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Committee on the Rights of the Child
through the Petitions and Urgent Actions Section
Office of the High Commissioner for Human Rights
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Third-party intervention

Communication no. 51/2018 against Finland

Submitted in accordance with the Guidelines on third-party interventions under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OPIC).

Intervening organisations:

- Child Rights International Network (CRIN)
- The International Commission of Jurists (ICJ)
- The European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe)
- International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World)
- Network of European LGBTIQ* Families Associations (NELFA)

The object and purpose of the intervention

The case *51/2018 against Finland* concerns the deportation of a same-sex couple and their child to Russia, notwithstanding the alleged risk of discriminatory and irreparable harm to the child motivated by prejudice and hatred against the same-sex sexual orientation of the child's parents.

The best interests of the child shall be a primary consideration in all actions concerning children, including deportation decisions. In light of these considerations, the intervention provides information relevant for the assessment of the best interests of the child of LGBTI parents in the context of deportation to Russia.

The proposed intervention does not comment on the individual facts of the case.

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1. Overview of the international and regional standards on non-refoulement and the best interests of the child in the context of removal

1. All children involved in or affected by international migration -- including as a result of persecution or other forms of forced displacement -- are entitled to the enjoyment of their human rights, regardless of their or their parents', other family members' or legal guardians' age, gender, gender identity or sexual orientation.¹ This section highlights the existing jurisprudence and practice of the Committee on the Rights of the Child (CteeRC) with regards to the best interests of the child in the context of this communication, complementing it with relevant comparative international and regional human rights law, standards and practice.

A. The best interests principle

2. Article 3(1) of the Convention on the Rights of the Child (CRC) clearly states that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". Expounding on this obligation, the CteeRC has underlined that "States may not exercise discretion as to whether best interests are assessed and ascribed the proper weight as a primary consideration in any action undertaken."² The CteeRC has also clearly identified the best interests principle as one that requires context-specific assessment and that must be determined on a case-by-case basis, according to the specific situation of the child, taking into consideration their personal context, situation and needs.³
3. The CteeRC has also defined the best interests principle under the CRC as a threefold concept: a substantive right, a fundamental interpretive legal principle and a rule of procedure.⁴ In respect of this communication, the application of the substantial and procedural elements of the best interests principle are both highly relevant.

(a) A substantive right

4. The CteeRC has noted that the following elements must be taken into account to determine the best interests of the child: the child's views, the child's identity, the preservation of the family environment and maintaining relations, the care, protection and safety of the child, the situation of vulnerability, the child's right to health, and the child's right to education.⁵ The EU Agency for Fundamental Rights ('FRA') has also emphasised that the children's views, identity, protection, safety and any situations of vulnerability (as is the case of asylum-seeking children and children who were victims of discrimination⁶) must be taken into account in identifying and assessing children's best interests.⁷ In the context of migration, the European Asylum Support Office ('EASO') states that asylum authorities must assess the best interests before, throughout and after the asylum procedure.⁸ This obligation requires the adoption of a "holistic and child-centred" approach, considering the "child's **individual and specific circumstances and needs**" before any decision is taken.⁹ EASO also considers that the best interests process must give due consideration to the child's family situation; the situation in their country of origin; particular vulnerabilities; safety and the risks they are exposed to; protection needs; level of integration in the host country; and mental and physical health, education and socioeconomic conditions.¹⁰
5. As indicated by the CteeRC and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families ('CMW'), this analysis must be set within the context of the child's gender; sexual orientation or gender identity; national, ethnic or social origin; migration or residence status; citizenship status; age; economic status; political or other opinion¹¹; cultural and linguistic background or other status.¹² EASO has underlined that it is important to explore and assess potential risks, including hidden risks that the child may face (e.g. situations where the child has faced or is likely facing abuse or violence)¹³.
6. With regard to the child's views specifically, the CteeRC has emphasised the essential role of children in all decisions affecting their lives, underlining that the assessment of a child's best interests must include respect for the child's right to express his or her views freely and due weight must be given to said views in all matters affecting the child.¹⁴ Importantly, the Committee has

¹ CMW & CteeRC (2017) Joint general comment no. 3(22) on the general principles regarding the human rights of children in the context of international migration, [CMW/C/GC/3-CRC/C/GC/22](https://www.refworld.org/docid/5a1293a24.html), para. 21

² CteeRC, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14, 29 May 2013, para. 36. Available at: https://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf

³ Id., para. 32.

⁴ CteeRC, General Comment No. 14, para. 6.

⁵ CteeRC, General Comment No. 14, Chapter V.A.1, paras. 53-79

⁶ European Union Agency for Fundamental Rights (FRA), Child-friendly justice – Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States, 2017, FRA Opinion 26. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-child-friendly-justice-children-s-perspective_en.pdf

⁷ Id., FRA Opinion 27.

⁸ European Asylum Support Office (EASO), Practical guide on the best interests of the child in asylum procedures, 2019, p. 13. Available at: <https://www.easo.europa.eu/sites/default/files/Practical-Guide-Best-Interests-Child-EN.pdf>

⁹ Id., p. 14

¹⁰ Id., p. 17

¹¹ Joint general comment No. 3 (2017) of the CMW and No. 22 (2017) of the CteeRC on the general principles regarding the human rights of children in the context of international migration, 16 November 2017, CMW/C/GC/3-CRC/C/GC/22, para. 3. Available at: <https://www.refworld.org/docid/5a1293a24.html>

¹² European Asylum Support Office (EASO), Practical guide on the best interests of the child in asylum procedures, 2019, p. 17. Available at: <https://www.easo.europa.eu/sites/default/files/Practical-Guide-Best-Interests-Child-EN.pdf>

¹³ Id., p. 29

¹⁴ CRC, Article 12; CteeRC, General Comment No. 14, para. 43

explained that the fact that the child is very young or in a vulnerable situation (e.g., as a migrant child) does not deprive him or her of the right to express his or her views, nor reduces the weight given to the child's views in determining his or her best interests.¹⁵ Indeed, the CtteeRC had previously urged State parties to make provisions for young children to be heard in all cases where they are capable of expressing their opinions or preferences.¹⁶

(b) A procedural right

7. To meet the procedural element of the best interests principle, the CtteeRC has set out safeguards to be respected, including: the right of the child to express his or her own views, the establishment of facts by well-trained professionals, the child's perception of the passing of time, the need for qualified professionals, appropriate legal representation for the child, the legal reasoning behind the decision, mechanisms to review or revise decisions, and child rights impact assessments.¹⁷
8. Two procedural aspects warrant special attention. First, the child's right to be heard is emphasised at the procedural level as well, demonstrating the importance that must be attached to giving the child the opportunity to express his or her views. Second, the CtteeRC has clarified that it is **not sufficient for the decision-maker to refer superficially to the child's best interests**. Any decision must be **motivated, justified and explained**, explicitly addressing all the factual circumstances regarding the child, what elements have been found relevant in the best interests assessment, the content of the elements in the individual case, and how they have been weighed to determine the child's best interests. If the decision differs from the views of the child, the reason for that should be clearly stated. If, exceptionally, the solution chosen is not in the best interests of the child, the grounds for this must be set out in order to show that the child's best interests were a primary consideration despite the result¹⁸.
9. The European Court of Human Rights (ECtHR) has applied the best interests principle in its case law. In *Cința v. Romania*, the ECtHR could not identify elements in the domestic courts' decisions that would explain how those courts had established or assessed the child's best interests.¹⁹ The Court considered that the decision-making process was not conducted so as to ensure that all views and interests were duly taken into account. It found that the domestic procedure had failed to provide safeguards that would be commensurate with the gravity of the interference and the seriousness of the interests at stake.²⁰ Similarly, in *G.S. v. Georgia*, the ECtHR acknowledged that the child's interest dictated that family ties must be maintained, except in cases where the family has proved particularly unfit, but that it was clearly also in the child's interest to ensure its development in a sound environment, with the parent not being entitled to have measures taken that would harm the child's health and development.²¹ The domestic court had not considered this when identifying the child's best interests, so it had not undertaken a careful examination of the child's situation.²²

