



Submission to Working Group on Discrimination Against Women in Law and in Practice

Lesbians, Bisexual Women and Trans Persons in the Family

Introduction

This written submission to the Working Group on Discrimination Against Women in Law and In Practice (the Working Group) was prepared by the International Gay and Lesbian Human Rights Commission (IGLHRC) in advance of the Working Group's research on family and cultural life. The submission focuses on the status and scope of "family" as a concept in international human rights law, children as constituting factors for the family, the prohibition of discrimination on the basis on sexual orientation and gender identity, and the role of discriminatory stereotyping in generating structural injustice in family policies and laws as they are applied to and lived by lesbians, bisexual women, and transgender (LBT) persons.

The Family in International Human Rights Standards

Several international and regional human rights documents establish the "family" as a fundamental unit of society, and, in particular, as essential in the upbringing of children and the protection of the rights of the child.¹ In June 2014, the Human Rights Council adopted a resolution for the protection of the family, stressing the importance of growth and support for all its members.²

Over the years, the understanding on what constitutes a family for the purposes of protection and rights has developed. The UN Committee on the Rights of the Child has clarified that "the Convention [on the Rights of the Child] reflects different family structures arising from various cultural patterns and emerging familial relationships."³

¹ Convention on the Rights of the Child, preambular paras. 5-6, article 20; American Convention on Human Rights, articles 17 and 19; European Convention on Human Rights, Article 8; European Social Charter, articles 16, 17.

² Human Rights Council resolution, "Protection of the Family," UN Doc. A/HRC/26/L.20/Rev.1, 25 June 2014.

³ Committee on the Rights of the Child, 40th Session, "Day of General Discussion: Children Without Parental Care," UN Doc. CRC/C/153 (2006), para 644.

The Committee has also made it clear “that ‘family’ [in the Convention] refers to a variety of arrangements that can provide for . . . children’s care, nurturance and development, including the nuclear family, the extended family, and other traditional and modern community-based arrangements, provided these are consistent with children’s rights and best interests.”⁴

Regional bodies, in particular the European Court on Human Rights and the Inter-American Court of Human Rights, have also made it clear either explicitly or implicitly in their rulings that the scope of provisions to protect “the family” includes a diversity of family structures, and that children’s interests and rights can be protected and nurtured in many different family environments.

For example, in 2012 the Inter-American Court of Human Rights ruled in a case concerning custody in same-sex families: “The Court confirms that the American Convention [on Human Rights] does not define a limited concept of family, nor does it only protect a ‘traditional’ model of the family.”⁵ The Court made this point in direct response to the reasoning used by the Supreme Court of Chile regarding a lesbian woman’s biological children’s alleged need to grow up in a “normally structured family that is appreciated within its social environment” and not in an “exceptional family.” The Court concluded that this reasoning “reflects a limited, stereotyped perception of the concept of family, which has no basis in the [American] Convention [on Human Rights], since there is no specific model of family.”⁶

Some States elevate one family form above others. This practice is not compatible with international human right norms, because it is linked to exclusion of and even violence against families that do not conform to the national ideal, or individual family members who do not conform to prevailing (and imposed) norms. Kinship models that defy prevailing norms are sometimes cast as a severe threat to the very existence of the State itself. These assumptions are often used to justify violence, exclusion, and even elimination of “unfit” families and individuals. Exclusion is evident in the many obstacles to family re-unification or marriage across borders (*see e.g.*, Israel’s Palestinian-Arab minority and the impossibility of re-unification “for security reasons”⁷). In some cases, exclusion even takes the form of ethnic cleansing or genocide. It is important to make connections between these restrictions of family rights and restrictions that affect families with members who do not gender conform, such as, for example, lesbians, bisexual women, and trans persons.

The fact is that international human rights standards allow for the coexistence of different, even conflicting, views on issues that carry intimate importance to each person,

⁴ Committee on the Rights of the Child, “General Comment No. 7: Implementing Child Rights in Early Childhood,” UN Doc. CRC/C/GC/Rev. 1 (2006), para. 15.

⁵ *Case of Atala Riffo and Daughters v. Chile*, Judgment of 24 February 2012 (Inter-Am. Ct. H.R.), para. 142.

⁶ *Id.*, para. 145.

