

# Equal opportunities for all children:

## Non-discrimination of lesbian, gay, bisexual, transgender and intersex (LGBTI) children and young people



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## Part 1

# Analysis of challenges, gaps and opportunities in the field of human rights of LGBTI children<sup>1</sup>

### INTRODUCTION

— The document contains a concise analysis of challenges, gaps and opportunities in the field of human rights of lesbian, gay, bisexual, transgender and intersex (LGBTI)<sup>2</sup> children, and children in LGBTI families. It draws on the study “Good practices and policies to combat discrimination against children on the grounds of sexual orientation and gender identity”, Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, other European standards, good practices and lessons learnt from member states. It was prepared for the thematic session “Non-discrimination of lesbian, gay, bisexual, transgender and intersex (LGBTI) young people” during the launching conference of the Council of Europe Strategy for the Rights of the Child (Sofia, Bulgaria, 5-6 April 2016).<sup>3</sup>

### CHALLENGES

— This analysis identifies three central issues that prevent LGBTI children and young people from fully realising and enjoying their human rights: prejudice and discrimination, resistant educational systems and the targeting or negation of the work of civil society organisations.

### PREJUDICE AND DISCRIMINATION TOWARDS LGBTI CHILDREN

— The Council of Europe has repeatedly drawn attention to discrimination against LGBTI children.<sup>4</sup> Systemic, direct and indirect discrimination affects LGBTI people in areas such as legal standards, protections from violence, participation in society, privacy and family life and access to education and employment to varying degrees in all Council of Europe member states.<sup>5</sup> While the specific effects of these multiple discriminations of children and young people remain largely invisible in most research, surveys and mapping projects, the particularly heightened level of bullying and violence experienced by LGBTI young people in schools has been well established.<sup>6</sup> The limited availability of data presents challenges for policy makers and advocates regarding approaches, mandates and duties to children and young people.

### CHALLENGES WITHIN EDUCATION SYSTEMS

1. On the basis of Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity and the study “Good practices and policies to combat discrimination against children on the grounds of sexual orientation and gender identity”.
2. LGBT is an umbrella term used to encompass lesbian, gay, bisexual, and transgender people. It is a heterogeneous group that is often bundled together under the LGBT heading in social and political arenas. Sometimes LGBT is extended to include intersex (LGBTI) and queer persons (those who do not wish to be identified with reference to traditional notions of gender and sexual orientation, LGBTIQ).
3. This analysis and the background report for the thematic session “Non-discrimination of lesbian, gay, bisexual, transgender and intersex (LGBTI) young people” during the launching conference of the Council of Europe Strategy for the Rights of the Child (Sofia, Bulgaria, 5-6 April 2016) were drafted by Michael Barron. The opinions expressed in this work are the responsibility of the author and do not necessarily reflect the official policy or position of the Council of Europe. This report was drafted thanks to voluntary contributions.
4. For example, see Council of Europe (2011a).
5. See, for example, European Union Agency for Fundamental Rights (2014) and ILGA-Europe’s Rainbow Index – a comparative rating of socio-legal conditions throughout almost the entire Council of Europe region, at [www.ilga-europe.org/resources/rainbow-europe/2015](http://www.ilga-europe.org/resources/rainbow-europe/2015).
6. See UNESCO (2012).

Recommendation CM/Rec(2010)5 calls on member states to take actions to ensure the human rights of LGBTI children in schools, particularly in the areas of school curriculum and of bullying (see below). While progress is being made in a number of member states, the extent of violence towards LGBTI children and young people in schools and the lack of inclusiveness of school curricula continue to pose serious challenges. An acute problem here is that teachers, school staff and management are frequently ill-equipped to tackle bullying or deliver inclusive curricula. States often do not provide adequate investments into this area, which could take the form of policy guidance, support or funding.

## **DISCRIMINATION AGAINST CIVIL SOCIETY ORGANISATIONS**

At country level, there are many examples of LGBTI and human rights organisations leading the way in promoting the rights of LGBTI children.<sup>7</sup> The level of government support to these civil society organisations varies significantly from jurisdiction to jurisdiction. Although Recommendation CM/Rec(2010)5, paragraph 10, recommends that “access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity”, this is most often not the case. For many civil society organisations working in this field, the lack of financial, technical and political support by governments is a constant challenge.

In some jurisdictions, the weight of traditions, religious dogma and politics combine to produce societal and legal conditions whereby LGBTI children and young people, their families or allies cannot access accurate and unbiased information or vital support services. Certain states criminalise adults who work to provide such support to children and young people, through a variety of legal mechanisms, including limiting external donor support and censoring content about sexual orientation, gender identity or sexual characteristics. These laws and practices may undermine the fundamental principle of non-discrimination of the European Convention on Human Rights; may deny LGBTI young people the right to education, health, freedom of expression and freedom of association; and may ultimately limit access to accurate and unbiased information.

## **GAPS**

As the human rights of LGBTI children have generally not been a central focus of law and policy development, there are knowledge gaps regarding this age cohort. The present analysis identifies seven crucial areas that pertain to all member states regarding access to data, the role of mainstream youth and educational organisations, direct support to LGBTI children, homelessness, the voice of children in decisions that affect them, human rights of intersex children and legal gender recognition of transgender children.

## **LACK OF CREDIBLE DATA ON EXPERIENCES OF LGBTI CHILDREN ACROSS THE COUNCIL OF EUROPE REGION**

Of central importance to all initiatives within this sphere, the development of evidence-based policy and practices to promote the human rights of LGBTI children and young people is hindered by the lack of data on their lived experiences. As a result, LGBTI children tend to be discounted or rendered invisible in policies. Importantly, this lack of basic quantitative and qualitative data also disempowers advocates in their ability to justify and promote their work, thereby garnering support from states and donors. This lack of comparative data and longitudinal studies that map progress over time in states makes it difficult for effective national, bilateral or regional strategies to be developed, implemented and evaluated.

## **LGBTI CHILDREN AS A PRIORITY FOR MAINSTREAM CHILD AND YOUTH ADVOCACY AND SUPPORT ORGANISATIONS**

A second gap in our ability to address the human rights of LGBTI children is identified in organisational mandates within the children and youth sectors. The rights of LGBTI children are human rights, rather than “special rights”. Therefore, all funded youth-focused organisations, both statutory and private, that work with human rights should work to advance the rights of LGBTI children and young people. In nearly all states, such bodies have simply not yet had the opportunity or the impetus to make this connection, or, because of political sensitivities in states, may avoid doing so. The political, technical and financial resources which mainstream children’s and youth organisations could bring to bear in this area, illustrate the scale of this gap.

7. See examples in the accompanying Good Practices document, at Table 2.

## DIRECT SUPPORT TO LGBTI CHILDREN

Research has shown that homophobia, transphobia and family rejection leave LGBTI young people vulnerable to mental health problems, including depression, and lead to higher rates of suicide. Very few Council of Europe member states offer support services directly targeted to LGBTI children and their families.<sup>8</sup> In contexts where prejudice and discrimination towards LGBTI children is rife – in schools, communities and families – it is vital that LGBTI children have access to safe and affirming spaces. The absence of such spaces, where young people can be directly supported, constitutes a significant deficiency.

## HOMELESSNESS

Although Recommendation CM/Rec(2010)5 specifically acknowledges the vulnerability of LGBTI children and young people to homelessness – in part due to family rejection – this has by and large not translated into practice or policy in member states (other than community-driven initiatives in cities in Albania and the United Kingdom).<sup>9</sup>

## THE VOICE OF CHILDREN IN DECISIONS THAT AFFECT THEM

The views of LGBTI children are most often absent from national and international policy and practices to support their human rights. While acknowledging the barriers to their inclusion – LGBTI children and young people may not be publically “out” and infrastructural conditions (spaces) for speaking directly with them may be limited – there are major gaps in consultation with LGBTI children across the Council of Europe region. In line with Article 12 of the United Nations Convention on the Rights of the Child,<sup>10</sup> and acknowledged best practice, it is important that LGBTI children be consulted in the development of policies and practices that impact their lives.

## HUMAN RIGHTS OF INTERSEX CHILDREN

International human rights mechanisms are presently evolving and creating standards regarding human rights and intersex people. Currently, Malta is the only Council of Europe member state (indeed the only state in the world) with a policy framework, supported by legislation, on intersex people, which includes intersex children and young people. As such, currently there is very little European or international good practice guidance available, other than that produced by non-governmental organisations (NGOs).<sup>11</sup> Further guidance can be derived from standards set by United Nations treaty bodies, but even there, there is a dearth of direct attention to intersex issues (see the paragraphs in this document on Ireland and Austria).

## LEGAL GENDER RECOGNITION FOR TRANSGENDER CHILDREN

Legal gender recognition on the basis of self-determination (that is, without the approval of medical practitioners, psychologists, or the requirement to be sterilised or divorced) exists only in four countries in Europe: Denmark (2014), Malta (2015) and Ireland (2015) and some areas of Spain (2014). However, even in these states, and in others where provisions exist through the diagnosis of a disorder, the conditions imposed for transgender children and young people for their recognition are much more arduous. These laws and policies (and their absence) impede access to legal gender recognition, which in turn exposes young transgender people to discrimination in all aspects of their lives, including at school and in health care.

## OPPORTUNITIES

As member states progressively realise their obligations to protect and promote LGBTI children’s access to their human rights,<sup>12</sup> opportunities to fulfil that mandate are continually increasing. The body of work overseen

8. For example Mayock P., Bryan A., Carr N. and Kitching K. (2009), European Union Agency for Fundamental Rights, (2014).

9. See, for instance, The Albert Kennedy Trust (2015), “LGBT youth homelessness: a UK national scoping of cause, prevalence, response and outcome”. [www.akt.org.uk/webtop/modules/\\_repository/documents/AlbertKennedy\\_ResearchReport\\_FINALInteractive.pdf](http://www.akt.org.uk/webtop/modules/_repository/documents/AlbertKennedy_ResearchReport_FINALInteractive.pdf)

10. See, [www.ohchr.org/en/professionalinterest/pages/crc.aspx](http://www.ohchr.org/en/professionalinterest/pages/crc.aspx).

11. See, for example, OII-Europe and ILGA-Europe “Standing up for the human rights of intersex people – how can you help?” (Brussels, December 2015) [www.ilga-europe.org/sites/default/files/Attachments/how\\_to\\_be\\_a\\_great\\_intersex\\_ally\\_a\\_toolkit\\_for\\_ngos\\_and\\_decision\\_makers\\_december\\_2015\\_updated.pdf](http://www.ilga-europe.org/sites/default/files/Attachments/how_to_be_a_great_intersex_ally_a_toolkit_for_ngos_and_decision_makers_december_2015_updated.pdf).