B. Best interests, deportation and non-refoulement

10. The Council of Europe (CoE) identifies children on the move as one of the **most vulnerable groups** in Europe today.²³ Migrant children, even when accompanied by parents, often suffer persistent violations of their human rights because the principle of the best interests of the child is too often neglected in asylum and immigration procedures.²⁴
11. The CtteeRC and the CMW have maintained that the best interests of the child must be taken fully into consideration in granting or refusing applications on entry to or residence in a country, and that they shall be a primary consideration and thus have high priority.²⁵ The Committees have underlined that, under the best interests principle, States are obliged to ensure that any decision to return a child to his or her country of origin should be based on evidentiary considerations on a case-by-case basis and pursuant to a procedure with appropriate due process safeguards, including a robust individual assessment and determination of the child's best interests.²⁶ As the CtteeRC reaffirmed in *Z.Y. and J.Y. v. Denmark*²⁷, this procedure should ensure that the child, upon return, will be safe and provided with proper care and enjoyment of rights.²⁸ Importantly, the Committees have reiterated that the child's best interests should be ensured explicitly through individual procedures as an integral part of any administrative or judicial decision on asylum.²⁹ The ECtHR has also acknowledged that national decision-making bodies should, in principle, advert to and assess evidence in support of the practicality, feasibility and proportionality of any removal in order to give effective protection and sufficient weight to the best interests of the child affected.³⁰

¹⁵ *Id.*, para. 54

¹⁶ CtteeRC, General comment No. 7 (2005): Implementing child rights in early childhood, CRC/C/GC/7/Rev.1, 20 September 2006, para. 13

(a). Available at: <https://www.refworld.org/docid/460bc5a62.html>

¹⁷ CRC, General Comment No. 14, Chapter V.B.

¹⁸ *Id.*, para. 97

¹⁹ *Cința v. Romania* [2020] ECtHR App. No. [3891/19](#), para. 52.

²⁰ *Id.*, para. 57

²¹ *G.S. v. Georgia* [2015] ECtHR App. No. [2361/13](#), para. 45

²² *Id.*, para. 59

²³ Council of Europe, Strategy for the Rights of the Child (2016-2021). Available at: <https://rm.coe.int/168066cff8>, p. 9.

²⁴ *Ibid.*

²⁵ CMW and CRC Committee, Joint GC Nos. 3 and 22, para. 29

²⁶ *Id.*, para. 33

²⁷ CRC, *Z.Y. and J.Y. v. Denmark*, CRC/C/78/D/7/2016, Views adopted on 31 May 2018, para. 8.7

²⁸ CMW and CRC Committee, Joint GC Nos. 3 and 22, para. 33

²⁹ *Id.*, para. 30

³⁰ *Jeunesse v. The Netherlands* [2014] ECtHR Grand Chamber, App. No. [12738/10](#), para. 120

12. With regard to the standard used to evaluate *non-refoulement* claims, the CtteeRC has noted that States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child.³¹ This standard was reaffirmed in *I.A.M. v. Denmark* in the context of a case where both the child and the mother had been subject to a deportation order.³² Such *non-refoulement* obligations apply irrespective of whether the risk of serious violations of those rights guaranteed under the Convention emanate from non-State actors or whether such violations are directly intended or are the indirect consequence of action or inaction. In the same communication, the Committee emphasised that State parties should take measures to protect the child from all forms of physical or mental violence, injury or abuse in all circumstances.³³ In *Z.Y. and J.Y. v. Denmark*, the Committee referred to the lack of a specific and personal risk of a serious violation of the child's rights upon return on the particular facts of the case.³⁴ The CtteeRC has also explained in its General Comment No.6 that return to the country of origin, even in situations of family reunification, should not be pursued where there is a "reasonable risk" that such return would result in the violation of fundamental human rights of the child. Return to the country of origin shall in principle only be arranged if such return is in the best interests of the child.³⁵

2. Concealment of sexual orientation and the best interests of the child in removal proceedings

13. Concealing one's sexual orientation requires the suppression of a fundamental aspect of one's identity. While existing case-law and analysis concern adult asylum seekers, the Interveners submit that the following considerations are relevant and applicable in the case of children of LGBTI parents, as they are directly impacted and forced to hide a fundamental aspect of their family background and identity.
14. In the context of adult LGBTI asylum seekers the UNHCR SOGI Guidelines state: "[t]hat an applicant may be able to avoid persecution by concealing or by being 'discreet' about his or her sexual orientation or gender identity, or has done so previously, is not a valid reason to deny refugee status. As affirmed by numerous decisions in multiple jurisdictions, a person cannot be denied refugee status based on a requirement that they change or conceal their identity, opinions or characteristics in order to avoid persecution. LGBTI people are as much entitled to freedom of expression and association as others."³⁶ Their children too. Thus, under refugee law, the fact that individuals may have previously concealed their same-sex sexual orientation is not a valid reason to refuse them refugee status, nor is the possibility that they could or would suppress their identity in the future.³⁷ The same principles are equally applicable to a situation where a child would have to conceal his/her family background, and to conceal the sexual orientation of his/her parents. Relating to the right to found a family, the Yogyakarta principles +10 indicate that "States shall:... **Protect children from discrimination, violence or other harm due to the sexual orientation, gender identity, gender expression or sex characteristics of their parents, guardians, or other family members**".³⁸ Furthermore, "alongside **age, factors such as rights specific to children, a child's stage of development, knowledge and/or memory of conditions in the country of origin, and vulnerability**, also need to be considered to ensure an appropriate application of the eligibility criteria for refugee status³⁹".
15. Individuals should not be required to lie or to exercise restraint about their protected characteristics, be it, for example, one's religious beliefs,⁴⁰ or, their sexual orientation.⁴¹ In its judgment in *X, Y and Z v. Minister voor Immigratie en Asiel*, the Court of Justice of the European Union (CJEU) affirmed that "requiring members of a social group sharing the same sexual orientation to conceal that orientation is incompatible with the recognition of a characteristic so fundamental to a person's identity that the

³¹ CtteeRC, General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, CRC/GC/2005/6, 1 September 2005, para.27. Available at: <https://www.refworld.org/docid/42dd174b4.html>

³² CRC Committee, *I.A.M. v. Denmark*, CRC/C/77/D/3/2016, Views adopted on 25 January 2018, para. 11.3

³³ *I.A.M. v. Denmark*, para. 11.8 (b)

³⁴ CRC, *Z.Y. and J.Y. v. Denmark*, para. 8.12

³⁵ CRC, General Comment No. 6, para. 84.

³⁶ The UNHCR SOGI Guidelines, § 31, footnotes in the original omitted. In *Sadeghi-Pari v Canada*, the Federal Court of Canada held that requiring a person to conceal or suppress their sexual orientation amounts to persecution: "[c]oncluding that persecution would not exist because a gay woman in Iran could live without punishment by hiding her relationship to another woman may be erroneous, as expecting an individual to live in such a manner could be a serious interference with a basic human right, and therefore persecution", *Sadeghi-Pari v Canada (Minister of Citizenship and Immigration)*, 2004 FC 282, 37 Imm LR (3d) 150, § 29. See also case: No. 103 722 of 29 May 2013 where the Belgian Council for Alien Law Litigation held, *inter alia*, in an asylum case concerning Senegal that "sexual orientation constitutes a fundamental characteristic of the human identity which a person cannot be demanded to abandon or dissimulate", § 6.8.3.7 (translation from French original). The Yogyakarta Principles plus 10, 2017, Principle 23..

³⁷ *RRT Case No. 1102877* [2012] RRTA 101, Australia, Refugee Review Tribunal, 23 February 2012, "[b]ased on the applicant's past conduct, the Tribunal is of the view that he would be able to avoid the harm he fears by being discreet. However, the Tribunal cannot require a protection visa applicant to take steps and modify his conduct to avoid persecution (*Appellant S395/2002 v MIMA* (2003) 216 CLR 473). The applicant had acted discreetly in the past because of the threat of harm. As noted by the High Court, in these cases it is the threat of serious harm with its menacing implications that constitutes the persecutory conduct", § 96; see also *RRT Case No. 071862642* [2008] RRTA 40, Australia: Refugee Review Tribunal, 19 February 2008.

³⁸ Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles. Available at: <https://yogyakartaprinciples.org/principles-en/yp10/>.

³⁹ UNHCR, Guidelines on Unaccompanied Children Seeking Asylum, op cit., page 10.

⁴⁰ See, e.g., the 5 September 2012 judgment of the Grand Chamber of the CJEU in the Joined Cases C-71/11 and C-99/11 *Bundesrepublik Deutschland v Y and Z* where the Court held that, in determining an application for refugee status the national authorities cannot reasonably expect the applicant to abstain from the manifestation or practice of certain religious acts in order to avoid exposure to persecution (§§ 79-80).

