

Joint submission for the UN Office of the High Commissioner for Human Rights report for the 31st session of the Human Rights Council on the “Protection of the family and the contribution of families in realizing the right to an adequate standard of living”

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With reference to the resolution 29/22, adopted by vote by the UN Human Rights Council in June 2015, requesting the UN Office of the High Commissioner for Human Rights (OHCHR) to prepare a report on the “Protection of the family and the contribution of families in realizing the right to an adequate standard of living”, the above-mentioned organisations submit the present contribution.

Given the scope of the report and the nature and mandate of the UN Human Rights Council (UN HRC), it is essential that this report, while focusing on a social institution like ‘family’, integrates a human rights perspective, within the framework of existing international human rights treaties, including the UN Convention on the Rights of the Child (UN CRC) – the most universally ratified human rights treaty with 196 States parties.

In particular, the report should put a strong emphasis on the rights of children and the legal responsibilities of States to respect, protect and fulfil children's rights in all settings, both within and outside families.

According to the preamble and provisions¹ of the UN CRC, including children’s unequivocal right to non-discrimination, notably on the basis of family status, activities of parents, guardians and family members,² and the overarching principle of the best interests of the child,³ it is clear that States have the obligation to respect and support, in law and practice, all types of families.

According to the Committee on the Rights of the Child, from a children’s rights perspective, ‘family’ refers to “a variety of arrangements that can provide for young children’s care, nurturance and development, including the nuclear family, the extended family, and other community-based arrangements, provided these are consistent with children’s rights and best

¹ See in particular, the following UN CRC articles: Articles 2 (non-discrimination), 3 (best interests), 7 (the right to know and be cared for by parents), 8 (the right to identity and to preserve family relations), 9 (the right not to be separated from parents unless when in the child’s best interest), 12 (the right to be heard), 16 (the right to non-interference with family), 18 (State’s duty to support parents in their responsibility to secure children’s upbringing), 20 (the right to protect children deprived of their family environment), 21 (domestic and inter-country adoption), 22 (the right of refugee children to be reunified with their families or provided with alternative care services), 25 (the right to periodic review of care placement), 27 (the right to adequate standards of living) and 30 (the rights of indigenous children to enjoy their culture, religion and language).

² See Article 2 of UN CRC, accessible at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

³ See Article 3 of UN CRC, accessible at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

interests.”⁴ Therefore, ‘family’ means in fact “all forms of families in different contexts”, including the full range of care-giving environments, kinship, non-nuclear families, single-headed families, adoptive families, children-headed households and any other arrangements, provided they respect children's rights and best interests, and ensure provision of care, nurturance and development.

As civil society representatives of all regions of the world working with and for children, we affirm that children experience ‘family’ in a variety of ways and forms. In each cultural, political and social system, a multitude of families exist, and different forms of family structures have emerged in response to social change, conflict, urbanization, HIV/AIDS and other crises, which fulfil an important role in society today and for children and their rights.

We also recognise that while the majority of families want the best for their children and play a key role in their upbringing, children's rights can be and have been violated within families, including by the persons closest to children, who should protect them and take care of them. Such violations include violence, abuse, exploitation, neglect or other actions that expose children to situations that threaten their personal integrity and development.⁵

Where children do not have safe family-based care, they are at increased risk of experiencing other violations of their rights, including by being involved in harmful work or other forms of exploitation, living on the street or in institutional care.

To fully realise all rights for children – including the rights to access health, social care and education services and the right to protection from violence – States must ensure that families with children are able to assume their responsibilities towards children and prevent violations of their rights. This is clearly spelled out in the preamble of the CRC and in article 18 of the CRC which provides that “*States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities*”.

To this end, States have the obligation to ensure that laws, public policies, programmes and services in these areas be aimed at the development and strengthening of the capacities of families and caregivers to adequately fulfil their parental responsibilities and do not exclude or discriminate against any child by ensuring that they apply to all forms of families. Furthermore, States must support all families, and specifically strengthen those families in vulnerable circumstances by tailoring responses that address the root causes of vulnerability.

From a children’s rights perspective, it is therefore clear that the “protection of the family” can only be understood as supporting and strengthening families to ensure the fulfilment of the rights of all its members, including the rights of children.

⁴See CRC/C/GC/7/Rev.1, 2006, paragraph 15, accessible at: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/GeneralComment7Rev1.pdf> The CRC Committee is the expert body mandated by States parties to monitor the realization of States obligations under the CRC, including through the examination of individual communications, and thus, to interpret the meaning and scope of children's rights in the light of the object and purpose of the UN CRC, in accordance with the Vienna Convention on the Law of Treaties.

⁵ See Committee on the Rights of the Child, General Comment No. 8, The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia) (Forty-second session, 2006), U.N. Doc. CRC/C/GC/8 (2006) : <http://www1.umn.edu/humanrts/crc/comment8.html>

We recommend that the report:

1. Explicitly make reference to the existence of all families by using the phrase “all forms of families in different contexts”;
2. Reaffirm that all children, whether they live in a family environment or not, remain rights-holders whose rights cannot be overlooked, limited or negated, because of the environment in which they live;
3. Explicitly reiterate States’ legal obligation to protect and respect the human rights of all individuals in families, including by taking action to prevent and respond to violations of children’s rights occurring within families, by prohibiting and working to eliminate all forms of violence, exploitation and neglect in families, by providing alternative care for children, where needed, which respects their rights, and by ensuring all legislation, policy and practice related to families is in compliance with the UN CRC.
4. Reaffirm that “protection of the family” means supporting and strengthening families to ensure the fulfilment of the rights of all their members, including by providing them appropriate assistance in the performance of their child-rearing responsibilities.

