

Application No. 47220/19
IN THE EUROPEAN COURT OF HUMAN RIGHTS

BETWEEN
A.M. and Others,
Applicants
– and –
Russia,
Respondent

SUBMISSIONS ON BEHALF OF HUMAN RIGHTS WATCH

Michael Bochenek
Kyle Knight
Tanya Lokshina
Aisling Reidy

HUMAN RIGHTS WATCH
16-20 Ely Place
London EC1N 6SN

1. These written submissions are made by Human Rights Watch pursuant to article 36 § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights, ECHR) following the leave granted by the President of the Section under rule 44 § 3 of the Rules of the Court by letter dated 12 March 2020.¹

2. These submissions draw substantially on the interpretations by the United Nations treaty monitoring bodies of relevant international treaty provisions with regard to the best interests of the child, children’s right to preserve their family relations and to be free from arbitrary interference with their family, discriminatory stereotyping based on exclusionary perceptions of family, and the definition of family. The brief also draws on Human Rights Watch’s expertise and research regarding these issues from various regions, including on the experiences of children in Russia living under the “gay propaganda” law and its *sequelae*, and on scholarly research regarding the fitness of transgender people as parents and its relevance to the rights of children. Human Rights Watch urges the Court to take these arguments into consideration in its determination of whether the facts of the current case amount to a violation of the rights protected by the European Convention on Human Rights.

The relevance of international human rights principles and their authoritative interpretation by human rights treaty bodies

3. The ECHR rights at issue in this case are also protected under other human rights treaties, in some cases in terms that offer detailed guidance that is directly relevant to the issues at stake in this case. For instance, the principle that the best interests of the child should be a primary consideration in all matters affecting children, an aspect of the right to respect for family and private life guaranteed in article 8 of the ECHR,² is explicitly set forth as a right in article 3(1) of the Convention on the Rights of the Child (CRC) and is the subject of authoritative interpretation by the Committee on the Rights of the Child.³ This Court has explicitly acknowledged that “the positive obligations that Article 8 [of the ECHR] lays on the Contracting States in this matter, they must be interpreted in the light of the Convention on the Rights of the Child.”⁴ Similarly, the CRC expressly recognizes that children have the right as far as possible to “know and be cared for” by their parents (art. 7(1)); the right to preserve their family relations (art. 8(1)); the right, if separated from one or both parents, “to maintain personal relations and direct contact with both parents on a regular basis” unless contrary to their best interests (art. 9(3)); and the right to protection from arbitrary or unlawful interference with their family (art. 16), and it establishes the principle that both parents have joint responsibility for caring for their children, with appropriate support by the state (art. 18).

¹ The President’s directive provided that this submission should reach the Court by 9 April 2020. This submission is made after that date but is timely under this Court’s orders in response to the COVID-19 pandemic extending “[a]ll time-limits allotted in proceedings that are currently pending.” See European Court of Human Rights, “European Court of Human Rights Is Taking Exceptional Measures,” Press Release, Mar. 16, 2020 (one-month extension); European Court of Human Rights, “Extension of Exceptional Measures at the European Court of Human Rights,” Press Release, Apr. 9, 2020 (extension for a further two months).

² See *Strand Lobben and Others v. Norway*, Judgment, § 206, App. No. 37283/13 (Eur. Ct. H.R. Grand Chamber Sept. 10, 2019).

³ See, e.g., UN Committee on the Rights of the Child, General Comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration, U.N. Doc. CRC/C/GC/14 (May 29, 2013).

⁴ *Harroudj v. France*, Judgment, § 42, App. No. 43631/09 (Eur. Ct. H.R. Oct. 4, 2012). See also *Wagner and J.M.W.L. v. Luxembourg*, Judgment, §120, App. No. 76240/01 (Eur. Ct. H.R. June 28, 2007).

4. When several treaties address the same issue, they “should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations.”⁵ As this Court observed in *Banković v. Belgium*, “[t]he Convention should be interpreted as far as possible in harmony with other principles of international law of which it forms part.”⁶ This principle is particularly compelling where the other sources of international law are human rights treaties. Because all States party to the ECHR are also party to the CRC, along with the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), it is imperative that these treaties be construed in harmony.

