

The rights of the child and ‘family’

Joint position paper

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This year marks the 20th Anniversary of the International Year of the Family. On this occasion, a number of international initiatives are expected to be launched, including at the UN Human Rights Council.

Given its nature and mandate, any discussion and/or initiative at the UN Human Rights Council (HRC) on a social issue like ‘family’ must take place from 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 194 States parties.

In particular, it should clearly acknowledge what ‘family’ means in the context of the rights of the child and 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, including within and outside families.

As the UN Secretary-General, Mr Ban Ki-moon, and the Director-General of the UN International Labour Organization, Mr Guy Ryder, recalled on the International Day of Families this year, families may take “whatever form”, they have “different shapes and sizes”.¹ This is particularly true from a children’s rights perspective.

According to the preamble and provisions² 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,³ and the overarching principle of the best interests of the

¹ See the statement of UN Secretary General Ban Ki-moon on 15 May 2014, available at: <http://www.un.org/apps/news/story.asp?NewsID=47796#.U42PJ3I0WSr>

² 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).

³ See Article 2 of UN CRC, accessible at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

child,⁴ it is clear that States have the obligation to respect and support, in law and practice, all types of families.

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 interests."⁵ 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 around 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 crisis, 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 in families, including by family members, through notably violence, abuse, exploitation and neglect.⁶ In such cases, it is the legal obligation of States to protect the rights of children by superseding families.

We therefore recommend States to comply with their international obligations with respect to children's rights and thus to:

- 1. Explicitly acknowledge the existence of all families by using the phrase "all forms of families in different contexts" in any discussion or international document on 'family'.**
- 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 recall 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 in families, by prohibiting and working to eliminate all forms of violence, exploitation and neglect in families, by**

⁴ See Article 3 of UN CRC, accessible at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁵See 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.

⁶ 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>

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.