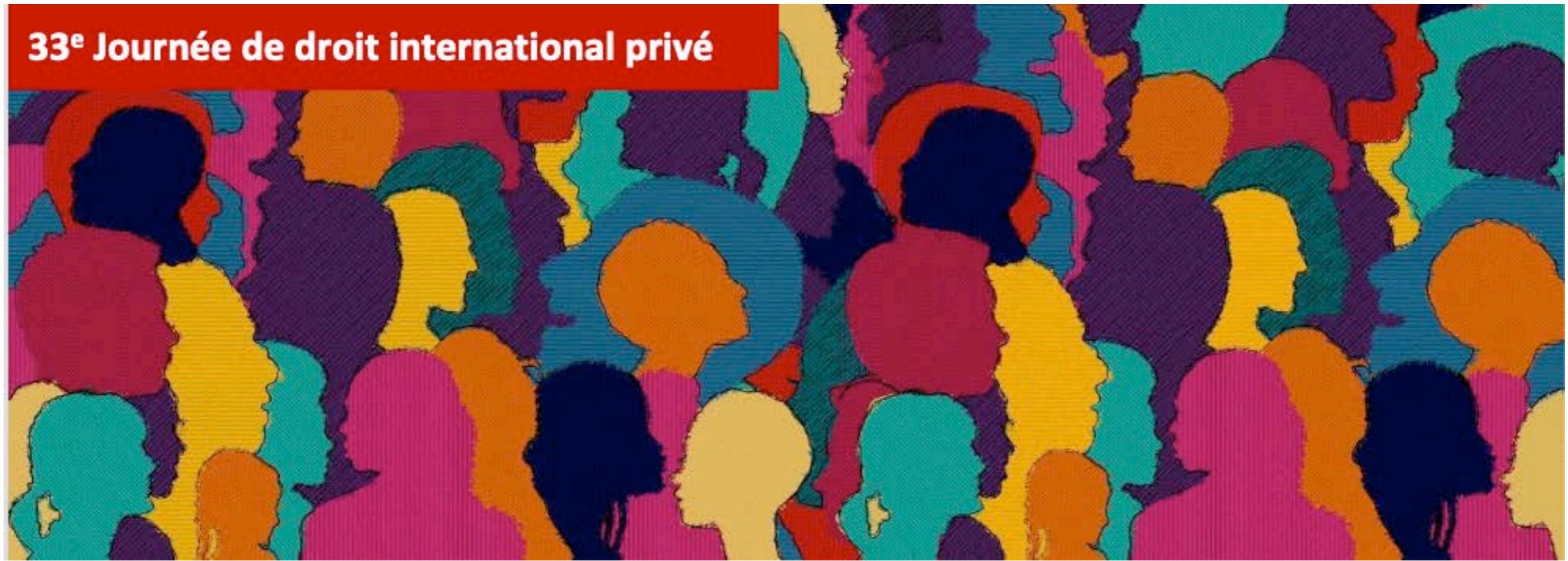


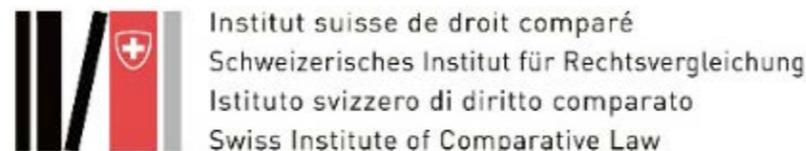
33^e Journée de droit international privé



Family status, Identities and Private International Law

A Critical Assessment in the Light of Fundamental Rights

Zoom online conference
5 and 12 May 2022



Filiation between Law, Language, and Society

Ilaria Pretelli

5 May 2022



Legal Developments
in the Recognition of Filiation

THE PRACTICAL PROBLEM

Same-sex Marriages

Subject to the
Public Policy
Exception



Introduced by
New Statutory
Rules

Sperm Donation, Egg Donation, Surrogacy

Global Governance



"Ad for surrogate mothers, Burbank, California, USA" by gruntzooki

The U.S. fertility market is estimated to be valued at \$8 billion, inclusive of IVF, genetic testing, reproductive issue storage and donor services

Status Filiationis

Natural Filiation

A child is born to a mother (male, female, non-binary)

Legal Filiation

Parenthood is attributed by operation of law to the spouse (male, female, non-binary) of the mother, or by means of a unilateral declaration of recognition (sometimes the consent of the mother is required)



"Premières contractions" by Guillaume Brialon

Contractual Filiation

Parenthood is attributed by means of the implementation of a private agreement between several parties

Private International Law

19th century

Recht über Recht

Mere Technique of Allocation

Myth of Ideological Neutrality

20th century

Private International Law is

Shaped on Substantive Law

21st century

Substantive Law is Influenced by Private International Law

(Method of Recognition of Legal Situations Created Abroad)



"motion gears -team force" by ralphbijker

LAW AND LANGUAGE

“Whoever ^{HAS} ~~is~~ a parent in a
Member State should ^{HAVE} ~~be~~ a
parent in all Member States”.

