



THE FAMILY ARTICLES

Official Civil Society Platform

“Civil Society for the Family”

- ARTICLE 1.** The family is defined in international law and policy as “the natural and fundamental group unit of society.” As such, it is “entitled to protection by society and the State” and is a proper subject of human rights.
- ARTICLE 2.** The Universal Declaration of Human Rights and binding international instruments reserve singular protections for the family in recognition of the family’s irreplaceable role as “natural environment for the growth and well-being of all its members and particularly children.”
- ARTICLE 3.** The best available social science validates the exceptional status of the family in international law.
- ARTICLE 4.** International law further establishes that the family is formed through the union of a man and a woman who exercise their right to freely “marry and found a family.” This fundamental right is enshrined in the Universal Declaration of Human Rights and binding international instruments.
- ARTICLE 5.** Relations between individuals of the same sex and other social and legal arrangements that are neither equivalent nor analogous to the family are not entitled to the protections singularly reserved for the family in international law and policy.
- ARTICLE 6.** The UN secretariat, agencies, treaty bodies, and other mandate holders are bound to assist Member States in fulfilling their obligations toward the family as defined in international law, and following the directions of UN Member States.

ARTICLE 7. The international community has repeatedly rejected attempts to redefine the family in international law and policy. Any mention of the family in UN resolutions and conference outcomes can only be interpreted in reference to a man and a woman united in marriage, and relations that are equivalent or analogous, including single parent families and multigenerational families.

ARTICLE 8. Acts and declarations by UN entities and mandate holders that treat relations between individuals of the same sex as equivalent or analogous to the family, including acts and declarations purporting the existence of international human rights obligations on the basis of “sexual orientation and gender identity” are *ultra vires* and cannot give rise to binding legal obligations on sovereign states. Such acts and declarations are not based on valid interpretations of international law and policy, and cannot contribute to the formation of new customary international law.

ARTICLE 9. International law protects all children equally, even when they are deprived of their family. It does not require sovereign states to extend the specific protections reserved for the family in international law and policy to social and legal arrangements that are neither equivalent nor analogous to the family.

To do so would threaten and undermine the fundamental human right of children to know and be cared for by their mother and father, and may jeopardize their health and wellbeing.

ARTICLE 10. UN resolutions, declarations, and conference outcomes should continue to reflect the definition of the family in international law and never use language that implicitly or explicitly attempts to dilute, erode, or undermine it. Any such language is incompatible with international human rights law and its use may constitute a violation of the fundamental human rights it enshrines.

EXPLANATORY NOTES ON THE FAMILY ARTICLES

Introduction

Recent pressure to grant international status and recognition to social and legal arrangements between individuals of the same sex in the context of the United Nations has led to confusion and acrimony in international negotiations on the subject of the family. Unfortunately, this has led to the exclusion of the family altogether from recent debates in the UN General Assembly. This position statement and explanatory notes are intended to constructively move the debate beyond the current impasse to a more fertile approach that will recognize the importance of the family for all individuals and society at large, but most especially for children.

NOTE 1

The Universal Declaration of Human Rights (UDHR) defines 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. The International Covenant on Civil and Political Rights (ICCPR 23), the International Covenant on Economic, Social, and Cultural Rights (ICESCR 10.1), and the Convention on the Rights of the Child (CRC, Preamble) reflect the UDHR verbatim in their provisions.

These binding international norms have not gone unheeded. At least 111 countries have constitutional provisions that echo Article 16 of the UDHR. *See* World Family Declaration, available at <http://worldfamilydeclaration.org/WFD>.

By virtue of these provisions in international law the family is a proper subject of human rights and is a bearer of rights in international human rights law. *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* 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.

The outcomes of United Nations conferences have recognized as much. The Programme of Action of the 1994 International Conference on Population and Development, for example, referred to the “rights of families” (UN document A/CONF.171/13, paragraph 5.8). Similarly, the Programme of Action of the 1995 World Summit for Social Development recognized that the family is “entitled to receive comprehensive protection and support” (UN document A/CONF.166/9, paragraph 80).