⁷ Jonathan Lis, “Knesset set to extend law prohibiting reunification of Palestinian families in Israel,” Haaretz, July 17, 2014, <http://www.haaretz.com/news/diplomacy-defense/.premium-1.580463> (accessed on July 31, 2014).

including matters of family. In a ruling regarding in-vitro fertilization in Costa Rica, the Inter-American Court of Human Rights held that, where conflicting views exist about a particular issue, the State cannot give preference to one view in the implementation of human rights, because “this would imply imposing specific types of beliefs on others who do not share them.”⁸

The Working Group should apply this analysis to evaluations of the laws and practices that discriminate against subgroups of women in family life or within families. The prevalence of a specific vision of family or marriage in any given society cannot justify preference being given to this vision in the implementation of the right to privacy or in policies and laws about family life, generally, because this would imply imposing a specific type of belief on those who do not share it.

Children as Constituting Factors of the “Family”

Most treatment of the family in international human rights standards focus on the family unit as a key actor in upholding and guaranteeing the best interests of the child. As mentioned above, the Committee on the Rights of the Child has been very clear that the family, as such, is a broad concept, and that many different types of families can fulfill this role.

Another important consideration is that new reproductive technologies and models of parenthood have de-emphasized biological kinship. This has resulted in the decentering of biological (and even sexual) relations, permitting the creation of kinship and durable ties that constitute “family” outside of the biological and conjugal frame. Kinship and family, as concepts, are now open to community ties that cannot be reduced to biology.

These salient developments have tested the reach of existing family and privacy-related laws in national courts, radically redefining the contours of the family, through cases regarding surrogacy, adoption, in-vitro fertilization, sperm donor rights and obligations, etc. The Working Group could help provide criteria to direct these developments. It should be the goal of the Working Group to encourage a commonality of family law principles across national boundaries, principles that account for the diversity of family structures that reflect the reality of the twenty-first century.

The Prohibition of Discrimination: Sexual Orientation and Gender Identity

Sexual orientation is part of a person’s innermost and immutable identity.⁹ Since 1994, the Human Rights Committee has explicitly clarified that the general prohibition of

⁸ *Case of Artavia Murillo et al (“In Vitro Fertilization”) v. Costa Rica*, Judgment of 28 November 2012 (Inter-Am. Ct. H.R.), para. 185.

⁹ The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity define the term “sexual orientation” as “each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender of the same gender or more than one gender.” Yogyakarta Principles, available at http://www.yogyakartaprinciples.org/principles_en.htm (accessed on July 30, 2014).

discrimination in the International Covenant on Civil and Political Rights includes a prohibition of discrimination on the grounds of sexual orientation, and that laws and policies that perpetuate such discrimination therefore are of concern to the Human Rights Committee.¹⁰ For this reason, courts and other adjudicating bodies have been particularly careful in examining the motives for distinctions based on sexual orientation. The Human

