



## Policy Brief

### Binding Obligation of States to Protect the Family

#### I. Multiple binding and nonbinding UN documents call for the protection of the family.<sup>1</sup> (Binding treaties are indicated by an asterisk.)

- **The family** is the natural and fundamental group unit of society and is **entitled to protection** by society and the State – Universal Declaration, Article 16 (3).
- Convinced that **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** – CRC, Preamble.\*
- **The widest possible protection and assistance should be accorded to the family**, which is **the natural and fundamental group unit of society**, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses – ICESCR, Article 10-1.\*
- **The family** is the **natural and fundamental group unit of society and is entitled to protection** by society and the State – ICCPR, Article 23-1.\*
- Convinced that **the family** is the natural and fundamental group unit of society and is **entitled to protection** by society and the State – Disabilities, Preamble (x).\*
- Recognizing that **the family** is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall **take appropriate measures to ensure the protection of the unity of the families** of migrant workers – Migrant Workers Convention (Article 44).\*
- **The family**, as a fundamental group and natural environment for the growth and well-being of children, **should be given all necessary protection and assistance**. – Children’s Summit (1990), 14.
- **Recognize the family as the basic unit of society**, and acknowledge that **it plays a key role in social development and as such should be strengthened** ... It is entitled to receive comprehensive **protection** and support – Social Summit (1995), 26(h).
- **The family** is the basic unit of society and as such should be strengthened. **It is entitled to receive comprehensive protection and support** – Habitat (1996), 31.

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<sup>1</sup> Please note that (1) UN consensus language calling for the protection of the family has never been used by UN Member States to promote or protect abusive families or physical or sexual abuse of any kind, nor is there any intent to use it for this purpose; (2) Protection of the family encompasses the promotion of equality between husband and wife. (See Section III.); (3) Governments are under obligation to protect and support single-parent, extended, and multigenerational families. (See section III.)

- Society should facilitate, as appropriate, all necessary conditions for its integration, reunification, **preservation** – Habitat +5 (2001), 30.
- **The family** is the basic unit of society and as such should be strengthened. It **is entitled to receive comprehensive protection and support.** – Beijing (1995), 29.

## **II. States are Obligated to Create Family-Friendly Policies to Protect the Family.**

**Multiple UN documents indicate States' obligation to create family-supportive policies:**

- **Design, implement and promote family friendly policies and services** – Beijing +5 (2000), 82(d).
- **Governments should formulate family-sensitive policies in the field of housing, work, health, social security and education** in order to create an environment supportive of the family ... monitor the impact of social and economic decisions and actions on the well-being of families, on the status of women within families, and on the ability of families to meet the basic needs of their members – ICPD (1994), 5.9.
- Analyse, from a gender perspective, policies and programmes ... **assess their impact on family well-being** – Beijing (1995), 58(b).
- **To develop policies and laws that better support the family** – ICPD (1994), 5.2(a).
- **Governments should formulate family-sensitive policies** in the field of housing, work, health, social security and education in order **to create an environment supportive of the family** – ICPD (1994), 5.9.
- Analysing policies and programmes, including those relating to macroeconomic stability, structural adjustment programmes, taxation, investments, employment, markets and all relevant sectors of the economy, with respect to their impact on poverty and inequality, **assessing their impact on family well-being** – Social Summit (1995), 81(a).
- **Formulate policies and programmes to help the family**, as defined in paragraph 29 above, in its supporting, educating and nurturing roles – Beijing (1995), 285(a).

## **III. What Are States Obligated to Protect the Family From?**

**UN documents indicate that the family should be protected from the effects of:**

### **Disintegration**

- **Greater attention should be paid** to helping the family in its supporting, educating and nurturing roles, **to the causes and consequences of family disintegration** – Social Summit +5 (2000), III 56.

- **Family disintegration**, population movements between urban and rural areas within countries, international migration, war and internal displacements are factors – Beijing (1995), 22.
- There are increasing numbers of vulnerable families, including ... **families with members affected by ... disintegration** ... millions of children and youths are left to their own devices as **family ties break down**, and hence are increasingly exposed to risks such as dropping out of school, labour exploitation, sexual exploitation, unwanted pregnancies and sexually transmitted diseases. AIDS or other terminal diseases – ICPD (1994), 5.4.

## HIV/AIDS

- **There are increasing numbers of vulnerable families**, including ... families with **members affected by AIDS** or other terminal diseases. – ICPD (1994), 5.4.
- Commit to develop and implement strategies to improve **infant HIV diagnosis, through increased financial, social and moral support for their parents, families** and legal guardians – HIV/AIDS (2011), 68.
- Support research and develop comprehensive strategies ... **to enhance the ability of families and communities to care for ... victims of HIV/AIDS** – ICPD +5 (1999), 21-c.
- **Recognize that agrarian economies are heavily affected by HIV and AIDS, which debilitate their communities and families** – HIV/AIDS (2011), 20.
- **Reaffirm the central role of the family ... in reducing vulnerability to HIV** – HIV/AIDS (2011), 43.
- Strengthen strategies, policies and programmes, **which recognize the importance of the family in reducing vulnerability, inter alia, in educating and guiding children** – HIV/AIDS (2001), 63.