NOTE 2

By highlighting the “natural” and “fundamental” character of the family as social unit international law recognizes the family as a universal human experience that antedates any positive legal status or definition of the family. The family is as it were a pre-juridical entity. It is as such that the family is “entitled” to protection by society and the state.

The underlying justification for the singular protections to which the family is entitled in international law is best expressed in the Preamble of the CRC, which affirms 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).

The importance of the family for the growth and well-being of children was also seen as the underlying reason for the special protections it is afforded under international law in the Declaration and Programme of Action of the 1993 World Conference on Human Rights, which stressed that “the child for the full and harmonious development of his or her personality should grow up in a family environment which accordingly merits broader protection” (A/CONF.157/23, paragraph 21).

In this regard, it is important to note how ICESCR established 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” (UDHR 23, 25; ICESCR 7, 11.1). The ICESCR, in this sense, does not merely “entitle” the family to generic social and economic protection and assistance, as the ICCPR, but requires states to provide the family with the “widest possible” protection and assistance.

Several other core obligations of states towards the family in international law are also well established. These include, the protection of the equal rights of men and women to freely enter into marriage and found a family, and their equal rights during marriage and at its dissolution (UDHR16, ICCPR 23, ICESCR 10); the obligation to create an environment conducive to family formation and stability (UDHR 23, 25, ICESCR 10, 11, CRC 18, 23, 27); the protection of the right of the child to know and be cared for by her/his parents; and the related rights of the child to a cultural and religious identity (ICCPR, 23, 24, CRC 2, 3, 5, especially 7, 8, 9, 10, 18, 27) and 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, 30).

NOTE 3

The self-evident truth of the benefit of the family to its individual members and society at large enshrined in international law is validated by the best available social science and research, making use of the most reliable data and widest possible samples.

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. 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 (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>).

A host of negative outcomes result from family breakdown and deprivation. 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. Ibid. Regnerus, M.; *see also* Sullins, Donald Paul, Emotional Problems among Children with Same-Sex Parents: Difference by Definition (January 25, 2015). *British Journal of Education, Society and Behavioural Science* 7(2):99-120, 2015. Available at SSRN: <http://ssrn.com/abstract=2500537>; and Sullins, Donald Paul, Child Attention-Deficit Hyperactivity Disorder (ADHD) in Same-Sex Parent Families in the United States: Prevalence and Comorbidities (January 21, 2015). *British Journal of Medicine & Medical Research* 6(10): 987-998, 2015, Article no. BJMMR.2015.275, ISSN: 2231-061. Available at SSRN: <http://ssrn.com/abstract=2558745>.

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. *See* 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.

The family is essential in combating poverty and creating economic opportunity.

A 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. *See* 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>.

Entering marriage and founding a family is correlated with higher earnings and social mobility. 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. Ibid. Wilcox, B., et al.

The benefits of the family for individuals and communities are repeated across borders and all segments of society regardless of social and economic status, including among minorities. *See*

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>.

NOTE 4

Even as the family acquires specific legal characteristics across legal systems and social contexts, cultures and religions, international law recognizes and protects the fundamental human right to marry and found a family. This fundamental right antedates any formal recognition of marriage by society and the state, and sanctions the self-evident truth of marriage as a permanent and exclusive union of a man and a woman naturally oriented towards procreation and childrearing. See Girgis, Sherif and George, Robert and Anderson, Ryan T., What is Marriage? (November 23, 2012). Harvard Journal of Law and Public Policy, Vol. 34, No. 1, pp. 245-287, Winter 2010. Available at SSRN: <http://ssrn.com/abstract=1722155>.

The UDHR (Article 16) ties the founding of the family to marriage, and affirms that “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. *They are entitled to equal rights* as to marriage, during marriage and at its dissolution (emphasis added).” The UDHR 16 language on the *equal right* to marry and found a family of men and women is reflected verbatim in the ICCPR (Article 23), the ICESCR (Article 10), as well as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW 16), which refers to equality within marriage as between “men and women” and refers to “husband and wife” in the context of the family.