12. See Council of Europe (2015).



by various agencies and bodies of both the Council of Europe and the European Union (the Fundamental Rights Agency (FRA) among others) provides a solid foundation for significant institutional, political and social advances in the field of human rights for LGBTI children across the region. Along with the formal European initiatives, there is a growing body of research, and at national level there are opportunities for states to engage in peer-to-peer learning in order to include rights standards in their own policy frameworks. Practitioners can also communicate to policy makers the advances made at local level which have been seen to reduce discrimination against LGBTI children.

### **RECOMMENDATION CM/REC(2010)5**

— The primary significance of Recommendation CM/Rec(2010)5 is that it signals the extent of the work required to institutionalise human rights, regardless of sexual orientation or gender identity, in legislation and a wide range of policy environments. The activities it endorses have particular importance to LGBTI children and children in “rainbow families” (families in which the parents are LGBTI): for example, hate crime, freedom of expression and the rights to education, health and housing.

### **EUROPEAN SOCIAL CHARTER**

— In 2011, guidance on the revised European Social Charter was described thus: the “European Committee of Social Rights requires that States Parties to the Revised European Social Charter monitor the impact of their policies and legislation on the most vulnerable segments of the population, thus imposing on them a positive duty to promote equality”. In 2007 the European Committee for Social Rights ruled in a case against Croatia that sex education in schools is compulsory, and must not give evidence of discrimination about diverse sexual orientation. Further, schools must not stigmatise LGBTI people by imposing upon them characterisations “based upon negative, distorted, reprehensible and degrading stereotypes.”<sup>13</sup>

### **STRATEGY FOR THE RIGHTS OF THE CHILD (2016-2021)**

— In the coming years, the Council of Europe’s Strategy for the Rights of the Child (2016-2021) has the potential to provide significant opportunities in the field of human rights and LGBTI children.<sup>14</sup> All five priority areas (1. Equal opportunities for all children; 2. Participation of all children; 3. A life free from violence for all children; 4. Child-friendly justice for all children; and 5. Rights of the child in the digital environment) may have far reaching implications for LGBTI children. With reference to Recommendation CM/Rec(2010)5, and the strategy specifically stating that the “Council of Europe will undertake research on the situation of LGBT and intersex children as regards the realisation of their rights” (see below), this undertaking offers an opportunity to address the human rights of LGBTI children and young people.

### **PACE RESOLUTION 2048 (2015) – DISCRIMINATION AGAINST TRANSGENDER PEOPLE IN EUROPE**

— The Parliamentary Assembly of the Council of Europe adopted Resolution 2048 (2015) on discrimination against transgender people in Europe,<sup>15</sup> which can open pathways to significant opportunities in the area of human rights of young transgender people. In a reference to transgender children in particular, the resolution calls on member states to make legal gender recognition available, regardless of age. It calls on states to make the best interests of the child the primary focus in cases involving transgender children, and to make specific health care available to all transgender people, including children. This resolution provides member states with a roadmap for developing country-level policy and action plans to ensure that the rights of young transgender people are realised.

### **PACE RESOLUTION 2097 (2016)1 – ACCESS TO SCHOOL AND EDUCATION FOR ALL CHILDREN**

13. *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia*, (No. 45/2007).

14. Council of Europe Strategy for the Rights of the Child (2016-2021) Adopted by The Committee of Ministers of the Council of Europe on 2 March 2016.

15. Resolution available here: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=21736&lang=en>.

— The Parliamentary Assembly of the Council of Europe adopted Resolution 2097 (2016) on access to school and education for all children.<sup>16</sup> The resolution calls on member states to enhance their education systems in order to ensure access to quality education for all and regular class attendance until the end of the study programme. Member states should, in particular: ensure access by lesbian, gay, bisexual, transgender and intersex children to quality education by promoting respect and inclusion of LGBTI persons and the dissemination of objective information about issues concerning sexual orientation and gender identity, and by introducing measures to address homophobic and transphobic bullying.

## **PARTNER CIVIL SOCIETY ORGANISATIONS**

— Resources are also available from European-based international NGOs, such as the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)-Europe;<sup>17</sup> the International Lesbian, Gay, Bisexual, Transgender & Queer Youth and Student Organisation (IGLYO)<sup>18</sup> and the Global Alliance for LGBT Education (GALE).<sup>19</sup> These resources encourage Council of Europe member states to share and learn from the experience of those working on the ground in creating evidence-based policy.

## **NATIONAL LEVEL GOOD POLICY INITIATIVES**

— A number of Council of Europe member states have set up national policy initiatives that are designed to be inclusive of the human rights of LGBTI children. Examples include Sweden's National Action Plan for Human Rights 2006-2009,<sup>20</sup> Ireland's Action Plan on Bullying,<sup>21</sup> and Malta's LGBTIQ Action Plan 2015-2017.<sup>22</sup> Each of these initiatives have been developed to suit the socio-legal and cultural environments of the particular member state. While such policy initiatives are not directly transferable to other member states, they do illustrate the extent of state commitment needed to meaningfully engage with equality and non-discrimination for LGBTI children and young people. It is notable in all three circumstances that civil society organisations were highly involved from the outset.

## **UNESCO**

— In the area of education and homophobic and transphobic bullying in the Council of Europe region, UNESCO's international research and data collection work, consultation toolkit and other resources provide significant information and opportunities for Council of Europe member states.<sup>23</sup>

## **UNITED NATIONS TREATY BODIES – CONVENTION ON THE RIGHTS OF THE CHILD**

— The non-discrimination provision enshrined in Article 2 of the Convention on the Rights of the Child is inclusive of sexual orientation and gender identity, as specifically outlined in General Comment No. 15 (see above).<sup>24</sup> The committee's concluding observations included sexual orientation and gender identity within the scope of the non-discrimination provisions outlined in the convention.<sup>25</sup> In 2016, the committee recommended that Ireland take action in relation to intersex children,<sup>26</sup> including in the area of unnecessary medical and surgical procedures, investigations into these procedures and training for medical staff.<sup>27</sup> Such concluding observations provide significant guidance to states to take action to ensure the human rights of LGBTI children are upheld. They set standards and are generally applicable across states.

16. <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=22510&lang=EN>

17. ILGA Europe, Education [www.ilga-europe.org/what-we-do/our-advocacy-work/education](http://www.ilga-europe.org/what-we-do/our-advocacy-work/education)

18. The International Lesbian, Gay, Bisexual, Transgender & Queer Youth & Student Organisation (IGLYO). [www.iglyo.com](http://www.iglyo.com).

19. GALE: [www.lgbt-education.info](http://www.lgbt-education.info)

20. See [www.government.se/information-material/2006/01/a-national-action-plan-for-human-rights-2006-2009/](http://www.government.se/information-material/2006/01/a-national-action-plan-for-human-rights-2006-2009/).

21. See [www.education.ie/en/Publications/Education-Reports/Action-Plan-On-Bullying-2013.pdf](http://www.education.ie/en/Publications/Education-Reports/Action-Plan-On-Bullying-2013.pdf).

22. See <http://socialdialogue.gov.mt/en/Documents/LGBTIQ%20Action%20Plan/LGBTIQ%20Action%20Plan%20Io%20res.pdf>.

23. For more information on UNESCO's work: [www.unesco.org/new/en/education/themes/leading-the-international-agenda/health-education/homophobic-bullying/](http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/health-education/homophobic-bullying/).

24. CRC/C/GC/15 [www2.ohchr.org/english/bodies/crc/docs/GC/CRC-C-GC-15\\_en.doc](http://www2.ohchr.org/english/bodies/crc/docs/GC/CRC-C-GC-15_en.doc).

25. UN Committee on the Rights of the Child, Concluding Observations on the combined second to fourth periodic reports of Iraq, Paras. 19 and 27 CRC/C/IRQ/CO/2-4 (2015).

26. Full concluding observations CRC/C/IRL/C-O/3-4, at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fIRL%2fCO%2f3-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fIRL%2fCO%2f3-4&Lang=en).

27. See, CRC/C/IRL/C-O/#-4, at paragraph 27.

## UNITED NATIONS TREATY BODIES – COMMITTEE AGAINST TORTURE

Among many mentions of LGBTI populations in the treaty bodies over recent years, the first significant reference to intersex children in the European context emerged in 2011 in the Committee Against Torture's review of Germany, and subsequent reports on Austria and Switzerland in 2015. Its range of recommendations included provision of a clear legislative and administrative framework so that unnecessary medical procedures are not carried out on children, counselling for parents and children and access to information. Moreover, in its report on Austria, the committee urged the country to "guarantee that full, free and informed consent is ensured in connection with medical and surgical treatments for intersex persons and that non-urgent, irreversible medical interventions are postponed until a child is sufficiently mature to participate in decision-making and give effective consent."<sup>28</sup> This sets a good practice standard for all Council of Europe member states.

## CONCLUSION

While there are considerable challenges and gaps in respecting the human rights of LGBTI children across the Council of Europe region, there are also very considerable opportunities to advance the rights of these children and young people, and improve their lives. The explicit reference to LGBTI children within the Council of Europe's Strategy for the Rights of the Child (2016-2021), when combined with national level good practices, the work of civil society organisations and the legal standards set by the Council of Europe and the UN treaty bodies, presents an extraordinary opportunity to make very substantial progress in the human rights of LGBTI children and young people, as well as those in rainbow families.

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28. Committee Against Torture, Concluding observations on the sixth periodic report of Austria, CAT/C/AUT/CO/6, 27 January 2016, at paragraphs 44 and 45, see: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/AUT/CO/6&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/AUT/CO/6&Lang=En)

## Part 2

# Good practices and policies to combat discrimination against children on the grounds of sexual orientation and gender identity

### INTRODUCTION

On the occasion of International Day Against Homophobia, Biphobia and Transphobia (IDAHOT) on 17 May 2015, the UN Committee on the Rights of the Child, a group of UN human rights experts, the Inter-American Commission on Human Rights, the Special Rapporteur on Human Rights Defenders of the African Commission on Human and Peoples' Rights, and the Commissioner for Human Rights of the Council of Europe urged governments worldwide to protect LGBT and intersex children and young people from violence and discrimination.

Around the world, children and young people who are lesbian, gay, bisexual, transgender (LGBT) or intersex, or seen as such, still face stigma, discrimination and violence because of their perceived or actual sexual orientation and gender identity, or because their bodies differ from typical definitions of female or male.

