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Submitted by LGBT Group “Stimul”

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Submission on the rights of Russian same-sex families with children

For the adoption of

List of Issues

Submitted to the Committee on the Elimination of Discrimination against Women

Pre-sessional Working Group for the 78th session (13-17 July 2020)

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Table of Contents

Executive Summary.....	2
Suggested Questions for the List of Issues to the Russian Federation	2
1. Russian same-sex families: General situation	3
2. Nationality of children born in Russian same-sex families: Case description	5
3. Relevant international human rights law standards and recommendations.....	7
Information about submitting parties	9

Executive Summary

This submission provides information on the situation of Russian same-sex families, specifically lesbian families with children. It identifies a particular problem requiring attention of the Committee and a constructive solution. This problem is **obstacles faced by Russian same-sex couples living abroad and not being able to obtain a Russian citizenship for their children**.

To address this problem, we provide some general context of the Russian policies and legislation in relation to same-sex families, including those with children. Then, we describe a particular case of a Russian lesbian couple whose child was denied a Russian citizenship based on the birth certificate of the child issues by their current country of residence and mentioning the two parents. Finally, we compile some relevant international human rights law standards and recommendations.

Suggested Questions for the List of Issues to the Russian Federation

Marriage and family relations

1. Please comment whether the provisions of the Russian legislation, particularly the Family Code of the Russian Federation and the Federal Law “On Citizenship of the Russian Federation”, permit obtaining Russian citizenship by children born abroad if these children’s birth certificates, issued in accordance with the law of their country of birth, mention two Russian women as their parents. Please clarify whether the application for admission to the citizenship of the Russian Federation is gender-neutral. Please provide statistics on such cases.
2. Please also comment whether the reply of the Consulate of the Russian Federation in Argentina, described below, is discriminatory in its nature. In that regard, please inform the Committee whether the Ministry of Justice and the Ministry of Foreign Affairs of the Russian Federation support the interpretation of the Russian legislation given by the Consulate in the cited case.
3. What is the legal status of children born in same-sex families of Russian citizens? What measures have been taken by the Russian Federation to ensure that such families, women and their children are not discriminated against?

1. Russian same-sex families: General situation

As was noted by CEDAW in 2015 in its latest **Concluding observations on the Russian Federation**, the laws adopted at the regional and federal levels in Russia banning the “promotion of non-traditional sexual relations to minors” upheld by the Constitutional Court may reinforce homophobia. The Committee was also concerned at reports of discrimination, harassment and hate speech, based on negative stereotypes, against LGBTI women, and urged Russia to provide necessary protection against discrimination and violence against LGBTI women.¹

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.² 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 same-sex families.³ 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 issues⁴ due to the risk of administrative penalties.

The online survey conducted by the LGBT Organisation “Coming Out” in 2012–2013 revealed that the “anti-propaganda” laws affected same-sex families’ 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”.⁵ 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.⁶

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 same-sex families.⁷ In 2014, the Committee on the Rights of the Child urged Russia to ensure “that children who belong to LGBTI groups or children from same-sex families are not subjected to any forms of discrimination”.⁸

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

¹ CEDAW (2015), *Concluding Observations: Russian Federation*, [CEDAW/C/RUS/CO/8](#), paras. 41 and 42.

² 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*.

³ Anti-discrimination Centre Memorial, Coming Out & Russian LGBT Network (2013).

⁴ Russian LGBT Network (2013).

⁵ LGBT Organization “Coming Out” (2013).

⁶ *Ibid.*

⁷ See e.g., Committee against Torture (2018). *Concluding observations: Russian Federation*, [CAT/C/RUS/CO/6](#), paras. 32 and 33; Human Rights Committee (2015). *Concluding observations: Russian Federation*, [CCPR/C/RUS/CO/7](#), para. 10; Committee on Economic, Social and Cultural Rights (2017). *Concluding observations: Russian Federation*, [E/C.12/RUS/CO/6](#), paras. 56 and 57.

⁸ Committee on the Rights of the Child (2014). *Concluding observations: Russian Federation*, [CRC/C/RUS/CO/4-5](#), para. 24.