These provisions effectively define the family in international law as resulting from the union of a man and a woman in marriage. This definition of the family is called *natural family* by anthropologists or *nuclear family* by social scientists.

The European Convention on Human Rights (ECHR 12) and the Inter-American Convention on Human Rights (IACHR 17) also reflect the language of the UDHR on the right to marry and found a family verbatim.

In fact, the European Court of Human Rights has said on multiple occasions, while interpreting the provision on the right to marry and found a family in the ECHR (Article 12), that marriage is understood in the ECHR to be between a man and a woman, and that states do not have an obligation to grant individuals who identify as LGBT the right to marry another individual of the same sex. See *HÄMÄLÄINEN v. FINLAND*, no. 37359/09, § 71, ECHR 2014; *SCHALK AND KOPF v. AUSTRIA*, no. 30141/04, § 101, ECHR 2010; *HÄMÄLÄINEN v. FINLAND*, § 96; *REES v. UK*, § 49; *REES v. UK*, § 49). It should be conversely noted that the Court has elsewhere inconsistently applied the term “family” to relations between individuals of the same-sex.

NOTE 5

The definition of the family in international law only applies to relations between men and women and does not apply to relations between individuals of the same sex and other social and legal arrangements between adults that are not equivalent or analogous to the family, and indeed, incapable of constituting a family for purposes of international law.

The Vienna Convention on the Law of Treaties (VCLT) provides the most authoritative canon to interpret international treaties, and is considered widely to be part of customary international law. According to the VCLT (Article 31) treaties must be interpreted in “good faith” according to the “ordinary” meaning of the terms of the treaty as they were understood at the time the treaty was negotiated and its overall “object and purpose.”

The ordinary meaning of the text of the provisions of international law on the right to marry and found a family is unambiguous. These provisions preclude that they apply to relations between individuals of the same sex because they explicitly refer to men and women and their equality before, during, and after marriage.

Moreover, it is impossible that UN member states could have intended these provisions to apply to relations between individuals of the same sex because at the time when all UN treaties were negotiated, with the single exception of the Convention on the Rights of Persons with Disabilities (CRPD), so-called same-sex “marriage” or unions of any type did not exist anywhere in the world, and neither did any kind of legal status for relations between individuals of the same sex. The first country to ever enact so-called same-sex “marriage” was the Netherlands in 2001. The first country to give any type of legal status to relations between individuals of the same-sex was Denmark in 1989.

NOTE 6

The mandate of the United Nations secretariat and agencies emanates from the sovereign will of UN member states expressed in the Charter of the United Nations and the resolutions of the General Assembly. Any actions by the secretariat must be mandated unambiguously by the General Assembly.

Article 98 of the United Nations Charter requires the Secretariat to follow the instructions of UN Member States and to perform his functions “as are entrusted to him” by the inter-governmental charter bodies of the United Nations. Article 100 of the UN Charter prohibits the UN Secretary General or his staff from seeking or receiving “instructions from any government or from any other authority external to the Organization,” further instructing the Secretary General and his staff to “refrain from any action which might reflect on their position as international officials responsible only to the Organization.”

The expression of the sovereign will of UN member states enshrined in UDHR 16 is still the normative framework for the secretariat and agencies to understand the family and develop policies and programs to strengthen and protect it. Therefore the secretariat and agencies may not expand their mandate unilaterally, or change the substance of UDHR 16 to include relations between individuals of the same sex and other social and legal arrangements that are not equivalent or analogous to the family.

Any mention of the family in UN policies and programming should reiterate the understanding at the founding of the United Nations that the family is the “natural and fundamental group unit of society” and abide by the definition of the family in international law. This excludes any international recognition for relations between persons of the same-sex as capable of constituting a “family,” as in the case of social and legal arrangements like homosexual civil unions and so-called gay “marriage” (See Note 4 above and Note 7 below).