EUROPEAN CERTIFICATE OF

~~PARENTHOOD~~

FILIATION



Patria Potestas

Vitae necisque potestas endo filio

“Express your desire and ordain that Lucius Valerius be the son of Lucius Titius as justly and lawfully as if he had been born of that father and the mother of his family, and that Titius have that power of life and death over Valerius which a father has over a son. This, just as I have stated it, I thus ask of you, fellow Romans.”



Adoption and Kafalah



"Grandma and Grandson, Family gathering at Navruz, Bukhara, Uzbekistan" by Boonlong1



"Orphans sleep in beds made from hanging mosquito nets"

by World Bank Photo Collection



"baby handover" by pinguino

From Parental Authority...



Obedience

Correctional Powers

Zahlvaterschaft

« La fille est considérée comme étrangère à la personne dénoncée (le père biologique) et n'a droit à aucune indemnité, car elle est le résultat d'un acte illégitime cautionné par sa mère »
(Cour de cassation du Maroc - cas de viol)



...to Parental
Responsibility
and
Universal
Rights of
Children

1989 New York Convention on the Rights of the Child



Article 7 (1)

The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents

Article 8 (1)

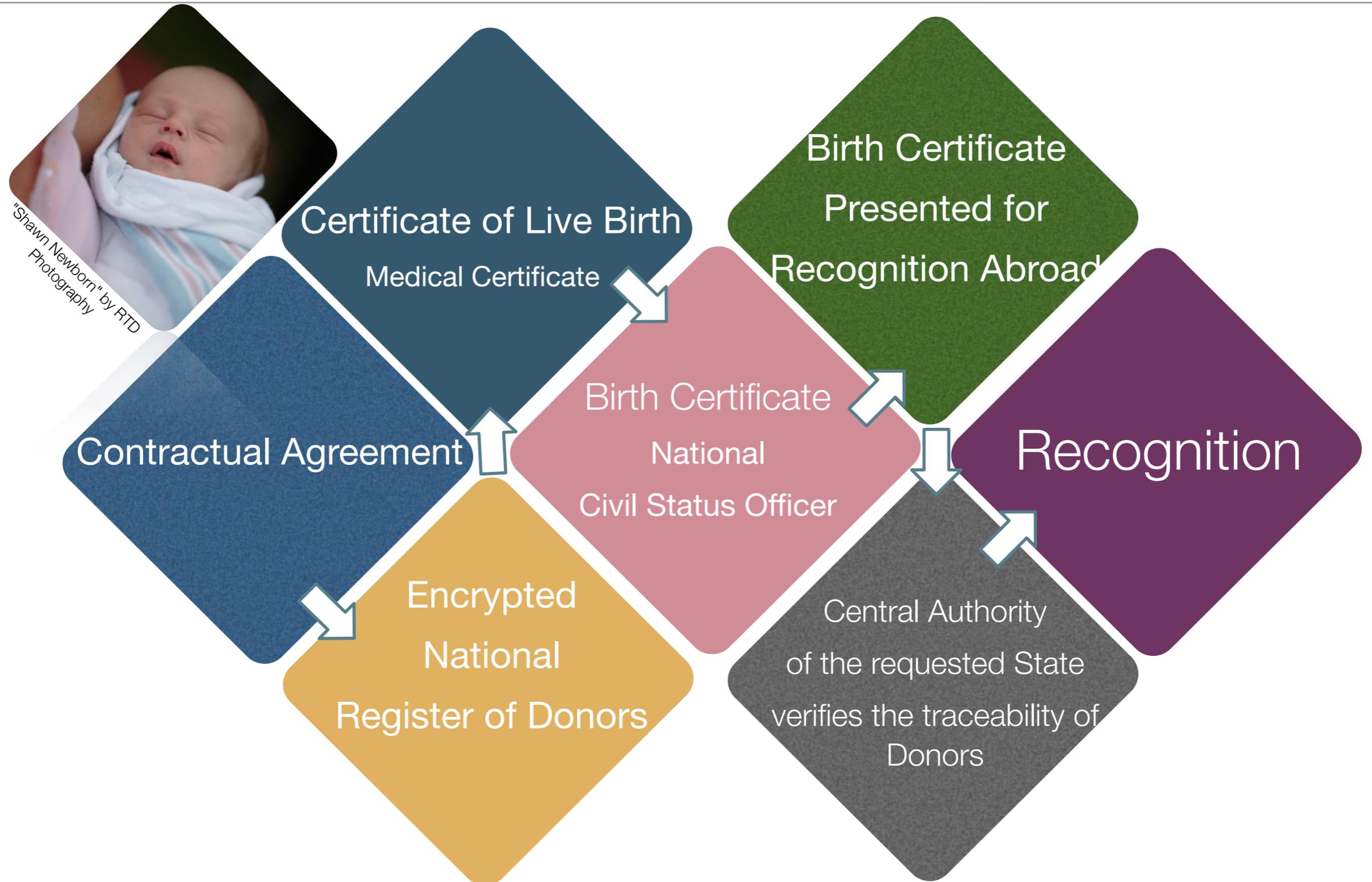
States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