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”.⁹ 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”.¹⁰

Public opinion polls conducted in Russia shows extremely negative attitudes of the population towards same-sex families and raising children in such families.

According to a public poll conducted by the Levada Analytical Center in 2013, 50% of the respondents definitely considered raising children in a same-sex family as “propaganda of homosexuality”, and other 28% rather agreed with this. At the same time, 30% of the respondents said that they were very afraid that their children or grandchildren “would fall the victim of homosexual propaganda”, and other 31% were rather afraid of this¹¹.

A survey published by the same Center in 2018 indicated that 81% of Russian respondents thought it was “always reprehensible” or “almost always reprehensible” for two adults of the same sex to have sexual relations. Previous polls showed that the percentage of those who are opposed to same-sex relationships had already increased from 68% in 1998 to 76% in 2008¹².

Since 2013, several legislative and judicial developments have taken place in Russia further restricting the rights of and stigmatizing same-sex families and their children.

In 2013, Russia’s Family Code was amended to prohibit adoption or custody over children by same-sex couples”.¹³

There have also been several court cases where LGBT 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 same-sex families based on prejudicial approach.¹⁴

On 4 March 2015, the Sovietsky District Court of the city of Astrakhan¹⁵ 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.

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

⁹ 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*.

¹⁰ Committee on Economic, Social and Cultural Rights (2017). *Concluding observations: Russian Federation*, E/C.12/RUS/CO/6, paras. 56 and 57.

¹¹ Available in Russian at: <http://www.levada.ru/12-03-2013/strakh-drugogo-problema-gomofobii-v-rossii>.

¹² Available in Russian at: <https://www.levada.ru/2018/01/11/17389/>.

¹³ 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”. The Federal Law of the Russian Federation no. 167-FZ of 2 July 2013.

¹⁴ 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 Committee on the Elimination of Discrimination against Women*.

¹⁵ *Ibid*.

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 authorities.¹⁶ The children were not returned to Y.S. and the couple had to leave the country.

2. Nationality of children born in Russian same-sex families: Case description

In the context of the generally negative situation of Russian same-sex families, we would like to draw attention of the Committee to one particular problem. This is the obstacles for obtaining Russian citizenship by children born in Russian same-sex families living abroad. One concrete case is the perfect illustration of this.

Two Russian citizens (X. and Y.) live in Argentina, where both have a residence permit. They are in a registered same-sex marriage, which was concluded in Buenos Aires in January 2018.

On 6 January 2020, X. gave birth to a girl, Z. On 2 March 2020, the Buenos Aires Government Civil Registry Office (*Registro del Estado Civil y Capacidad de las Personas*) registered the birth of a child and issued a relevant certificate. The certificate simply mentions X. and Y. as parents of Z., without naming the biological mother of the child.

Due to the fact of birth in Argentina, Z. automatically acquired Argentine citizenship. Meanwhile, parents, still being Russian citizens and wishing their daughter to keep links with Russia, applied to the Russian Consulate in Argentina with a statement on Z.'s citizenship of the RF. The relevant application was filed by X. with the consent of Y.

In accordance with article 12 of the Federal Law "On Citizenship of the Russian Federation", a child acquires the citizenship of the RF by birth if both his parents (or his only parent) have the citizenship of the RF on the child's birthday (regardless of the place of birth of the child).

On 21 May 2020, the Consulate gave the following refusal to Anna's application (by electronic reply sent from consulrusoarg@gmail.com):

"The legal basis for registering the presence of citizenship of the RF by birth is Article 12 of the Federal Law "On Citizenship of the Russian Federation". In relation to the participants in the relevant legal relations (applicants), this article uses such terms as "parent" / "parents".

We proceed from the understanding and interpretation of these terms in a sense that meets the norms of the Constitution and the Family Code of the RF, which regulate legal relations between parents and children, including the grounds for their occurrence.

¹⁶ 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.

In this context, the provisions of Chapter 10 of the Family Code (“Establishing the Origin of Children”) and, in particular, Articles 47 and 48, according to which the rights and obligations of parents and children are based on the origin of the children, certified in the manner prescribed by law, are of crucial importance. Moreover, article 48, as applied to parents, exclusively says about establishing the origin of the child from the mother (motherhood) and the father (fatherhood).