The State’s obligation to consider children’s best interests

5. The best interest of the child should be a primary consideration in all matters that affect them, as provided in the CRC⁷ and under this Court’s jurisprudence.⁸ As this Court has stated, “[i]n instances where the respective interests of a child and those of the parents come into conflict, Article 8 requires that the domestic authorities should strike a fair balance between those interests and that, in the balancing process, particular importance should be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parents.”⁹

6. As the Inter-American Court of Human Rights observed in *Atala Riffo and Daughters v. Chile*, “the determination of the child’s best interest in cases involving the care and custody of minors must be based on an assessment of specific parental behaviors and their negative impact on the well-being and development of the child, or of any real and proven damage or risks to the child’s well-being and not those that are speculative or imaginary.”¹⁰

7. In 2010 the Council of Europe issued Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. It recommends: “Taking into account that the child’s best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a

⁵ See International Law Commission, 58th sess., Conclusions of the Work of the Study Group on the Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law (2006), concl. 4. See also *id.* concl. 42.

⁶ See *Banković and Others v. Belgium and Others*, Admissibility Decision, § 57, App. No. 52207/99 (Eur. Ct. H.R. Grand Chamber Dec. 12, 2001).

⁷ Convention on the Rights of the Child, art. 3(1), Nov. 20, 1990, 1577 U.N.T.S. 3. The Union of Soviet Socialist Republics (USSR) ratified the convention on August 16, 1990, and the Russian Federation remains a state party to the convention. See also Committee on the Rights of the Child, General Comment No. 14, ¶ 1; Committee on the Rights of the Child, General Comment No. 20 on the Implementation of the Rights of the Child in Adolescence, ¶ 22, U.N. Doc. CRC/C/GC/20 (Dec. 6, 2016); Committee on the Rights of the Child, General Comment No. 7: Implementing Child Rights in Early Childhood, ¶ 13, U.N. Doc. CRC/C/GC/7/Rev. 1 (Sept. 20, 2006).

⁸ *Strand Lobben*, § 202 (“the Court reiterates that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance”) (citing *Neulinger and Shuruk v. Switzerland*, Judgment, § 135, App. No. 41615/07 (Eur. Ct. H.R. Grand Chamber July 6, 2010)).

⁹ *Strand Lobben*, § 206 (citing *Sommerfeld v. Germany*, Judgment, § 64, App. No. 31871/96 (Eur. Ct. H.R. Grand Chamber July 8, 2003)). See also *Strand Lobben*, § 202 (“in cases involving the care of children and contact restrictions, the child’s interests must come before all other considerations”); *Jovanovic v. Sweden*, Judgment, § 77, App. No. 10592/12 (Eur. Ct. H.R. Oct. 22, 2015); *Gnahoré v. France*, Judgment, § 59, App. No. 40031/98 (Eur. Ct. H.R. Sept. 19, 2000).

¹⁰ *Atala Riffo and Daughters v. Chile*, Merits, Reparations, and Costs, Judgment, ¶ 109, Inter-Am. Ct. H.R. (ser. C) No. 239 (Feb. 24, 2012).

child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.”¹¹

Children’s rights to preserve their family relations and to be free from arbitrary interference with their family

8. As the Grand Chamber has recognized, “the mutual enjoyment by parent and child of each other’s company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by this provision.”¹² The right to family life under the ECHR is complemented by the detailed protections set forth in articles 7(1), 8(1), 9(3), 16, and 18 of the CRC and should be interpreted in light of those provisions.

9. Under this Court’s jurisprudence, an interference with family life “constitutes a violation of [article 8] unless it is ‘in accordance with the law,’ pursues an aim or aims that is or are legitimate under its second paragraph and can be regarded as ‘necessary in a democratic society.’”¹³ The Court has clarified that “[t]he notion of necessity further implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued, regard being had to the fair balance which has to be struck between the relevant competing interests.”¹⁴

10. The CRC and other international and regional human rights instruments recognize the family as a fundamental group unit of society, and, in particular, as essential in the upbringing of children and the protection of the rights of the child.¹⁵ The Committee on the Rights of the Child has observed that the preservation of family ties is “particularly relevant in cases where parents are separated and live in different places.”¹⁶ In striking the appropriate balance “in cases involving the care of children and contact restrictions,” this Court has concluded that “the child’s interests must come before all other considerations.”¹⁷

11. In similar terms, the Human Rights Committee has noted that among the special measures of protection to which children are entitled under article 24 of the ICCPR, in cases of dissolution of marriage, “steps should be taken, keeping in view the paramount interest of the children, to give them

¹¹ Council of Europe Committee of Ministers, Recommendation of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, CM/Rec(2010)5, 31 Mar. 2010, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a (viewed Mar. 26, 2020).