Violence and discrimination against LGBT and intersex children and young persons take place at home, in schools and in institutions. LGBT young people too often face rejection by their families and communities who disapprove of their sexual orientation or gender identity. This can result in high rates of homelessness, social exclusion, and poverty. LGBT children are often bullied by classmates and teachers, resulting in some students dropping out. They may even be refused school admission or expelled on the basis of their actual or perceived sexual orientation or gender identity.

We call on States to comply with their obligation to respect, protect and fulfil the rights of all children and young adults without discrimination, to ensure that lesbian, gay, bisexual, transgender and intersex children and young people are consulted and participate in discussions on policies and laws that impact on their rights. We also call on human rights and child rights institutions to fulfil their mandate and play their part in protecting them from violence and discrimination.<sup>29</sup>

This document is meant to be a useful tool to policy makers, authorities and other stakeholders in their work to comply with their legally binding obligations under both international and European law regarding combating discrimination against LGBTI children on the grounds of sexual orientation and gender identity. This report outlines relevant international human rights obligations, offers some context for these obligations and draws attention to good practice and policy development.<sup>30</sup>

The explicit focus of this document is on materials relevant to LGBTI children (young people under 18 years of age), as well as children in rainbow families. This is a group whose rights in international and European law are found in policies and practices pertaining to children and youth on the one hand, and in developing treaty body interpretation and jurisprudence around sexual orientation and gender identity on the other. The increasing attention by the UN Committee on the Rights of the Child (CRC) on issues of children's sexual orientation and gender identity that are highlighted herein brings these areas together.

29. "Discriminated and made vulnerable: Young LGBT and intersex people need recognition and protection of their rights –International Day against Homophobia, Biphobia and Transphobia - Sunday 17 May 2015" – See more at: [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15941&LangID=E#sthash.E8ftYKXv.xpXRRDAb.dpuf](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15941&LangID=E#sthash.E8ftYKXv.xpXRRDAb.dpuf)

30. This background report for the thematic session "Non-discrimination of lesbian, gay, bisexual, transgender and intersex (LGBTI) young people" during the launching conference of the Council of Europe Strategy for the Rights of the Child (Sofia, Bulgaria, 5-6 April 2016) was drafted by Michael Barron. He would like to thank Aengus Carroll, author of "State-sponsored homophobia" (International Lesbian, Gay, Bisexual, Trans and Intersex Association) for support in producing this text.

— This report is divided into four key areas:

1. role of the state, state agencies and ombudspersons for children in protecting the rights of LGBTI children and ensuring their access to services;
2. harassment, violence and (cyber) bullying in and outside the educational sector, including support services provided by charities or NGOs;
3. legal gender recognition for transgender children and access to transgender- and intersex-specific health care;
4. children in rainbow families.

— In each section, the document gives a short overview of international standards and international policy guidance documents relevant to protecting LGBTI young people from discrimination, and points to a small number of significant academic studies. Under each of the four sections, attention is given to good practice at country level and toolkits and reports by non-governmental organisations – all with a view to supporting the further development of good policy and practice throughout the Council of Europe region.

— The primary purpose of this report is to provide a concise set of resources for real-world policy development in Council of Europe member states. Its drafters were fully aware of the wide variety of legal and social barriers to combating discrimination towards LGBTI children in particular jurisdictions. It is also written with an acknowledgment of the impact of budgeting, training and other support (or lack thereof) in the drafting, and particularly the implementation of, policy at national and regional levels.

— The scope of this document is limited to the primary documents and current guidance in this area, and it is acknowledged that there are many excellent national level resources not included here. Some additional resources are cited throughout the text, footnotes and bibliography.

## **Section 1 – Role of the state, state agencies and ombudsperson for children in protecting rights of LGBTI children and their access to services**

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— The principles of equality and non-discrimination are fundamental elements of international human rights law and are found throughout the guidance documents issued by global and European human rights mechanisms. As such, regarding the deepening recognition that sexual orientation and gender identity fall within the scope of the existing human rights framework, all states have a duty to keep up with these developments.

— The **International Covenant on Civil and Political Rights (ICCPR)** and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)** oblige states to ensure the enjoyment of human rights without any discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Although sexual orientation and gender identity are not explicitly named grounds, a variety of UN treaty bodies have interpreted the covenants as including sexual orientation and gender identity within the scope of the open-ended lists of grounds, either within the “sex” provision mentioned above, or under that of “other status”.<sup>31</sup>

— LGBT young people are specifically protected through the **UN Convention on the Rights of the Child (UNCRC)** (again as part of “all children”, but also as a named group in interpretations of the convention), and specifically protected in schools, the site of much discrimination, through the right to education. Article 19 of the convention provides that “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence”. In reference to violence, in its General Comment No. 13 (2011) the UN Committee on the Rights of the Child states clearly that “bullying” is a form of both physical and mental violence (see below).<sup>32</sup> This general comment also states with regard to violence among children that “this includes physical, psychological and sexual violence, often by bullying” aimed at “children in potentially vulnerable situations”, and “groups of children which are likely to be exposed to violence” including those who are “lesbian, gay, transgender or transsexual”.<sup>33</sup>

— The non-discrimination provision in Article 2 of the Convention on the Rights of the Child is inclusive of sexual orientation and gender identity, as specifically outlined in General Comment No. 15 at paragraph 8. CRC Concluding Observations, such as that on Iraq in 2015, include sexual orientation and gender identity

31. *UN Human Rights Committee, Toonen v. Australia*, Communication No. 488/1992, 30 March 1994.

32. UN Committee of the Rights of the Child, General Comment No. 13 (2011) pp. 9-10.

33. *Ibid.*, p. 27.

as coming under the general principle of non-discrimination.<sup>34</sup> It is notable that some earlier CRC statements refer to sexual orientation only,<sup>35</sup> reflecting the evolution of comprehension of how sexual orientation, gender identity and, more recently, intersex conditions, have been recognised as falling within the mandates of human rights protection. The committee has discussed the fact that inadequate legislation and inadequate efforts to tackle discrimination against children based on their sexual orientation or gender identity has been a problem.<sup>36</sup>

■ In 2011, in the first report of its kind to the **UN Human Rights Council**,<sup>37</sup> the **High Commissioner for Human Rights** Navi Pillay explained how UN mechanisms, including human rights treaty bodies and the special procedures of the Human Rights Council, have highlighted human rights violations of LGBT people for close to two decades. She also outlined how UN entities – including the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Office of the UN High Commissioner for Refugees (UNHCR) – have integrated issues of sexual orientation and gender identity into their work. Central to the High Commissioner's report is the point that universality, equality and non-discrimination are core to all international human rights law.

■ The application of international human rights law is guided by the principles of universality and non-discrimination enshrined in article 1 of the Universal Declaration of Human Rights, which states that "all human beings are born free and equal in dignity and rights". All people, including lesbian, gay, bisexual and transgender (LGBT) persons, are entitled to enjoy the protections provided for by international human rights law.

■ The **Yogyakarta Principles** address a broad range of international human rights standards and their application to issues of sexual orientation and gender identity. In 2006, in response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, Indonesia to outline a set of international principles relating to sexual orientation and gender identity. The result was the Yogyakarta Principles: a universal guide to human rights which affirm binding international legal standards with which all states must comply. They promise a different future where all people born free and equal in dignity and rights can enjoy that precious birthright.<sup>38</sup>

■ At the regional level, the **European Court of Human Rights (the Court)** that enforces the **European Convention on Human Rights (the Convention, ETS No. 5)**, which applies to all Council of Europe member states, plays a significant role in establishing how sexual orientation and gender identity should be set down in law. Article 14 of the Convention and Protocol No. 12 (dealing with discrimination and the mechanisms to address it) to the European Convention on Human Rights contain open-ended lists of prohibited grounds for discrimination. Neither Article 14 nor the protocol specifically mention sexual orientation or gender identity as prohibited discrimination grounds, but the commentary on the provisions of the protocol stipulates that the list of non-discrimination grounds is not exhaustive.<sup>39</sup>

■ As with the UN conventions, it is clear that both sexual orientation and gender identity have become recognised as grounds of discrimination in more recent years. The European Court of Human Rights confirmed in *da Silva Moputa v. Portugal* in 1999 that sexual orientation is a discrimination ground covered by Article 14 of the European Convention on Human Rights.<sup>40</sup> Similarly, in 2010, the Court explicitly mentioned "transsexuality" in *P.V. v. Spain*.<sup>41</sup> The Court has issued several judgments on discrimination on grounds of sexual orientation and gender identity in which Article 14 has been invoked.<sup>42</sup>

■ The **European Social Charter** also plays a significant part in framing gender identity and sexual orientation matters at the Council of Europe. A non-discrimination clause is contained in Article E, with an open-ended list of prohibited grounds for discrimination. The explanatory notes, meanwhile, give explicit recognition to non-discrimination on grounds of sexual orientation. The clause should be read in conjunction with other

34. UN Committee on the Rights of the Child, Concluding Observations on the combined second to fourth periodic reports of Iraq, Paragraphs 19 and 27 CRC/C/IRQ/CO/2-4 (2015).

35. For example, see UN Committee on the Rights of the Child, Concluding Observations: Chile, paragraph 29 (2007) CRC/C/CHL/CO/3.

36. Concluding observations of the UN Committee on the Rights of the Child on New Zealand (CRC/C/NZL/CO/3-4), at paragraph 25 (2011); Slovakia (CRC/C/SVK/CO/2), at paragraph 27 (2007); Malaysia (CRC/C/MYS/CO/1), at paragraph 31 (2007); China (CRC/C/CHN/CO/2), at paragraph 31 (2013); Isle of Man, United Kingdom (CRC/C/15/Add.134), at paragraph 22 (2000).

37. Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, A/HRC/19/41, November 2011.

38. [www.yogyakartaprinciples.org/principles\\_en.htm](http://www.yogyakartaprinciples.org/principles_en.htm).

39. See extensive annotated listing of cases relating to sexual orientation at the European Court of Human Rights here: [www.echr.coe.int/Documents/FS\\_Sexual\\_orientation\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Sexual_orientation_ENG.pdf), and extensive annotated listing of cases relating to gender identity at the European Court of Human Rights here: [www.echr.coe.int/Documents/FS\\_Gender\\_identity\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Gender_identity_ENG.pdf).

40. *Salgueiro da Silva Mouta v. Portugal*, Application No. 33290/96. 21 December 1999.

41. *P.V. v. Spain*, Application No. 35159/09. 30 November 2010.

