

## **Consultation on IVF Legislation**

### **Joint Submission by aditus foundation and MGRM**

#### Background

On 30 July 2015 the Parliamentary Secretariat for Health issued a Press Release (PR 151745) inviting feedback on Malta's IVF legal framework. We understand that the aim of this request is to review the current regime and bring it in line with other relevant legal norms as well as ECtHR jurisprudence.

aditus foundation and MGRM welcome this initiative and are happy to share their views in this document. We look forward to discussing this feedback with the Secretariat and with the Inter-Ministerial IVF Review Working Committee.

#### Comments on IVF Legislation

It is the position of aditus and MGRM that Malta's current IVF law reinforces inequalities. The 'Embryo Protection Act' is an unashamedly homophobic law insofar as it denies access to medical services purely on the basis of sexual orientation. To our understanding it is also in contravention of the constitutional anti-discrimination provisions introduced in April 2014 with respect to the grounds of sexual orientation and gender identity.

The law is also a violation of human dignity by introducing unreasonable and unwarranted intrusions into physical integrity, in its criminalization of egg or sperm donation. aditus foundation and MGRM take the opportunity of this consultation process to reiterate their earlier criticism of the IVF law.

Under the IVF law, medically assisted procreation is only open to "*prospective parents*", defined in a discriminatory manner as "*two persons of the opposite sex who are united in marriage, or...who are in a stable relationship with each other.*" In practice, despite the introduction of the Civil Unions Act, and the parenting rights introduced under this law, this means that same-sex couples are automatically denied access to medical services on the basis of their sexual orientation.

Furthermore, the Act imposes severe criminal sanctions against any person who donates his sperm or her eggs outside of the IVF law framework. aditus foundation and MGRM question the relationship between embryo protection and the fundamental rights of all persons to be protected from violations of their physical and mental integrity, and to decide on core matters such as their private and family lives.

We question the compliance of Malta's IVF law with human rights law, since it seems to ignore legislation and jurisprudence unequivocally stating that all rights and obligations accessible by

different-sex couples should be equally accessible and enjoyable by same-sex couples. The decision to restrict assisted reproduction services to couples is also inconsistent with the government's current legislation and policy with respect to fostering and adoption both of which allow individuals to apply as single parents.

aditus and MGRM disagree with any pressure on the prospective parent/s to make use of all the embryos frozen. Any such obligation could amount to an infringement of CEDAW which establishes *"the right for women to decide freely and responsibly on the number and spacing of their children..."* [Article 16(e)].

Furthermore, while we acknowledge the serious ethical considerations with respect to surrogacy, possibly exacerbated in the local context, we nonetheless believe that this could be a legitimate pathway to parenthood for several couples. In this regard, we can confirm our willingness to engage in dialogue with the respective authorities with a view to exploring the matter, particularly with a view to ensuring full protection of the involved parties and to preventing any form of exploitation or abuse..

Any new legislation should also take into consideration the right to found a family of trans and intersex persons, and should therefore allow for the freezing of gametes and embryos should these choose to undergo surgery. The Act should also keep in mind that following the introduction of the Gender Identity, Gender Expression and Sex Characteristics Act, no surgical interventions are required for gender recognition. It is therefore imperative that the Act adopts gender neutral terminology, as this guarantees access to reproductive health services to trans men and women.

aditus foundation and MGRM strongly urge the competent authorities to truly respect, protect and fulfil the rights of all persons irrespective of their sexual orientation, gender identity or sex characteristics, and to embrace a more realistic, understanding and indiscriminate notion of 'family'. In particular, the two organisations urge that a thorough revision of the Embryo Protection Act remove all discriminatory provisions and bring it in line with current legislative provisions and human rights standards.

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