¹² *Strand Lobben*, § 202 (citing *K. and T. v. Finland*, Judgment, § 151, App. No. 25702/94 (Eur. Ct. H.R. Grand Chamber July 12, 2001); *Johansen v. Norway*, Judgment, § 52, App. No. 17383/90 (Eur. Ct. H.R. Aug. 7, 1996)).

¹³ *Strand Lobben*, § 202.

¹⁴ *Id.* § 203 (citing *Paradiso and Campanelli v. Italy*, Judgment, § 181, App. No. 25358/12 (Eur. Ct. H.R. Grand Chamber Jan. 24, 2017)).

¹⁵ Convention on the Rights of the Child, pmb. ¶¶ 5-6, art. 20; International Covenant on Civil and Political Rights art. 23(1), Dec. 16, 1966, 999 U.N.T.S. 171; American Convention on Human Rights arts. 17, 19, Nov. 22, 1969, 1144 U.N.T.S. 123; Convention for the Protection of Human Rights and Fundamental Freedoms art. 8, Nov. 4, 1950, E.T.S. No. 005; European Social Charter art. 16, Nov. 18, 1961, E.T.S. No. 35; European Social Charter (Revised) arts. 16, 17, Mar. 3, 1995, E.T.S. No. 163.

¹⁶ Committee on the Rights of the Child, General Comment No. 14, ¶ 70. *See also C.R. c. Paraguay*, Dictamen, ¶ 8.4, Comunicación Núm. 30/2017, Comité de los Derechos del Niño, U.N. Doc. CRC/C/83/D/2017 (Mar. 12, 2020); Committee on the Rights of the Child, Concluding Observations: Belarus, ¶ 26(d), U.N. Doc. CRC/C/BLR/CO/5-6 (Feb. 28, 2020) (calling on Belarus to “[e]nsure that the deprivation of parental rights is used as a last resort and solely in the best interests of the child”).

¹⁷ *Strand Lobben*, § 204 (citing *Jovanovic v. Sweden*, § 77; *Gnahoré v. France*, § 59).

necessary protection and, so far as is possible, to guarantee personal relations with both parents.”¹⁸ The Human Rights Committee also observes that the obligation under article 23 of the ICCPR to ensure “equality of rights and responsibilities of spouses as to marriage, during marriage *and at its dissolution*” (emphasis added) requires states to prohibit “any discriminatory treatment in regard to . . . child custody [or] visiting rights . . . bearing in mind the paramount interest of the children in this connection.”¹⁹

12. When authorities treat noncustodial parents differently on the basis of the noncustodial parents’ gender identity, they treat similarly situated persons differently. When similarly situated persons are treated differently, that differential treatment is discriminatory, in violation of article 14 of the ECHR, in the absence of an objective and reasonable justification.²⁰ Even accounting for the margin of appreciation afforded to states in conducting this analysis,²¹ differences based on gender identity or sexual orientation require particularly serious reasons by way of justification.²²

13. Protection of “family values” cannot meet the high burden required to justify differences based on gender identity. In the same way that limitations on the rights to freedom of expression, assembly, association, and freedom to manifest a religion or belief “for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition,”²³ protection of the family cannot be premised on an understanding of “family values” that values some families less than others.

14. In this regard, the Committee on the Rights of the Child has noted that “the [CRC] reflects different family structures arising from various cultural patterns and emerging familial relationships”²⁴ and observed that “a range of family patterns may be consistent with promoting children’s well-being.”²⁵ The Committee has clarified “that ‘family’ here refers to a variety of arrangements that can provide for . . . children’s care, nurturance and development, including the

¹⁸ Human Rights Committee, General Comment No. 17: Rights of the Child, ¶ 6, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1 (July 29, 1994), p. 25.

¹⁹ Human Rights Committee, General Comment No. 19: Protection of the Family, the Right to Marriage and Equality of the Sexes (1990), ¶ 9, in *Compilation of General Comments and General Recommendations*, p. 30. *See also id.* ¶ 8.

²⁰ *See Hämäläinen v Finland*, Judgment, § 108, App. No. 37359/09 (Eur. Ct. H.R. Grand Chamber July 16, 2014).

²¹ *See Burden v. the United Kingdom*, Judgment, § 60, App. No. 13378/05 (Eur. Ct. H.R. Grand Chamber Apr. 29, 2008); *D.H. and Others v. Czech Republic*, Judgment, § 175, App. No. 57325/00 (Eur. Ct. H.R. Grand Chamber Nov. 13, 2007).