NOTE 7

The Universal Declaration of Human Rights is the only UN consensus outcome to define the family and how it is formed for purposes of UN policy. Moreover, it embodies the definition of family enshrined in binding human rights instruments to which every single UN member state is a party.

Any mention of the family in a UN resolution or other intergovernmental outcome of the United Nations can only be interpreted as referring to the union of a man and a woman in marriage or in reference to relations that are at least analogous to the family. Relations between individuals of the same sex are not analogous to the family because by definition the family requires the union of a man and a woman and their natural offspring.

Beginning with the Programme of Action of the International Conference on Population and Development (ICPD) UN policy employed the phrase “various forms of the family exist” (UN document A/CONF.171/13, Principle 9) when describing the family. This phrase never displaced the definition of the family in the Universal Declaration of Human Rights, or the understanding that the family results from the union of a man and a woman. This is reflected also in the ICPD outcome itself where it states, “While various forms of the family exist in different social, cultural, legal and political systems, the family is the basic unit of society and as such is entitled to receive comprehensive protection and support (ICPD 5.1).”

Similarly, the Programme of Action of the 1995 World Summit for Social Development recognized that “[i]n different cultural, political and social systems, various forms of the family exist.” However it also linked the family to marriage, and when discussing the topic of the family it states that “[m]arriage must be entered into with the free consent of the intending spouses, and husband and wife should be equal partners.” (UN document A/CONF.166/9, paragraph 80).

The entirety of Chapter V of the ICPD outcome dedicated to the family and family structure, does not pretend to redefine the family, but simply used the word “family” analogously (ICPD 5.6) for “single-parent and multigenerational *families*” (see section below in notes 9 and 10). These situations, indicative of family breakdown, are certainly analogous and derivative of the family as enshrined in international law. It is important to highlight that even in this context the ICPD outcome did not use the term family in reference to “one-person *households*” (emphasis added).

In recent years, the phrase “various forms of the family exist” has been rejected by the General Assembly because of now confirmed suspicions that it would be construed by the UN secretariat and agencies as a mandate to recognize and promote the notion of so-called same-sex “marriage” or “families.” The Office of the High Commissioner for Human Rights (OHCHR) is spearheading a UN system wide effort to promote these notions (addressed below in Note 8). Recent General Assembly resolutions on the family excluded the phrase “various forms of the family exist”, most significantly the General Assembly resolution on the celebration on the 20th Anniversary of the International Year of the Family and its predecessor resolutions (UN Document A/RES/69/144).

The 2030 Agenda also excludes this notion (UN document A/RES/70/1). In fact the 2030 agenda goes further, and distinguishes “the family” from “the household”, highlighting the exceptional status of the family in international law and policy as a status not shared by other social and legal arrangements. Target 5.4 of the Sustainable Development Goals commits government to “recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies, and the promotion of shared responsibility within *the*

household and the family as nationally appropriate.” The implication of this target, is that while the family is entitled to protection under international law, countries may at the national level extend protections to other households as they deem fit, even if they are not equivalent or analogous to the family. This continues to exclude international recognition for any and all households as capable of constituting a family in UN policy and programming.

The exceptional status of the family in international law and policy is not too narrow to include also situations where the family is not intact, or where children deprived of their biological family are adopted by a putative family.

UN policy may indeed provide for “single-parent and multi-generational families” because they are analogous or derivative in so far as they seek to preserve the natural bonds of the family and the blood ties between children and their guardians, or try to reconstitute the nuclear family for a child deprived of his/her intact family in the absence of blood ties.

On the other hand, relations between individuals of the same sex and other social and legal arrangements that are neither equivalent nor analogous to the family should not be recognized as “families” by the UN secretariat and agencies in UN policies and programmes. There is no indication that the General Assembly wanted to extend the protections specifically reserved for the family under international law to relations between persons of the same-sex and other social and legal arrangements that are not equivalent or analogous to the family in the ICPD outcome, or the outcomes of subsequent UN conferences that employed the phrase “various forms of the family exist.”