¹⁰ See, e.g., Human Rights Committee, *Toonen v. Australia*, Views, Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992 (1994), para. 8.7; Human Rights Committee, *Young v. Australia*, Views, Communication No. 941/2000, UN Doc. CCPR/C/78/D/2000 (2003), para. 10.4; Human Rights Committee, *X v. Colombia*, Views, Communication No. 1361/2005, UN Doc. CCPR/C/89/D/1361/2005 (2007), para. 7.2; Human Rights Committee, 109th sess., *Concluding Observations: Mauritania*, UN Doc. CCPR/C/MRT/CO/1 (2013), para. 8; Human Rights Committee, 108th sess., *Concluding Observations: Albania*, UN Doc. CCPR/C/ALB/CO/2 (2013), para. 8; Human Rights Committee, 108th sess., *Concluding Observations: Finland*, UN Doc. CCPR/C/FIN/CO/6 (2013), para. 8; Human Rights Committee, 108th sess., *Concluding Observations: Ukraine*, UN Doc. CCPR/C/UKR/CO/7 (2013), paras. 8 and 10; Human Rights Committee, 107th sess., *Concluding Observations: Belize*, UN Doc. CCPR/C/BLZ/CO/1 (2013), para. 13; Human Rights Committee, 107th sess., *Concluding Observations: China (Hong Kong)*, UN Doc. CCPR/C/CHN-HKG/CO/3 (2013), para. 23; Human Rights Committee, 107th sess., *Concluding Observations: Paraguay*, UN Doc. CCPR/C/PRY/CO/3 (2013), para. 9; Human Rights Committee, 107th sess., *Concluding Observations: Peru*, UN Doc. CCPR/C/PER/CO/5 (2013), para. 8; Human Rights Committee, 106th sess., *Concluding Observations: Philippines*, UN Doc. CCPR/C/PHL/CO/4 (2012), para. 10; Human Rights Committee, 106th sess., *Concluding Observations: Turkey*, UN Doc. CCPR/C/TUR/CO/1 (2012), paras. 8 and 10; Human Rights Committee, 105th sess., *Concluding Observations: Armenia*, UN Doc. CCPR/C/ARM/CO/2 (2012), para. 10; Human Rights Committee, 105th sess., *Concluding Observations: Kenya*, UN Doc. CCPR/C/KEN/CO/3 (2012), paras. 8-9; Human Rights Committee 105th sess., *Concluding Observations: Lithuania*, UN Doc. CCPR/C/LTU/CO/3 (2012), para. 8; Human Rights Committee, 105th sess., *Concluding Observations: Maldives*, UN Doc. CCPR/C/MDV/CO/1 (2012), para. 8; Human Rights Committee 104th sess., *Concluding Observations: Dominican Republic*, UN Doc. CCPR/C/DOM/CO/5 (2012), para. 16; Human Rights Committee 104th sess., *Concluding Observations: Guatemala*, UN Doc. CCPR/C/GTM/CO/3 (2012), para. 11; Human Rights Committee 104th sess., *Concluding Observations: Turkmenistan*, UN Doc. CCPR/C/TKM/CO/1 (2012), para. 21; Human Rights Committee 104th sess., *Concluding Observations: Yemen*, UN Doc. CCPR/C/YEM/CO/5 (2012), para. 13; Human Rights Committee, 103rd sess., *Concluding Observations: Iran*, UN Doc. CCPR/C/IRN/CO/3 (2011), para. 10; Human Rights Committee, 103rd sess., *Concluding Observations: Jamaica*, UN Doc. CCPR/C/JAM/CO/3 (2011), paras. 8-9; Human Rights Committee, 103rd sess., *Concluding Observations: Kuwait*, UN Doc. CCPR/C/KWT/CO/2 (2011), para. 30; Human Rights Committee, 103rd sess., *Concluding Observations: Malawi*, UN Doc. CCPR/C/MWI/CO/1 (2011), para. 7; Human Rights Committee, 102nd sess., *Concluding Observations: Ethiopia*, UN Doc. CCPR/C/ETH/CO/1 (2011), para. 12; Human Rights Committee, 101st sess., *Concluding Observations: Mongolia*, UN Doc. CCPR/C/MNG/CO/5 (2011), para. 9; Human Rights Committee, 101st sess., *Concluding Observations: Togo*, UN Doc. CCPR/C/TGO/CO/4 (2011), para. 14; Human Rights Committee, 100th sess., *Concluding Observations: Poland*, UN Doc. CCPR/C/POL/CO/6 (2010), paras. 5 and 8; Human Rights Committee, 99th sess., *Concluding Observations: Cameroon*, UN Doc. CCPR/C/CMR/CO/4 (2010), para. 12; Human Rights Committee, 98th sess., *Concluding Observations: Mexico*, UN Doc. CCPR/C/MEX/CO/5 (2010), para. 21; Human Rights Committee, 98th sess., *Concluding Observations: Uzbekistan*, UN Doc. CCPR/C/UZB/CO/3 (2010), para. 22; Human Rights Committee, 83rd sess., *Concluding Observations: Greece*, UN Doc. CCPR/CO/83/GRC (2005), paras. 5 and 19; Human Rights Committee, 83rd sess., *Concluding Observations: Kenya*, UN Doc. CCPR/CO/83/KEN (2005), para. 27; Human Rights Committee, 82nd sess., *Concluding Observations: Poland*, UN Doc. CCPR/CO/82/POL (2004), paras. 5 and 18; Human Rights Committee, 81st sess., *Concluding Observations: Namibia*, UN Doc. CCPR/CO/81/NAM (2004), para. 22; Human Rights Committee, 79th sess., *Concluding Observations: Philippines*, UN Doc. CCPR/CO/79/PHIL (2003), para. 18; Human Rights Committee, 78th sess., *Concluding Observations: El Salvador*, UN Doc. CCPR/CO/78/SLV (2003), para. 16.