⁴¹ In 2003, the High Court of Australia held that, "[i]t would undermine the object of the Convention if the signatory countries required [individuals] to modify their beliefs or opinions or to hide their race, nationality or **membership of particular social groups** before those countries would give them protection under the Convention", *Appellant S395/2002 v. Minister for Immigration and Multicultural Affairs; Appellant S396/2002 v. Minister for Immigration and Multicultural Affairs*, High Court of Australia, 9 Dec. 2003, [2003] HCA 71, § 41.

persons concerned cannot be required to renounce it”.⁴² In *X, Y and Z* the CJEU held that, even if through concealing the applicant may avoid the risk of persecution, “[t]he fact that he could avoid the risk by exercising greater restraint than a heterosexual in expressing his sexual orientation is not to be taken into account in that respect”,⁴³ and that “[w]hen assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation.”⁴⁴

16. The interveners submit that in *X, Y and Z* the CJEU made it clear that in the risk assessment the authorities must not take into account the possibility of concealment.⁴⁵ In *X, Y and Z*, the CJEU emphasises that the refugee protection regime is meant to enable persons to exercise their fundamental freedoms openly. Consistent with this line of authorities, in its decision in the case of *I.K. v. Switzerland*,⁴⁶ the ECtHR held that because sexual orientation constitutes a fundamental aspect of an individual’s identity and awareness, those claiming international protection based on sexual orientation cannot be required to hide it.⁴⁷ The principles apply *a fortiori* to international protection claims made by vulnerable individuals, such as children, and especially children from rainbow families.
17. UNHCR SOGI Guidelines recognise: “[b]eing compelled to conceal one’s sexual orientation and/or gender identity may also result in significant psychological and other harms. Feelings of self-denial, anguish, shame, isolation and even self-hatred which may accrue in response an inability to be open about one’s sexuality or gender identity are factors to consider, including over the long-term.”⁴⁸ Such findings are consistent with refugee law holding that in some cases **psychological harm is persecutory**.⁴⁹ This is of particular concern if asylum-seekers, whose asylum claims have been rejected, are required to conceal their or their relatives’ sexual orientation on return in an attempt to avoid persecution, since fear of discovery and the resulting physical ill-treatment by State or non-State actors may be lifelong.⁵⁰ The same applies to children required to conceal their family background in an attempt to avoid bullying or being taken away from their parents.
18. It should also be recalled that even if the children concerned attempt to conceal such a personal aspect of their identity, as their parents’ sexual orientation, there remains a strong probability of discovery against their will,⁵¹ for example by accident, rumours, growing suspicion or use of social media.⁵² Risk of discovery is particularly high in case of young children within LGBTI families, who do not have the ability to fully restrain themselves from talking about their family background, in particular with friends, at school, at medical facilities or in other public spaces. Laws criminalising same-sex relationships and so-called “anti-propaganda” laws, even if not routinely implemented, essentially require concealing one’s parents’ sexual orientation, as they could be used against one’s LGBTI parents at any time. Children in such contexts may therefore choose to conceal their familial status out of fear of being teased, ostracised or losing friends⁵³, while, in doing so, risking isolation and distancing from peers.
19. Consistent with these principles, the UNHCR SOGI Guidelines advise that: “the question thus to be considered is **what predicament the applicant would face if he or she were returned to the country of origin**. This requires a **fact-specific examination of what may happen if the applicant returns to the country of nationality or habitual residence and whether this amounts to persecution**. The question is not, could the applicant, by being discreet, live in that country without

⁴² Joined Cases C-199/12, C-200/12, C-201/12 *X, Y and Z v. Minister voor Immigratie en Asiel*, CJEU, Fourth Chamber, 7 November 2013, § 70.

⁴³ *X, Y and Z*, §§ 72-75; see also the Dissenting Opinion of Judge Power-Forde in *M.E. v. Sweden*, European Court of Human Rights (Fifth Section), no. 71398/12, 26 June 2014, “[t]he fact that the applicant could avoid the risk of persecution in Libya by exercising greater restraint and reserve than a heterosexual in expressing his sexual orientation is not a factor that ought to be taken into account”; and “[s]uch a requirement of forced reserve and restraint in order to conceal who one is, is corrosive of personal integrity and human dignity”.

⁴⁴ *X, Y and Z*, § 76.

⁴⁵ As stated above, the CJEU held that, “requiring members of a social group sharing the same sexual orientation to conceal that orientation is incompatible with the recognition of a characteristic so fundamental to a person’s identity that the persons concerned cannot be required to renounce it”, *X, Y and Z*, § 70. This Court has also recognized that one’s sexual orientation is not simply a matter of privacy and that the Convention protects the **right to express it publicly** (*Baczkowski and others v. Poland*, no. 1543/06, 48 EHRR, §§ 68,100 and 101; and *Alekseyev v. Russia*, no. 4916/07, ECHR, 21 October 2010, §§ 86-88 and 109-11).

⁴⁶ *I.K. v. Switzerland*, decisions on admissibility, no. 21417/17, 19 December 2017.

⁴⁷ “[L]a Cour estime que l’orientation sexuelle constitue un aspect fondamental de l’identité et de la conscience d’un individu et qu’il ne saurait dès lors être exigé de personnes déposant une demande de protection internationale fondée sur leur orientation sexuelle qu’elles dissimulent cette dernière”, *I.K. v. Switzerland*, § 24.

⁴⁸ The UNHCR SOGI Guidelines, § 33, footnotes in the original omitted.

⁴⁹ See, *Abay v. Ashcroft*, 368 F.3d 634, United States Court of Appeals for the Sixth Circuit, 19 May 2004, where a mother’s psychological trauma due to the risk of her child undergoing female genital mutilation was found to constitute persecutory harm and thus enough to entitle her to protection as a refugee. **Psychological, mental harm is capable of constituting persecution for the purposes of the Refugee Convention when it results from coercion**. US case law also confirms this clearly: *Fisher v I.N.S.*, 37 F.3d 1371 (9th Cir. 1994) “being forced to conform to, or being sanctioned for failing to comply with, a conception of Islam that is fundamentally at odds with one’s own...can rise to the level of persecution”, § 45.

⁵⁰ See, *inter alia*, *Appellant S395/2002 v. Minister for Immigration and Multicultural Affairs; Appellant S396/2002 v. Minister for Immigration and Multicultural Affairs*, per McHugh and Kirby JJ, “[...] It is the threat of serious harm with its menacing implications that constitutes the persecutory conduct. To determine the issue of real chance without determining whether the modified conduct was influenced by the threat of harm is to fail to consider that issue properly”, § 43 (emphasis added).

⁵¹ See, e.g., *Appellant S395/2002 v. Minister for Immigration and Multicultural Affairs; Appellant S396/2002 v. Minister for Immigration and Multicultural Affairs*, §§ 56-58.

⁵² E.g. the Human Rights Watch report, “*We Are a Buried Generation*” *Discrimination and Violence against Sexual Minorities in Iran*, 15 December 2010, documenting internet surveillance of gay chat rooms in Iran and the ensuing human rights violations.

⁵³ Goldberg, A. E., & Kuvallanka, K. A. (2012); Clarke, V., & Demetriou, E. (2016). Not a big deal? Exploring the accounts of adult children of lesbian, gay and trans parents. *Psychology & Sexuality*, 7(2), 131–148; Lubbe, C. (2008). The experiences of children growing up in lesbian-headed families in South Africa. *Journal of GLBT Family Studies*, 4(3), 325–359.

attracting adverse consequences.”⁵⁴ Enforcing removals on the basis that the individuals concerned would be expected to conceal their or their relatives’ sexual orientation would constitute arbitrary *refoulement*.