NOTE 8

Over the last decade the UN secretariat and agencies have been advancing a controversial social agenda under the guise of human rights for individuals that identify as lesbian, gay, bisexual, transgender, or otherwise (LGBT), including most recently by promoting the notions of same-sex “marriage” and homosexual “families.” An OHCHR report details how every UN agency is now working to promote this agenda throughout the UN system. See “The Role of the United Nations in Combatting Discrimination and Violence against Individuals Based on Sexual Orientation and Gender Identity,” November 2015, available at: http://www.ohchr.org/Documents/Issues/Discrimination/UN_SOGI_summary25Nov2015.pdf.

In 2014 the UN Children’s Fund (UNICEF) released a “Position Paper,” on “Eliminating Discrimination Against Children and Parents Based on Sexual Orientation and/or Gender Identity,” making the case for giving legal recognition to same-sex “families,” decriminalizing sodomy, and making the age of consent for sex the same for sodomy. After some controversy the paper was no longer listed as a “Position Paper” but as part of a “Current Issues” series. UNICEF, Current Issues No. 9, available at: http://www.unicef.org/esaro/Current_Issues_Paper- Sexual_Identification_Gender_Identity.pdf.

Since 2013 the powerful UN human rights bureaucracy has been conducting a campaign called “Free and Equal” that recently promoted so-called gay “marriage” at UN Headquarters in an event extolling the marriage of Brazilian celebrity Daniela Mercury to another woman. See Free and Equal campaign website available at: <https://www.unfe.org>; See also Stefano Gennarini, “UN Officials Promote Homosexual Marriage In Latin America through Celebrity Culture, Judicial

Activism, and Executive Overreach”, Friday Fax, November 26, 2015, available at: https://c-fam.org/friday_fax/un-officials-promote-homosexual-marriage-latin-america-celebrity-culture-judicial-activism-executive-overreach.

In September 2015 twelve major UN entities, including UNDP, OHCHR, WHO, UNFPA, UNICEF, UNESCO, WFP, UNHCR, UNAIDS, UNODOC, and the ILO, released a statement that ambiguously refers to “families” of individuals who identify as LGBT, and laments how children face discrimination “on the basis of their actual or perceived sexual orientation or gender identity, or *that of their parents* (emphasis added).” See “Ending, Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender, and Intersex People,” available at: <http://www.ohchr.org/EN/Issues/Discrimination/Pages/JointLGBTIstatement.aspx>.

These acts and declaration of the UN secretariat and other UN entities are based for the most part in the non-binding recommendations of UN treaty bodies and special procedures. While these recommendations are not binding, the OHCHR and the treaty bodies like to describe them as “authoritative”, and even refer to views of the treaty bodies as “jurisprudence” improperly suggesting the status of binding precedent that term denotes in common law systems (OHCHR website: <http://juris.ohchr.org>).

On the whole, when dealing with same-sex relations these treaty body recommendations contain unfounded and inaccurate assertions about the obligations of UN member states, and scholars have called into question the authority of treaty bodies to issue such recommendations. See Kloster, Andrew and Pedone, Joanne, Human Rights Treaty Body Reform: New Proposals (June 27, 2011). Journal of Transnational Law & Policy, Vol. 22, Spring 2013, available at SSRN: <http://ssrn.com/abstract=1885758>. See also San Jose Articles, Notes to Article 6, available at: www.sanjosearticles.com.

The main thrust of these recommendations is captured in two reports of the Office of the High Commissioner for Human Rights on violence and discrimination on the basis of “sexual orientation and gender identity” (UN document A/HRC/29/23 and A/HRC/19/41) following two narrowly adopted resolutions on “sexual orientation and gender identity of the Human Rights Council.

For example, the reports say that international treaties require states to recognize homosexual relations and extend to them the same benefits reserved for marriage between a man and a woman, including parental rights, to recognize transsexual sex-change in law, decriminalize any and all consensual sex between adults, enact special protections for individuals who identify as LGBT in criminal and employment laws and other law enforcement mechanisms, grant special asylum rights to individuals and their families when they identify as LGBT. See Report of the United Nations High Commissioner for Human Rights on discrimination and violence against individuals based on their sexual orientation and gender identity, 4 May 2015 (UN Document A/HRC/29/23); Report of the United Nations High Commissioner for Human Rights on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, 17 November 2011 (UN Document A/HRC/19/41).