Rights Committee has repeatedly insisted that distinctions made between those in different-sex and those in same-sex couples must be “reasonable and objective.”¹¹ The European Court on Human Rights has been equally adamant on this point, requiring particularly “convincing and weighty”¹² reasons to justify distinctions in treatment resulting from an individual’s sexual orientation.

Gender identity has likewise been considered “one of the most basic essentials of self-determination,”¹³ and the Human Rights Committee has established that an individual’s gender identity cannot be a ground for discrimination.¹⁴ In early cases involving gender identity, adjudicating bodies at times recognized that States had more discretion (“margin of appreciation”) in decisions to change the originally recorded gender of transgender persons, to maintain such records confidential, or to enter later annotations or

¹¹ See, e.g., *Toonen v. Australia* paras. 8.5-8.6.

¹² *Case of Lustig-Prean and Beckett v. United Kingdom*, App. Nos. 31417/96 (Eur. Ct. H.R. 3d section 27 September 1999), para 10. See also *id.* Para 82 (“when the relevant restrictions concern ‘a most intimate part of an individual’s private life,’ there must exist ‘particularly serious reasons’ before such interferences can satisfy the requirements of Article 8.2 of the [European] Convention”); *Case of Smith and Grady v. United Kingdom*, App. Nos. 33985/96, 33986/96 (Eur. Ct. H.R. 3d section 27 September 1999) paras. 89, 110 (same); *Case of Perkins and R. v. United Kingdom*, App. Nos. 43208/98, 44875/98 (Eur. Ct. H.R. 4th section 22 October 2002) para 38 (investigation of servicemembers’ sexual orientation and their dismissal constituted direct interference in their private lives and could not be justified as “necessary in a democratic society”); *Case of Beck, Copp and Bazeley v. United Kingdom*, App. Nos. 48535/99, 48536/99, 48537/99 (Eur. Ct. H.R. 4th section 22 October 2002), para 51 (same).

¹³ *Case of Van Kück v. Germany*, App. No. 35968/97 (Eur. Ct. H.R. 3d section 12 June 2003), para. 73.

¹⁴ Human Rights Committee, 108th sess., *Concluding Observations: Finland*, UN Doc. CCPR/C/FIN/CO/6 (2013), para. 8; Human Rights Committee, 108th sess., *Concluding Observations: Ukraine*, UN Doc. CCPR/C/UKR/CO/7 (2013), paras. 8 and 10; Human Rights Committee, 107th sess., *Concluding Observations: Belize*, UN Doc. CCPR/C/BLZ/CO/1 (2013), para. 13; Human Rights Committee, 107th sess., *Concluding Observations: China (Hong Kong)*, UN Doc. CCPR/C/CHN-HKG/CO/3 (2013), para. 23; Human Rights Committee, 107th sess., *Concluding Observations: Paraguay*, UN Doc. CCPR/C/PRY/CO/3 (2013), para. 9; Human Rights Committee, 107th sess., *Concluding Observations: Peru*, UN Doc. CCPR/C/PER/CO/5 (2013), para. 8; Human Rights Committee, 106th sess., *Concluding Observations: Philippines*, UN Doc. CCPR/C/PHL/CO/4 (2012), para. 10; Human Rights Committee, 106th sess., *Concluding Observations: Turkey*, UN Doc. CCPR/C/TUR/CO/1 (2012), paras. 8 and 10; Human Rights Committee, 105th sess., *Concluding Observations: Armenia*, UN Doc. CCPR/C/ARM/CO/2 (2012), para. 10; Human Rights Committee, 105th sess., *Concluding Observations: Kenya*, UN Doc. CCPR/C/KEN/CO/3 (2012), para. 8; Human Rights Committee 105th sess., *Concluding Observations: Lithuania*, UN Doc. CCPR/C/LTU/CO/3 (2012), para. 8; Human Rights Committee 104th sess., *Concluding Observations: Dominican Republic*, UN Doc. CCPR/C/DOM/CO/5 (2012), para. 16; Human Rights Committee 104th sess., *Concluding Observations: Guatemala*, UN Doc. CCPR/C/GTM/CO/3 (2012), para. 11; Human Rights Committee 104th sess., *Concluding Observations: Turkmenistan*, UN Doc. CCPR/C/TKM/CO/1 (2012), para. 21; Human Rights Committee, 103rd sess., *Concluding Observations: Iran*, UN Doc. CCPR/C/IRN/CO/3 (2011), para. 10; Human Rights Committee, 103rd sess., *Concluding Observations: Jamaica*, UN Doc. CCPR/C/JAM/CO/3 (2011), para. 8; Human Rights Committee, 103rd sess., *Concluding Observations: Kuwait*, UN Doc. CCPR/C/KWT/CO/2 (2011), para. 30; Human Rights Committee, 101st sess., *Concluding Observations: Mongolia*, UN Doc. CCPR/C/MNG/CO/5 (2011), para. 9; Human Rights Committee, 100th sess., *Concluding Observations: Poland*, UN Doc. CCPR/C/POL/CO/6 (2010), para. 8.

