



Input to Human Rights Council resolution 29/22 on the protection of the family International Lesbian and Gay Association

We would like to thank the High Commissioner for the opportunity to make this submission in preparation for his report on *‘the impact of the implementation by States of their obligations under relevant provisions of international human rights law with regard to the protection of the family, and on the contribution of families in realizing the right to an adequate standard of living for their members, particularly through their role in poverty eradication and in achieving sustainable development’*.

We wish to take this opportunity to remind the High Commissioner of the role of LGBTI persons and their families in achieving these goals. A human rights-based approach to poverty eradication and sustainable development, which aims to achieve an adequate standard of living for all, must effectively protect the rights of LGBTI persons and their families as established under international human rights law.

Protection of Same-Sex Families Under International Human Rights Law

Article 10(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes that “the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.” The principle of non-discrimination as defined in Article 2(2) requires that the scope and application of the rights enshrined in this Covenant do not make any distinction on the grounds of sexual orientation. Furthermore, the principle of non-discrimination on grounds of sexual orientation has also been recognized in general comments on the rights to work, water, social security and the highest attainable standard of health.¹

The nature of the family has not been explicitly defined in international human rights law and the application of article 10 on the protection of the family and 11 on the right to an adequate standard of living as enshrined in the ICESCR, informed by the principle of non-discrimination established in Article 2, establishes broad protection of the rights of families, including same-sex families and their children. Additionally, a recent report of the Working Group on the issue of discrimination against women in law and practice establishes that the term “diverse families” encompasses families comprising lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons. It is also in the opinion of the Working Group that the “understanding and legal definition of the family in national legislation should be extended to recognize different forms of family”.² Moreover, the Committee on Economic, Social and Cultural Rights has expressed concern in several concluding observations about the absence of a legal framework for the protection of the rights of same-sex couples.³

The lack of legal recognition of same-sex families violates this principle of non-discrimination through the denial of rights, benefits, and privileges that are accorded to opposite-sex couples. This also fails to fulfill the wide protection and assistance that should be accorded to the family under Article 10, but also impedes poverty eradication and the achievement of the sustainable development goals.

¹ See general comments No. 18 (E/C.12/GC/18) (right to work), para. 12 (b) (i); No. 15 (E/C.12/2002/11) (right to water), para. 13; No. 19 (E/C.12/GC/19) (right to social security), para. 29; and No. 14 (E/C.12/2000/4) (right to the highest attainable standard of health), para. 18.

² A/HRC/29/40, paras 23,25 – Report of the Working Group on the issue of discrimination against women in law and in practice

³ See concluding observations on Japan (E/C.12/JPN/CO/3, para 10), Mongolia (E/C.12/MNG/CO/4, para 13), Bulgaria (E/C.12/BGR/CO/4-5, para 17), and Slovakia (E/C.12/SVK/CO/2, para 10).

LGBTI Families and Poverty Eradication

Recalling Resolution 29/22 which notes with concern that the ‘contribution of the family in society and in the achievement of development goals continues to be largely overlooked and underemphasized’, we remind the High Commissioner that the achievement of these goals may not be realized if the most vulnerable families, including but certainly not limited to same-sex-parented households, are not taken into consideration.

Poverty eradication is one of the top priorities of the post-2015 development agenda. Given that LGBTI persons have been recognized as a group extremely vulnerable to poverty⁴, a comprehensive and inclusive global strategy focusing on the achievement of poverty eradication, with a special focus on the contribution of the family in achieving this objective, must consider the role of LGBTI persons and their families. This brief submission specifically focuses on two areas: discrimination in the areas of housing and employment, and the impacts of such discrimination on the achievement of an adequate standard of living for LGBTI persons and their families.

Employment Discrimination

Ensuring full and productive employment and decent work for all members of society is a way to foster inclusive and sustainable economic growth, reduce poverty, and guarantee the protection of all families and their members. Employment laws frequently recognize that families have certain special needs, and family members are offered benefits such as parental leave to ensure that they are able to both work and focus on raising their children. These employment benefits are frequently not available to LGBTI persons and their families.⁵

The lack of legal recognition of same-sex partnerships reduces the economic strength of these families by denying access to safety net programs, providing one additional barrier to realizing the right to an adequate standard of living. Additionally, without anti-discrimination protection, same-sex partners can be treated unfairly by private actors, including health-care providers and insurance companies.⁶ Limiting access to healthcare has clear negative health and economic impacts on these families and their children.