3. The detrimental affect of lack of specific legislative recognition and protection on children in LGBTI families

20. There is broad consensus among social scientists⁵⁵ and professional associations⁵⁶ that children’s well-being, psychosocial adjustment, and cognitive abilities are unrelated to the sexual orientation of their parents. However, lack of legal recognition of their family structure as well as laws that criminalise or stigmatise their parents’ sexual orientation adversely impact children living in LGBTI families⁵⁷. Evidence reveals that growing up in a hostile legal and social climate has both direct and indirect impact on the human rights of children in LGBTI families, including their rights to health, education and be free from discrimination.⁵⁸

(a) The lack of legal recognition deprives parents and children of material resources

21. Due to lack of legal recognition of LGBTI families, children are excluded from many material benefits and resources that cannot be conferred on them by their non-legal parent, such as health insurance coverage, alimony, or inheritance⁵⁹. In educational settings, non-legal parents face challenges including impossibility of signing official documents, having their child released to them after school, or taking part in parent consultation hours⁶⁰. In healthcare settings, non-legal parents might not be allowed to accompany their child during routine or emergency medical visits, make medical decisions in an emergency situations, visit their child in hospital, or be visited by them during a hospital stay⁶¹. In countries with a hostile socio-legal climate, where prejudicial attitudes towards sexual minorities have been found to prevail among healthcare professionals⁶², LGBTI families might not only be confronted with these legal barriers to optimal healthcare for their child, but also disapproving or outright hostile attitudes from service providers on a personal level⁶³.
22. Children growing up in LGBTI families are also affected indirectly by economic hardship their parents may experience due to the lack of financial and legal benefits for couples in relationships that domestic legal regimes do not recognise.⁶⁴ In the absence of legal protection, many LGBTI families look for alternative means for providing at least minimal security for their children,⁶⁵ e.g., in the case of relationship dissolution or death of a non-legal parent, which renders the legal parent and the child particularly

⁵⁴ The UNHCR SOGI Guidelines, § 32.

⁵⁵ E.g., Adams, J., & Light, R. (2015). Scientific consensus, the law, and same sex parenting outcomes. *Social Science Research*, 53, 300–310; Patterson, C. J. (2017). Parents’ sexual orientation and children’s development. *Child Development Perspectives*, 11(1), 45–49; Reczek, C. (2020). Sexual-and gender-minority families: A 2010 to 2020 decade in review. *Journal of Marriage and Family*, 82(1), 300–325.

⁵⁶ E.g., American Academy of Child and Adolescent Psychiatry. (2009). *Policy Statement. Gay, lesbian, bisexual, or transgender parents*. Retrieved from: https://www.aacap.org/AACAP/Policy_Statements/2008/Gay_Lesbian_Bisexual_or_Transgender_Parents.aspx; Paige, R. U. (2005). Proceedings of the American Psychological Association, Incorporated, for the legislative year 2004. Minutes of the annual meeting of the Council of Representatives. *American Psychologist*, 60, 436–511; Siegel, B. S., Perrin, E. C., & the Committee on Psychosocial Aspects of Child and Family Health (2013). Promoting the well-being of children whose parents are gay or lesbian. *Pediatrics*, 131(4), 827–830.

⁵⁷ Kazyak, E., Woodell, B., Scherrer, K., & Finken, E. (2018). Law and family formation among LGBTQ-parent families. *Family Court Review*, 56(3), 364–373.

⁵⁸ E.g., UNICEF (2014). Eliminating discrimination against children and parents based on sexual orientation and/or gender identity. *UNICEF Current Issues*, 9, 1–6. Retrieved from: https://www.unicef.org/videoaudio/PDFs/Current_Issues_Paper-Sexual_Identity_Gender_Identity.pdf.

See also Paige, R. U. (2005); Siegel, B. S., Perrin, E. C., & the Committee on Psychosocial Aspects of Child and Family Health (2013); American College of Obstetricians and Gynecologists. (2018). Marriage and family building equality for Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, and Gender Nonconforming Individuals. Committee Opinion No. 749. *Obstetrics & Gynecology*, 132, e82–e86; American Medical Association (2015). *Policy Statement. Health Disparities among gay, lesbian, bisexual, transgender and queer families*. Retrieved from: <https://policysearch.ama-assn.org/>; Anton, B. (2008). Proceedings of the American Psychological Association, Incorporated, for the legislative year 2007: Minutes of the annual meeting of the Council of Representatives. *American Psychologist*, 63, 360–442; Pawelski, J. G., Perrin, E. C., Foy, J. M., Allen, C. E., Crawford, J. E., Del Monte, M., ... & Tanner, J. L. (2006). The effects of marriage, civil union, and domestic partnership laws on the health and well-being of children. *Pediatrics*, 118(1), 349–364; Perrin, E. C., Siegel, B. S., & the Committee on Psychosocial Aspects of Child and Family Health (2013). Promoting the well-being of children whose parents are gay or lesbian. Technical report. *Pediatrics*, 131, e1374–e1383.

⁵⁹ Perrin, E. C., Siegel, B. S., & the Committee on Psychosocial Aspects of Child and Family Health (2013). See also Gonzales, G., & Blewett, L. A. (2013). Disparities in health insurance among children with same-sex parents. *Pediatrics*, 132(4), 703–711.

⁶⁰ Padavic, I., & Butterfield, J. (2011). Mothers, fathers, and “mathers”. Negotiating a lesbian co-parental identity. *Gender & Society*, 25(2), 176–196; Rawsthorne, M. (2012). How long in the wilderness? Australian lesbian parents and social policy reform. *Critical Social Policy*, 33(2), 266–284.

⁶¹ Pawelski, J. G., Perrin, E. C., Foy, J. M., Allen, C. E., Crawford, J. E., Del Monte, M., ... & Tanner, J. L. (2006); Perrin, E. C., Siegel, B. S., & the Committee on Psychosocial Aspects of Child and Family Health (2013).

⁶² European Union Agency for Fundamental Rights (2014). *EU LGBT Survey – European Union lesbian, gay, bisexual and transgender survey. Main results*. Publications Office of the European Union. Retrieved from: <https://fra.europa.eu/en/publication/2014/eu-lgbt-survey-european-union-lesbian-gay-bisexual-and-transgender-survey-main>; European Union Agency for Fundamental Rights (2016). *Professionally speaking. Challenges to achieving equality for LGBT people*. Publications Office of the European Union. Retrieved from: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-lgbt-public-officials_en.pdf.

⁶³ Perrin, E. C., Siegel, B. S., & the Committee on Psychosocial Aspects of Child and Family Health (2013); Gartrell, N., Rothblum, E. D., Koh, A. S., van Beusekom, G., & Bos, H. (2019). “We were among the first nontraditional families”. Thematic perceptions of lesbian parenting after 25 years. *Frontiers in Psychology*, 10, 1–10. <https://doi.org/10.3389/fpsyg.2019.02414>.

⁶⁴ European Commission Policy Memo: “Leave policies and practice for non-traditional families”, Catalog N. KE-02-19-409-EN-N, available: <https://ec.europa.eu/social/main.jsp?catId=1060&langId=en>

⁶⁵ Riggle, E. D., Rostosky, S. S., Prather, R. A., & Hamrin, R. (2005); Goldberg, A. E., Moyer, A. M., Weber, E. R., & Shapiro, J. (2013). What changed when the gay adoption ban was lifted? Perspectives of lesbian and gay parents in Florida. *Sexuality Research and Social Policy*, 10, 110–124; Park, N. K., Kazyak, E., & Slauson-Blevins, K. (2016). How law shapes experiences of parenthood for same-sex couples. *Journal of GLBT Family Studies*, 12(2), 115–137; Zhabenko, A. (2019). Russian lesbian mothers. Between “traditional values” and human rights. *Journal of Lesbian Studies*, 23(3), 321–335. Goldberg, A. E., Moyer, A. M., Weber, E. R., & Shapiro, J. (2013).

vulnerable, as they may not be entitled to alimony or inheritance, respectively, from their former/deceased parent.⁶⁶ Clearly, private arrangements cannot make up for the loss of fiscal benefits,⁶⁷ and put an additional strain on families, as their notarisation and regular renewal is time-consuming⁶⁸ and costly.⁶⁹

(b) The lack of legal recognition constitutes an additional psychosocial stressor for parents and their children

23. A hostile socio-legal climate has a psychological impact on both parents and children in LGBTI families, as they are well aware of the legal and societal vulnerability their family faces. Children experience worries and anxiety not only about their family's stability and their own well-being⁷⁰, but also about their parents, who might be subject to discriminatory treatment⁷¹.
24. Studies suggest that the existence of criminalising laws (e.g., of consensual same-sex relations or of "propaganda of homosexuality") also constitutes a chronic source of stress and anxiety for sexual minorities and their families.⁷² In countries with criminalising legislation, sexual minorities' fears are grounded in actual threats to their personal safety and well-being, with severe implications for their physical and mental health⁷³. This is also evident from a qualitative investigation on the impact of Russia's 'propaganda laws' on lesbian mothers⁷⁴ in which interviewed mothers expressed increased and existential anxiety about their children's safety and well-being, including their fear of having them taken away from them or being denied custody rights⁷⁵.
25. Conversely, legal recognition for LGBTI families has been found to foster family stability, normalcy, and security perceived by both children and parents⁷⁶, to alleviate parental fears regarding a partner's death, and to increase emotional bonds between family members⁷⁷.