amendments.¹⁵ The European Court on Human Rights, in particular, has later signaled its consciousness of the serious problems facing transsexuals and by 2002 concluded that States no longer could claim margin of appreciation in determining whether individuals should be enabled “to live in dignity and worth in accordance with the sexual identity chosen by them at great personal cost.”¹⁶ Recent legislative developments and national court cases have indicated a growing understanding that a person’s gender identity is indeed part of our very being and cannot be traded away as a condition for access to other rights or entitlements.¹⁷

Discriminatory Stereotyping and the Family

UN treaty monitoring bodies have acknowledged the existence of intersecting discrimination, that is, distinct discrimination because of intersecting factors of disadvantage. Treaty monitoring bodies—in particular the Committee on the Elimination of Discrimination against Women—as well as independent experts and Special Rapporteurs, have also increasingly applied analysis that highlights the link between stereotypes, stigma, and discrimination.

An analysis of intersecting discrimination acknowledges that women (and men) may experience discrimination due to the intersection of sex with other factors such as, for example, age, race, language, class, religion, marital status, sexual orientation, gender identity, gender expression, or intersex status. These factors combine to produce distinct forms of discrimination, such as, for example, the exclusion of gender non-conforming women in adoption procedures, the mutilation of intersex infants, or the coerced sterilization of transgender individuals as a condition for changing gender markers.

Ensuring freedom from discrimination requires states to take account of and address these intersecting forms of discrimination. Discrimination based on sexual orientation or

¹⁵ In 1992, the European Court on Human Rights found that French authorities’ refusal to update the applicant’s civil status to reflect her gender identity violated the right to privacy. See *B. v. France* App. No. 13343/87 (Eur. Ct. H.R. (plenary) 25 March 1992), para. 63 (concluding that “even having regard to the State’s margin of appreciation, the fair balance which has to be struck between the general interest and the interests of the individual... has not been attained.”) Further, in 1996, the European Court of Justice held that discrimination arising from gender reassignment was discrimination on the ground of sex, counter to Council Directive of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. *P. v. S. and Cornwall County Council*, Case No. C-13/94 (Eur. Ct. J. 30 April 1996).

¹⁶ *Case of Goodwin v. United Kingdom*, App. No. 28957/95 (Eur. Ct. H.R. Grand Chamber 11 July 2002), paras. 91 and 92.

¹⁷ See, e.g., Emily Schmall, “Transgender advocates hail law easing rules in Argentina,” *New York Times*, May 24, 2012, <http://www.nytimes.com/2012/05/25/world/americas/transgender-advocates-hail-argentina-law.html> (accessed on July 31, 2014); “India court recognizes transgender people as third gender,” *BBC World*, April 15, 2014, <http://www.bbc.com/news/world-asia-india-27031180> (accessed on July 31, 2014); “World must follow Denmark’s example after landmark transgender law,” *Amnesty International*, June 12, 2014, <http://www.amnesty.org/en/en/news/denmark-transgender-law-2014-06-12> (accessed on July 31, 2014).

gender identity are often most vehemently expressed with regard to family relations: distinctions in law and practice determining how the State values relationships between individuals, whether adults or children. Over the years, much of the jurisprudence from treaty monitoring bodies and regional human rights bodies about discrimination based on sexual orientation or gender identity focuses on family-related issues such as pension, health insurance, tenancy benefits for same-sex partners,¹⁸ custody or other parental rights,¹⁹ and adoption procedures.²⁰

Many differences in treatment based on sexual orientation and gender identity—especially with regard to family relations—have their root in stereotypes about gender roles, and stigma attached to persons who are seen to be, or identify as, lesbian, bisexual, or trans.