42. [www.echr.coe.int/Pages/home.aspx?p=press/factsheets](http://www.echr.coe.int/Pages/home.aspx?p=press/factsheets).



articles of the Charter, some of which pertain specifically to children; these include Article 7 (the right of young people to protection), as well as Articles 16 and 17 (the rights of the family and children and young people to social, legal and economic protections).

■ The **European Committee of Social Rights**, which monitors state compliance with the Charter, has found non-discrimination on grounds of sexual orientation and gender identity to be implicated in numerous Charter guarantees. This includes, for example, Article 11.2 (right to protection of health education). In its 2009 decision against Croatia, the committee noted that states have an obligation to ensure non-discriminatory sex education which does not perpetuate or reinforce social exclusion.<sup>43</sup>

■ In 2010, the **Council of Europe Committee of Ministers** adopted **Recommendation CM/Rec(2010)5** inviting member states to ensure that the stipulated principles and measures are applied in national legislation, policies and practices relevant to the protection of the human rights of LGBT persons. The recommendation covers a wide range of areas including hate crime and education.<sup>44</sup> The **Parliamentary Assembly of the Council of Europe** has also adopted resolutions and recommendations on the subject.

■ The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (**ETS No. 201, the Lanzarote Convention**), adopted in 2007, contains a non-discrimination clause, with explicit mention of non-discrimination on grounds of sexual orientation.<sup>45</sup> In 2011, the Committee of Ministers of the Council of Europe adopted the Convention on Preventing and Combating Violence against Women and Domestic Violence (**ETS No. 210, the Istanbul Convention**), which entered into force in 2014. The non-discrimination article of this convention includes the grounds of sexual orientation and gender identity, thereby making it the first international treaty to include explicitly both sexual orientation and gender identity as prohibited grounds of discrimination.<sup>46</sup>

■ What follows is an overview of a small number of texts relevant to international standards and international policy guidance concerned with protecting LGBTI children from discrimination, some significant academic studies followed by exemplary country-level good practice documents, and finally a set of relevant NGO toolkits and reports.

## INTERNATIONAL STANDARDS AND GUIDANCE

### **UN Committee on the Rights of the Child General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence**

*(CRC/C/GC/13, paragraph 72)*<sup>47</sup>

■ The following elements need to be mainstreamed across national co-ordinating frameworks (legislative, administrative, social and education recovery and reintegration): "(g) Children in potentially vulnerable situations. Groups of children which are likely to be exposed to violence include, but are not limited to, children: ... who are lesbian, gay, transgender or transsexual."<sup>48</sup>

### **UN Committee on the Rights of the Child, General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (Article 24)**

*CRC/G/GC/15*<sup>48</sup>

■ In order to fully realize the right to health for all children, states parties have an obligation to ensure that children's health is not undermined as a result of discrimination, which is a significant factor contributing to vulnerability. A number of grounds on which discrimination is proscribed are outlined in article 2 of the Convention, including the child's, parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. These also include sexual orientation, gender identity and health status, for example HIV status and mental health. Attention should also be given to any other forms of discrimination that might undermine children's health, and the implications of multiple forms of discrimination should also be addressed.<sup>49</sup>

43. *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia*, Collective Complaint No. 45/2007, 21 October 2009.

44. <https://wcd.coe.int/ViewDoc.jsp?id=1606669>.

45. [www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680084822](http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680084822).

46. [www.coe.int/en/web/istanbul-convention/home](http://www.coe.int/en/web/istanbul-convention/home).

47. [www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf).

48. *CRC/G/GC/15*: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f15&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f15&Lang=en)

49. See, *CRC/G/GC/15*, II.b.

## **Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law**

*UN, Office of the High Commissioner for Human Rights, 2012*<sup>50</sup>

— This document (following on from the first Sexual Orientation and Gender Identity (SOGI) Resolution A/HRC/Res/17/19, October 2011)<sup>51</sup> represents the first time that the UN has placed the rights of intersex persons under the rubric of human rights, and affirms that discrimination on the basis of sex characteristics has status in international human rights law. The UN now takes a clear position of protecting intersex infants against enforced medical correction or “normalising” interventions, although, as yet, Malta is the only country to bring protection against enforced correction into its laws.

## **The role of the United Nations in combatting discrimination and violence against individuals based on sexual orientation and gender identity – a programmatic overview (November 2015)**<sup>52</sup>

— This document provides an overview of the work of a variety of UN agencies and programmes in combatting discrimination and violence against LGBTI people around the world. Information is presented in summary format, with bullet points of developments and reports produced by each agency relevant to this field. It includes hyperlinks to documents, reports and other materials that can be consulted for further information. One section is a summary of UNICEF’s work in advancing the rights of LGBTI youth and children, including details of its strategic plan for 2014 to 2017 (which places equity for disadvantaged children at its heart); there are also a March 2014 statement on anti-homosexuality laws and a November 2014 current issues paper on eliminating discrimination against children and parents on the basis of sexual orientation and gender identity.

## **Discrimination on grounds of sexual orientation and gender identity in Europe** *2nd edition, Council of Europe, 2011*<sup>53</sup>

— This report is the largest study ever carried out on discrimination on grounds of sexual orientation and gender identity in the 47 member states of the Council of Europe. It points out serious flaws in many member states in terms of discrimination against LGBTI children in areas such as legal standards, protection against violence, participation in society, privacy in family life, and access to education and employment. It makes key policy recommendations to combat bullying and harassment in schools; to provide unbiased access to information about sexual orientation and gender identity for young people; to recognise the preferred gender of transgender persons; to grant same-sex partnerships and marriages the same rights and benefits as those of heterosexual partnerships and marriages; and to recognise the parental and family rights of LGBTI persons based on the principle of the best interests of the child.

## **Committee of Ministers Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity** *Council of Europe*<sup>54</sup>

— This recommendation is the first instrument in the world dealing specifically with one of the most persistent and difficult forms of discrimination. It sets out the principles derived from existing European and international instruments, with particular emphasis on the European Convention of Human Rights and the European Court of Human Rights case law.

## **LGBTI children have the right to safety and equality** *Council of Europe Commissioner for Human Rights, Human Rights Comment, 2 October 2014*<sup>55</sup>

— Commissioner Nils Muižnieks states the importance of key rights and protection for LGBTI children in all areas of life. Schools should be safe, positive environments for LGBTI children. Bullying and harassment can have a profoundly negative impact on their lives and experience of school. Access to information is a basic condition for transgender and intersex children, and LGBTI children must be protected from violence and bullying “at

50. [www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf](http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf).

51. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/148/76/PDF/G1114876.pdf?OpenElement>.

52. Available at [www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNSystem.aspx](http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNSystem.aspx).

53. [www.coe.int/t/Commissioner/Source/LGBT/LGBTStudy2011\\_en.pdf](http://www.coe.int/t/Commissioner/Source/LGBT/LGBTStudy2011_en.pdf).

54. <https://wcd.coe.int/ViewDoc.jsp?id=1606669>.

55. [www.coe.int/en/web/commissioner/-/lgbti-children-have-the-right-to-safety-and-equality](http://www.coe.int/en/web/commissioner/-/lgbti-children-have-the-right-to-safety-and-equality).



home, in schools, on the internet, in sports and in public spaces.”The state and all state agencies need to make particular efforts to include LGBTI children in their remit and governments need to take systematic action to empower, protect and ultimately improve the safety and equality of LGBTI children.

Of the many Council of Europe legal standards, implementation tools and materials on children’s rights, the following make explicit reference to LGBT(I) children:

- ▶ the Council of Europe Strategy for the Rights of the Child (2016-2021);<sup>56</sup>
- ▶ Recommendation CM/Rec(2009)10 of the Committee of Ministers to member states on integrated national strategies for the protection of children from violence;<sup>57</sup>
- ▶ Recommendation CM/Rec(2011)12 of the Committee of Ministers to member states on children’s rights and social services friendly to children and families.<sup>58</sup>

## The Yogyakarta Principles at Ten

*Michael O’Flaherty, Nordic Journal of Human Rights, 30 January 2015*<sup>59</sup>

This article by incoming director of the FRA Michael Flaherty assesses the 2006 Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity in the light of almost a decade of experience. This academic article seeks to determine the extent of the principles’ impact, legal rigour, and engagement with actual, lived experience. The article looks at the original background to the principles and goes on to examine their influence at national and regional levels, in addition to that within the UN system. It concludes that a substantial revision of the text is not yet required, but rather, a better appreciation of the application of the principles is needed.

## Acknowledging the SOGI norm: the politics of its recognition in the HRC and the politics for its recognition through the UPR

*Aengus Carroll, September 2013*<sup>60</sup>

Carroll examines how, despite opposition, particularly on the basis of national sovereignty and traditional values, the right of sexual and gender minorities to “frame and deliver their information to human rights mechanisms, and the duty of the UN to accept the information” came about. Carroll further explores the role played by UN and Council of Europe courts and treaty bodies in promoting the human rights of LGBT people in areas of decriminalisation and discrimination. With reference to, among others, the Vienna Declaration and Programme of Action, the article affirms the principles of universality, indivisibility, inter-relatedness and interdependence of human rights.<sup>61</sup> Central to Carroll’s argument is that failing to recognise sexual orientation and gender identity as a basis for human rights violations and the need for protection against them negatively implicates the “entire human rights framework”.

## NATIONAL AND LOCAL GOOD PRACTICE AND POLICY

### Malta LGBTIQ Action Plan 2015-2017

*Ministry for Social Dialogue, Consumer Affairs and Civil Liberties, July 2015*<sup>62</sup>

This is a government document prepared by the Maltese Minister for Social Dialogue, Consumer Affairs and Civil Liberties to strengthen policy initiatives across all government departments and public services (including the police force) with the aim of combating discrimination on the grounds of sexual orientation. The two-year action plan includes 38 separate policy measures, including a variety of interventions to ensure the right of LGBTIQ young people to an education free from violence, harassment or discrimination; measures to further support the rights to family life for LGBTIQ people; and measures to guarantee full legal recognition of a person’s gender identity in all areas of life.

56. [www.coe.int/en/web/children/children-s-strategy](http://www.coe.int/en/web/children/children-s-strategy).

57. <https://wcd.coe.int/ViewDoc.jsp?id=1539717&>

58. <https://wcd.coe.int/ViewDoc.jsp?id=1872121>.

59. [www.tandfonline.com/doi/full/10.1080/18918131.2015.1127009](http://www.tandfonline.com/doi/full/10.1080/18918131.2015.1127009).