(c) The lack of legal recognition exacerbates existing minority-related, psychosocial stressors for parents and their children

26. Sexual minorities face unique stressors due to the societal marginalisation of their sexual orientation.⁷⁸ These include victimisation and discriminatory treatment, but also behaviours and cognitions, such as concealment of one's sexual orientation or internalised negative beliefs about one's sexual orientation,⁷⁹ as discussed above. Hostile socio-legal climate has been found to elicit or exacerbate these minority stressors on individual and structural levels⁸⁰. These stressors impact parents and children

⁶⁶ Riggle, E. D., Rostosky, S. S., Prather, R. A., & Hamrin, R. (2005). The execution of legal documents by sexual minority individuals. *Psychology, Public Policy, and Law*, 11(1), 138–163.

⁶⁷ Pawelski, J. G., Perrin, E. C., Foy, J. M., Allen, C. E., Crawford, J. E., Del Monte, M., ... & Tanner, J. L. (2006).

⁶⁸ Gartrell, N., Rothblum, E. D., Koh, A. S., van Beusekom, G., & Bos, H. (2019).

⁶⁹ Riggle, E. D., Rostosky, S. S., Prather, R. A., & Hamrin, R. (2005); Goldberg, A. E., Moyer, A. M., Weber, E. R., & Shapiro, J. (2013); Short, L. (2007). Lesbian mothers living well in the context of heterosexism and discrimination: Resources, strategies and legislative change. *Feminism & Psychology*, 17(1), 57–74.

⁷⁰ A recent quantitative study from the US even suggests that a favorable socio-legal climate may affect the well-being of children in SGF into their adulthood. In this study, living in areas with a higher density of same-gender couples as well as anti-discrimination legislation was associated with higher well-being among adult children raised in SGF, regardless of their own sexual orientation. See Lick, D. J., Tornello, S. L., Riskind, R. G., Schmidt, K. M., & Patterson, C. J. (2012). Social climate for sexual minorities predicts well-being among heterosexual offspring of lesbian and gay parents. *Sexuality Research and Social Policy*, 9(2), 99–112.

⁷¹ Goldberg, A. E., Moyer, A. M., Weber, E. R., & Shapiro, J. (2013); Fairtlough, A. (2008). Growing up with a lesbian or gay parent. Young people's perspectives. *Health and Social Care in the Community*, 16(5), 521–528; Goldberg, A. E., & Kivalanka, K. A. (2012). Marriage (in)equality: The perspectives of adolescents and emerging adults with lesbian, gay, and bisexual parents. *Journal of Marriage and Family*, 74(1), 34–52.

⁷² Hylton, E., Wirtz, A. L., Zelaya, C. E., Latkin, C., Peryshkina, A., Mogilnyi, V., ... & Beyrer, C. (2017). Sexual identity, stigma, and depression: the role of the "anti-gay propaganda law" in mental health among men who have sex with men in Moscow, Russia. *Journal of Urban Health*, 94(3), 319–329; Schwartz, S. R., Nowak, R. G., Orazulike, I., Keshinro, B., Ake, J., Kennedy, S., ... Baral, S. D. (2015). The immediate effect of the Same-Sex Marriage Prohibition Act on stigma, discrimination, and engagement on HIV prevention and treatment services in men who have sex with men in Nigeria: Analysis of prospective data from the TRUST cohort. *The Lancet HIV*, 2, e299–e306, Zhabenko, A. (2019).

⁷³ For example, the passage of Russia's 'propaganda laws' has been linked to an increase in hate crimes related to sexual orientation or gender identity and depressive symptoms among sexual minority men. Schwartz, S. R., Nowak, R. G., Orazulike, I., Keshinro, B., Ake, J., Kennedy, S., ... Baral, S. D. (2015).

⁷⁴ Zhabenko, A. (2019).

⁷⁵ *Ibid.*

⁷⁶ These sentiments seem to be ubiquitous. For example, 93% of parents responding to the Health and Marriage Equality in Massachusetts survey felt that marriage has made their child happier and better off. See Ramos, C., Goldberg, N. G., & Badgett, L. M. V. (2009). *The effects of marriage equality in Massachusetts: A survey of the experiences and impact of marriage on same-sex couples*. The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Ramos-Goldberg-Badgett-MA-Effects-Marriage-Equality-May-2009.pdf>.

⁷⁷ Rawsthorne, M. (2012); Gartrell, N., Rothblum, E. D., Koh, A. S., van Beusekom, G., & Bos, H. (2019); Goldberg, A. E., Moyer, A. M., Weber, E. R., & Shapiro, J. (2013); Short, L. (2007); Goldberg, A. E., & Kivalanka, K. A. (2012); McClellan, D. (2001); Bacchus, R. (2018). "Go forth and wrestle with the legal system": Some perceptions and experiences of lesbian parents in rural Australia. *Australian Journal of Social Issues*, 53(1), 18–33; Crouch, S. R., McNair, R., & Waters, E. (2017). Parent perspectives on child health and wellbeing in same-sex families: Heteronormative conflict and resilience building. *Journal of Child and Family Studies*, 26(8), 2202–2214; Hosking, G., Mulholland, M., & Baird, B. (2015). "We are doing just fine": The children of Australian gay and lesbian parents speak out. *Journal of GLBT Family Studies*, 11(4), 327–350; Surtees, N. (2011). Family law in New Zealand: The benefits and costs for gay men, lesbians, and their children. *Journal of GLBT Family Studies*, 7(3), 245–263.

⁷⁸ Meyer, I. H. (2003). Prejudice, social stress, and mental health in lesbian, gay, and bisexual populations: Conceptual issues and research evidence. *Psychological Bulletin*, 129, 674–697.

⁷⁹ Berg, R. C., Munthe-Kaas, H. M., & Ross, M. W. (2016). Internalized homonegativity: A systematic mapping review of empirical research. *Journal of Homosexuality*, 63(4), 541–558.

⁸⁰ Meyer, I. H., & Frost, D. M. (2013). Minority stress and the health of sexual minorities. In C. J. Patterson & A. R. D'Augelli (Eds.), *Handbook of Psychology and Sexual Orientation* (pp. 252–266). Oxford University Press; Newcomb, M. E., & Mustanski, B. (2010). Internalized homophobia and internalizing mental health problems: A meta-analytic review. *Clinical Psychology Review*, 30(8), 1019–1029. For example, it has been linked to increased sexual orientation concealment (Pachankis, J. E., & Bränström, R. (2018). Hidden from happiness: Structural

in LGBTI families equally. Thus, in countries with prevailing stigmatisation or criminalisation of sexual orientation, children from LGBTI families report significantly higher rates of bullying with regard to their parents' sexual orientation.⁸¹ Bullying poses a significant risk to children's psychosocial development and educational attainment in general,⁸² but also exacerbates the situation when it is based on parental sexual orientation. It is linked to more behavioural and emotional problems,⁸³ causes reduced self-esteem⁸⁴ in children,⁸⁵ and constitutes a source of worries for their parents.⁸⁶ In addition, while hostile socio-legal climate exposes children in LGBTI families to a greater risk of bullying, it may also reduce their access to personal or professional support when being victimised.⁸⁷

4. Overview of the international human rights law standards on children of LGBTI parents

27. In relation to children of LGBTI parents and LGBTI children the UN **treaty bodies** have addressed: a) the right of same-sex couples to adopt children, including access to stepparent adoption⁸⁸ and filiation rights⁸⁹; b) childcare allowances for LGBTI parents⁹⁰; c) adequate and equal protection for children in heterosexual and same-sex families⁹¹; d) violence against LGBTI children and children from LGBTI families, including violence online, at home and in institutions⁹²; e) bullying against LGBTI children in schools⁹³; f) awareness-raising and educational programmes on LGBTI rights for children in schools⁹⁴; g) access of LGBTI children to mental health⁹⁵ and social services⁹⁶; and h) measures to combat discrimination against children from LGBTI families and LGBTI children, including affirmative actions⁹⁷.
28. The **Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity** (IE SOGI) identified the following problems relevant for children from LGBTI families in different parts of the world:

stigma, sexual orientation concealment, and life satisfaction across 28 countries. *Journal of Consulting and Clinical Psychology*, 86(5), 403–415; Pachankis, J. E., Hatzenbuehler, M. L., Hickson, F., Weatherburn, P., Berg, R. C., Marcus, U., & Schmidt, A. J. (2015). Hidden from health: structural stigma, sexual orientation concealment, and HIV across 38 countries in the European MSM Internet Survey. *AIDS*, 29(10), 1239–1246); and internalized homonegativity (Berg, R. C., Ross, M. W., Weatherburn, P., & Schmidt, A. J. (2013). Structural and environmental factors are associated with internalised homonegativity in men who have sex with men: Findings from the European MSM Internet Survey (EMIS) in 38 countries. *Social Science & Medicine*, 78, 61–69), as well as higher rates of victimization and threat (Hatzenbuehler, M. L., Bränström, R., & Pachankis, J. E. (2018). Societal-level explanations for reductions in sexual orientation mental health disparities: Results from a ten-year, population-based study in Sweden. *Stigma and Health*, 3(1), 16–26) in several large-scale, cross-sectional, and prospective studies with sexual minority youth and adults.