The Inter-American Court of Human Rights laid bare the link between such stereotypes and discrimination based on sexual orientation, specifically, in *Atala Riffo and daughters v. Chile*. In this case, the Court ruled that it was unreasonable for the Chilean courts to require a lesbian woman to put her lesbian identity on hold for the purposes of protecting her children from an unproven “harm”: “[This] implies using a ‘traditional’ concept of women’s social role as mothers according to which it is socially expected that women bear the main responsibility for their children’s upbringing and that in pursuit of this she should have given precedence to raising her children, renouncing an essential aspect of her identity.”²¹

Discriminatory stereotypes about what a family should look like ignore the reality that

¹⁸ See Human Rights Committee, *X v. Colombia*, Views, Communication No. 1361/2005, U.N. Doc. CCPR/C/89/D/1361/2005 (2007); Human Rights Committee, *Young v. Australia; P.B. and J.S. v. Austria*, App. No. 18984/02 (Eur. Ct. H.R. 1st Sec. 22 July 2010), para 30 (finding that the ruling in *Mata Estevez v. Spain*, Decision, App. No. 56501/00 (Eur. Ct. H.R. 4th Sec. 10 May 2010), which held that “long-term homosexual relationships between two men do not fall within the scope of the rights to respect for family life protected by Article 8 of the Convention,” is “artificial to maintain” and concluding instead that “the relationship of the applicants, a cohabitating same-sex couple living in a stable de fact partnership, falls within the notion of ‘family life,’ just as the relationship of a different-sex couple in the same situation would”); *Kozak v. Poland*, App. No. 13102/02 (Eur. Ct. H.R. 4th Sec. 2 March 2010), para 99 (“a blanket exclusion of persons living in a homosexual relationship from succession to a tenancy cannot be accepted by the Court as necessary for the protection of the family viewed in the traditional sense Nor have any convincing or compelling reasons been advanced by the Polish Government to justify the distinction in treatment of heterosexual and homosexual partners at the material time.”); *Karner v. Austria*, App. No. 40016/98 (Eur. Ct. H.R. 1st Sec. 24 July 2003) paras 33, 42-43 (similar).

¹⁹ See *Salgueiro da Silva Mouta v. Portugal*, App. No. 33290/96 (Eur. Ct. H.R. 4th Sec. 21 December 1999) paras. 35-36; *J.M. v. United Kingdom*, App. No. 37060/06 (Eur. Ct. H.R. 4th Sec. 28 September 2010) paras 55-58; *Case of Atala Riffo and Daughters v. Chile*, Judgment of 24 February 2012 (Inter-Am. Ct. H.R.).

²⁰ See *E.B. v. France*, App. No. 43546/02 (Eur. Ct. H.R. Grand Chamber 22 January 2008), paras 88, 94, 96 (the “sexual orientation [of an application for authorization to adopt a child] was consistently at the centre of deliberations in her regard and omnipresent at every stage of the administrative and judicial proceedings,” and the government’s stated reasons for refusal of authorization “cannot be regarded as particularly convincing and weighty.”)

²¹ *Atala Riffo and Daughters v. Chile*, paras 139, 140.

multiple types of families already exist, and—specifically—that lesbians, bisexual women, and trans persons already are family members. Research coordinated by the International Gay and Lesbian Human Rights Commission (IGLHRC) from Japan, Malaysia, Pakistan, the Philippines, and Sri Lanka shows that the family in many cases is the primary perpetrator of direct violence and exclusion against LBT persons, in particular those who do not conform to gender norms.²²

Moreover, millions of LBT persons around the world are already caregivers, spouses, and parents. The reality is that many lesbians, bisexual women, and trans persons do bear primary responsibility for raising children. The belief that LBT persons are not as capable as heterosexual women or cisgender persons of raising well-balanced, healthy and happy children is a common, and damaging, stereotype, that is contradicted by studies on the wellbeing of children in same-sex and trans-inclusive families.²³ In fact, studies show that children need parental support and love to thrive, and that parents' sexual orientation or gender expression is irrelevant to this support and love.²⁴

In its examination of this issue, it will be important for the Working Group to address laws and practices that require persons to choose between his or her sexual orientation or gender identity and right to form a family, and the discriminatory stereotypes that are at the basis of this. Such policies might include laws that only allow married couples to adopt children (instead of focusing, as required by the Convention on the Rights of the

²² "Violence: Through the Lens of Lesbians, Bisexual Women and Trans People in Asia," (New York: IGLHRC, 2014) at <http://iglhrc.org/content/violence-through-lens-lbt-people-asia> (accessed on July 31, 2014).

