



The Family and Human Rights

Submission to the Office of the High Commissioner for Human Rights (OHCHR) from the Center for Family and Human Rights (C-Fam)

October 28, 2015

Contact: Stefano Gennarini (stefano@c-fam.org)

C-Fam welcomes this opportunity to contribute to the High Commissioner's report mandated by Resolution 29/22 of the Human Rights Council on 3 July 2015. We welcome the focus of the Human Rights Council on the family and human rights and look forward to continued engagement on this issue. This submission is organized under the three broadly defined subjects covered in Resolution 29/22.

1. 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

International law obligations of states under UN treaties with regard to the family are well established. These obligations make it clear that the family is indeed a subject of human rights in conjunction with the individual persons that make up the family.¹

The Universal Declaration of Human Rights recognizes the family as “the natural and fundamental group unit of society” and declares that it is “entitled to protection by society and the State” (UDHR 16). It recognizes the formation of a family as resulting from the union of a man and a woman in marriage (UDHR 16). The International Covenant on Civil and Political Rights (ICCPR 23.1) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR 10.1) also reflect the UDHR verbatim (ICCPR 23, ICESCR 10).

The protection of the family encompasses also the right to an adequate standard of living (UDHR 23, 25). The ICESCR established, most relevantly, the obligation of state parties to that convention to provide the “widest possible protection and assistance to the family,” and that the right to an adequate standard of living extends not only to individuals but to individuals “and their families” (ICESCR 7, 11.1). The ICESCR does not merely “entitle” the family to generic protection and assistance, as the ICCPR, but requires governments to make all “possible” efforts to ensure this entitlement is fulfilled in law and fact.

More recently, the Convention on the Rights of the Child also affirmed how “the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community” (CRC, Preamble).

These binding norms have not gone unheeded. At least 111 countries have constitutional provisions that echo Article 16 of the UDHR.² Still, more remains to be done. The OHCHR report should highlight

¹ See Holy See, CHARTER OF THE RIGHTS OF THE FAMILY, (October 22, 1983), available at: http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_19831022_family-rights_en.html; See also Pontifical Council for the Family, THE FAMILY AND HUMAN RIGHTS (December 16, 1998), available at: http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_20001115_family-human-rights_en.html

specific obligations of member states enshrined in international law where implementation falls short, and where states are failing to respect the human rights of the family and its members.

More specifically, OHCHR may highlight the following as “core” obligations under international law:

1. Protection of the rights of men and women to freely enter into marriage and found a family (UDHR16, ICCPR 23, ICESCR 10).
2. Creating a legal, social, and economic environment conducive to family formation and stability, including by providing economic assistance to families where appropriate and feasible (UDHR 23, 25, ICESCR 10, 11, CRC 18, 23, 27).
3. Protection of the right of the child to know and be cared for by her/his parents (ICCPR, 23, 24, CRC 2, 3, 5, especially 7, 8, 9, 10, 18, 27).
4. Protection of the “prior” right of parents to educate their children in accordance with their convictions (UDHR 26.3, ICCPR 18, CRC 2, 3, 5, 14, 20, 29).

These rights have historically been abused by harmful practices such as child and forced marriage. Economic conditions frequently make the right to an adequate standard of living merely aspirational. Violations of these rights also arise in the context of migration. Recent times have also given rise to new threats to these human rights. The removal of many safeguards for family stability protecting its most vulnerable members, children, in laws surrounding the dissolution of marriage. New legal arrangements between adults, such as same-sex relationships, violate and obstruct the right of children to know and be cared for by their parents. In addition, new reproductive technologies also undermine this right. Families are penalized for their traditions, religious and cultural beliefs when they attempt to opt children out of state-run education, or of specific classes such as sex education that promotes and/or legitimizes early sexualization, homosexuality, and gender ideology.

2. 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

The family is uniquely suited as a vehicle to promote the social and economic well being of its members as well as society at large within a framework of sustainability, and thereby fulfill their human rights in the social and economic sphere while respecting nature and the environment. Rightly, Human Rights Council resolutions 29/22 and 26/11 reaffirmed that “the family is the natural and fundamental group unit of society” and the “natural environment for the growth and well-being of all its members.” the self-evident truth of the benefit of the family to its individual members and society at large is confirmed and validated by the best available science and research. The following three conclusions are drawn from recent social science research bearing on this topic, and generally are applicable across borders.³

1. The family is good for children. No other structure or institution is able to deliver the same quality outcomes for children as the family composed of a man and a woman in a stable and enduring relationship. Children thrive in intact families formed by the marriage of a man and a woman. It is the place where individuals learn both love and responsibility. A host of negative outcomes result from family breakdown. When children are not brought up by their biological parents in a stable family environment, as for example in unmarried, cohabiting, and same-sex households, they are more likely to experience school failure, lower levels of education, behavioral problems, drug use, and loneliness, among other negative outcomes, as well as physical, sexual, and emotional abuse.