⁸¹ *Ibid.*

⁸² Moore, S. E., Norman, R. E., Suetani, S., Thomas, H. J., Sly, P. D., & Scott, J. G. (2017). Consequences of bullying victimization in childhood and adolescence: A systematic review and meta-analysis. *World Journal of Psychiatry*, 7(1), 60–76.

⁸³ Gartrell, N., Deck, A., Rodas, C., Peyser, H. and Banks, A. (2005) The National Lesbian Family Study: 4. Interviews with the 10-year-old children. *American Journal of Orthopsychiatry*, 75, 518–524; Koh, A. S., Bos, H. M., & Gartrell, N. K. (2019). Predictors of mental health in emerging adult offspring of lesbian-parent families. *Journal of Lesbian Studies*, 23(2), 257–278.

⁸⁴ Bos, H. M., & Van Balen, F. (2008). Children in planned lesbian families: Stigmatisation, psychological adjustment and protective factors. *Culture, Health & Sexuality*, 10(3), 221–236.

⁸⁵ In a related vein, bullying on grounds of sexual orientation has been found to negatively impact educational outcomes (e.g., school belonging), and mental health (e.g., levels of depression) in sexual minority youth, see Collier, K. L., Van Beusekom, G., Bos, H. M., & Sandfort, T. G. (2013). Sexual orientation and gender identity/expression related peer victimization in adolescence: A systematic review of associated psychosocial and health outcomes. *Journal of Sex Research*, 50(3-4), 299–317. Arguably, being bullied on grounds of one's own sexual orientation might be rooted in similar prejudicial attitudes and stereotypes (on part of the predator) as being bullied on grounds of parental sexual orientation.

⁸⁶ Gartrell, N., Rothblum, E. D., Koh, A. S., van Beusekom, G., & Bos, H. (2019); Herrmann-Green, L., & Herrmann-Green, M. (2008).

⁸⁷ Pawelski, J. G., Perrin, E. C., Foy, J. M., Allen, C. E., Crawford, J. E., Del Monte, M., ... & Tanner, J. L. (2006).

⁸⁸ See e.g., HRC (2019). *Concluding Observations: Czech Republic*, [CCPR/C/CZE/CO/4](#), paras. 11 and 13; CteeRC (2019). *List of Issues: Portugal*, [CRC/C/PRT/Q/5-6](#), para. 4; HRC (2018). *Concluding Observations: Bulgaria*, [CCPR/C/BGR/CO/4](#), paras. 11 and 12; CEDAW (2018). *Concluding Observations: Chile*, [CEDAW/C/CHL/CO/7](#), paras. 50 and 51; CEDAW (2018). *Concluding Observations: Luxembourg*, [CEDAW/C/LUX/CO/6-7](#), paras. 51 and 52; HRCe (2017). *List of Issues: Honduras*, [CCPR/C/HND/Q/2](#), para. 6; HRC (2017). *Concluding Observations: Italy*, [CCPR/C/ITA/CO/6](#), paras. 10 and 11; CEDAW (2017). *Concluding Observations: Monaco*, [CEDAW/C/MCO/CO/1-3](#), paras. 45 and 46.

⁸⁹ See e.g., CEDAW (2018). *Concluding Observations: Chile*, [CEDAW/C/CHL/CO/7](#), paras. 50 and 51; CEDAW (2018). *Concluding Observations: Luxembourg*, [CEDAW/C/LUX/CO/6-7](#), paras. 51 and 52.

⁹⁰ See e.g., CEDAW (2018). *List of Issues: Austria*, [CEDAW/C/AUT/Q/9](#), para. 21.

⁹¹ See e.g., CEDAW (2018). *Concluding Observations: Cyprus*, [CEDAW/C/CYP/CO/8](#), paras. 50 and 51; HRC (2017). *Concluding Observations: Italy*, [CCPR/C/ITA/CO/6](#), paras. 10 and 11.

⁹² See e.g., CteeRC (2019). *Concluding Observations: Australia*, [CRC/C/AUS/CO/5-6](#), paras. 29 and 30; CteeRC (2019). *List of Issues: Belarus*, [CRC/C/BLR/Q/5-6](#), para. 6; CteeRC (2019). *List of Issues: Bosnia and Herzegovina*, [CRC/C/BIH/Q/5-6](#), para. 4; CteeRC (2018). *Concluding Observations: Sri Lanka*, [CRC/C/LKA/CO/5-6](#), para. 16.

⁹³ See e.g., CEDAW (2017). General Recommendation no. 36 on girls' and women's right to education, [CEDAW/C/GC/36](#), paras. 45 and 46; CteeRC (2019). *Concluding Observations: Australia*, [CRC/C/AUS/CO/5-6](#), para. 43; CteeRC (2019). *List of Issues: Belarus*, [CRC/C/BLR/Q/5-6](#), para. 6; CESCRs (2018). *List of Issues prior to reporting: Ukraine*, [E/C.12/UKR/QPR/7](#), para. 29; HRCe (2018). *List of Issues: Lebanon*, [CCPR/C/LBN/Q/3](#), para. 4; CEDAW (2018). *Concluding Observations: Australia*, [CEDAW/C/AUS/CO/8](#), paras. 41 and 42; CEDAW (2018). *Concluding Observations: Fiji*, [CEDAW/C/FJI/CO/5](#), paras. 37 and 38; CEDAW (2018). *Concluding Observations: Luxembourg*, [CEDAW/C/LUX/CO/6-7](#), paras. 39 and 40; CEDAW (2018). *Concluding Observations: Malaysia*, [CEDAW/C/MYS/CO/3-5](#), paras. 35 and 36; CteeRC (2018). *Concluding Observations: Spain*, [CRC/C/ESP/CO/5-6](#), paras. 39 and 40.

⁹⁴ See e.g., CEDAW (2019). *Concluding Observations: Colombia*, [CEDAW/C/COL/CO/9](#), para. 44; CteeRC (2019). *Concluding Observations: Japan*, [CRC/C/JPN/CO/4-5](#), para. 18; CteeRC (2019). *Concluding Observations: Republic of Korea*, [CRC/C/KOR/CO/5-6](#), para. 42; CteeRC (2019). *Concluding Observations: Singapore*, [CRC/C/SGP/CO/4-5](#), para. 36; CteeRC (2018). *Concluding Observations: Argentina*, [CRC/C/ARG/CO/5-6](#), para. 14; CteeRC (2018). *List of Issues prior to reporting: Hungary*, [CRC/C/HUN/QPR/6](#), para. 25; CteeRC (2018). *Concluding Observations: Panama*, [CRC/C/PAN/CO/5-6](#), para. 16.

⁹⁵ CteeRC (2019). *Concluding Observations: Australia*, [CRC/C/AUS/CO/5-6](#), paras. 37 and 38.

⁹⁶ CteeRC (2019). *Concluding Observations: Guinea*, [CRC/C/GIN/CO/3-6](#), para. 17.

⁹⁷ See e.g., CteeRC (2019). *Concluding Observations: Italy*, [CRC/C/ITA/CO/5-6](#), para. 15; CteeRC (2019). *List of Issues: Portugal*, [CRC/C/PRT/CO/5-6](#), para. 16; CteeRC (2019). *Concluding Observations: Singapore*, [CRC/C/SGP/CO/4-5](#), para. 20; CteeRC (2017). *Concluding Observations: Ecuador*, [CRC/C/ECU/CO/5-6](#), para. 16.

