

Submission to the OHCHR for the preparation of the report on "Protection of the family and the contribution of families in realising the right to an adequate standard of living" following the HRC resolution 29/22

**by Child Rights International Network (CRIN)
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Child Rights International Network (CRIN) is a rights-based organisation that advocates for the full realisation of all children’s rights. Our submission aims to contribute a children’s rights-based perspective on discussions at the UN relating to the “protection of the family”. In particular, this submission emphasises that such discussions should not paint the family as an abstract holder of rights needing protection; rather they must explicitly position the family as a social unit with responsibilities to individual family members, and underline States’ obligation to ensure their fulfilment. This, in turn, will reinforce the family unit as an arrangement that must provide care, nurture and development to children in order to realise their right to an adequate standard of living.

Children’s right to an adequate standard of living

International human rights treaties provide the normative foundation for understanding the role of the family and the responsibility of its members in realising a child’s right to an adequate standard of living. Article 27 of the Convention on the Rights of the Child enshrines children’s right to a standard of living adequate for their physical, mental, spiritual, moral and social development; and it identifies parents as having the primary responsibility to ensure that the child has an adequate standard of living. The preamble of the Convention on the Rights of the Child places special emphasis on the primary caring and protective responsibility of the family. It does so recognising the fact that children, because of their special vulnerability, need special care and protection; and identifies the family unit as the “natural environment for the growth and well-being” of children. To ensure that this responsibility can be fulfilled, article 27 also identifies the State as guarantor of children’s right to an adequate standard of living, which can include material assistance to parents and their children.

Human rights and family duties

The preamble of the Convention of the Rights of the Child states that the family “should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.” Of significance here is that that family is identified as having responsibilities, not rights. Indeed, family is a social unit which in itself does not hold rights, including to protection; it is individual family members who are independent rights holders. Therefore the need for protection should be understood as States’ obligation to support families so that they can fully assume their responsibilities in ensuring the fulfilment of the rights of all family members, including children.

However, there is an evident need to clarify this, as discussions at the UN on ‘protection’ of the family have to-date often been misconstrued by a number of Member States as an opportunity to argue for the preservation of certain family structures¹ and cultural or traditional values.²

¹ International Service for Human Rights, “Protection of the Family resolution increases vulnerabilities and exacerbates inequalities,” 19 June 2015. Available at:

These include entrenched conceptions of family and norms that are inconsistent with human rights and the principle of non-discrimination. Patriarchal family structures, for example, are known to solidify the cultural construction of gender and allow for gender-based discrimination and violence against women and girls to endure. And a heteronormative conception of family fails to recognise the diversity of family structures and sexual orientations, which can result in the abandonment or abuse at the hands of family members of children who identify as lesbian, gay, bisexual or transgender.

Indeed while the majority of families want the best for their children and play a key role in their upbringing and development, children's rights can be and are violated within the family.³ Accordingly, the Convention on the Rights of the Child recognises the family as both a protector and potential violator of children's rights. While the preamble situates the family unit as "the natural environment for the growth and well-being of all its members and particularly children", the treaty also enshrines children's right to protection from all forms of violence "while in the care of parent(s), legal guardian(s) or any other person who has the care of the child" (CRC art. 19). And being able to lead a life free from all forms of violence determines whether a child, and indeed any person, can fully enjoy and exercise their human rights, including their right to an adequate standard of living.

Recommendations to the OHCHR:

- clarify to States that 'protection' of the family entails recognition of families in realising the right to an adequate standard of living and supporting families to assume their responsibilities through family-centred social assistance programmes.

Legal recognition of family diversity

While the preamble of the Convention on the Rights of the Child (CRC) places emphasis on the primary caring and protective responsibility of the family, it does not refer to a single family structure, instead citing a variety throughout the text. Yet despite 'family' being a social institution that nowadays takes many forms, a large number of States have not legally recognised this diversity, leaving children from non-stereotypical family structures often without legal status. What's more, at UN events on the "protection of the family", a number of Member States continue to push for a conservative, heteronormative conception of family within UN resolutions,⁴ which ignores approved UN language requiring that all relevant UN instruments on human rights consider the different cultural, political and social systems of family life.