² WORLD FAMILY DECLARATION, available at <http://worldfamilydeclaration.org/WFD>

³ Wilcox et. al, *Why Marriage Matters, Thirty Conclusions from the Social Sciences*, Institute for American Values (New York 2011), available at:

http://www.breakingthespiralofsilence.com/downloads/why_marriage_matters.pdf; Regnerus M., “How different are the adult children of parents who have same-sex relationships? Findings from the New Family Structures Study”. *Soc Sci Res.* 2012 Jul;41(4):752-70. Findings of this research are also observable at the website: <http://www.familystructurestudies.com/>; Fernando Pliego Carrasco, *Tipos de familia y bienestar de niños y adultos: El debate cultural del siglo XXI en 13 países democráticos*, (Universidad Nacional Autónoma de México Instituto de Investigaciones Sociales 2013). Findings of this research are also observable at the website: <http://www.tiposdefamilia.com/libro/>; Chetty, Raj and Hendren, Nathaniel and Kline, Patrick and Saez, Emmanuel, Where is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States (January 2014). NBER Working Paper No. w19843. Findings of this research are also observable at the website: <http://www.equality-of-opportunity.org/>

2. *The family is good for parents.* Entering marriage and founding a family is associated with better physical and mental health, emotional wellbeing, less criminality and substance abuse, and longer life expectancies for both men and women. It is also positively correlated with lower infant mortality. Moreover, research shows that healthy families formed by the union of a man and a woman result in more healthy families. While individuals who do not experience the benefits of being raised by their mother and father can rise above their circumstances, children born in families that stay together are more likely to form their own families.

3. *The family is good for society.* The benefits of the family for individuals and communities are repeated across all social and economic groupings, including minorities. Moreover, the family is essential in combating poverty and creating economic opportunity. Entering marriage and founding a family is correlated with higher earnings and social mobility. A recent landmark Harvard study shows the best predictor of social mobility in the United States is the family. The most consistent factor in the ability of individuals to emerge from poverty and climb the social ladder is living in areas where families stay together. When the family breaks down new generations and entire social strata become trapped in the cycle of poverty. Moreover, the economic synergies found naturally in families are impossible to recreate through government programs or institutions. Even aside from the direct social and economic costs of family breakdown because of its effect on children and parents outlined above, the breakup of the family results in exponentially higher expenses for governments through welfare programs to care for children and youth who do not benefit from an intact family, as well as adults and elderly persons whose only safety net is found in the public purse.

3. The status of the family in the 2030 development agenda

Sadly, the Sustainable Development Goals and the summit outcome “Transforming Our World” that launched the 2030 era of UN development programming ignore the family as a subject of rights and an essential vehicle to promote sustainable development. States have a compelling duty to protect and assist the family. Without the family, societies cannot exist, let alone develop.

We are troubled by this omission. Some countries do not want to even consider the family in the UN agenda unless the international community recognizes relations between persons of the same-sex as equivalent to the family as it has always been understood in UN policy. UN policy since the UDHR was adopted recognizes only the family formed from the union of a man and a woman in marriage. It does not contemplate homosexual unions, or other arrangements between adults that fall short of this.

These countries say the UDHR discriminates against children who find themselves in same-sex households. They even say that the family has no human rights at all. This is disingenuous. Validating the choices of adults to live in same-sex unions, or other arrangements, as equivalent to the family is not necessary to protect children from discrimination. The UDHR and UN human rights treaties already protect the rights of children deprived of a family to receive the benefits afforded to all children under the law (UDHR 23, especially 25, ICCPR 24, ICESCR 10, CRC 2, 7, 8, 20).

Only a few developed countries have changed their laws to recognize a special status for homosexual relationships, yet they argue this requires a change to the universal, longstanding understanding of family for all UN member states and UN policy.⁴

While agreement could not be reached on how the family squares in the new development agenda, countries must recognize that family policy, for the reasons outlined in the sections above, will be essential to realize the Sustainable Development Goals, the eradication of poverty, and the human right of every human being to an adequate standard of living.

We hope that the resolution on protection of the family at the Human Rights Council will contribute to overcoming the political impasse that has prevented consensus to be formed on the importance of the family to sustainable development in the General Assembly so that UN member states may consensually recommit to provide the natural and fundamental group unit of society the widest possible assistance and protection.

⁴ Fewer than 20 countries in the world recognize same-sex “marriage,” according to an Amicus Brief of 54 International and Comparative Law Experts from 27 Countries in the 2015 U.S. Supreme Court Marriage Cases, U.S. Supreme Court, Nos. 14-556, 14-562, 14-571 & 14-574.