and in social inequalities, both of which have their foundation in wider society. This understanding has led to a large body of international work on ‘prejudice based bullying’ or ‘identity based bullying’. This term takes into account the significant extent to which pupils may be more vulnerable to bullying because of prejudices, stereotyping and stigma against people with particular identities.

The Department’s anti-bullying procedures require **all** schools to name homophobic and transphobic bullying as examples of identity based bullying in anti-bullying policies.

Recommendation:

- ***The Department of Education and skills (DoES) has made great efforts to improve the protection of students and the provision of education for all. The DoES has provided an excellent resource in the form of the ‘Anti-Bullying Procedures for Primary and Post-Primary Schools’ (2013), however proper implementation¹⁶ of these procedures is needed in order to afford the maximum benefit to pupils who are at an increased risk of ‘identity based bullying’ such as LGBT students.***

¹⁶ Proper implementation can be considered as (i) 100% of primary and post-primary schools succeeding in effective implementation of the anti-bullying procedures, (ii) ensuring that schools have the necessary resources to provide comprehensive education and prevention strategies as well as ensuring the adequate resourcing of the inspectorate to support schools in the full implementation of the anti-bullying procedures (iii) that there are adequate resources given to allow a proper assessment of the impact of the *anti-bullying procedures for primary and post-primary schools*.

The Right to Take Part in Cultural Life¹⁷

State Report paragraphs 452-479

LGBT people and Cultural Life – Marriage

Marriage is one of the fundamental Constitutional building blocks of Irish society. Currently marriage is only available to opposite-sex couples¹⁸ thus discriminating against same sex couples who wish to have equal recognition in Irish law. Equal access to civil marriage and full Constitutional equality for lesbian and gay couples is a critical issue for lesbian and gay 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”¹⁹.

Colley stated that should marriage be vulnerable to Constitutional challenge²⁰ 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 lesbian and gay couples and their families from the protection given to families under the Constitution.

A subsequent Government enacted the Civil Partnership and Certain Rights and Obligations of Cohabitants Bill in 2010 which provided for marriage-like rights and obligations for lesbian and gay couples. Civil Partnership has been very successful, with over 1,500 couples entering civil partnership all across Ireland up to June 2014.

The current Government established a Constitutional Convention which in April 2014 debated the issue of civil marriage for lesbian and gay couples. In an overwhelming vote (79%) the members of the Convention recommended to Government that the Constitution be changed to allow for civil marriage for lesbian and gay couples.

In November 2014, the Government decided to accept the Convention recommendation and hold a referendum on equal access to marriage in 2015.

Recommendation

- ***The Government ensure that their commitment to hold a referendum on equal access to civil marriage for lesbian and gay couples in 2015 is fulfilled.***

¹⁷ Article 15, ICESCR; 1. The states Parties to the present Covenant recognise the right of everyone: (a) to take part in cultural life.

¹⁸ Article 41.3.1, Bunreacht Na hEireann, 1937.

¹⁹ Department of Justice, Equality and Law Reform 2006. *Options Paper Presented by Working Group on Domestic Partnership*. Available at www.justice.ie

²⁰ A case seeking recognition of a foreign same-sex marriage (the Zappone/Gilligan case) was awaiting a decision by the High Court. The High Court subsequently decided that the Constitution did not permit recognition of their marriage, and this decision was appealed to the Supreme Court. The appeal was subsequently dropped.

LGBT people and Cultural Life – Full Participation

There is significant evidence, including from the recent EU Fundamental Rights Agency Study *EU Lesbian, Gay, Bisexual and Transgender Study*²¹ that LGBT people still face discrimination, harassment and violence in different areas of life: the home; the school; the workplace and in public spaces, in all countries in Europe, including in Ireland. These experiences severely limit the possibility for many LGBT people of availing of their cultural, social and economic rights, and have a significant impact on their mental health and wellbeing.

There is a critical need to combat discrimination on the grounds of sexual orientation and gender identity, building on the legislative protections that are in place in Ireland, to ensure that the lived experience of being an LGBT person is one that ensures the full and equal participation in all aspects of Irish life.

Recommendation

- ***The Government, in conjunction with GLEN and other LGBT groups, and other stakeholders, develop a National Roadmap for LGBT equality, to ensure the full and equal participation of LGBT people in all aspects of Irish life – social, cultural, political, economic.***

²¹ EU Fundamental Rights Agency *European Union lesbian, gay, bisexual and transgender study: Results at a glance*, May 2013. www.fra.europa.eu

(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 with the passing of the Social Welfare and Pensions Act 2010 (which treats same sex couples the same as opposite sex couples) and the Finance Bill (No. 3) 2011.

The Civil Partnership legislation built 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 LGBT 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 LGBT 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 LGBT people.