

# The Family in International Law and Policy

By Stefano Gennarini, J.D.

## INTRODUCTION

Since the founding of the United Nations, international law and policy have recognized a preeminent place for marriage and the family as the “natural and fundamental unit of society.” This *Definitions* paper will evaluate the ongoing campaign by Western countries to redefine the family internationally and to make homosexual relations equivalent to marriage between a man and a woman. The paper will show how the definition of the family in international law is perfectly adequate and does not need modification.

## The Family Defined in International Law

Article 16 of the Universal Declaration of Human Rights (UDHR) defines the family as “the natural and fundamental group unit of society” and further declares the family as defined is “entitled to protection by society and the State.”<sup>1</sup> This understanding of the UDHR is reflected *verbatim* in the provisions of major UN human rights treaties, including Article 23 of the International Covenant on Civil and Political Rights (ICCPR),<sup>2</sup> Article 10.1 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR),<sup>3</sup> and the Preamble to the Convention on the Rights of the Child (CRC).<sup>4</sup> By virtue of these many provisions in international law, which have jointly achieved universal ratification, the family is a proper subject of human rights and is a bearer of rights in international human rights law.

The UDHR (article 16) further 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

---

By virtue of these many provisions in international law, which have jointly achieved universal ratification, the family is a proper subject of human rights and is a bearer of rights in international human rights law.



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* of men and women to marry and found a family 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),<sup>5</sup> which refers to equality within marriage as between “men and women” and refers to “husband and wife” in the context of the family.

---

The right to marry and found a family is the only context in which international human rights law protect sexual autonomy.

The right to marry and found a family is the only context in which international human rights law protect sexual autonomy. These rights are further elaborated in article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which fleshes out the equality between men and women as spouses in the context of marriage.

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, as has been summarized in The Family Articles.<sup>6</sup>

The European Convention on Human Rights (ECHR 12)<sup>7</sup> and the Inter-American Convention on Human Rights (IACHR 17)<sup>8</sup> also reflect the language of the UDHR on the right to marry and found a family verbatim.

As a result of this body of binding international law, 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 according to this definition, such as multi-generational or extended families, single-parent homes, or adoptive families. Relations between individuals of the same sex, on the other hand, are not analogous to the family because by definition the family requires the union of a man and a woman and, at a minimum, their natural offspring. Similarly, other interpersonal relationships or household arrangements are excluded from the definition of the family and the specific protections to which the family is entitled under international human rights law.

---

Western countries, the UN secretariat and UN agencies increasingly challenge the legal understanding that the family is a subject of rights.

### The Family in UN Policy

Western countries, the UN secretariat and UN agencies increasingly challenge the legal understanding that the family is a subject of rights. They argue that the family has no rights

under international law and that only individuals are bearers of rights with respect to the state.<sup>9</sup> This notion that the family is not a proper subject of human rights is entirely novel, and it contradicts longstanding interpretations of the obligations of states under UN human rights treaties.

In 1994, the General Assembly celebrated the International Year of the Family in order to create “among Governments, policy-makers, and the public greater awareness of the family as the natural and fundamental group unit of society.”<sup>10</sup>

Several landmark UN conferences recognized the importance of the family as a subject of rights and an essential unit for policies and programs. For example, paragraph 5.8 of the outcome document of the 1994 International Conference on Population and Development referred to the “rights of families.”<sup>11</sup> Similarly, paragraph 80 of the Programme of Action of the 1995 World Summit for Social Development recognized that the family is “entitled to receive comprehensive protection and support.”<sup>12</sup> As recently as 1999, the Office of the High Commissioner for Human Rights (OHCHR) produced a report titled “The Family in International and Regional Human Rights Instruments” that clearly identifies the family as a subject of human rights.<sup>13</sup>

---

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” when describing the family.

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” when describing the family.<sup>14</sup> This phrase never displaced the definition of the family in the Universal Declaration of Human Rights, nor the understanding that the family results from the union of a man and a woman. This is reflected also in paragraph 5.1 of 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.”

Similarly, the Programme of Action of the 1995 World Summit for Social Development recognized that “in 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 “marriage must be entered into with the free consent of the intending spouses, and husband and wife should be equal partners.”<sup>15</sup>

The entirety of Chapter V of the ICPD outcome, which is dedicated to the family and family structure, does not pretend to redefine the family, but simply used the word “family,” as

understood in international law, analogously (ICPD 5.6) for “single-parent and multi-generational *families*.” These situations, indicative of family breakdown in the case of single-parent families, are certainly analogous to 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 word “family” in reference to “one-person *households*” (emphasis added).

More recently, the 2030 Agenda, which launched the Sustainable Development Goals in 2015, also excludes this notion.<sup>16</sup> 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 governments 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 as the natural and fundamental group unit of society, 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, as defined in international law.