The OHCHR also prepared a report on protection of the family for the 31st Session of the Human Rights Council that attempts to create space for international recognition of so-called same-sex “marriage” and “families” within the definition of the family in international law (UN document A/HRC/31/37).

In the report the OHCHR asserts “There is no definition of the family under international human rights law,” and that it should be understood in a “wide sense” (Paragraph 24). The report equates the nuclear family with “the extended family, and other traditional and modern community-based arrangements” when it comes to caring for children and binding international obligations addressing guardianship (Paragraph 25), and cites examples of countries extending protections reserved for the family to relations between individuals of the same sex as examples of changes in family law and policy, as if it were a matter of course that international law and policy should account for such changes (Paragraph 51-75).

These acts and declarations of the UN secretariat, treaty bodies, and other UN entities are *ultra vires*. They are not based on valid interpretations of international law and as such cannot create new legal obligations either as interpretations of existing international instruments or by way of customary international law, consistent with the principle *ex inuria jus non oritur* (law cannot arise from offenses against the law).

This applies also to the purported existence of special rights on the basis of “sexual orientation and gender identity” for individuals who identify as LGBT. All human beings possess the same fundamental human rights by virtue of their inherent dignity and worth (UDHR, Preamble and Article 1), but sexual preferences and behaviors are not protected by international human rights law except in the context of the right of men and women to freely marry and found a family.

Debates on the use of the terms “sexual orientation” and “gender identity” within the United Nations in reference to individuals who identify as lesbian, gay, bisexual, and transgender (LGBT) are often conducted with the assumption that these notions are clearly defined in science and law. In fact, there is no scientific consensus on how to define sexual orientation, very few countries treat individuals that identify as LGBT as a discrete class of persons, and many proscribe homosexual conduct because of moral and public health concerns. See the Amicus Brief of Dr. Paul McHugh in the U.S. Supreme Court case of *Hollingsworth v. Perry* (containing a detailed discussion of the science), available at: http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs-v2/12-144-12-307_merits-reversal-dpm.authcheckdam.pdf.

No UN human rights treaty includes the words “sexual orientation and gender identity” in any form nor does the context and drafting histories of respective treaties allow a good faith interpretation that includes special protections for sexual preferences or behavior. Unlike freedom of conscience and religion sexual preferences are not protected under international human rights law.

Quite aside from any moral considerations, there is no legal basis for asserting any special protections for sexual preference and behavior outside of the context of the right to marry and found a family, according to the definition of the family outlined above (footnote 4 and 5).

International human rights law does not protect unfettered sexual autonomy or any kind of sexual conduct between consenting adults whatsoever. The only scope for autonomous sexual choices recognized in international law is found in the context of the right to freely marry and found a family (UDHR 16, ICCPR 23 and 24, CESC 10) and the equal right of men and women to decide freely and responsibly on the number and spacing of children (CEDAW 16).

The right to privacy and family life similarly does not protect unfettered sexual autonomy. The UDHR and ICCPR indeed recognize a right to be free of interference in one’s privacy and family

(UDHR 17; ICCPR 17). But this cannot be understood to protect unfettered sexual autonomy or any kind of sexual activity between consenting adults whatsoever.

At the time that these human rights instruments were negotiated and adopted by UN member states many countries outlawed sodomy, and nearly 80 still do so to this day. Many countries also restricted or penalized other forms of sexual conduct between consenting adults, including incest, adultery, and fornication, and many countries still do today. Therefore it is inconsistent to say that either the right to privacy or the prohibition against unjust discrimination in international law presume the protection of sexual preferences and behaviors outside of the context of the right to marry and found a family, as defined in international law.

UN political consensus similarly does not recognize these categories. The UN General Assembly has repeatedly refused to include this notion in UN resolutions.

