

**Center for Reproductive Rights Submission for OHCHR Report on Human Rights Council  
Resolution 29/22 on the Protection of the Family  
October 23, 2015**

The Center for Reproductive Rights greatly appreciates the opportunity to contribute to this report, which presents a critical opportunity for greater elaboration on states' obligations under international human rights norms to guarantee all individuals the ability to effectively exercise the broad range of human rights including within families, such as the right to equality and non-discrimination, the right to determine the number and spacing of their children and to be free from violence. The Center is a global legal advocacy organization dedicated to promoting reproductive rights as fundamental human rights that states are obligated to respect, protect and fulfill. Headquartered in New York, with regional offices in Bogota, Nairobi, Geneva, Kathmandu and Washington, D.C., the Center works on a range of issues related to this report, including the rights to determine the number and spacing of one's children, access to the full range of sexual and reproductive health information and services, and freedom from discrimination, violence and coercion.

**I. Individuals are the holders of human rights**

In accordance with the international human rights framework, although there are a number of human rights that relate to the family, the individual members of the family are the rights-holders to whom states have specific legal obligations. States are obligated to ensure that all measures they take which relate to the family comply with the full range of rights afforded each individual. In this regard, states should not invoke protections of the family or traditional family values as a justification or excuse for infringing on each individuals' ability to effectively exercise his or her human rights.

**II. A constellation of human rights held by individuals relate to relationships within families and childbearing**

Although the family unit itself does not possess human rights, a constellation of human rights that are held and exercised by individuals relate to relationships within families and the right to make decisions around one's family and childbearing. For example, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) protects women's right to enter into marriage on the basis of equality, the freedom to choose a spouse and to enter into marriage only with free and full consent, and the right to freely decide if and when to bear children and to have access to the information and resources to exercise these rights.<sup>1</sup> The International Covenant on Civil and Political Rights guarantees the right to found a family and requires states to ensure spouses equality of rights and responsibilities within marriage and in its dissolution.<sup>2</sup> Under the Convention on the Rights of Persons with Disabilities (CRPD), states must "eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships," to guarantee people with disabilities the right to enter into marriage on the basis of free and full consent, determine the number and spacing of their children, and retain their fertility.<sup>3</sup> CEDAW and the Convention on the Rights of the Child also protect the right to be free from violence, including within the family.<sup>4</sup> International human rights norms further protect all individuals' right to be from discrimination on the basis of sex, gender, marital status, sexual orientation, gender identity, disability, and health status, among a range of other grounds,<sup>5</sup> and

recognize that families exist in different forms, including as nuclear families, extended families, unmarried parents, interracial couples, same-sex couples and single parents, among others.<sup>6</sup>

#### A. The Right to the Full Range of Sexual and Reproductive Health Information and Services

In interpreting these provisions and providing authoritative guidance to states, UN Treaty Monitoring Bodies (UNTMBs) have elaborated on the measures states must take to respect, protect and fulfill individuals' rights as they pertain to relationships within families and the right to make decisions around one's family and childbearing. UNTMB's have made clear that these provisions require states to guarantee all individuals access to the full range of sexual and reproductive health services, including quality maternal health care; contraceptive information and services, including emergency contraception; and safe abortion care,<sup>7</sup> free from discrimination, violence and coercion.<sup>8</sup>

Human rights bodies have also addressed individuals' right to access assisted reproductive technology. In *Artavia Murillo et al. v. Costa Rica*, the Inter-American Court of Human Rights noted that " the decision to have biological children using assisted reproduction techniques forms part of the sphere of the right to personal integrity and to private and family life,"<sup>9</sup> in finding that Costa Rica's ban on the use of in vitro fertilization impermissibly violated these rights in a manner that disproportionately affected women, persons with disabilities, and those from lower socioeconomic strata.<sup>10</sup> The CEDAW Committee has further expressed concern about banning in vitro fertilization and its effect on women's right to determine the number of their children.<sup>11</sup>

#### B. Positive Measures to Realize Individuals' Rights Related to Family and Childbearing

In addition to guaranteeing all individuals access to the information and resources to make decisions around if and when to bear children, UNTMBs have also called on states to take a number of measures that support their ability to exercise rights that are related to family, including by promoting gender equality and alleviating gender roles and stereotypes. For example, under the CEDAW Convention, states must prohibit discrimination against women in the workplace on the basis of pregnancy and guarantee paid parental leave and the subsequent right to return to their employment.<sup>12</sup> To overcome entrenched gender roles and stereotypes, UNTMBs have also called on states to take measures to increase men and women's equal participation in childcare and other caretaking responsibilities.<sup>13</sup> UNTMBs have further called on states to guarantee all individuals access to affordable and quality childcare,<sup>14</sup> and quality maternal and newborn health care.<sup>15</sup> Furthermore, the CRPD has called on states to provide comprehensive support to parents raising children with disabilities,<sup>16</sup> including financial, social and educational support.<sup>17</sup>