²² *See Smith and Grady v. the United Kingdom*, Judgment, §§ 89, 90, App. Nos. 33985/96 and 33986/96 (Eur. Ct. H.R. Sept. 27, 1999); *L. and V. v. Austria*, Judgment, § 45, App. Nos. 39392/98 and 39829/98 (Eur. Ct. H.R. Jan. 9, 2003); *Karner v. Austria*, Judgment, § 37, App. No. 40016/98 (Eur. Ct. H.R. July 24, 2003); *X and Others v. Austria*, Judgment, § 99, App. No. 19010/07 (Eur. Ct. H.R. Grand Chamber Feb. 19, 2013); *Vallianatos and Others v. Greece*, Judgment, § 77, App. Nos. 29381/09 and 32684/09 (Eur. Ct. H.R. Grand Chamber Nov. 7, 2013). *See also Konstantin Markin v. Russia*, Judgment, § 127, App. No. 30078/06 (Eur. Ct. H.R. Grand Chamber Mar. 22, 2012).

²³ Human Rights Committee, General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion) (1993), ¶ 8 (1993), in *Compilation of General Comments and General Recommendations*, p. 37. *Accord* Human Rights Committee, General Comment No. 34: Freedoms of Opinion and Expression, ¶ 32, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) (adding that “[a]ny such limitations must be understood in the light of universality of human rights and the principle of non-discrimination). *See also* Human Rights Committee, General Comment No. 27: Freedom of Movement, ¶¶ 11, 18, U.N. Doc. C/21/Rev.1/Add.9 (Nov. 1, 1999) (limitations for the protection of public morals on freedom of movement must be consistent with all other rights set forth in the ICCPR and with the fundamental principles of equality and non-discrimination).

²⁴ Committee on the Rights of the Child, 40th sess., Day of General Discussion: Children without Parental Care, U.N. Doc. CRC/C/153 (Mar. 17, 2006), ¶ 644.

²⁵ Committee on the Rights of the Child, General Comment No. 7, ¶ 19.

nuclear family, the extended family, and other traditional and modern community-based arrangements, provided these are consistent with children’s rights and best interests.”²⁶ Similarly, the Human Rights Committee has stated that “the term ‘family’ . . . [should] be given a broad interpretation,”²⁷ and the Committee on the Elimination of Discrimination against Women notes that “families take many forms.”²⁸ This variety of families includes same-sex families, or family structures involving persons who do not necessarily define themselves as male or female.

15. This sentiment was also prominent in the Inter-American Court on Human Rights’ ruling in *Atala Riffo*: “The Court confirms that the American Convention does not define a limited concept of family, nor does it only protect a “traditional” model of the family. The Court made this point specifically with regard to the reasoning used by the Supreme Court of Chile regarding a lesbian woman’s biological children’s alleged need to grow in a “normally structured family that is appreciated within its social environment” and not in an “exceptional family.” The Inter-American Court concluded that this reasoning “reflects a limited, stereotyped perception of the concept of family, which has no basis in the [American] Convention, since there is no specific model of family.”²⁹

16. Furthermore, the state has a duty under the CRC to combat traditional and cultural attitudes, including “[t]raditional concepts of . . . gender norms,” when they impair children’s rights.³⁰ The Committee on the Rights of the Child has noted that “[a]lthough preservation of religious and cultural values and traditions as part of the identity of the child must be taken into consideration . . . [c]ultural identity cannot excuse or justify the perpetuation by decision-makers and authorities of traditions and cultural values that deny the child or children the rights guaranteed by the [CRC]”³¹ and has called on States to “ensure that they do not, in the name of traditional values, tolerate or condone violence, reinforce unequal power relations within family settings.”³² The committee has also used its concluding observations on States’ periodic reports to point out that traditional attitudes pose a barrier to the realisation of the prohibition on discrimination and the principle of the best interest of the child, in addition to the child’s right to be heard.³³

²⁶ *Id.* ¶ 15.

²⁷ Human Rights Committee, General Comment No. 16: The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation (1988), in *Compilation of General Comments and General Recommendations*, p. 22.

²⁸ Committee on the Elimination of Discrimination against Women, General Recommendation No. 29: Economic Consequences of Marriage, Family Relations and Their Dissolution, ¶ 16, U.N. Doc. CEDAW/C/GC/29 (Oct. 30, 2013). *See also* Committee on the Elimination of Discrimination against Women, General Recommendation No. 21: Equality in Marriage and Family Relations, ¶ 13, in *Compilation of General Comments and General Recommendations*, p. 94.

²⁹ *Atala Riffo*, Judgment, ¶ 145, Inter-Am. Ct. H.R. (ser. C) No. 239.