- Abuse in educational settings, including teasing, name-calling, intimidation, physical violence, social isolation, cyberbullying, physical and sexual assault, and death threats, all in a manner disproportional to that affecting the general population. These abuses occur in classrooms, playgrounds and social areas, toilets and changing rooms, on the way to and from school and online. Such abuse will in turn affect participation in cultural and sport activities⁹⁸.
 - Exclusionary processes leading to a disproportionate representation of LGBTI people, as well as their dependents and children, within the homeless population⁹⁹.
 - Violence and discrimination in public spaces, as a sanction of a person's actions to publicly express certain sexual orientations and gender identities perceived by the agent of violence and discrimination to be transgressive. Expressions even extend to the most involuntary of settings, as is the case of the aggression suffered by children raised in families regarded as "non-traditional"¹⁰⁰.
29. A number of **Special Procedures** mandate holders have specifically addressed laws or bills prohibiting "gay propaganda" among minors. For example, communications regarding such legislation were sent to Russia and Kazakhstan, highlighting its negative effects on children' and adolescents' rights.¹⁰¹
30. At the European level, according to the **CoE Committee of Ministers**, the non-discrimination clause in Article 2 of the CRC must be understood as prohibiting discrimination in the enjoyment of rights by children, including discrimination on grounds of the child's parents' sexual orientation or gender identity.¹⁰² The **ECtHR** has repeatedly stated that the Convention rights, including the protection of family life, apply to *de facto* families.¹⁰³ In *Salgueiro da Silva Mouta v. Portugal*, the ECtHR specifically recognised **the right to protection of family life between a LGBTI parent and her or his child**.¹⁰⁴ In *Bayev v Russia*, the ECtHR acknowledged the commitment to family values by LGBTI community members and in so doing reinforced the notion that the right to "family life" would equally apply to them. The right to protection of family life is applicable in asylum cases when considering whether a State's removal decision would impact the stability of family life between a lesbian couple and their child.

5. *The situation of children of LGBTI parents in Russia*

31. The disproportionately negative impact of "anti-propaganda" laws adopted in Russia on LGBTI children and children of LGBTI families, such as harassment and violence towards LGBTI children, is well documented.¹⁰⁵ These laws fuel bullying of same-sex families and threats to deprive them of children, the growth of "everyday homophobia" towards same-sex families with children, and force a "double life" for children from LGBT families.¹⁰⁶ The "anti-propaganda" laws also deprive children of access to reliable and accurate information regarding sexual orientation and gender identity. Evidence shows that school psychologists and counsellors are afraid to provide counselling on LGBTI issues¹⁰⁷ due to the risk of administrative penalties.
32. The online survey conducted by the LGBT Organisation "Coming Out" in 2012–2013 revealed that the "anti-propaganda" laws affected LGBTI people's family lives especially in relation to raising children. For example, one of the respondents mentioned that "there are children, and we have to explain to them not to tell anybody that they have two mothers, in order to avoid bullying from children and adults at school or kindergarten"¹⁰⁸. The lack of any recognition of children in same-sex families also reportedly creates many practical problems for such children and their parents, including with medical institutions, schools or kindergartens, workplaces, immigration authorities, passport and citizenship services.¹⁰⁹
33. A number of international and regional human rights bodies have expressed their concerns on the legislation prohibiting "propaganda of unconventional sexual relationships" in Russia, **which encourages the stigmatisation of and discrimination against LGBTI persons, including children, and children from LGBTI families**. The CtteeRC has pointed out that the vague

⁹⁸ The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (2019). *Thematic report on socio-cultural and economic inclusion*, [A/74/181](#), para. 5.

⁹⁹ *Ibid.*, para. 15.

¹⁰⁰ *Ibid.*, paras. 29 and 30.

¹⁰¹ Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, [OL KAZ 5/2018](#), 7 November 2018; Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the situation of human rights defenders, [UA RUS 8/2012](#), 12 December 2012.

¹⁰² CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity. CoE Resolution 2239 (2018), entitled, „Private and Family life: achieving equality regardless of sexual orientation“, adopted by the Assembly on 10 October 2018: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25166&lang=en>

¹⁰³ See Eur. Ct. H.R., *Abdulaziz, Cabales and Balkandali v. United Kingdom*, App. No. 9214/80, 9473/81, 9474/81 (1985).

¹⁰⁴ Elena Falletti, "LGBTI Discrimination and Parent–Child Relationships: Cross-Border Mobility of Rainbow Families in the European Union", *Family Court Review*, Volume 52, Issue 1, February 2014. <https://doi.org/10.1111/fcre.12068>, Page 32.

¹⁰⁵ See e.g., Anti-discrimination Centre Memorial, *Coming Out & Russian LGBT Network* (2013). Implementation of the UN Convention on the Rights of the Child and Problem of Children from Vulnerable Groups (Russia): [Additional and updated information concerning the combined third and fourth periodic reports of the Russian Federation](#); Human Rights Watch (2013). [Submission to the United Nations Committee on the Rights of the Child on Russia](#); LGBT Organization "Coming Out" (2013). [The Situation of LGBT Children and Children of LGBT Families in St. Petersburg, Russia: Alternative submission for the Committee on the Rights of the Child](#); Russian LGBT Network (2013). [Commentary to the fourth and fifth periodic report by the Russian Federation: NGO alternative report](#).

¹⁰⁶ Anti-discrimination Centre Memorial, *Coming Out & Russian LGBT Network* (2013).

¹⁰⁷ Russian LGBT Network (2013).

¹⁰⁸ LGBT Organization "Coming Out" (2013).

¹⁰⁹ *Ibid.*

definitions of propaganda lead to the targeting and ongoing persecution of the country's LGBTI community, including through abuse and violence¹¹⁰. Similarly, in 2015, the **Human Rights Committee (HRC)** and the **Committee on the Elimination of Discrimination against Women (CEDAW)**¹¹¹ were concerned that these laws “exacerbate the negative stereotypes against LGBTI individuals and represent a disproportionate restriction of their rights”. the **Committee against Torture (CAT)** expressed concern regarding hate crimes against LGBTI persons having significantly increased since the introduction of these laws.¹¹² All these Committees have recommended Russia to repeal these laws¹¹³. In addition the CtteeRC has urged that Russia ensures “that children who belong to LGBTI groups or children from LGBTI families are not subjected to any forms of discrimination”.¹¹⁴

34. As was reported by civil society in the context of the Committee on Economic, Social and Cultural Rights' review of Russia in 2017, the “anti-propaganda” “has instilled in LGBTI parents “an atmosphere of fear and made its members vulnerable to threats from former spouses and other relatives to revoke or limit their parental rights, insofar as they subject children to ‘the influence of information which causes harm to their health and development’. Over the course of 2015-2016, 10 LGBTI parents reported to the Russian LGBT Network that they had experienced such threats. Additionally, LGBTI parents who have not been restricted in their parental rights but live separately from their children are often denied support from government agencies in the exercise of these parental rights”¹¹⁵. At the review's end, the Committee expressed concern regarding harassment in schools against LGBTI children or children of LGBTI families and recommended Russia to “implement a zero-tolerance policy against harassment in schools, paying particular attention to LGBT children or children of LGBT families, and ensure effective protection of victims and their families”¹¹⁶.
35. In a 2015 report, the Finnish Immigration Service acknowledged the real threats to LGBTI families and their children in Russia, stressing the close causal link with the adoption of the anti-propaganda laws, which are still in force.¹¹⁷ The Report indicates that “Finland and other Western countries can therefore expect a continuing influx of LGBTI asylum seekers from Russia. If the current situation continues, their number may even increase.”¹¹⁸ The report refers to ILGA-Europe figures that in 2012, Russia “was the worst country in Europe for sexual and gender minorities”¹¹⁹ and that the situation had worsened with the adoption of the “gay propaganda law”, which “fostered further social polarisation and increased violence”. In the context of a broader crackdown on human rights and the rule of law, discrimination and other forms of human rights violations against the LGBTI community are perpetrated in a climate of impunity and “generally go unpunished”¹²⁰. The situation is unchanged as in 2019, according to ILGA-Europe rainbow map¹²¹ looking at LGBTI equality laws and policies across Europe, Russia has an overall score of 10% and ranks 46th among 49 countries, and the Annual Review 2020 notes continued implementation of the anti-propaganda law.”¹²²
36. Amongst the negative impacts of the anti-propaganda law, the Finnish Immigration Service identified “charges against and convictions of private individuals and administrators of organisations” and “the deterrent effect of the law and its influence on public opinion”¹²³ further legitimising the violence against the LGBTI community.¹²⁴ Hence, “[it] is not possible to identify any specific at-risk groups among sexual and gender minorities on the basis of these sources; basically, everyone is equally at risk if information about them reaches the wrong people.”¹²⁵ The Finnish authorities noted that LGBTI parents are afraid that social services would take away their children from them.¹²⁶ A concrete example is Masha Gessen, an openly gay journalist, who was directly advised by her adoption attorney to leave the country because she was facing a real risk of losing her son, after she organised a campaign against the ‘gay propaganda law’¹²⁷. In another widely publicised case, in September 2019, a gay couple was forced to flee Russia after being targeted for raising two boys adopted by one of the partners. The family situation became known to the authorities as one of the children was taken to the emergency care and the doctor reported the parents

¹¹⁰ CtteeRC (2014). *Concluding observations: Russian Federation*, [CRC/C/RUS/CO/4-5](#), para. 24.

