

## EXECUTIVE SUMMARY

# THE RIGHT TO ADOPTION OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER PERSONS IN VIET NAM



In Viet Nam, lesbian, gay, bisexual, and transgender persons, or LGBT for short, are still facing severe stigma and discrimination. However, there has been much progress in the awareness of the state authorities and wider society on diverse gender and sexuality. During the amendment of the Law on Marriage and Family and the Civil Code, gender and sexual diversity has been addressed much more in the society, in the media, and in the National Assembly's sessions.

Studies on adoption of same-sex couples have been conducted in some countries, but it is still absent in Viet Nam. Study on this issue in Viet Nam is necessary to (i) clarify the gaps and inconsistent points in Viet Nam's legal system related to gender and sexual diversity, and the rights of children in the area of adoption from the rights-based approach; (ii) understand the demand for adoption and related issues of LGBT people in Viet Nam; (iii) understanding the viewpoints and attitude of the community towards the recognition of the right to adoption of same-sex couples; and (iv) identify the actions to remove legal barriers and administrative procedures, including amending the Law on Adoption and related laws to recognize the right to adoption of same-sex couples.

With a right-based approach, the study on the Right to Adoption of LGBT People in Viet Nam reviewed provisions in international treaties signed and ratified by Viet Nam as well as regulations of Vietnamese laws on gender and sexual diversity and the rights of children. The study focused on the area of child fostering in order to clarify the existing entanglement in Vietnamese legal system and law enforcement. The rights to equality and non-discrimination are fundamental principles of international human rights law. Thus, LGBT people are entitled to all the human rights like any other in all aspects of life, including the right to marriage and family and the right to child adoption and child rearing. At the same time, international human rights law emphasizes the principles of "non-discrimination" and "in the best interests of the

children” in executing the rights of the child. Children need protection without any discrimination, including those who are same-sex attracted and those who are different-sex attracted, those who are transgender and those who are cisgender, those living in a family with one mother and one father and those living in a family with two mothers or two fathers. Although these principles have already been prescribed in the Constitution, some legal provisions are still subjective in nature and are not really clear. This has been causing much difficulty in implementing the laws and leading to exclusion of LGBT people from the right to adoption.

In reality, LGBT people also have the demand to cohabitate, to raise children, and to adopt children, similarly to that of any other individual. However, due to many challenges, including low level of social awareness, this desire has not been fulfilled. Recognition of the laws, support from local authorities, support from the family, attitude of society, support from their partner, and their psychological well-being have crucial impacts on their decision to adopt.

At the present, Vietnamese laws do not mention sexual orientation and gender identity of adopting parents, legal guardians or representatives. In the future, the Government should include the principles of non-discrimination on the basis of sexual orientation and gender identity in the laws and implementing guidelines, and emphasize fundamental human rights to move towards a society that is ever more equal, free, humane, and democratic. Once their rights have been recognized and protected by the Government, social attitude towards gender and sexual diversity will become more open, and LGBT people will have better living conditions.

Based on the analysis of quantitative data and the opinions compiled during the study, this report recommends:

- to amend laws, including the draft Civil Code, and other legal documents containing provisions on the right to have a guardian, the right to have a legal representative, and the right to sex reassignment;
- to amend the Law on Adoption to include different forms of adoption, specify the conditions for adoption, temporary fostering, or foster care, and adoption by couples;
- to amend the Law on Gender Equality to define and update the concepts and definitions of gender and sexuality, include the definitions of sexual orientation, gender identity and expression, to create a more enabling environment for LGBT people to live;
- to amend regulations of the Law on Child Protection, Caring, and Education and the Law on Civil Status to protect and support children with two fathers or two mothers, with a mother or a father who is transgender; and ensure the rights of LGBT people and their relatives.

The Government of Vietnam is reviewing laws and policies for possible amendment, supplementation, and improvement to align with the Constitution amended in 2013. Although each country has their own cultural and legal context, they still need to conform to the human rights standards and international laws. Recognition, protection and support to child adoption and rearing right of LGBT people, and the rights of the child regardless of their family structure or their parents’ condition, by the laws and the law enforcement agencies will be a big step forward in realization of the new Constitutional principles regarding human rights and civil rights into practice.