³⁰ Committee on the Rights of the Child, General Comment No. 20, ¶ 29. *See also id.* ¶ 30. A related obligation under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) obligates states parties, including the Russian Federation, to take all appropriate measures “to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices” based on stereotyped gender roles. CEDAW art. 5(a), Dec. 18, 1979, 1249 U.N.T.S. 13. (ratified by the USSR Jan. 23, 1981). In addition, as the Inter-American Court noted in a March 2020 decision, compliance with the principle of nondiscrimination includes the obligation to take positive measures to address stigmatization, prejudice, and negative perceptions directed at individuals on the basis of their gender identity, among other grounds. *Caso Azul Rojas Marín y Otros vs. Perú*, Sentencia, ¶¶ 89-93, Inter-Am. Ct. H.R. (ser. C) No. 402 (Mar. 12, 2020).

³¹ Committee on the Rights of the Child, General Comment No. 14, ¶ 57.

³² Committee on the Rights of the Child, General Comment No. 20, ¶ 50.

³³ *See, e.g.*, Committee on the Rights of the Child, Concluding Observations: Poland, ¶ 12, U.N. Doc. CRC/C/15/Add.31 (Jan. 15, 1995) (“traditional attitudes still prevailing in the country may not be conducive to the realization of the general

17. In similar terms, the Inter-American Court emphasized in *Atala Riffo* that “speculations, assumptions, stereotypes, or generalized considerations regarding the parents’ personal characteristics or cultural preferences regarding the family’s traditional concepts are not admissible,”³⁴ adding that “[a] determination based on unfounded and stereotyped assumptions about the parent’s capacity and suitability to ensure and promote the child’s well-being and development is not appropriate for the purpose of guaranteeing the legitimate goal of protecting the child’s best interest.”³⁵

18. Any definition of family that justifies limitations on children’s rights to preserve their family relations and to be free from arbitrary interference with their family by reference to tradition or culture will not fulfil the imperative to combat traditional and cultural attitudes that impair children’s rights.

Research regarding the fitness of transgender people as parents and its relevance to the rights of children

19. Scholarly research as well as analysis produced by groups of physicians, ethicists, and researchers find that a large number of transgender people are parents, and that children raised by a transgender parent or parents fare as well as their peers raised by cisgender parents.³⁶ While precise data for Russia are not available, studies conducted elsewhere show that between 25 and 50 percent of transgender people are parents.³⁷ Transgender people enter into parenting either by having children prior to transitioning or, after transitioning, through assistive reproductive methods or adoption. In these cases, in jurisdictions around the world, transgender people pursue becoming parents despite significant obstacles.

20. Developmental psychologists Samantha Tornello (United States) and Henny Bos (Netherlands) noted in a 2017 paper that transgender people who were parents pursued parenthood for a variety of reasons, with 25 percent of their study participants indicating that they pursued adoption “based on the desire to give back to children in need.”³⁸ A 2019 study showed that transgender people who were looking into adoption or foster care opportunities “experience heightened fears surrounding potential barriers to adopting and fostering, but also demonstrate remarkable willingness to adopt ‘hard to place’ children (i.e., children that have been historically overrepresented in the child welfare system).”³⁹

21. Timothy Murphy, a medical ethicist in the United States, concludes, “Cross-sex identification does not render people unfit as parents, because transgender identities do not undercut the ability to

principles of the Convention, including, in particular, article 2 (principle of non-discrimination), article 3 (principle of the best interest of the child) and article 12 (respect for the views of the child”).

³⁴ *Atala Riffo*, Judgment, ¶ 109, Inter-Am. Ct. H.R. (ser. C) No. 239.

³⁵ *Id.* ¶ 111.

³⁶ Rebecca L. Stotzer, Jody L. Herman, and Amira Hasenbush, “Transgender Parenting: A Review of Existing Research,” *The Williams Institute*, Oct. 2014, <https://escholarship.org/uc/item/3rp0v7qv> (viewed Apr. 4, 2020).