60. Carroll’s article is accessible on the Universal Periodic Review website: [www.upr-info.org/sites/default/files/general-document/pdf/-carroll\\_-\\_acknowledging\\_the\\_sogi\\_norm\\_2013\\_0.pdf](http://www.upr-info.org/sites/default/files/general-document/pdf/-carroll_-_acknowledging_the_sogi_norm_2013_0.pdf).

61. Adopted unanimously by all states at the United Nations World Conference on Human Rights in 1993, UN General Assembly, Vienna Declaration and Programme of Action A/CONF.157/23 12 July 1993, paragraph 5.

62. <https://socialdialogue.gov.mt/en/Documents/LGBTIQ%20Action%20Plan/LGBTI%20Action%20Plan%20lo%20res.pdf>.

## **Norway Governmental Action Plan – Improving quality of life of LGBT persons 2009-2012<sup>63</sup>**

— This is a governmental action plan prepared by the Ministry of Children and Equality. A full chapter is dedicated to child and family policies, including objectives for the provision of family and child welfare services to LGBT persons.

## **Strategy for Improving the Quality of Life of LGBT Persons 2013-2018**

*Government of Montenegro Ministry for Human and Minority Rights, May 2013<sup>64</sup>*

— This government publication was drawn up in consultation with the LGBT community, national LGBT groups and NGOs, as well as LGBT groups in neighbouring countries. Its policy measures to be adopted across government departments and agencies were taken from best practice examples from several other countries. Each section of the report, one of which focuses on sexual orientation and gender identity in education, lays out strategic objectives, specific programme measures and indicators of success in tackling discrimination, bullying and harassment and for the creation of a more understanding, tolerant and socially cohesive society.

## **EUROPEAN AND NATIONAL NGO TOOLKITS AND REPORTS**

### **Social exclusion of young lesbian, gay, bisexual and transgender (LGBT) people in Europe**

*Judit Takács, ILGA-Europe and IGLYO, April 2006<sup>65</sup>*

— The joint report between ILGA-Europe and IGLYO argues that the social exclusion of young LGBT people should be targeted at EU and national policy level. It highlights the effect that multiple forms of discrimination based on sexual orientation and gender identity have on young LGBT people's capacity to contribute to society and to become active citizens. The report recommends that EU member states should – through national action plans on social exclusion – adopt proactive strategies to ensure inclusion of young LGBT people in society, with an emphasis on tackling disadvantages in education systems, health and social services and providing adequate support for LGBT groups and youth groups in communities. The 2006 report also highlighted the need for further research and data collection on LGBT discrimination at EU and national levels.

### **Strengthening support to LGBTIQ adolescents: policy report on the rationale and scope for strengthening support to adolescents who are lesbian, gay, bisexual, transgender, intersex or questioning**

*Plan UK and Plan Sweden, May 2015<sup>66</sup>*

— This Plan International report first lays out the legal and social status of LGBTIQ adolescents worldwide, their needs, the impact of marginalisation on their development and current international support for action. The report looks into support currently offered by Plan International, as well as issues which affect delivery of services and best practice. It frames much of the report from the perspective of the “do no harm” principle. The conclusion and recommendations are very broad, with the intention that they can be implemented both by Plan International and by other institutions, civic society organisations, non-governmental organisations and donors. The report concludes that a “do no harm” approach should not be seen as reason to “do nothing”, but rather necessitates a cautious and culturally sensitive approach via new direct programmes to support LGBTIQ young people and to integrate issues relating to sexual orientation and gender identity across an organisation's existing programmes and advocacy work.

### **Combating homophobia and transphobia in education: consultation of ILGA-Europe membership**

*Jasna Magić, ILGA-Europe, 2013<sup>67</sup>*

63. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016801ddb4>.

64. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016801e8db7>.

65. [www.salto-youth.net/downloads/4-17-948/ReportSocialExclusionIGLYOilga.pdf](http://www.salto-youth.net/downloads/4-17-948/ReportSocialExclusionIGLYOilga.pdf)

66. <http://resourcecentre.savethechildren.se/library/strengthening-support-lgbtqi-adolescents-policy-report-rationale-and-scope-strengthening>.

67. Note – this is a consultation of ILGA-Europe member organisations rather than with organisations working in Council of Europe member states.

■ In her 2013 report on consultations with ILGA-Europe members on good policy and practice in combating homophobia and transphobia in education, Magić points to the huge diversity in contexts across various countries. Taking into account reported government engagement and support, the socio-political context and an assessment of the activities undertaken to combat homophobia and transphobia in schools, Magić categorises states as “rejection states” (where work in the area is “almost impossible”), “shifting states” (where work is developing) or “accommodating states” (where the state is proactive in the area).

## **Section 2 – Harassment, violence and (cyber)bullying (in and outside the educational sector, including support services provided by charities or NGOs)**

■ Violence towards LGBTI young people, particularly homophobic and transphobic bullying in schools, is the area where most policy and academic understanding has been developed. International NGOs and institutions have been active in this area for some time and at country level there are now significant examples of good practice and policy development. In terms of the right to education, UNESCO in its **Review of Homophobic Bullying in Educational Institutions** (2012) states:

Violence, fear and intimidation should have no place in educational settings. Yet bullying is a pervasive practice that adversely affects the health and well-being of learners and is recognised as such by the United Nations.

■ In creating a climate of fear and intimidation, bullying makes schools and other educational settings fundamentally unsafe places. In addition to undermining the UN Convention on the Rights of the Child,<sup>68</sup> together with fundamental human rights to health, safety, dignity and freedom from discrimination and violence,<sup>69</sup> bullying poses a significant threat to the universal right to education, as reflected in the Universal Declaration of Human Rights, the Millennium Development Goals and related actions of the Dakar Framework for Action.<sup>70</sup>

■ The **UN Special Rapporteur on the Right to Education** has argued that impartial information in schools can overcome prejudice and prevent people from inflicting or becoming victims of violence:

■ Sexual education must pay special attention to diversity, since everyone has the right to deal with his or her own sexuality without being discriminated against on grounds of sexual orientation or gender identity. Sexual education is a basic tool for ending discrimination against persons of diverse sexual orientations.<sup>71</sup>

■ The **UN Committee on the Rights of the Child** has recommended that states include sexual education in the curricula of primary and secondary schools which may also imply that laws that prevent young people from educating themselves about their sexual orientation conflict with the convention.

■ In terms of a UN-level call for education and prevention, in 2011 UNESCO brought together NGOs and government bodies from around the world in Rio de Janeiro, Brazil for the first UN-sponsored global consultation on homophobic bullying. At this meeting the bodies represented published the **Rio Statement on Homophobic Bullying and Education for All**, which concluded with the following declaration:

We call upon all governments to live up to their responsibility to provide universal access to a high quality education by eliminating the barriers created by homophobia and transphobia, including the unacceptable and devastating prevalence of anti-LGBTI bias and violence in elementary, secondary and tertiary levels and settings of education around the world.<sup>72</sup>

■ The **UN High Commissioner for Human Rights**, in her 2011 report mentioned above, highlighted her concern about discrimination against LGBT young people in schools,<sup>73</sup> and specifically about homophobic bullying. She included a recommendation that states “support public information campaigns to counter homophobia and transphobia among the general public and targeted anti-homophobia campaigns in schools”. This is in line with the concerns of children themselves, who, in a European-wide study of the Council of Europe, listed discrimination as a key challenge to children’s human rights.<sup>74</sup>

68. Together with other international principles, such as the Yogyakarta Principles, that address impediments to the right to education faced by victims of bullying and/or violence.

69. United Nations (1948), The Universal Declaration of Human Rights.

70. United Nations (2000), United Nations Millennium Declaration, United Nations, New York; World Education Forum, The Dakar Framework for Action, UNESCO, Paris; UNESCO (2005), Education for All Global Monitoring Report 2005, UNESCO, Paris.

71. Report of the United Nations Special Rapporteur on the Right to Education, A/65/162, 23 July 2010, paragraph 23.

72. Rio Statement on Homophobic Bullying and Education for All – including a list of participants – [www.unesco.org/new/en/hiv-and-aids/our-priorities-in-hiv/gender-equality/anti-bullying/](http://www.unesco.org/new/en/hiv-and-aids/our-priorities-in-hiv/gender-equality/anti-bullying/).

73. A/HRC/19/41, November 2011.

74. Council of Europe (2015), Challenges to children’s rights today: What do children think?, chapter 8. A desktop study on children’s views and priorities to inform the Council of Europe Strategy for the Rights of the Child.

Specifically relevant to work combating homophobic bullying, the **European Committee of Social Rights** affirmed in 2009 that:

[E]ducational materials [should] not reinforce demeaning stereotypes and perpetuate forms of prejudice which contribute to the social exclusion, embedded discrimination and denial of human dignity often experienced by historically marginalised groups such as persons of non-heterosexual orientation.<sup>75</sup>

It is widely held that the EU treaties say little about education or LGBT rights, but the FRA points to a significant role of the EU in this area.

Despite the limited protection against discrimination granted by EU legislation to LGBT persons beyond the employment sector, individuals enjoy a substantial protection through a variety of legal instruments at national and international level. Moreover, the enjoyment of the right to education, protected by Article 14 of the EU Charter of Fundamental Rights or Article 2 of Protocol No. 1 to the European Convention on Human Rights (ECHR), can be affected by discrimination, which is prohibited by Article 21 of the EU Charter.<sup>76</sup>

The following is a short overview of a small number of texts about international standards and international policy guidance, some academic studies and European and country-level good practice in protecting LGBTI young people from harassment, violence and (cyber) bullying.

## INTERNATIONAL STANDARDS AND GUIDANCE

### UN Convention on the Rights of the Child (UNCRC)<sup>77</sup>

Article 6 of the UNCRC provides a right to life, survival and development, while Article 19 obliges states to take all appropriate legislative, administrative, social and educational measures to protect children from all forms of violence. This covers harassment, bullying and suicide,<sup>78</sup> and is based on the principle of non-discrimination.

### Committee of Ministers of the Council of Europe – Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity<sup>79</sup>

Chapter VI of the recommendation details the rights of the child to effective enjoyment of education without discrimination on grounds of sexual orientation or gender identity. In particular, this includes protection from violence, bullying and social exclusion, as well as the promotion of mutual tolerance and respect in schools.

### Review of homophobic bullying in educational institutions

#### UNESCO, March 2012<sup>80</sup>

This UNESCO report – published for the first global UN consultation on homophobic bullying in educational institutions in December 2011 – addresses the scale and impact of homophobic bullying in schools and suggests “effective and appropriate action, based upon documented good practice.” It provides data on bullying and harassment from around the world, including several Council of Europe member states, and offers a system-wide response based on good practice interventions in policies, curriculum materials, staff training and support, support services for learners and community involvement. Each of these good practice actions, including case studies from various countries, are based on UNESCO principles of quality education, namely, they are rights based; learner centred; inclusive; gender responsive; evidence based; culturally sensitive; and age appropriate and specific.