The only times the terms have ever appeared in a General Assembly resolutions has been in bi-annual resolutions on extrajudicial killings, and even then, not by consensus (UN document A/RES/69/182).

The Human Rights Council resolutions on “sexual orientation and gender identity” only barely passed and were only procedural, merely requesting the reports mentioned above, and not validating “sexual orientation and gender identity” as a protected status recognized in international law (UN document A/HRC/RES/17/19, adopted by a recorded vote of 23 to 19, with 3 abstention, and UN document A/HRC/RES/27/32 adopted by a recorded vote of 25 to 14, with 7 abstentions). The UN secretariat and agencies cannot use these resolutions as a basis to modify the definition of the family in international law, so that it applies to relations between individuals of the same-sex.

NOTE 9

Validating the choices of adults to live with individuals of the same sex or in other social and legal arrangements that are not analogous to the family, and equating them to the family, is not necessary to prevent discrimination against children. International law requires the protection of children regardless of their situation in life but it does not require states to confer the special protections reserved for the family on relations between individuals of the same sex and other social and legal arrangements between adults that are not equivalent or analogous to the family.

The Universal Declaration of Human Rights and binding international human rights treaties recognize that many children are deprived of their family and must be provided with adequate protection, by providing that “[m]otherhood and childhood are entitled to special care and assistance” and that “all children, whether born in or out of wedlock, shall enjoy the same social protection” (Article 25).

This does not require states to elevate any social and legal arrangement where children may be situated as equivalent to the family. In fact, this norm enshrined in binding international human rights instruments, including the International Covenant on Civil and Political Rights (Article 24), the International Covenant on Economic, Social, and Cultural Rights (Article 10), and the Convention on the Rights of the Child (Articles 2, 7, 8, 20), underscores the obligation of member states to protect the family as the optimal environment for children (*See Note 3 above*).

It presumes that states will afford the family specific protections that are not available to any type of household arrangement. Precisely because of this it requires states to make special efforts to protect children in whatever situation they may be, and to protect mothers whether or not they are married.

Children have a fundamental human right to know and be cared by their mother and father under international law. It is the basis for rights of the child in the context of family reunification policies and adoption (ICCPR, 23, 24, CRC 2, 3, 5, especially 7, 8, 9, 10, 18, 27). It is also related to the “prior” right of parents to educate their children in accordance with their religious and moral convictions and to the right of the child to a cultural and religious identity (UDHR 26.3, ICCPR 18, CRC 2, 3, 5, 14, 20, 29, 30).

Legal recognition, on the same basis as the family, for relations between persons of the same sex or other social and legal arrangements that are neither equivalent nor analogous to the family, threatens the right of the child to know and be cared for by his/her parents. This takes place where adoption and step-child adoption gives legal guardianship of a child to persons that are not biologically related to the child in the context of so-called same-sex marriages and homosexual unions, or other social and legal arrangements that are not equivalent or analogous to the family. This kind of legal regimen directly threatens and undermines the right of the child, who is vulnerable and physically, intellectually, and emotionally immature to know his/her parents.

Such legal regimes may also threaten the health and wellbeing of children (*See Note 3 above*).

NOTE 10

The recent resurgence of the language of the UDHR (Article 16) on the family as “the natural and fundamental group unit of society” in Human Rights Council resolutions on protection of the family (UN documents 26/11 and 29/22), as well as resolutions of the Commission for Social Development (UN document E/CN.5/2014/L.5) is a welcome development that bodes well for the future.

Abandoning UDHR 16 would lead to the erosion of the definition the family in international law and policy, and eventually create the space within the institutional framework of the United Nations for a harmful re-definition of the family that reduces family to government sanction of adult sexual and emotional desires, where children are commodities to be manufactured, contracted for, and ultimately purchased.

Any ambiguity with regard to what constitutes a family presently will be construed by the UN secretariat and agencies as international recognition for social and legal arrangements between persons of the same-sex as “families” and a mandate to promote same-sex “families”, as well as sexual orientation and gender identity as categories in international human rights law or UN social policy.



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