³⁷ *Id.*

³⁸ Samantha L. Tornello and Henny Bos, “Parenting Intentions Among Transgender Individuals,” *LGBT Health*, vol. 4 (2017), <https://doi.org/10.1089/lgbt.2016.0153> (viewed Apr. 2, 2020)

³⁹ Abbie E. Goldberg and Samantha Tornello, “Barriers to Adoption and Foster Care and Openness to Child Characteristics Among Transgender Adults,” *Children and Youth Services Review*, vol. 109 (2020), <https://doi.org/10.1016/j.chilyouth.2019.104699> (viewed Apr. 2, 2020).

understand the nature and consequences of pregnancy or necessarily interfere with the ability to raise children.”⁴⁰ He notes that many transgender people “pursue lives that are meaningful to them, [and those include] lives that sometimes include children.”⁴¹

22. Regardless of when, how, or why transgender people become parents, evidence shows the outcomes for their children match those of children of cisgender parents. Psychologist Amanda Veldorale-Griffin's 2016 examination of trans parents and their children's experiences showed that over half of the 48 adults who participated in the study told their children directly about their decision to transition, and relationships between children and their parents had positively improved or not changed since transition in the majority of families (37.5 percent of parents reported positive changes to their parent-child relationships; 35 percent reported no change in their relationships).⁴² In a review of 26 studies, including 6 from Europe, scholars concluded that “[c]hildren need continuing contact with their transitioning and non-transitioning parents, support through their parents’ own co-operation and the active involvement of the extended family.”⁴³

23. In a paper published by the European Society of Human Reproduction and Embryology Task Force on Ethics and the Law, a group of physicians and ethicists from the United Kingdom, the Netherlands, Spain, Germany, and Belgium weighed the ethics of transgender parenthood. While their discussion was specific to the ability of trans people to access reproductive technologies, their robust consideration of the rights and welfare of the children of transgender parents is instructive to the broader issue of trans people’s fitness to be parents. “In many countries, homosexuality and transsexualism are socially condemned. As a result, even though the inherent risks for the welfare of the child in these situations are low or only hypothetical, there is a risk of social harm to the children involved, in terms of stigma, exclusion, bullying, etc.,” they acknowledged. However, the group said:

This should not be used as an argument to categorically withhold medically assisted reproduction from lesbian, gay or transsexual applicants. The well-being of their children would improve considerably were same-sex relationships and transsexual people socially respected and their potential for competent parenthood recognized.⁴⁴

24. Medical and mental health professional organizations agree. According to the American Academy of Child and Adolescent Psychiatry:

All decisions relating to custody and parental rights should rest on the interest of the child. There is no evidence to suggest or support that parents who are lesbian, gay, bisexual, or transgender are per se *superior or inferior* from or deficient in parenting skills, child-centered concerns, and parent-child attachments when compared with

⁴⁰ Timothy Murphy, “The Ethics of Helping Transgender Men and Women Have Children,” *Perspectives in Biology and Medicine*, vol. 53 (2010), pp. 46-60, doi: 10.1353/pbm.0.0138 (viewed Apr. 2, 2020).

⁴¹ *Id.*

⁴² Amanda Veldorale-Griffin, “Transgender Parents and Their Adult Children’s Experiences of Disclosure and Transition,” *Journal of GLBT Family Studies*, vol. 10 (2014), <https://doi.org/10.1080/1550428X.2013.866063> (viewed Apr. 4, 2020).

⁴³ Trish Hafford-Letchfield, Christine Crocker, Deborah Rutter, Moreblessing Tinarwo, and Rebecca Manning, “What Do We Know About Transgender Parenting? Findings from a Systematic Review,” *Health and Social Care in the Community*, vol. 27 (2019), pp. 1111-25, <https://doi.org/10.1111/hsc.12759> (viewed Apr. 2, 2020).

⁴⁴ Guido de Wert et al., “ESHRE Task Force on Ethics and Law 23: Medically Assisted Reproduction in Singles, Lesbian and Gay Couples, and Transsexual People,” *Human Reproduction*, vol. 29 (2014), pp. 1859-1865, doi:10.1093/humrep/deu183 (viewed Apr. 2, 2020).

heterosexual parents. There is no *credible evidence that shows* that a parent's sexual orientation or gender identity will adversely affect the development of the child.⁴⁵

25. The American College of Obstetricians and Gynecologists (ACOG) states that:

The legal landscape around the civil, human, and reproductive rights of the LGBTQIA and gender nonconforming communities is constantly changing. The [ACOG] supports efforts to affirm and uplift these communities. The [ACOG] recognizes that unrestricted access to marriage and family building resources is essential to the health and well-being of these communities⁴⁶

26. Noting that “[m]any transgender, transsexual, and gender-nonconforming people will want to have children,” the World Professional Association for Transgender Health in fact advises in its Standards of Care that health care providers counsel transgender people on fertility issues before they undergo interventions that could compromise their ability to become a biological parent.⁴⁷ Drawing on these standards, a group of Swiss health care professionals advise doctors involved in medical decisions on gender transition to include biological parenting among the factors to be discussed with transgender patients as a routine matter.⁴⁸

27. These research findings make abundantly clear that being transgender has no bearing on a person’s fitness as a parent. Infringements on family life on the basis that a parent’s gender identity differs from their assigned sex at birth do not pursue a legitimate aim and are not necessary in a democratic society. Simply put, stigma and societal prejudice cannot be used as an excuse to deny transgender people their right to maintain contact with their children, and to deny children their right to preserve their family relations with a parent who is transgender.