75. *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia*, Collective Complaint No. 45/2007, 21 October 2009. Available at <http://hudoc.esc.coe.int/eng?i=reschs-2009-7-en>.

76. European Union Agency for Fundamental Rights 2013.

77. [www.ohchr.org/en/professionalinterest/pages/crc.aspx](http://www.ohchr.org/en/professionalinterest/pages/crc.aspx).

78. See, e.g. CRC/C/GC/13 General Comment No. 13 (2011).

79. <https://wcd.coe.int/ViewDoc.jsp?id=1606669>.

80. <http://unesdoc.unesco.org/images/0021/002157/215708e.pdf>.

## NATIONAL AND LOCAL GOOD PRACTICE AND POLICY

### Embracing diversity: proposals for an education free of homophobia and transphobia

*José Ignacio Pichardo Galán (editor), Instituto de la Mujer y para la Igualdad de Oportunidades, Madrid, Spain, 2015<sup>81</sup>*

— This initiative is within the framework of the Understanding Discrimination, Recognising Diversity (*Conociendo la Discriminación, Reconociendo la Diversidad* or CORE) project conducted by the Institute for Women and for Equal Opportunities (*Instituto de la Mujer y para la Igualdad de Oportunidades*), as part of the European Commission Directorate-General for Justice's PROGRESS programme. This document offers a conceptual and legal analysis. It also provides a series of educational resources, as well as recommendations, indicators and strategies to prevent, identify and intervene in cases of homophobic and transphobic bullying in schools across Spain.

**Table 1 – Country-level examples of government policy initiatives**

Country	Description	Link
Ireland	Government action plan against bullying and mandatory procedures for schools (2013), includes homophobic and transphobic bullying	<a href="http://www.education.ie/en/Publications/Education-Reports/Action-Plan-On-Bullying-2013.pdf">www.education.ie/en/Publications/Education-Reports/Action-Plan-On-Bullying-2013.pdf</a> <a href="http://www.education.ie/en/Publications/Policy-Reports/Anti-Bullying-Procedures-for-Primary-and-Post-Primary-Schools.pdf">www.education.ie/en/Publications/Policy-Reports/Anti-Bullying-Procedures-for-Primary-and-Post-Primary-Schools.pdf</a>
Malta	Government policy addressing bullying behaviour in schools, including reference to homophobic and transphobic bullying (2014)	<a href="http://education.gov.mt/en/Documents/Addressing%20Bullying%20Behaviour%20in%20Schools.pdf">http://education.gov.mt/en/Documents/Addressing%20Bullying%20Behaviour%20in%20Schools.pdf</a>
Portugal	The Commission for Citizenship and Gender Equality - Campaign against homophobic bullying (2013)	<a href="http://www.cig.gov.pt/2013/11/relancamento-da-campanha-contra-o-bullying-homofobico-nos-expositores-da-postalfree/">www.cig.gov.pt/2013/11/relancamento-da-campanha-contra-o-bullying-homofobico-nos-expositores-da-postalfree/</a>
United Kingdom	Several government initiatives to address homophobia and transphobia in schools	<a href="http://www.gov.uk/government/news/awards-announced-from-2-million-homophobic-bullying-fund">www.gov.uk/government/news/awards-announced-from-2-million-homophobic-bullying-fund</a>

## EUROPEAN AND NATIONAL NGO TOOLKITS AND REPORTS

### The impact of homophobic and transphobic bullying on education and employment: a European Survey 2013.

*Eleanor Formby, IGLYO, Sheffield Hallam University, 2013.<sup>82</sup>*

— This IGLYO-commissioned report is based around a small-scale survey of 187 LGBTQ young people in Croatia, Denmark, Ireland, Italy and Poland. The survey results indicate that an experience of bullying and discrimination, or fear thereof, impacted some young people's plans or aspirations for the future, their educational attainment, and their securing and retaining employment. The report makes several recommendations for LGBTQ organisations, youth organisations and other institutions, including school and university-based support services; accessible online information about a range of education, social and employment concerns; work-related support on ways to navigate LGBTQ identities in the workplace; offering non-judgmental sex education; and promoting LGBTQ awareness and inclusive practice among all professionals working with young people.

81. [www.inmujer.gob.es/actualidad/NovedadesNuevas/docs/2015/Embracingdiversity.PDF](http://www.inmujer.gob.es/actualidad/NovedadesNuevas/docs/2015/Embracingdiversity.PDF).

82. [www.shu.ac.uk/research/ceir/impact-homophobic-and-transphobic-bullying-education-and-employment-european-survey-2013%E2%80%9314](http://www.shu.ac.uk/research/ceir/impact-homophobic-and-transphobic-bullying-education-and-employment-european-survey-2013%E2%80%9314).



**GALE Toolkit: Working with Schools 1.0. – Tools for school consultants, principals, teachers, students and parents to integrate adequate attention of lesbian, gay, bisexual and transgender topics into curricula and school policies**

*The Global Alliance for LGBT Education, 2011*<sup>83</sup>

GALE’s toolkit is a practical resource which aims to make schools more accessible for all students and create a better learning environment for LGBT students. It offers 12 detailed tools for creating inclusive curricula and school policies which are laid out for school managers, principals, teachers, students and parents. These measurable, specific actions aim to stop negative behaviour towards LGBT students; promote social (peer, teacher, parent and staff) support; strengthen empowerment and resilience; and reduce social distance. The toolkit provides examples of best practice for schools and their policies, going into every level of detail, from diversity policies at board level, to classroom exercises and FAQs for teachers.

**Cyberbullying research summary: bullying, cyberbullying, and sexual orientation**

*Sameer Hinduja and Justin W. Patchin, Cyberbullying Research Center, 2011*<sup>84</sup>

This publication from the US-based Cyberbullying Research Center echoes many of the findings in European-based reports, showing the negative effects of bullying and harassment on the rights, school experience and health of LGBT young people. While it considers the focus of government policy in the US, the report suggests a number of preventive strategies which are applicable to schools and policy makers in Council of Europe member states. The report recommends formal school policies, including explicit sanctions for any students involved in bullying or harassment; workshops for the school community (including staff) on the needs and experiences of LGBT children; gay-straight alliance groups set up in schools; positive representations of LGBT students at school events, and in posters and publications; as well as inclusive policies for school sports, clubs, societies and activities.

National NGOs have played a very significant role in framing practice and policy responses to violence against LGBT children. The following table lists a number of such NGOs and links to their work.

**Table 2 – National NGOs and policy responses to violence against LGBT children.**

Country	NGO	Description	Links
Belgium	Cavaria	The umbrella organisation of the Dutch-speaking LGBT organisations in Belgium. Cavaria works with teachers and students and with school authorities.	<a href="http://www.cavaria.be">www.cavaria.be</a>
Czech Republic	PROUD – Platform for equality, recognition and diversity	Addressing homophobia in education is a strategic priority and part of the core organisational programme. The organisation has school outreach programmes.	<a href="http://www.proudem.cz/">www.proudem.cz/</a>
Denmark	LGBT Denmark	Addressing homophobia and transphobia in education is a priority and part of the core programme of the organisation.	<a href="http://www.LGBT.dk/index.php?id=495">www.LGBT.dk/index.php?id=495</a>
Ireland	BeLoNG To	The national youth service for LGBT young people in Ireland. Addressing homophobia and transphobia in education is central to their work. The organisation operates on multiple levels, within schools and at national policy level with the government.	<a href="http://www.belongto.org">www.belongto.org</a>

83. Dankmeijer, Peter (editor) (2011), [www.lgbt-education.info](http://www.lgbt-education.info).

84. [http://cyberbullying.org/cyberbullying\\_sexual\\_orientation\\_fact\\_sheet.pdf](http://cyberbullying.org/cyberbullying_sexual_orientation_fact_sheet.pdf).

Country	NGO	Description	Links
The Netherlands	COC Netherlands	Extensive programmes of school outreach and teacher training. COC also supports a network of school-based gay-straight alliances.	<a href="http://www.coc.nl">www.coc.nl</a> <a href="http://www.gaystraightalliance.nl/">www.gaystraightalliance.nl/</a>
Norway	Skeiv Ungdom/ Queer Youth Norway (QYN)	Addressing homophobia in education is one of the priorities of the organisation and a part of its core programme.	<a href="http://www.skeivungdom.no/">www.skeivungdom.no/</a>
Poland	Kampania Przeciw Homofobii	Provides educational materials for students and teachers (secondary schools).	<a href="http://kph.org.pl/category/edukacja/">http://kph.org.pl/category/edukacja/</a> <a href="http://www.lekcjarownosci.pl/">www.lekcjarownosci.pl/</a>
Sweden	RFSL	Works with schools and government, and supports LGBT young people. Develops research and toolkits.	<a href="http://www.rfsl.se">www.rfsl.se</a>
United Kingdom	Stonewall	Extensive work in this area including the Education for All Campaign with teacher training and best practice guides on inclusive schools.	<a href="http://www.stonewall.org.uk/our-work/education-resources">www.stonewall.org.uk/our-work/education-resources</a>

### Section 3 – Legal gender recognition for transgender children and access to transgender- and intersex-specific health care

■ In April 2015, the **Parliamentary Assembly of the Council of Europe** adopted, by an overwhelming majority, the comprehensive Resolution 2048 (2015) on discrimination against transgender people in Europe. Building on **Recommendation CM/Rec(2010)5** of the Committee of Ministers, Section VII (Health), and on Article 12 of the UNCRC (respect for the views of the child), the Parliamentary Assembly calls upon member states to respect, protect the right of transgender persons not to be discriminated against, and to facilitate quick, transparent and accessible legal gender recognition based on self-determination.<sup>85</sup>

■ The resolution calls upon member states to:

- ▶ adopt explicitly trans-inclusive anti-discrimination and hate crime legislation and measures;
- ▶ adopt quick, transparent and accessible legal gender recognition procedures, based on self-determination, without further limitations based on a person's characteristics (such as age);
- ▶ abolish sterilisation and other medical requirements such as a mental health diagnosis, or a divorce requirement, in legal gender recognition;
- ▶ ensure that, in cases concerning children, the best interests of the child are always given primary consideration;
- ▶ consider including a third gender option in identity documents for those who seek it;
- ▶ make transgender-specific health care accessible and ensure that transgender people (including children) are not labelled as mentally ill in national or international classifications;
- ▶ be proactive regarding information, awareness raising and training, particularly for professional groups.