### A UN Campaign to Redefine the Family

---

Over the last three decades, Western countries and the international agencies they fund and largely control have worked to undermine and erode the definition of the family in international human rights law.

Over the last three decades, Western countries and the international agencies they fund and largely control have worked to undermine and erode the definition of the family in international human rights law for the purposes of elevating homosexual relations to the equivalent of the family. The principal way this is attempted has been adding the phrase “various forms of the family exist” to UN resolutions.

Diplomats from progressive countries openly admit that efforts to add the phrase “various forms of the family exist” are designed to create an expansive understanding of the family that includes homosexual relations that is normative for the entire world.<sup>17</sup> They also argue that unless this phrase is added to UN documents, any reference to the family is too Western and too exclusive.<sup>18</sup> They say, for example, unless there is greater recognition of family diversity, that the present international treaties and agreements exclude single-parent homes, multi-generational homes, child-headed households, and other such structures.

---

The introduction of this phrase into UN policy has always been controversial, and the phrase has never been adopted by consensus.

The introduction of this phrase into UN policy has always been controversial, and the phrase has never been adopted by consensus. General Assembly resolutions have always excluded the phrase “various forms of the family exist,” due to its connection to the contentious subject of homosexuality and the fact that it has always been a non-consensual expression. Even when this expression was included in the International Conference on Population and Development, the Fourth World Conference of Women in Beijing, and the Social Summit in Copenhagen, it was always accompanied by reservations in the annexes to the reports of those conferences.<sup>19</sup>

More recently, the OHCHR is spearheading a UN-system-wide effort to promote the notion that the family does not bear any rights and that the definition of the family in international law is not adequate (or that no actual definition exists). The main thrust of this campaign is captured in two reports of the OHCHR on violence and discrimination on the basis of “sexual orientation and gender identity”<sup>20</sup> following two narrowly adopted resolutions on “sexual orientation and gender identity” in the Human Rights Council.<sup>21</sup>

Subsequent reports of the UN Secretary General and the UN Independent Expert on violence and discrimination on the basis of sexual orientation and gender identity carry these same assumptions. For example, the reports say that international treaties require states to recognize homosexual relationships 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, decriminalization of any and all consensual sex between adults, the enactment of special protections for individuals who identify as LGBT in criminal and employment laws and other law enforcement mechanisms, and special asylum rights for individuals and their families when they identify as LGBT.<sup>22</sup>

The OHCHR also prepared a report on protection of the family for the 31<sup>st</sup> 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.<sup>23</sup>

In this report, the OHCHR falsely asserts “there is no definition of the family under international human rights law,” and that the term “family” 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*.

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).

### “Various Forms of the Family” is Superfluous

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

---

The exceptional status of the family in international law and policy is not too narrow to include 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 or 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 has ever 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.”

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

---

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 human rights law does not require states to elevate any social and legal arrangement for children as equivalent to the family.

---

In particular, artificial reproduction technologies, which include the donation of sperm or eggs, surrogacy, among other practices, undermine the right of the child to know and be cared for by his mother and father.

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 “motherhood 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 provision protects all children equally regardless of the marriage status of their parents.<sup>24</sup>

International human rights law does not require states to elevate any social and legal arrangement for children as equivalent to the family. In fact, countries have an obligation to protect the nuclear family as the optimal environment for the protection of children, 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). These provisions assume that states will afford the family specific protections that are not available to other household arrangements.

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, might also undermine and violate the right of the child to know and be cared for by his or her parents. In particular, artificial reproduction technologies, which include the donation of sperm or eggs, surrogacy, or other practices, undermine the right of the child to know and be cared for by his mother and father. The only UN human rights report on surrogacy concluded that the right of the child to be known and cared for by his or her mother and father can be satisfied by a mere bureaucratic requirement that children be able to obtain information on their biological origins once they reach a certain age.<sup>25</sup>

## Conclusion

It is unfortunate that some UN delegations insist that for any mention of the family to be included in a UN document, the document must include “different forms of the family” or “various forms of the family.” These efforts hold the entire UN membership hostage to their own “progressive” national laws and policies. In essence, they are refusing to let anyone

---

In essence, they are refusing to let anyone speak of the family until every Member State is willing declare homosexual unions as equivalent to the family.

---

## ABOUT THE AUTHOR

**Stefano Gennarini, J.D.** is the Vice President for Legal Studies at the Center for Family and Human Rights (C-Fam). He represents C-Fam at UN headquarters in New York and researches and writes on international law and policy.

Rebecca Oas, Ph.D.  
*Editor*

© C-Fam (Center for Family & Human Rights) Permission granted for unlimited use. Credit required.

DEFINITIONS is published monthly by the Center for Family & Human Rights (C-Fam).