²³ Allan, M. and Burrell, N., "Comparing the Impact of Homosexual and Heterosexual Parents of Children: Meta-Analysis of Existing Research," 32 *Journal of Homosexuality* 19 (1996); Biblarz, T.J., Stacey, J., "How Does the Gender of Parents Matter?," 72 *Journal of Marriage and Family* 3–22 (2010); Chan, R., Raboy, B. and Patterson, C., "Psychosocial Adjustment among Children Conceived via Donor Insemination by Lesbian and Heterosexual Mothers," 69 *Child Development* 443 (1998); Millbank, J., "From Here to Maternity: A Review of the Research on Lesbian and Gay Families," 38 *Australian Journal of Social Issues* 541–600 (2003); Patterson, C., "Children of Lesbian and Gay Parents," 63 *Child Development* 1025 (1992); Patterson, C. and Chan, R., "Gay fathers," in Michael Lamb, *The Role of the Father in Child Development* (3rd ed. 1997); Patterson, C., and Chan, R., "Families Headed by Lesbian and Gay Parents," in Michael Lamb, ed., *Parenting and Child Development in "Nontraditional" Families* (1999), p. 167; Patterson, C., "Families of the Lesbian Baby Boom: Parent's Division of Labor and Child Adjustment," 31 *Developmental Psychology* 115 (1995); Patterson, C., "Family Lives of Children Born to Lesbian Mothers," in Patterson and D'Augelli, *Lesbian, Gay and Bisexual Identities in Families* (1998), p. 161; Patterson, C., "Family Relationships of Lesbians and Gay Men," 62 *Journal of Marriage and the Family* 1052, 1064 (2000); Committee on Psychosocial Aspects of Child and Family Health, "Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents," 109 *Pediatrics* 341–344 (2002); Silverstein, L. and Auerbach, C., "Deconstructing the Essential Father," 54 *American Psychologist* 397, note 30 (1999); Tasker, F. and Golombok, S., "Children Raised by Lesbian Mothers: The Empirical Evidence," *Family Law* 184 (1991); Wainright, J.L., Russell, S.T., and Patterson, C.J., "Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same-Sex Parents," 75 *Child Development* 1886–1898 (2004).

²⁴ See Biblarz, T.J., Stacey, J., "How Does the Gender of Parents Matter?," 72 *Journal of Marriage and Family* 3–22 (2010); Patterson, C.J., "Lesbian and gay parents and their children: summary of research findings," in *Lesbian and Gay Parenting* (American Psychology Association: Washington, DC, 2005); van Gelderen, L., Bos H, Gartrell N, et al, "Quality of Life of Adolescents Raised from Birth by Lesbian Mothers," in *Journal of Development & Behavioral Pediatrics* 33(1), pp. 1–7.

Child, on the best interests of the child), domestic violence protections that ignore violence directed at family members because of their real or perceived sexual orientation or gender identity, or domestic violence services that do not cater to or even accept trans persons or women who have suffered violence at the hands of same-sex partners.

It will also be critical for the Working Group to acknowledge that LBT persons, and women who do not conform to culturally determined gender norms, are at heightened risk of violence and coercion from family members,²⁵ who may seek to force them into heterosexual marriages, attempt to “cure” them, or otherwise seek to punish them for not conforming to expectations about sexual orientation and gender expression.

Conclusion

International human rights standards already protect a diversity of families and kinship structures, and reject discriminatory stereotypes about lesbians, bisexual women, and transgender persons as they relate to the family. International human rights standards highlight the need for the protection of all members within the family, including children, and place emphasis on the best interests of the child as unrelated to the constituent parts of the family the child resides in. Medical and scientific developments constantly expand the possibility for legal kinship structures that are not related to biology, testing the limits of human rights protections. All of these issues should be reflected in the Working Group’s deliberations on good practices in the elimination of discrimination against women in family and cultural life.

²⁵ See e.g. Grace Poore, “Indonesian LBT Women Exposed to Backlash,” Women E-News, August 21, 2012, <http://womensenews.org/story/lesbian-and-transgender/120820/indonesian-lbt-women-exposed-backlash#.U8fk8VadpTI> (accessed on July 31, 2014).