■ Resolution 1952 (2013) of the **Parliamentary Assembly of the Council of Europe** on children's right to physical integrity makes reference to Article 3 of the UNCRC, which envisages that the best interests of the child should always prevail, and tackles non-medically justified violations of children's physical integrity which may have a long-lasting impact upon their lives. In view of the above, member states are encouraged to undertake further research to increase knowledge about the specific situation of intersex people; ensure that no-one

85. PACE Resolution 2048 (2015). <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=21736&lang=en>.

is subjected to unnecessary medical or surgical treatment that is cosmetic rather than vital for health during infancy or childhood; guarantee bodily integrity, autonomy and self-determination to persons concerned; and provide families of intersex children with adequate counselling and support.<sup>86</sup>

■ **EU Charter of Fundamental Rights**, Article 14. Taking into account the non-discrimination principle enshrined in Article 21 of the charter, the enjoyment of the right to education must be accessible to all on an equal basis. Referring to homophobic and transphobic bullying in schools, the **European Parliament** called on the European Commission to promote equality and non-discrimination on the grounds of sexual orientation and gender identity throughout the EU's youth and education programmes (European Parliament Resolution of 4th February 2014 on the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity).<sup>87</sup>

■ The following is a short overview of a number of texts relevant to international standards and international policy guidance concerned with the legal gender recognition for trans children and access to transgender- and intersex-specific health care, some significant academic studies, followed by national good practice documents, and a set of relevant NGO toolkits and reports.

## INTERNATIONAL STUDIES AND POLICY GUIDANCE DOCUMENTS

### Being Trans in the EU – Comparative analysis of the EU LGBT survey data summary

*European Union Agency for Fundamental Rights (FRA), 2014*<sup>88</sup>

■ This report by the FRA is a summary of the larger *Being Trans in the EU Report*<sup>89</sup> which analyses data on the experiences of 6 579 transgender respondents in the EU and represents the largest body of empirical evidence of its kind to date. The results reveal that transgender people face frequent infringements of their fundamental rights: discrimination, violence and harassment, all to a degree more intense than those suffered by other LGB respondents to the survey. A key finding of the report is that legal instruments and policy frameworks have a tangible impact: in EU countries where action plans, positive measures and equality policies (combating discrimination) exist, transgender people say they are more open about their identity and feel that their lives have improved.

### The fundamental rights situation of intersex people

*European Union Agency for Fundamental Rights (FRA), 2015*<sup>90</sup>

■ This focus paper by the FRA examines the legal situation of intersex people from a fundamental rights perspective. It draws on evidence from the agency's updated legal analysis on homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity, which now includes a section on intersex issues.

### Trans and intersex people – Discrimination on the grounds of sex, gender identity and gender expression

*European Commission Directorate-General for Justice, Office for Official Publications of the European Union, Luxembourg, 2012*<sup>91</sup>

■ Within the broader context of discrimination, discrimination on the grounds of gender identity and gender expression, as well as discrimination on grounds of sex with regard to intersex people, are particularly complex issues. This is due to the fact that the legal recognition and rights afforded to this community are often intertwined with specific medical and psychological requirements. While most of the report deals with discrimination on the grounds of gender identity and gender expression, a brief part focuses on the specific discrimination that intersex people face.

86. [www.assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=20174&lang=en](http://www.assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=20174&lang=en).

87. 2013/2183/INI. Available at: [www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2014-0062](http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2014-0062).

88. <http://tgeu.org/wp-content/uploads/2015/02/FRA-Being-Trans-in-the-EU-Summary-of-Report.pdf>.

89. [http://fra.europa.eu/sites/default/files/fra-2014-being-trans-eu-comparative-0\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-2014-being-trans-eu-comparative-0_en.pdf).

90. <http://fra.europa.eu/sites/default/files/fra-2015-focus-04-intersex.pdf>.

91. [http://ec.europa.eu/justice/discrimination/files/trans\\_and\\_intersex\\_people\\_web3\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/trans_and_intersex_people_web3_en.pdf).



## **Issue paper – Human rights and intersex people**

*Council of Europe Commissioner for Human Rights, Comm DH/Issue Paper(2015)1*<sup>92</sup>

— This issue paper aims to stimulate the development of a framework of action by suggesting a two-pronged approach. On the one hand, it calls on member states to end medically unnecessary “normalising” treatment of intersex persons when it is enforced or administered without the free and fully informed consent of the person concerned. On the other, it provides possible ways forward in terms of protection against discrimination against intersex people, adequate recognition of their sex on official documents and access to justice.

## **A Short Guide to Legal Gender Recognition – Protecting Human Rights of Transgender Persons, Council of Europe, November 2015**

— In 2015, the Council of Europe published this guide, which includes a chapter on quick, transparent and accessible procedures, including for transgender people under the age of 18.<sup>93</sup>

## **An insight into respect for the rights of trans and intersex children in Europe**

*Erik Schneider, Council of Europe, November 2013*<sup>94</sup>

— This report was drawn up following the international conference on The Right of the Child and of the Adolescent to His/Her Sexual Orientation and Gender Identity, from 2 to 4 May 2013 in Sion, Switzerland. It identifies and details the importance of recognising children’s gender identity, as well as a general lack of attention given to intersex matters, despite the high risk of physical integrity violations in this area. It also provides some guidance and examples of good practice for member states’ policies.

## **Guidelines on child-friendly health care**

*Council of Europe Committee of Ministers, Adopted 21 September 2011*<sup>95</sup>

— This document provides guidelines for improving the accessibility of health care for children. It emphasises, in particular, the right not to be discriminated against, the right to the enjoyment of the highest attainable standard of health, the rights of children to express their views and participate, and to have due weight given to their views in accordance with their age and maturity. Furthermore, it emphasises that, as with all actions concerning children, the best interests of the child should be the primary consideration. In line with these principles, there is clear applicability of these guidelines to health care for transgender and intersex children.

## **Critique and alternative proposal to the “Gender incongruence of childhood” category in ICD-11 at the World Health Organisation (WHO)**

*GATE Civil Society Expert Working Group, Buenos Aires, April 4-6, 2013*<sup>96</sup>

— This document from international NGO Global Action for Trans Equality (GATE) lays out an alternative policy strategy for the WHO concerning the proposed category in the 11th version of the International Classification of Diseases (ICD). It is policy-heavy on the internal mechanisms and codes within the WHO, although it makes several main recommendations. This policy response relates specifically to a proposed category on “Gender Incongruence of Childhood”. GATE recommends that the WHO consider the complete deletion of this proposed category and that it considers field-testing a combination of new codes to facilitate access to appropriate counselling for gender-variant children and their families.

92. [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH/IssuePaper\(2015\)1&Language=lanEnglish&Ver=original&Site=COE&BackColorIntranet=FD8C64&BackColorLogged=FD8C64&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH/IssuePaper(2015)1&Language=lanEnglish&Ver=original&Site=COE&BackColorIntranet=FD8C64&BackColorLogged=FD8C64&direct=true)

93. Available at [www.coe.int/en/web/sogi/resources?desktop=false](http://www.coe.int/en/web/sogi/resources?desktop=false)

94. Available at [www.coe.int/en/web/sogi/resources?desktop=false](http://www.coe.int/en/web/sogi/resources?desktop=false).

95. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805c1527](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c1527).

96. [https://globaltransaction.files.wordpress.com/2012/03/critique-and-alternative-proposal-to-the-\\_gender-incongruence-of-childhood\\_-category-in-icd-11.pdf](https://globaltransaction.files.wordpress.com/2012/03/critique-and-alternative-proposal-to-the-_gender-incongruence-of-childhood_-category-in-icd-11.pdf).

## NATIONAL AND LOCAL GOOD PRACTICE AND POLICY

### **Government of Malta Ministry for Education and Employment: Trans, Gender Variant and Intersex Students in Schools – Policy and Procedures, June 2015<sup>97</sup>**

— In June 2015, the government of Malta introduced comprehensive education policy and procedures for transgender, gender-variant and intersex children, making Malta the first country in Europe to do so. The policy document highlights issues that need to be addressed in order to make schools inclusive for transgender, gender-variant and intersex students, such as protection of privacy, provision of adequate facilities, inclusive policies, regulations and language, and access to counselling and information. The procedures document addresses how schools should respond when a transgender, gender-variant or intersex student comes out and/or transitions, and asks schools to implement detailed school support management and student transition management plans.

## EUROPEAN AND NATIONAL NGO TOOLKITS AND REPORTS

### **Trans Rights Europe Index, 2015**

*TGEU (Transgender Europe), April 2015<sup>98</sup>*

— This transgender-specific map and index is a graphic prepared by TGEU to show the legal situation in areas of equality and non-discrimination on the grounds of gender identity and gender expression in Europe, and highlights legal provisions in gender identity recognition. TGEU make it clear that this is a simple guiding document on legal measures, rather than an attempt to reflect the complex social situations that transgender people might face. The map and index compare each of the Council of Europe member states based on categories such as: legal gender recognition measures; asylum provisions; hate speech and violence; non-discrimination; and family matters.

### **“TGEU calls upon WHO to support gender variant children, not label them as ‘sick’”**

*TGEU, October 2015<sup>99</sup>*

— This press release from TGEU on 24 October 2015 calls on the World Health Organization and governments to ensure that gender-variant children are not labelled as “sick”. While the TGEU welcomes a cessation in the practice of labelling transgender-related diagnoses as diseases, it remains concerned that preadolescent children will be diagnosed as such if they show non-conforming gender behaviour. TGEU argues that this diagnosis goes against the “best interests of the child” principle from the Convention on the Rights of the Child and statements from the European Parliament. The TGEU recommends WHO seriously consider the recommendations made by GATE so that young, gender-diverse children can grow up in stigma-free environments.

### **Gender Recognition and Transgender Young People – Transgender Equality Network Ireland (TENI)<sup>100</sup>**

— This report from TENI addresses the legal recognition of transgender young people and provides background and evidence for advocating the protection of this vulnerable group prior to the introduction of transgender legislation in Ireland (July 2015). The document makes several key recommendations which it states would protect the rights and support the well-being of transgender people, enhance their experience at school and ultimately acknowledge and validate their identity. Specifically it recommends that Ireland’s Gender Recognition Bill make provision for children and young people by: removing the minimum age criteria; allowing parents or guardians to make an application on behalf of their children; and allowing young people from the age of 16 to apply for legal recognition of their preferred gender on their own initiative.