757 Third Ave, Suite 2119  
New York, New York 10017

[info@c-fam.org](mailto:info@c-fam.org)  
[www.c-fam.org](http://www.c-fam.org)

speak of the family until every Member State is willing declare homosexual unions as equivalent to the family. It would be more intellectually honest if the same countries insisting on “different forms of family” made reservations to agreements that mention the family. In this way they could clarify that they afford homosexual relations the same legal protections to which the family is entitled under international law, without seeking to impose this notion on the entire UN membership.

## Endnotes

- 1 United Nations General Assembly. The Universal Declaration of Human Rights (UDHR). New York: United Nations General Assembly, 1948. Available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
- 2 United Nations (General Assembly). 1966. “International Covenant on Civil and Political Rights.” Treaty Series 999 (December): 171. Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
- 3 United Nations (General Assembly). 1966. “International Covenant on Economic, Social, and Cultural Rights.” Treaty Series 999 (December): 171. Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>
- 4 United Nations (General Assembly) 1989. “Convention on the Rights of the Child.” Treaty Series 1577 (November): 3. Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>
- 5 United Nations (General Assembly) 1979. “Convention on the Elimination of All Forms of Discrimination Against Women.” Treaty Series 1249 (December):13. Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>
- 6 Civil Society for the Family. The Family Articles. Available at <https://civilsocietyforthefamily.org/>
- 7 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5. Available at <https://www.echr.coe.int/European-convention-on-human-rights>
- 8 Organization of American States (OAS), American Convention on Human Rights “Pact of San Jose, Costa Rica” (B-32), 22 January 1969. Available at [https://www.oas.org/dil/treaties\\_b-32\\_american\\_convention\\_on\\_human\\_rights\\_sign.htm](https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights_sign.htm)
- 9 See for example, Friday Fax, U.N. Resolution on the Family Dampens Gay Pride Festivities, July 3, 2014, available at: [https://c-fam.org/friday\\_fax/u-n-resolution-on-the-family-dampens-gay-pride-festivities/](https://c-fam.org/friday_fax/u-n-resolution-on-the-family-dampens-gay-pride-festivities/) and Friday Fax, Obama Team Tries to Scrap Parts of Universal Declaration of Human Rights, February 27, 2014, available at: [https://c-fam.org/friday\\_fax/obama-team-tries-to-scrap-parts-of-universal-declaration-of-human-rights/](https://c-fam.org/friday_fax/obama-team-tries-to-scrap-parts-of-universal-declaration-of-human-rights/).
- 10 United Nations (General Assembly), 44th session: 1989-1990. International Year of the Family: resolution. Available at <https://undocs.org/A/RES/44/82>
- 11 UN Population Fund (UNFPA), Report of the International Conference on Population and Development, Cairo, 5-13 September 1994, 1995,



- A/CONF.171/13/Rev.1. Available at [https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/a\\_conf.171\\_13\\_rev.1.pdf](https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/a_conf.171_13_rev.1.pdf)
- 12 United Nations. Report of the World Summit for Social Development, Copenhagen, 6-12 March 1995. Available at <https://undocs.org/A/CONF.166/9>
  - 13 United Nations: Office of the High Commissioner for Human Rights. The family in international and regional human rights instruments. (1999) HR/PUB/1999/1. Available at <https://archive.org/details/familyininternat0000bele>
  - 14 UN Population Fund (UNFPA), Report of the International Conference on Population and Development, *ibid.* See Principle 9.
  - 15 United Nations. Report of the World Summit for Social Development, *ibid.*
  - 16 UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1. Available at <https://sdgs.un.org/2030agenda>
  - 17 See for example, the standard EU Statement in the third committee of the General Assembly on November 18, 2016 <https://press.un.org/en/2016/gashc4190.doc.htm>
  - 18 See, Report of the UN Secretary General on the Celebration of the twentieth anniversary of the International Year of the Family in 2014, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/636/06/PDF/N1463606.pdf?OpenElement>
  - 19 See Report of the International Conference on Population and Development, UN Document No. A/CONF.171/13/Rev.1, Report of the Fourth World Conference on Women, UN Document No. A/CONF.171/13/Rev.1, and Report of the World Summit for Social Development, UN Document No. A/CONF.166/9
  - 20 Available at <https://undocs.org/A/HRC/19/41> and <https://undocs.org/A/HRC/29/23>, respectively
  - 21 *Ibid.*
  - 22 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) and 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).
  - 23 Report of the United Nations High Commissioner for Human Rights on protection of the family: contribution of the family to the realization of the right to an adequate standard of living for its members, particularly through its role in poverty eradication and achieving sustainable development, UN Document No. A/HRC/31/37. Available at <https://undocs.org/A/HRC/31/37>
  - 24 United Nations General Assembly. The Universal Declaration of Human Rights (UDHR), *ibid.*
  - 25 Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, UN document no. A/HRC/37/60, available at: <https://www.ohchr.org/en/documents/thematic-reports/ahrc3760-report-special-rapporteur-sale-and-sexual-exploitation-children>.