Thus, as applied to “parents”, the position of Article 12 of the Federal Law “On Citizenship of the RF” - as grounds for registering a child’s nationality by birth - can be followed only if it is established that the relevant persons (applicants) are the mother and father of the child.

In accordance with Article 167 of the Family Code, “the norms of foreign family law do not apply if such application would be contrary to the foundations of the rule of law (public order) of the Russian Federation. In this case, the legislation of the RF shall apply. Moreover, in our state only a union of a man and a woman is recognized as “marriage” (par. 3 of article 1 of the Family Code).

In accordance with paragraph 13 of Section 1 of Article 127 of the Family Code of the RF, adoptive parents cannot be “persons who are in a union concluded between persons of the same sex, recognized as a marriage, and registered in accordance with the laws of the state in which such marriage is permitted”. Such persons cannot be recognized as “parents” in the territory of the Russian Federation.

In a situation, where one of the participants in the same-sex union / partnership can be considered the parent of the child, namely, if his motherhood / paternity is certified in the manner prescribed by Russian law (for example, the “biological” mother of the child, who is in the same-sex marriage), the other participant in the same-sex union / partnership registered in a foreign state - regardless of his Russian citizenship - cannot be recognized as the “parent” of the child in the Russian Federation.

The above considerations, in our opinion, prevent the registration of Russian citizenship by birth of your daughter on the basis of the Argentine birth certificate and your application, in which citizen Y. is indicated as the second parent.”

On 19 May 2020, the couple turned for legal assistance to the LGBT-group “Stimul” (Moscow, Russia), which helps LGBTIQ individuals and their families who suffered from discrimination and hate crimes motivated by sexual orientation or gender identity. The lawyers of “Stimul” analyzed this case and concluded that the refusal of the Consulate does not comply with the legislation of the RF for the following reasons.

Justifying the denial of citizenship, the Consulate of the RF in Argentina refers to the norms of the Family Code of the RF on adoption, whereas in the described case there was no adoption. The child was immediately granted a birth certificate indicating two female parents. It means that even a formal adoption procedure has not been carried out.

It is crucial that the application for admission to the RF citizenship is gender-neutral. The definitions “father” and “mother” cannot be found in it; they are replaced by the words “applicant” and “parent”. Thus, there are not even technical obstacles for Z. to receive the Russian citizenship, to which the child has the right having been born by Russian parents.

In its refusal, the Consulate also writes that it cannot recognize same-sex marriage concluded abroad, but X. did not ask for marriage recognition, and such recognition is not necessary for the child to become a citizen.

Denial of citizenship of a child born by a same-sex couple is discriminatory because of unequal position of children of parents with different sex (and single parents) and children of same-sex parents. To our mind, such unequal attitude is not caused by legislative restrictions, but has

happened because of the erroneous application and interpretation of the law by individual officials.

Thus, the Consulate's refusal to accept X. and Y.'s child into Russian citizenship does not comply with Russian law and violates the rights of all family members. There are currently no obstacles to the adoption of citizenship of children of same-sex parents in the Russian laws and other regulations.

In this regard, the attorney working with the LGBT-group "Stimul", Mr. Lapov sent a relevant request to the Ministry of Justice of the Russian Federation.

Based on the norms of the Federal Law of the RF "On advocacy in the Russian Federation", Mr. Lapov requested the following information from the authorities:

"What procedure regulates the adoption of Russian citizenship of children born and staying abroad and whose parents are listed in the birth certificate as two Russian women (married abroad)? N.B.: In the birth certificate, the biological mother and the non-biological mother are not separated in any way. A birth certificate with two female parents was issued immediately at the birth of the child (that is, the formal adoption of a citizen did not even take place). What documents mothers must provide at the consulate for admission of a child to the citizenship?"

At the time of preparation of this submission, a response to the lawyer's request has not been received yet.

3. Relevant international human rights law standards and recommendations

The situation described above involves several articles of the **CEDAW Convention**, including arts. 1 and 2 (discrimination against women, its definition and measures to eliminate such discrimination), art. 9 (nationality of children) and art. 16 (marriage and family relations).