Council of Europe's Recommendation 2156 (2019)

- Gamete donation must remain a voluntary and altruistic act,
- Waiver of anonymity;
- Prohibition to use anonymously donated sperm and oocytes;
- Prohibition on donors contacting their genetic offspring;
- Right of the person conceived through donation to contact the parent and any siblings, under certain conditions;
- Requirement for Council of Europe member states that authorize sperm and egg donation to "set up and run a national donor and donor-conceived person register with a view to facilitating the sharing of information, to enforcing an upper limit on the number of possible donations by the same donor, ensuring that close relations cannot marry and tracing donors if the medical need should arise”;
- Obligation for clinics and service providers to keep adequate records and make them available to national registries;
- Introduction of a "mechanism to ensure the cross-border exchange of information between national registries"



Recognition of Foreign Contractual Filiation

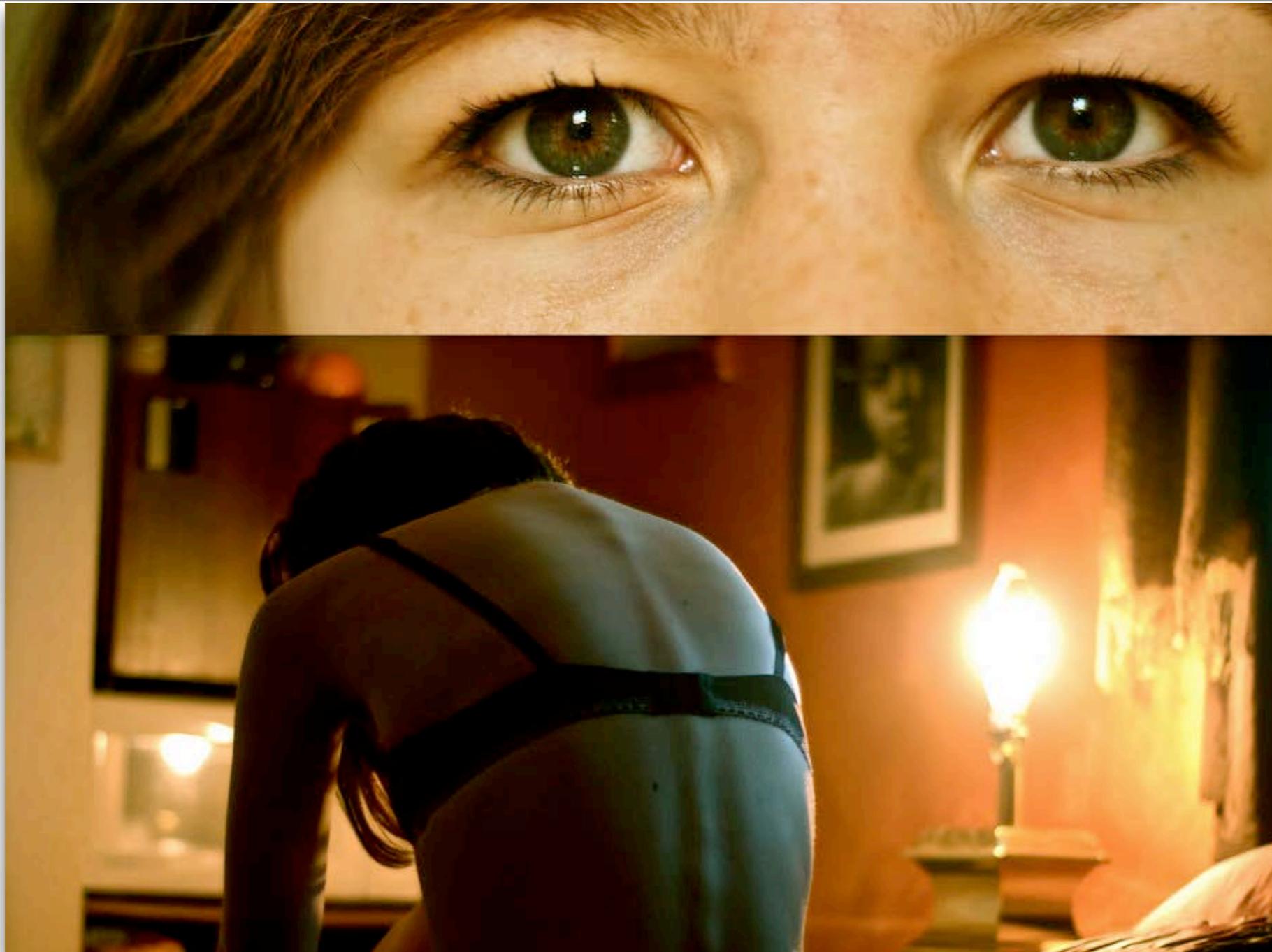




Struggles of families



Violence against women



the global sex trade is considered the fastest growing form of commerce all over the world

Mother, Father and Third Parent



Thank you for your patient attention