¹¹¹ CEDAW (2015). *Concluding observations: Russian Federation*, CEDAW/C/RUS/CO/8, paras. 41 and 42.

¹¹² CAT (2018). *Concluding observations: Russian Federation*, CAT/C/RUS/CO/6, paras. 32 and 33.

¹¹³ Human Rights Committee (2015). *Concluding observations: Russian Federation*, CCPR/C/RUS/CO/7, para. 10.

¹¹⁴ *Ibid*, para. 25.

¹¹⁵ Civil society coalition (2017). [List of issues related to the situation of lesbian, gay, bisexual and transgender persons and men who have sex with men in Russia](#).

¹¹⁶ Committee on Economic, Social and Cultural Rights (2017). *Concluding observations: Russian Federation*, [E/C.12/RUS/CO/6](#), paras. 56 and 57.

¹¹⁷ Finnish Immigration Service, “Current situation of sexual and gender minorities in Russia”, Country information Service, 10 April 2015. https://migri.fi/documents/5202425/5914056/60336_Suuntaus-raportti_LGBT_VenajallaEN-FINAL.pdf/e819db19-c0cb-45c1-9dd1-07450dc1cb4d/60336_Suuntaus-raportti_LGBT_VenajallaEN-FINAL.pdf [Hereinafter Finnish Immigration Service, Russia, 2015.]

¹¹⁸ Finnish Immigration Service, Russia, 2015, p.23.

¹¹⁹ Finnish Immigration Service, Russia, 2015, p. 2.

¹²⁰ Finnish Immigration Service, Russia, 2015, p.5.

¹²¹ ILGA-Europe's Rainbow Package: <https://www.ilga-europe.org/rainboweurope>, reflecting on region-wide and country specific legal, political and social developments, carried out over the past decade.

¹²² ILGA-Europe, Annual Review of the human rights situation of LGBTI people in Russia covering the period of January to December 2019, <https://www.ilga-europe.org/sites/default/files/2020/russia.pdf>

¹²³ Finnish Immigration Service, Russia, 2015, p.10.

¹²⁴ Finnish Immigration Service, Russia, 2015, p.12.

¹²⁵ Finnish Immigration Service, Russia, 2015, p.22.

¹²⁶ Finnish Immigration Service, Russia, 2015, p.12.

¹²⁷ Finnish Immigration Service, Russia, 2015, p.12.

to the authorities. The children were at risk to be taken away from the parents by social services and fathers were accused under the propaganda law¹²⁸.

37. Since 2013, several legislative and judicial developments have taken place in Russia further restricting the rights of and stigmatising LGBTI families and their children. In 2013, Russia's Family Code was amended to prohibit adoption or custody over children by same-sex couples¹²⁹. There have also been several court cases where LGBTI persons have been deprived of their rights towards biological or foster children in Russia in recent years. These cases are illustrative of patterns with explicit discriminatory attitudes by judiciary and custodial authorities affecting LGBTI families based on prejudicial approach¹³⁰.
38. On 4 March 2015, the Sovietsky District Court of the city of Astrakhan¹³¹ deemed legal the removal of custody from a Russian citizen on the sole basis that the petitioner was part of a same-sex union. At the time, the woman had been her child's guardian for three years, and the custody authorities had not expressed any dissatisfaction regarding her fulfilment of guardianship duties. The motivation of the court for depriving her of custody over the child was exclusively based her same-sex sexual orientation and being in a same-sex union.
39. In a more recent case, a couple, Y.S. and E.S., took two boys into their home as foster children in 2014. In 2017, Y.S. underwent a breast removal operation. Following a post on Instagram where Y.S. imagined life as a transgender man, a welfare administration conducted a surprise inspection of the couple's home, terminated the foster family contract and removed the two children, who were placed in a municipal institution for children without families. Y.S.'s claim challenging the decision to terminate the foster contract was dismissed on the basis that Y.S. had hidden the fact of undergoing "a surgery aimed at gender reassignment" and "represented herself as a man" in an Instagram post and thus had "ignored" the requirements for foster parents' "personality and moral standards" under Russian family law. In a later ruling, the Court identified Y.S. as having a "mental disorder" of "transsexualism" constituting a sufficient reason to terminate the foster family contract, and that Y.S. would enter into a same-sex marriage with E.S. and take a social role belonging to a male contradicting the Russian Family Code, Russian family law principles and Russian "society's traditions and mentality". Mandates of **four special procedures** communicated this case to the Russian authorities¹³². The children were not returned to Y.S. and the couple had to leave the country.
40. Recent opinion polls show that public acceptance of same-sex relationships is still very limited in Russia. A survey by the Levada Center, published in January 2018, for example, indicates that 83% of Russian respondents think it is "always reprehensible" or "almost always reprehensible" for two adults of the same sex to have sexual relations. Public opinion towards same-sex families and their children is becoming more hostile. It is worth noting that there was an increase in opposition to same-sex relationships among the Russian population, from 68% in 1998 to 76% in 2008.¹³³
41. According to the European Commission against Racism and Intolerance, there is no information about any awareness-raising activities targeting the general public concerning LGBTI issues organised by the Russian authorities¹³⁴.

6. Conclusion

42. The Interveners invite the CtteeRC to determine these principles in relation to the children in LGBTI families who are at heightened risk of irreparable harm especially in countries where LGBTI people face stigmatisation and discrimination on daily basis, and same-sex family relations prohibited. Especially where children are involved, States are under a duty to determine international protection claims in a manner that gives due regard to the best interests of the child principle, and ensures compliance with the *non-refoulement* principle.

¹²⁸ See e.g. Vachedin, D. (2019, August 12). Gay parents flee Russia with kids: 'The authorities can take children away'. Deutsche Welle. <https://www.dw.com/en/gay-parents-flee-russia-with-kids-the-authorities-could-take-the-children-away/a-49992847>; Coming Out. (2019, September 26). Moskovskaja gej-para s det'mi zaprosila politubezhishhe v SShA [Moscow gay couple with children seeks political asylum in the US]. <https://comingoutspb.com/news/moskovskaya-gej-para-s-detmi-zaprosila-politubezhishche-v-ssha/>.

¹²⁹ The current version of the Family Code excludes from adoption and custody "persons in a union concluded between persons of the same sex, recognized as a marriage and registered in accordance with the laws of a state in which such marriage is permitted". See The Federal Law of the Russian Federation no. 167-FZ of 2 July 2013.

¹³⁰ Union of Independent LGBT Activists of Russia (2015). [*Written submission related to discrimination and violence against lesbian, bisexual and transgender women in Russia: Submitted for the consideration of the 8th periodic report by the Russian Federation for the 62nd Session of the CEDAW.*](#)

¹³¹ Ibid, page 10.

¹³² Mandates of the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Working Group on the issue of discrimination against women in law and in practice, [AL RUS 9/2018](#), 9 May 2018.

¹³³ Council of Europe, ECRI REPORT ON THE RUSSIAN FEDERATION (Fifth monitoring cycle), 2019, CRI(2019)2, <https://rm.coe.int/fifth-report-on-the-russian-federation/1680934a91>. [Hereinafter ECRI Report on Russia 2019], §121 page 38.

¹³⁴