#### C. Elimination of Violence against Individuals within the Family

While several international human rights treaties refer to the family as a fundamental group or unit within society, it is important to be cognizant of the evolving understanding of the family and its role within society. While human rights bodies recognize that individuals are entitled to certain forms of protection in relation to their families, such as protection from arbitrary or unlawful interference,<sup>18</sup> as a result of concerted advocacy on behalf of the women's rights and children's rights movements, outdated conceptions of the family as only a belonging in the private sphere, which should be free from state interference, have been rejected by international human rights bodies. The UNTMBs have set forth clear obligations on behalf of states to protect individuals from violence within family settings, such as by calling on states to eradicate physical and psychological violence; gender-based violence; domestic violence; sexual abuse and exploitation; marital rape; child, early and forced marriage; dowry deaths; and honor killings.<sup>19</sup>

D. States measures in relation to individuals and families must comply with the principles of equality and non-discrimination

International human rights norms protect all individuals' right to be free from discrimination on the basis of sex, gender, marital status, sexual orientation, gender identity, disability, and health status, among a range of other grounds.<sup>20</sup> Human rights bodies further recognize that families exist in different forms, including as nuclear families, extended families, unmarried parents, interracial couples, same-sex couples and single parents, among others.<sup>21</sup> The right to be free from discrimination applies to the exercise of the full range of individuals' human rights, including the right to found a family and to determine the number and spacing of one's children. The case of *Atala Riffo and Daughters v. Chile*, decided by the Inter-American Court in 2012, is particularly instructive in this regard. In this case, the Court recognized that the increasing social acceptance of different forms of the family requires states "promote social progress," as the failure to do so would create "a grave risk of legitimizing and consolidating different forms of discrimination that violate human rights."<sup>22</sup> In noting that "the concept of family life is not limited only to marriage and must encompass other *de facto* family ties,"<sup>23</sup> the Inter-American Court rejected the states' use of an individual's sexual orientation to justify discrimination against her in the context of child custody.<sup>24</sup> Along this same vein, states must ensure that they do not directly or indirectly perpetuate discrimination against individuals on the basis of their family structure or decisions around pregnancy and childbearing. Further, states should take positive measures to guarantee equality for all individuals, including by taking steps to overcome harmful social norms and stereotypes and remedying social structures that disadvantage members of particular forms of families. For example, states should take measures to eradicate child, early and forced marriage, to prevent the perpetuation of discrimination against women and girls within families.<sup>25</sup>

### III. Recommendations

The Office of the High Commissioner for Human Rights should urge states to comply with their obligations to respect, protect and fulfill the human rights of all persons in relation to their right to found a family and to make decisions about if and when to bear children. States should do this by:

- Guaranteeing all individuals access to the full range of quality sexual and reproductive health services, including maternal health care; contraceptive information and services; safe abortion care; and assisted reproductive technologies;
- Taking positive measures to enable all individuals to make meaningful decisions around if and when to bear children, such as promoting gender equality and alleviating gender roles and stereotypes; providing paid parental leave, quality maternal and newborn health care, and affordable childcare; and increasing men and women's equal participation in childcare and other caretaking responsibilities;
- Eliminating forms of violence that take place within family or household settings, including physical and psychological violence; gender-based violence; sexual abuse and exploitation; marital rape; child, early and forced marriage; dowry deaths; and honor killings; and
- Eradicating all forms of direct and indirect discrimination against individuals on the basis of their family structure or decisions around pregnancy and childbearing and guarantee equality for all individuals, including by taking steps to overcome harmful social norms and stereotypes and remedying social structures that disadvantage members of particular forms of families.

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<sup>1</sup> Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, art. 16, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46, U.N.T.S. 13 (*entered into force* Sept. 3, 1981).

<sup>2</sup> International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, art. 23, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976)

<sup>3</sup> Convention on the Rights of Persons with Disabilities, *adopted* Dec. 13, 2006, art. 23, G.A. Res. A/RES/61/106, U.N. GAOR, 61st Sess., arts. 23 & 25, U.N. Doc. A/61/611 (*entered into force* May 3, 2008).

<sup>4</sup> See CEDAW Committee, *General Recommendation 19: Violence Against Women* (1992); Convention on the Rights of the Child, *adopted* Nov. 20, 1989, G.A. Res. 44/25, annex, U.N. GAOR, 44th Sess., Supp. No. 49, art. 19, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990) (ratified June 10, 1991).

<sup>5</sup> See, e.g., International Covenant on Civil and Political Rights, Article 2; International Covenant on Economic, Social and Cultural Rights, Article 2; Convention on the Rights of the Child, Article 2.