In its practice of **periodic country reviews**, CEDAW has already made a number of recommendations to State parties regarding the rights of same-sex families, including those with children, and including filiation and parental rights for both parents.¹⁷

According to **CEDAW General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women** (paras. 56 and 57), "[b]irth registration is ... closely linked to the enjoyment by women and their children of the right to a nationality. ... Failure to register a child's birth may impair or nullify the child's effective enjoyment of a range of rights, including the right to nationality, to a name and identity, to equality before the law and to recognition of legal capacity"; "[d]iscriminatory laws or practices may lead to women and their children being unable to gain access to documentation that proves their identity and nationality. In the absence of proof of identity and nationality, a woman and her children may be faced with restrictions on freedom of movement, problems gaining access to diplomatic protection...".

According to the **Yogyakarta Principles**, everyone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family

¹⁷ See, in particular: CEDAW (2018), *Concluding Observations: Chile*, [CEDAW/C/CHI/CO/7](#), paras. 50 and 51; CEDAW (2019), *Concluding Observations: Colombia*, [CEDAW/C/COL/CO/9](#), paras. 43 and 44; CEDAW (2018), *Concluding Observations: Cyprus*, [CEDAW/C/CYP/CO/8](#), paras. 50 and 51; CEDAW (2017), *Concluding Observations: Guatemala*, [CEDAW/C/GTM/CO/8-9](#), paras. 44 and 45; CEDAW (2019), *Concluding Observations: Lithuania*, [CEDAW/C/LTU/CO/6](#), paras. 44 and 45; CEDAW (2018), *Concluding Observations: Luxembourg*, [CEDAW/C/LUX/CO/6-7](#), paras. 51 and 52; CEDAW (2017), *Concluding Observations: Monaco*, [CEDAW/C/MCO/CO/1-3](#), paras. 45 and 46; CEDAW (2017), *Concluding Observations: Paraguay*, [CEDAW/C/PRY/CO/7](#), paras. 44 and 45.

may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members.

States shall:

- ensure that laws and policies recognize the diversity of family forms, including those not defined by descent or marriage, and take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members, including with regard to family-related social welfare and other public benefits, employment, and immigration;
- 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.¹⁸

¹⁸ Yogyakarta Principles: Principles on the application of international human rights law in relations to sexual orientation and gender identity (2006). Available at: http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf; Yogyakarta Principles plus 10: Additional principles and state obligations on the application of international human rights law in relations to sexual orientation, gender identity, gender expression and sex characteristics to complement the Yogyakarta Principles (2017). Available at: http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf. (Principle 24 – The Right to Found a Family, paras. “B” and “H”).

Information about submitting parties

The LGBT-group “Stimul”

The LGBT-group “Stimul” is a Russian civic initiative created in 2015 with the aim of fighting for equal rights and ensuring human dignity regardless of sexual orientation and gender identity. Our main activities are providing legal aid to victims of hate crimes or discrimination and representing their interests in police and courts. We also monitor human rights violations, assist LGBT-refugees, provide legal education and do international advocacy.

Since 2015, we have provided legal aid to 600 applicants. Currently, our lawyers deal with more than 50 legal cases. Last year, we managed to stop criminal activities of several gangs engaged in robbery on fake dates with gays. We helped police to arrest at least six of the perpetrators, later they were convicted by courts. In total, in 2019, we assisted the police to initiate seven criminal cases related to hate crimes against LGBT-people. Earlier, “Stimul” submitted its observations to the UN CAT and the UN CESCR in 2017-2018, the UN HRCtte in 2020.

The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World)

ILGA World is a worldwide federation of more than 1,600 organisations from over 150 countries and territories campaigning for lesbian, gay, bisexual, trans and intersex human rights.

We want a world where the human rights of all are respected and where everyone can live in equality and freedom: a world where global justice and equity are assured and established regardless of people’s sexual orientations, gender identities, gender expressions and sex characteristics (SOGIESC).

Established in 1978, ILGA World has ECOSOC consultative status at the United Nations and engages with United Nations human rights bodies, including treaty bodies and specifically CEDAW.