Housing Discrimination and Homelessness

In jointly setting-up homes, LGBTI persons often face discrimination in obtaining safe, secure, and affordable housing that gender-conforming and/or same-sex couples do not face. As noted by the Special Rapporteur on adequate housing, discrimination has resulted in LGBT persons being “disproportionately affected by inadequate housing and homelessness”.⁷ Additionally, on a visit to Indonesia, the Special Rapporteur received reports of several cases of forced evictions of LGBT people by private landlords in various regions across Indonesia⁸. The ability to earn a living can be compromised when a person has been relocated following a forced eviction and can seriously impact the rights of their children. Forced evictions threaten LGBTI families’ and their children’s right to personal security and may result in children’s schooling being interrupted or completely stopped. This has consequent impacts on the eradication of poverty.

Homelessness is a heightened issue for LGBTI persons compared to the general population. Specifically, there are examples of intersex youth who, in the face of personal shame exacerbated by discrimination and rejection from

⁴ See A/HRC/29/23, para. 42 and A/HRC/23/36/Add.2, para. 61

A/HRC/23/36/Add.3 - Report of the Special Rapporteur on extreme poverty and human rights, Ms. Magdalena Sepúlveda Carmona Addendum Mission to Namibia: comments by the State on the report of the Special Rapporteur

⁵ A/HRC/19/41 - High Commissioner’s Report on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity

⁶ A/HRC/29/23, para. 68 - High Commissioner’s Report on discrimination and against individuals based on their sexual orientation and gender identity

⁷ A/69/274 - Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (7 August 2014)

⁸ A/HRC/25/54/Add.1 - Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Indonesia (26 December 2013)

family members, feel neither safe nor welcome in the family home, and either are thrown out or find staying at home intolerable. With no independent resources, intersex persons find themselves homeless. In East Asia, intersex adults who are “outed” in their neighbourhood will sometimes leave their parents’ home in order to save “face” for their parents and escape the daily public shame of living openly in the family environment.⁹

In light of this, we suggest that the High Commissioner’s report on the protection of the family should include information on laws, policies, and practices that perpetuate discrimination by State and non-State actors in access to adequate housing of LGBTI persons and their families.

Human Rights Violations Perpetrated by the Family

The State’s responsibility to protect individuals from discrimination “extends to the family sphere, where rejection and discriminatory treatment of and violence against LGBTI family members can have serious, negative consequences for the enjoyment of human rights”.¹⁰

For LGBTI persons, especially LGBTI youth and children, the family may negatively impact their right to an adequate standard of living. While the family may promote values that are consistent with human rights and gender equality, it can also become the site of discrimination and abuse. While families and communities may play a key role in providing support for its members, discriminatory attitudes within families and communities may also inhibit the ability of its members, especially LGBTI persons, from enjoying the full range of human rights. This discrimination within families manifests itself in various ways and has a serious impact on the eradication of poverty. LGBTI individuals are excluded from family homes, disinherited and prevented from going to school. They are sent to psychiatric institutions, forced to marry, forced to relinquish children, punished for activist work and subjected to attacks on personal reputation.¹¹

Recently, a gay man was committed to psychiatric care by his family, and forced to receive treatment for sexual preference disorder after he came out of the closet to his family and filed for divorce with his wife.

In positive steps, groups of parents of LGBTI persons in various parts of the world are fighting for the equal rights of and participation in development of their children. These are parents who had formerly discriminated against their own children, detaining or abusing them, or sending them to mental health centres for corrective therapy. Realising now that there was nothing wrong with the children, they share their stories with other parents and LGBTI people, hoping to prevent the same mistakes they had made in the past.¹²

Pressure to conform to gender norms and heteronormative standards is strongly enforced in the home and those who deviate from these ideas may become targets of physical or psychological abuse from both members within and individuals outside of the family. A recent report submitted to the Committee against torture emphasizes the dangers that this environment of impunity can have on LGBTI persons by emboldening their family members who feel shamed by the real or perceived LGBTI status of their relatives to resort to violent acts such as honor killings as a means to restore their family’s reputation.¹³ It is imperative that such abuses are documented in order to create strategies and policies aimed towards eliminating this type of abuse.

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⁹ Information provided by OII-Chinese

¹⁰ A/HRC/29/23, para 66 - High Commissioner’s Report on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity

¹¹ A/HRC/29/23 - High Commissioner’s Report on discrimination and against individuals based on their sexual orientation and gender identity

¹² Information received from PFLAG-Viet Nam

¹³ Living With Fear: Torture and Discrimination Committed Against LGBT Persons in Iraq. Report submitted to the Committee against Torture for its review of Iraq during its 55th Session, held in July 2015. Submitted by The International Women’s Human Rights (IWHR) Clinic at the City University of New York (CUNY) School of Law, MADRE, The International Gay and Lesbian Human Rights Commission (IGLHRC), and was written in collaboration with local Iraqi women’s human rights organizations that wish to remain anonymous.