The experiences of children in Russia living under the “gay propaganda” law and its *sequelae*

28. In order to understand their own sexuality and to make responsible choices children need access to information about sexuality that is science-based, non-judgmental, and takes into account the whole range of human intimacy.⁴⁹ When guidance at home or in school is limited, lesbian, gay,

⁴⁵ American Academy of Child and Adolescent Psychiatry, “Gay, Lesbian, Bisexual, or Transgender Parents,” 2009, https://www.aacap.org/AACAP/Policy_Statements/2008/Gay_Lesbian_Bisexual_or_Transgender_Parents.aspx (viewed Apr. 2, 2020).

⁴⁶ American College of Obstetricians and Gynecologists, “Committee Opinion No. 749: Marriage and Family Building Equality for Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, and Gender Nonconforming Individuals,” *Obstetrics & Gynecology*, vol. 132 (2018), https://journals.lww.com/greenjournal/FullText/2018/08000/ACOG_Committee_Opinion_No__749__Marriage_and.54.aspx (viewed Apr. 2, 2020).

⁴⁷ World Professional Association of Transgender Health, Standards of Care, version 7, 2012, https://www.wpath.org/media/cms/Documents/SOC%20v7/Standards%20of%20Care_V7%20Full%20Book_English.pdf (viewed Apr. 2, 2020).

⁴⁸ David Garcia et al., “Von der Transsexualität zur Gender-Dysphorie. Beratungs- und Behandlungsempfehlungen bei TransPersonen,” *Swiss Medical Forum*, vol.14 (2014), p. 386, <https://doi.org/10.5167/uzh-97330> (viewed Apr. 7, 2020).

⁴⁹ See, e.g., Committee on the Rights of the Child, General Comment No. 20, ¶¶ 33, 59, 60; Committee on the Rights of the Child, General Comment No. 4: Adolescent Health and Development, ¶ 26, U.N. Doc. CRC/GC/2003/4 (July 1, 2003); Committee on the Rights of the Child, General Comment No. 3: HIV/AIDS and the Rights of the Child, ¶ 16, U.N. Doc. CRC/GC/2003/3 (Mar. 17, 2003); Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health, ¶ 11, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000); Committee on Economic, Social and Cultural Rights, General Comment No. 22 on the Right to Sexual and Reproductive Health, ¶ 7, U.N. Doc. E/C.12/GC/22 (May 2, 2016).

bisexual, and transgender (LGBT) children turn to sources of uncertain quality for information about sexuality. The same is true of the children of LGBT parents, and indeed of all children. When the state does not support schools and parents to provide necessary information and guidance to children and instead acts to restrict health-related education and information, including on sexual and reproductive health, it violates children’s rights to information, education, and health.⁵⁰

29. But the availability and quality of online resources in Russia has been affected by the ban on “promotion of nontraditional sexual relations to minors,” colloquially referred to as “gay propaganda” law.⁵¹ Since enactment of the “gay propaganda” law in 2013, however, authorities have cracked down on online meeting spaces as well as websites that contain information on sexual orientation or gender identity or sexual health.⁵²

30. While Russian government officials and members of parliament claim that the goal of the “gay propaganda” law is to protect children from potentially harmful subject matter, the law directly harms children by denying them access to essential information and fostering stigma against LGBT children and their families.⁵³

31. For LGBT youth, isolation and exclusion can be as detrimental as bullying and can aggregate over time to create an unmistakably hostile environment. In recent years, psychologists have drawn attention to these types of incidents—or “microaggressions”—and the way they collectively function to adversely affect development and health.⁵⁴ When students experience stigmatization, hostility, and rejection over years of schooling, the cumulative effect can be devastating and long-lasting. Psychological research has suggested that “circumstances in the environment, especially related to stigma and prejudice, may bring about stressors that LGBT people experience their entire lives.”⁵⁵