97. <http://education.gov.mt/en/resources/Documents/Policy%20Documents/Trans,%20Gender%20Variant%20and%20Intersex%20Students%20in%20Schools%20Policy.pdf>.

98. <http://tgeu.org/wp-content/uploads/2015/05/trans-map-Side-B-may-2015.pdf>.

99. <http://tgeu.org/support-gender-variant-children/>.

100. [www.teni.ie/attachments/8156eb45-14af-4804-aac4-412a3f6cdec1.PDF](http://www.teni.ie/attachments/8156eb45-14af-4804-aac4-412a3f6cdec1.PDF).

### **Third International Intersex Forum Concludes. Intersex Forum, TGEU, December 2013<sup>101</sup>**

■ This statement from the Third International Intersex Forum on 2 December 2013 called on: international, regional and national human rights institutions to take on board and provide visibility to intersex issues in their work; national governments to address the concerns raised by the Intersex Forum, and draw up adequate solutions in direct collaboration with intersex representatives and organisations; media agencies to ensure intersex people's rights to privacy, dignity and accurate and ethical representation. The statement also makes a series of specific demands based around policies, legal protection and other measures which would improve the lives and well-being of intersex people.

### **Standing up for the human rights of intersex people – how can you help?**

*OII Europe and ILGA-Europe, December 2015<sup>102</sup>*

■ In a world where the overwhelming majority of people and governments only know and accept two sexes (male and female), intersex people and their bodies are not given adequate recognition. This paper aims to detail the issue and offer guidance on its resolution.

### **Eliminating forced, coercive and otherwise involuntary sterilization – An interagency statement**

*OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, Geneva, Switzerland, 2014<sup>103</sup>*

■ This statement from key UN bodies draws attention to the experiences of intersex children: "Like any other contraceptive method, sterilization should only be provided with the full, free and informed consent of the individual. However, in some countries, people belonging to certain population groups, including people living with HIV, persons with disabilities, indigenous peoples and ethnic minorities, and transgender and intersex persons, continue to be sterilized without their full, free and informed consent."

### **Intersex: Stories and Statistics from Australia 2016**

*Tiffany Jones et al., Open Book Publishers, Cambridge, UK (forthcoming)<sup>104</sup>*

■ Drawing on stories and statistics from the first national study of intersex persons, the book argues for a distinct "Intersex Studies" framework to address intersex issues and identity – foregrounding the goals, perspectives and experiences of people with intersex variations. Collected in 2015 and arranged in thematic chapters, the study presented here on 272 individuals provides an illuminating account of historically and socially obscured experiences. This book is an important and long-overdue contribution to our understanding of human sexuality.

## **Section 4 – Children in rainbow families**

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■ The area of the rights of rainbow families has progressed greatly in Council of Europe member states over the last decade. The materials cited below, in particular the two policy documents from ILGA-Europe, provide a clear indication of this progression since 2006 and 2007. Their documents clarify the basic rights available to LGBT families as a result of the EU Freedom of Movement Directive,<sup>105</sup> and point to aspirations which are slowly becoming a reality, such as recognition of LGBT people's right to marry, respect to family life without discrimination and, importantly for the purposes of this paper, respect for the rights of children in LGBT families. It should also be noted that children in rainbow families can suffer discrimination by association, or secondary discrimination, on the basis of the sexual orientation or gender identity of one or more of their family members.

■ Crowley (2015, below) in particular details the scope of protection available to LGBT families – and the children within these families – at national level throughout Council of Europe member states. While 13 European countries now recognise the right of same-sex couples to marry and a further 12 acknowledge civil

101. <http://tgeu.org/third-international-intersex-forum-concludes/>.

102. [www.ilga-europe.org/sites/default/files/Attachments/how\\_to\\_be\\_a\\_great\\_intersex\\_ally\\_a\\_toolkit\\_for\\_ngos\\_and\\_decision\\_makers\\_december\\_2015\\_updated.pdf](http://www.ilga-europe.org/sites/default/files/Attachments/how_to_be_a_great_intersex_ally_a_toolkit_for_ngos_and_decision_makers_december_2015_updated.pdf).

103. [http://apps.who.int/iris/bitstream/10665/112848/1/9789241507325\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/112848/1/9789241507325_eng.pdf?ua=1).

104. [www.openbookpublishers.com/product/431](http://www.openbookpublishers.com/product/431).

105. Directive 2004/38 EC.

union to some extent, there is still a disconnect between the more liberal rulings of the European Court of Human Rights<sup>106</sup> and the policies, legislation and action plans introduced by member states.

■ The **Network of European LGBTI Families Associations (NELFA)** was created on 1 May 2009 to unite European associations of lesbian, gay, bisexual and transgender parents and their children under one umbrella organisation representing rainbow families at the European level.<sup>107</sup>

■ What follows is a short overview of a small number of texts relevant to children in rainbow families.

### **Defining the Family and the Scope of the Protection Available – Tensions between National Governance and International Expectations**

*Louise Crowley, July 2015*<sup>108</sup>

■ Crowley's report focuses on the evolving area of family law and the importance of the European Court of Human Rights as an "active forum" in debates over widening the scope of the definitions of family and acceptance of same-sex marriages. Crowley describes how there has been a shift, using examples of case law, towards an expanded definition of the family and a move away from the more traditional construct. While there is still an absence of consensus on acceptance of same-sex marriages and rainbow families, there is a "growing momentum to the right of marriage for all", with 13 European countries recognising same-sex marriage as lawful and a further 12 allowing a form of civil union. Crowley concludes that this slow evolution towards "non-traditional" family acceptance will continue, citing further cases to appear before the European Court of Human Rights in due course.

### **Rights On The Move – Rainbow families in Europe: Proceedings of the Conference, Trento, 16-17 October 2014**

*Carlo Casonato and Alexander Schuster (eds), 2014*<sup>109</sup>

■ This wide-ranging report is a summary of the proceedings of an international two-day conference that was held at the University of Trento in October 2014. The report includes the conference contributions of many experts in the area of LGBTI rights and approaches issues such as reproductive rights for LGBTI persons, new legal challenges in the field of gender identity and intersexuality, family issues in private international law, issues regarding parenthood, medically assisted reproduction, and country-specific analyses of several European states.

### **The Rights of Children Raised in Lesbian, Gay, Bisexual or Transgender Families: A European Perspective**

*ILGA-Europe, December 2008*<sup>110</sup>

■ This report by ILGA-Europe is firmly rooted in a human rights and child-focused perspective. It documents the legal rights of children in LGBT families at European level and analyses the gaps in their protection. The report lays out the legal protection, where it exists, across Europe for children in LGBT families, illustrates the extent to which this protection varies and argues, as a result, that many children are denied equal enjoyment of the family rights that international human rights law promises. Among its recommendations are calls for the Council of Europe to request member states to put in place legal recognition of same-sex partnerships, for parental rights for LGBT couples and for making marriage available to transgender people in accordance with the Christine Goodwin judgment of the European Court of Human Rights.<sup>111</sup>

### **Different families, Same rights? LGBT Families under Human Rights Law**

*ILGA-Europe, December 2007*<sup>112</sup>

■ This ILGA-Europe booklet from 2007 assesses the levels of protection offered to LGBT families under international human rights law. It aims to outline ways of moving towards achieving full recognition of different

106. For an overview, see [www.echr.coe.int/Documents/FS\\_Sexual\\_orientation\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Sexual_orientation_ENG.pdf); [www.echr.coe.int/Documents/FS\\_Gender\\_identity\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Gender_identity_ENG.pdf).

107. <http://nelfa.org/>.

108. [www.academia.edu/17346054/Defining\\_the\\_Family\\_and\\_the\\_scope\\_of\\_protection\\_available\\_-\\_tensions\\_between\\_national\\_governance\\_and\\_international\\_expectations](http://www.academia.edu/17346054/Defining_the_Family_and_the_scope_of_protection_available_-_tensions_between_national_governance_and_international_expectations).

109. [http://eprints.biblio.unitn.it/4448/1/Casonato-Schuster-ROTM\\_Proceedings-2014.pdf](http://eprints.biblio.unitn.it/4448/1/Casonato-Schuster-ROTM_Proceedings-2014.pdf).

110. [www.ilga-europe.org/resources/ilga-europe-reports-and-other-materials/rights-children-raised-lesbian-gay-bisexual-or](http://www.ilga-europe.org/resources/ilga-europe-reports-and-other-materials/rights-children-raised-lesbian-gay-bisexual-or).

111. *Christine Goodwin v. the United Kingdom*, Application No. 28957/95. 11 July 2002.

112. [www.ilga-europe.org/resources/ilga-europe-reports-and-other-materials/different-families-same-rights-lgbt-families-under](http://www.ilga-europe.org/resources/ilga-europe-reports-and-other-materials/different-families-same-rights-lgbt-families-under).

non-traditional family types. The report contains sections addressing the problems caused by excluding LGBT families from international legal protection and issues a challenge to the legitimacy of excluding LGBT families from these rights. ILGA concludes the report by recommending that all states should recognise LGBT people's right to marry, respect family life without discrimination, respect the rights of children and acknowledge everyone's right to start a family. It also calls on human rights institutions and other policy makers to uphold the rights of LGBT people on the basis of equality with other family forms.

## **LGBT families and the Free Movement Directive: Implementation Guidelines**

*ILGA-Europe, 2005 (updated January 2009)*<sup>113</sup>

■ This ILGA-Europe booklet sets out the main contents of the EU's 2004 Directive on the Freedom of Movement and its relevance for LGBT people and their families. The guidelines are intended to assist NGOs and other organisations in monitoring national laws to ensure LGBT families enjoy the fullest protection of the directive. It specifically addresses the rights of children and other family members and the report concludes with a compliance checklist and a list of steps that may be taken by NGOs or individuals if national legislation does not meet the minimum requirements of the directive (by April 2006).

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113. [www.ilga-europe.org/resources/ilga-europe-reports-and-other-materials/lgbt-families-and-free-movement-directive](http://www.ilga-europe.org/resources/ilga-europe-reports-and-other-materials/lgbt-families-and-free-movement-directive)  
<http://www.ilga-europe.org/resources/ilga-europe-reports-and-other-materials/lgbt-families-and-free-movement-directive>

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The Council of Europe has repeatedly drawn attention to discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) children and young people. The first part of this publication contains a concise analysis of challenges, gaps and opportunities in the field of human rights of LGBTI children and young people. The second part provides a collection of good practices and policies to combat discrimination against children on the grounds of sexual orientation and gender identity and outlines relevant international human rights obligations in the field.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

