



8 December 2020

Hon. Marise Payne
Minister for Foreign Affairs
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Senate
Parliament House
Canberra ACT 2600

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Dear Minister Payne

RE: REFORM IN HUNGARY TO PREVENT LGBTIQI PEOPLE FROM ADOPTING CHILDREN

I am writing to you on behalf of more than 10 million global supporters of Amnesty International to call on you to speak out loudly against the Hungarian government's move to prevent LGBTIQI people from adopting children.

The draft 9th Amendment to the Fundamental Law (the Hungarian Constitution) and the draft bill T/13648 (hereinafter the omnibus bill) is currently under consideration by the Parliament of Hungary, and will be voted on from 14-15 December.

Amnesty International is concerned that the proposed measures would further **undermine the rights of lesbian, gay, bisexual, transgender, queer and intersex people**, including right to a private and family life and the right to protection from discrimination, and **negatively affect children's right** to live in a family,¹ to their gender identity, and their parents' right to impart education according to their religion or belief.²

On 10th November, the Hungarian government announced a package of legislative changes, some of which would further restrict the rights of LGBTIQI people. The omnibus bill amendment stipulates that **only married couples should be allowed to adopt children**, while single people can adopt by special permission of the Minister for Family Affairs. Same-sex marriage is not legalised in Hungary, and same-sex partnerships do not contain adoption rights, thus **preventing LGBTI people from adopting children**. Furthermore, these restrictions would **curb the possibility for children living in state institutions to be adopted**, thus affecting their right to a family life. It is important to note that the Convention on the Rights of the Child (CRC) recognizes that the child, for the full and harmonious development of their personality, should grow up in a family environment.³

The government has also proposed **two constitutional amendments** as part of the legislative changes. The first **restricts children's gender identity to their sex assigned at birth** and ensures an upbringing that "reflects the values based on Hungary's constitutional identity and Christian

¹ UN Convention on the Rights of the Child, Preamble, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

² Protocol 1, Article 2, ECHR, https://www.echr.coe.int/documents/guide_art_2_protocol_1_eng.pdf

³ UN Convention on the Rights of the Child, Preamble, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

culture."⁴ This proposal comes following the adoption of a law in May⁵ banning the legal gender recognition of trans and intersex people.⁶ The reference to "Christian culture"⁷ is contrary to **the rights to freedom of conscience and religion** enshrined in the Constitution⁷ and can be potentially used to undermine the equal enjoyment of human rights by non-Christians. According to the European Convention of Human Rights, **the right to education** includes that "the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."⁸

The second proposed constitutional amendment aims to further **institutionalise the restrictive interpretation of a family and marriage**, by stating that family ties must be based on marriage, where "the mother is a woman and the father is a man".⁹

This move by the Hungarian government is in **stark contrast with the first-ever EU strategy for LGBTQI equality**. One of the key action points outlined in the strategy includes protecting the rights of rainbow families and setting out several targeted actions, including legal and funding measures for the next five years.¹⁰ The funds will be conditional upon compliance with EU anti-discrimination law.¹¹

On 20th November, the **Council of Europe (CoE) Commissioner for Human Rights, Dunja Mijatović also urged Hungary's Parliament to postpone the vote on these draft bills** saying that, if adopted, it will have **far-reaching adverse effects on human rights in the country**.¹² Her statement quoted the **Venice Commission's report** from June 2020¹³ that such far-reaching legislative proposals, particularly **constitutional amendments, should not be introduced during states of emergency**.¹⁴ The Commissioner underlined "that several proposals contained in the complex legislative package, submitted without prior consultation and relating to matters including the functioning of the judiciary, election law, national human rights structures, scrutiny over public funds, and the human rights of lesbian, gay, bisexual, transgender, and intersex (LGBTI) people,

⁴ <https://www.parlament.hu/irom41/13647/13647.pdf> ,
<https://telex.hu/english/2020/11/10/hungary-constitutional-amendment-gender-family-public-funds-special-legal-order>

⁵ <https://www.amnesty.org/en/documents/eur27/2085/2020/en/>

⁶ According to the latest news, The Court of Appeal of Miskolc submitted a complaint to the Constitutional Court asking to determine the ban on legal gender recognition is contrary to the Constitution. See <https://hatter.hu/hirek/miskolci-torvenyszek-alaptorveny-ellenes-a-transz-emberek-nemenek-jogi-elismereset-tilto>

⁷ Magyarország Alaptörvénye, VI. cikk/Fundamental Law, Article VI, <https://www.parlament.hu/irom39/02627/02627.pdf>

⁸ Protocol 1, Article 2, ECHR, https://www.echr.coe.int/documents/guide_art_2_protocol_1_eng.pdf

⁹ <https://www.parlament.hu/irom41/13647/13647.pdf>,
<https://telex.hu/english/2020/11/10/hungary-constitutional-amendment-gender-family-public-funds-special-legal-order>

¹⁰ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2068

¹¹

<https://www.independent.co.uk/news/world/europe/hungary-to-restrict-adoption-to-lgbt-people-in-line-with-other-populist-countries-b1724896.html>

¹²

<https://www.coe.int/en/web/commissioner/-/commissioner-urges-hungary-s-parliament-to-postpone-the-vote-on-draft-bills-that-if-adopted-will-have-far-reaching-adverse-effects-on-human-rights-in->

¹³ CDL-AD(2020)014-e – Report – respect for democracy, human rights and the rule of law during states of emergency: reflections – taken note of by the Venice Commission on 19 June 2020 by a written procedure replacing its 123rd plenary session, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)014-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)014-e)

¹⁴

<https://www.coe.int/en/web/commissioner/-/commissioner-urges-hungary-s-parliament-to-postpone-the-vote-on-draft-bills-that-if-adopted-will-have-far-reaching-adverse-effects-on-human-rights-in->

could serve to undermine democracy, the rule of law and human rights in Hungary.”¹⁵

Amnesty International is concerned that these proposed amendments violate the rights to dignity, to private and family life, legal gender recognition, to children’s right to live in a family and parents’ right to impart education according to their education or belief.

As the **Hungarian Parliament plans to vote on these amendments on 14-15 December**, Amnesty International is urging you to request an urgent meeting with the Hungarian Ambassador to Australia, Dr Istvan Mikola, and raise the human rights concerns posed by the proposed legislation and call on Hungary to reconsider adopting such legislation. I also ask that you make a public statement regarding the human rights concerns

Amnesty International continues to monitor developments and stands ready to provide more information.

For further information, or to discuss and organise a meeting, please contact Joel MacKay at joel.mackay@amnesty.org.au or 0424 242 112.

Yours sincerely,



Sam Klintworth
National Director
Amnesty International Australia

¹⁵

<https://www.coe.int/en/web/commissioner/-/commissioner-urges-hungary-s-parliament-to-postpone-the-vote-on-draft-bills-that-if-adopted-will-have-far-reaching-adverse-effects-on-human-rights-in->