There are multiple circumstances in which a child's right to an adequate standard of living is violated on the grounds of the structure of their family. For instance:

Single-headed households are particularly vulnerable to poverty and social exclusion, particularly those headed by single mothers. Discriminatory citizenship laws in some countries, for example, prohibit mothers from passing on their nationality to their children, which leaves the

<http://www.ishr.ch/news/protection-family-resolution-increases-vulnerabilities-and-exacerbates-inequalities#sthash.mvoCv5pe.dpuf>

² See, for example, "Summary of the Human Rights Council panel discussion on the protection of the family," 22 December 2014, A/HRC/28/40. Available at:

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_40_ENG.doc

³ See, for example, "Where violence occurs: In the home and family," UN Secretary-General's Study on Violence against Children, 2006. Available at: <http://www.unviolencestudy.org/>

⁴ International Service for Human Rights, "Protection of the Family resolution increases vulnerabilities and exacerbates inequalities," 19 June 2015. Available at:

<http://www.ishr.ch/news/protection-family-resolution-increases-vulnerabilities-and-exacerbates-inequalities#sthash.mvoCv5pe.dpuf>

child of a single mother effectively stateless (CRC art. 7), thus compromising their childhood as well as their opportunities to live full, dignified lives as adults.

Children born out of wedlock can have a lesser right to inherit their parents' estate than those born in wedlock, in contravention of children's right to non-discrimination, including on the grounds of their birth status (art. 2).

In child-headed households, like in any family, there is a need for food, clothes and shelter, but opportunities to earn income are limited because: national minimum ages restrict children's entry into the labour force (so there is the risk of not having any household income or being forced to enter the illegal economy where abuse and exploitation are prevalent); absence of earnings means there is a reliance on support from the extended family, but the income flow may be unreliable; and as children in child-headed households tend to be in their mid to late teens, many do not fall within the eligible age threshold to receive child support grants.⁵

In countries where surrogacy agreements are not recognised, children born through surrogacy are not always given birth certificates or national identity numbers in the commissioning parents' country, which effectively leaves a child without a name and nationality (CRC art. 7), and therefore unable to access services such as health care (art. 24) or education (art. 28).

Recommendations to the OHCHR:

- ensure that UN documentation on the role of the family in realising the right to an adequate standard of living uses language which explicitly recognises that family structures vary between cultural, political and social systems;
- urge States to legally recognise the diversity of family structures and provide social and material support to families according to their particular needs;
- reiterate to States their obligation to give legal recognition to children regardless of the circumstances of their birth.

Alternative care and States' obligations

States must fulfil their legal obligation to ensure children's rights are respected, protected and fulfilled in all settings, including within and outside families. This is especially the case when the family is unable to fulfil or is a direct violator of a child's right to an adequate standard of living and it is deemed to be in the child's best interests to not remain in that environment. In cases where alternative care must be arranged, article 20 of the Convention on the Rights of the Child (CRC) sets out States' obligation to provide special protection for a child and to ensure that appropriate alternative family care or institutional placement is available.

Such alternative care must allow a child to grow up in a safe and supportive environment where they are able to thrive. This is particularly important for children who may face discrimination based on their race, ethnicity or sexual orientation or gender identity or other grounds. For instance, in alternative care settings where a child's identity is not affirmed by their caregivers or peers, the environment can be more hostile than or as damaging as the one they left.

Recommendations to the OHCHR:

- reiterate to States their obligation to ensure children's rights are respected, protected and fulfilled in all settings, including within families and in alternative care settings.

⁵ Children's Institute, University of Cape Town, "Child-headed households in South Africa: A statistical brief", 2009. Available at: http://www.childrencount.ci.org.za/uploads/brief_child_headed_households.pdf