<sup>6</sup> See Human Rights Committee, *General Comment 19: Protection of the family, the right to marriage, and equality of the spouses* (1990); *Atala Riffo and Daughters v. Chile*, Merits, Reparations and Costs, Judgment of February 24, 2012, para. 120, Inter. Am. Ct. H.R., Series C No. 239 (2012) [hereinafter *Atala Riffo and Daughters v. Chile*].

<sup>7</sup> See, e.g., CEDAW Committee, *General Recommendation No. 24: Article 12 of the Convention (women and health)*, (20th Sess., 1999), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008); *Alyne da Silva Pimentel Teixeira v Brazil*, CEDAW Committee, Comm'n No. 17/2008, U.N. Doc. CEDAW/C/49/D/17/2008 (2011); Committee on the Rights of the Child, *General Comment No. 15: On the right of the child to the enjoyment of the highest attainable standard of health*, (62nd Sess., 2013), U.N. Doc. CRC/C/GC/15 (2013); Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (Art. 12)*, (22nd Sess., 2000), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 85, para. 12, U.N. Doc. HRI/GEN/1/ Rev.6 (2003).

<sup>8</sup> See, e.g., CEDAW Committee, *General Recommendation No. 24*, para. 22; CRPD Committee, *General Comment No. 1: Article 12: Equal recognition before the law*, (11th Sess., 2014), U.N. Doc. CRPD/C/GC/1 (2014).

<sup>9</sup> *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*, Preliminary objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R., para. 272 (Nov. 28, 2012).

<sup>10</sup> *Id.*, paras. 275-304.

<sup>11</sup> CEDAW Committee, *Concluding Observations: Costa Rica*, paras. 32-33, U.N. doc. CEDAW/C/CRI/CO/5-6 (2011).

<sup>12</sup> CEDAW, Art. 11(2); CEDAW Committee, *Concluding Observations: Lichtenstein*, para. 37, U.N. doc. CEDAW/C/LIE/CO/4 (2011). See also ICESCR, Article 10.

<sup>13</sup> See generally Committee on Economic, Social and Cultural Rights, *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights (Art. 3)*, (34th Sess., 2005), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, para. 7, U.N. Doc. HRI/GEN/1/ Rev.9 (Vol. I) (2008); CEDAW Committee, *General recommendation No. 21: Equality in marriage and family relations* (1994).

<sup>14</sup> See, e.g., CEDAW Committee, *Concluding Observations: Australia*, para. 39, U.N. doc. CEDAW/C/AUL/CO/7 (2010); Committee on Economic, Social and Cultural Rights, *Concluding Observations: Austria*, para. 15, UN Doc. E/C.12/AUT/CO/4 (2013).

<sup>15</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: Brazil*, para. 28(d), U.N. Doc. E/C.12/BRA/CO/2 (2009); CRC Committee, *Concluding Observations: Marshall Islands*, para. 2(g), U.N. Doc. CRC/C/MHL/CO/2 (2007); *Armenia*, para. 38, UN Doc. CRC/C/ARM/CO/3-4( 2013); *Alyne da Silva Pimentel Teixeira v. Brazil*, CEDAW Committee, Comm'n No. 17/2008, para. 8(2)(b), U.N. Doc. CEDAW/ C/49/D/17/2008 (2011). See also CEDAW Committee, *Concluding Observations: Kenya*, paras. 38(b), U.N. Doc. CEDAW/C/KEN/CO/7 (2011).

<sup>16</sup> Convention on the Rights of Persons with Disabilities, Articles 7 & 23.

<sup>17</sup> Committee on the Rights of Persons with Disabilities, *Concluding Observations: Paraguay*, para. 56, U.N. Doc. CRPD/C/PRY/CO/1 (2013); *Spain*, para. 44, U.N. Doc. CRPD/C/ESP/CO/1 (2011).

<sup>18</sup> See ICCPR, Art. 17.

<sup>19</sup> See CEDAW Committee, *General Recommendation 19: Violence Against Women* (1992); Human Rights Committee, *General Comment No. 28: Article 3 (The equality of rights between men and women)* (2000); Committee on Economic, Social and Cultural Rights, *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights (Art. 3)* (2005).

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*ee, e.g.*, International Covenant on Civil and Political Rights, Article 2; International Covenant on Economic, Social and Cultural Rights, Article 2; Convention on the Rights of the Child, Article 2.

<sup>22</sup> *Atala Riffo and Daughters v. Chile*, para. 120.

<sup>23</sup> *Id.*, para. 142.

<sup>24</sup> *Id.*, para. 146.

<sup>25</sup> *See, e.g.*, Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child, *Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices*, para. 20-24, UN Doc. CEDAW/C/GC/31 (2014).