32. Human Rights Watch’s research on the experiences of LGBT youth living under Russia’s gay propaganda law confirm these findings. Interviewees recounted experiences of abuse and discrimination, and the deleterious impact the relentless anti-LGBT rhetoric from public officials had on their mental health. The information environment created by the “gay propaganda” law skewed available sources toward inaccurate and stigmatizing portrayals of LGBT people’s lives.⁵⁶

33. In addition, mental health providers Human Rights Watch interviewed said the law interferes with their ability to offer honest, scientifically accurate, and open counseling services, leading some to self-censor themselves or set out explicit disclaimers at the start of sessions to avoid running afoul

⁵⁰ For a detailed analysis of these rights, see Human Rights Watch, *No Support: Russia’s “Gay Propaganda” Law Imperils LGBT Youth* (New York: Human Rights Watch, Dec. 2018), pp. 64-81, <https://www.hrw.org/report/2018/12/11/no-support/russias-gay-propaganda-law-imperils-lgbt-youth>.

⁵¹ Federal Law of June 29, 2013, No. 135-FZ (Russian Federation). In addition to the federal “gay propaganda” law, several regions, including Arkhangelsk, Ryazan, and St. Petersburg, have their own “gay propaganda” laws. See generally *Expression Abridged: A Legal Analysis of Anti-LGBT Propaganda Laws* (London: Thompson Reuters Foundation and IGLYO, 2018).

⁵² See, e.g., Human Rights Watch, *Online and on All Fronts: Russia’s Assault on Freedom of Expression* (New York: Human Rights Watch, July 2017), pp. 75-78, https://www.hrw.org/sites/default/files/report_pdf/russiafoe0717_web_2.pdf.

⁵³ See Human Rights Watch, *No Support*, pp. 18-19, 45-52.

⁵⁴ Kevin L. Nadal, *That’s So Gay! Microaggressions and the Lesbian, Gay, Bisexual, and Transgender Community* (Washington, D.C.: American Psychological Association, 2013).

⁵⁵ Ilan H. Meyer, “Resilience in the Study of Minority Stress and Health of Sexual and Gender Minorities,” *Psychology of Sexual Orientation and Gender Diversity*, vol. 2 (2015), p. 209.

⁵⁶ Human Rights Watch, “*No Support*,” pp. 26-44, 51-63.

of the law.⁵⁷ The law also discourages teachers and other professionals working for the public education system to have open discussions with children about sexual orientation and other pertinent issues.⁵⁸

The state’s responsibility to support parents

34. Parents and other caregivers play an important role in “providing security, emotional stability, encouragement and protection to children.”⁵⁹ Parents should fulfil this role by acting in their children’s best interests and respecting children’s evolving capacities.⁶⁰

35. States have “a positive and active obligation to support and assist parents and other caregivers” as they carry out these responsibilities.⁶¹ As the Committee on the Rights of the Child recommends, “States should adopt evidence-based interventions to support good parenting, including parenting skills education, support groups and family counselling”⁶²

Conclusion

36. International standards and this Court’s jurisprudence makes clear that decisions on visitation, custody, and other aspects of family life should take into account the individual children’s best interests as a primary consideration and should afford considerable protection for children’s rights to preserve their family relations and to be free from arbitrary interference with their family.

37. In the same way that it is improper to deny custody, limit visitation, or infringe on other aspects of family life on the basis of a parent’s sexual orientation, states may not restrict a parent’s contact with their children simply because the parent is transgender. Protection of “family values” does not justify differences in treatment based on gender identity because protection of the family cannot be premised on an understanding of “family values” that values some families less than others.

⁵⁷ *Id.*, pp. 57-61.

⁵⁸ *Id.*, pp. 26-34.

⁵⁹ Committee on the Rights of the Child, General Comment No. 20, ¶ 50. *See also* Committee on the Rights of the Child, General Comment No. 14, ¶ 67.

⁶⁰ Committee on the Rights of the Child, General Comment No. 14, ¶ 78.

⁶¹ Committee on the Rights of the Child, General Comment No. 13: The Right of the Child to Freedom from All Forms of Violence, ¶ 5, U.N. Doc. CRC/G/GC/13 (Apr. 18, 2011); Committee on the Rights of the Child, General Comment No. 20, ¶ 50. *See also* Convention on the Rights of the Child art. 18(2); Committee on the Rights of the Child, General Comment No. 15 on the Right of the Child to the Highest Attainable Standard of Health, ¶¶ 76, 78, U.N. Doc. CRC/C/GC/15 (Apr. 17, 2013).

⁶² Committee on the Rights of the Child, General Comment No. 14, ¶ 67. *See also* Committee on the Rights of the Child, General Comment No. 7, ¶ 20(c).