## Migration

- There are increasing numbers of vulnerable families, including ... families with members affected by **labour migrations and refugee movements** – ICPD (1994), 5.4.
- Female-maintained households are very often among the poorest... population movements between urban and rural areas within countries, international **migration** – Beijing (1995), 22.

## Disease

- **Providing assistance to grandparents who have been required to assume responsibility for children, particularly of parents who are affected by serious diseases, including AIDS or leprosy** – Social Summit (1995), 40(d).

**Pornography** – (Note: A major cause of divorce and thus family breakdown today is pornography)

- Take effective measures or institute such measures, including **appropriate legislation against pornography** – Beijing (1995),243(f).
- Encouraging education systems ... to **discourage the exhibition of pornography** and the gratuitous depiction of explicit violence and cruelty in the media – Social Summit (1995), 16(d).

## **Poverty**

- **Families are sensitive to strains induced by social and economic changes. It is essential to grant particular assistance to families in difficult life situations** – ICPD (1994), 5.4.
- When formulating socio-economic development policies, **special consideration should be given to increasing the earning power of all adult members of economically deprived families** – ICPD (1994), 5.4.
- **Society should facilitate**, as appropriate, all necessary conditions for its [the family's] integration, reunification, preservation, improvement, and **protection within adequate shelter and with access to basic services and a sustainable livelihood** – Habitat +5 (2001), 30.

## **Family Separation/Reunification**

- **Governments, particularly those of receiving countries, must recognize the vital importance of family reunification and promote its integration into their national legislation in order to ensure protection of the unity of the families of documented migrants** – Social Summit (1995), 77 (b).
- **The family reunification of documented migrants is an important factor in international migration** – ICPD (1994), 10.9.
- Society should facilitate, as appropriate, all necessary conditions for its integration, **reunification, preservation** – Habitat +5 (2001), 30.

## **Substance Abuse**

- Promote or improve information programmes and measures including treatment for the elimination of the increasing **substance abuse** among women and adolescent girls, including information campaigns about the risks to health and other consequences **and its impact on families** – Beijing +5 (2000), 72 (q).
- There are increasing numbers of vulnerable families, including ... **families** with members affected by ... **substance dependence** – ICPD (1994), 5.4.
- **Recognize that stable, supportive and nurturing family relationships, supported by communities and, where available, professional services, can provide a vital shield against substance abuse**, particularly among minors – Social Summit +5 (2000), III, 72.

## Unemployment

- **Families are sensitive to strains induced by social and economic changes ...** Conditions have worsened for many families in recent years, **owing to lack of gainful employment** – ICPD (1994), 5.4.

## IV. What Family Rights Need Recognition or Strengthening?

### The Right to Enter Marriage Freely and Voluntarily

- **Marriage must be entered into with the free consent of the intending spouses**, and husband and wife should be equal partners – Habitat (1996), 31, Habitat +5 (2001), 30, ICESCR (1976), Article 10-1.\*
- Men and women ... have the **right to marry and to found a family ... Marriage shall be entered into only with the free and full consent of the intending spouses** – Universal Declaration (1948), Article 16 1, 2.
- **The right of men and women of marriageable age to marry and to found a family shall be recognized. (3) No marriage shall be entered into without the free and full consent of the intending spouses** – ICCPR, Article 23 – 2, 3, 4.\*
- **Marriage must be entered into with the free consent of the intending spouses** – Social Summit (1995), 80.
- **The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;** – Disabilities (2006), 23-1(a).\*

### Equality Rights of Husbands and Wives

- (4) States Parties to the present Covenant shall take appropriate steps to **ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.** – ICCPR, Article 23 – 2, 3, 4.\*
- Men and women . . . 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.** – Universal Declaration (1948), Article 16 1, 2.
- **husband and wife should be equal partners.** – Social Summit (1995), 80., ICPD (1994), Principle 9, Habitat (1996), 31, Habitat +5 (2001), 30.
- **equality and equity between women and men** and respect for the rights of all family members are **essential for family well-being** and for society at large – Social Summit +5 (2000), III 56.

### Rights Relating to Motherhood and Fatherhood

- **Motherhood and childhood are entitled to special care and assistance..** – Universal Declaration, Article 25-2.

- **Special protection should be accorded to mothers during a reasonable period before and after childbirth.** – ICESCR, Article 10-2.\*
- **Ensure appropriate pre-natal and post-natal health care for mothers** – CRC (1990), Article 24-2(d).\*
- **All births should be assisted by trained persons, preferably nurses and midwives, but at least by trained birth attendants.** ICPD (1994), 8.22.
- **“...enable mothers to breast-feed their infants by providing legal, economic, practical and emotional support.** – ICPD 8.18.
- **The social significance of maternity, motherhood and the role of parents in the family and in the upbringing of children should be acknowledged . . . Maternity, motherhood, parenting and the role of women in procreation must not be a basis for discrimination** – Beijing (1995), 29.
- **Safe motherhood aims at attaining optimal maternal and newborn health . . . prenatal, delivery and post-natal care for the mother and infant, and access to essential obstetric and neonatal care** (World Health Organization, Health Population and Development, WHO Position Paper, Geneva, 1994 - WHO/FHE/ 94.1). – ICPD (1994), endnote
- **Important interventions to ensure safe motherhood and a healthy start in life for the newborn.** – Children’s Summit (1990), 17.
- **Motherhood and fatherhood** and the role of parents and legal guardians . . . **must not be a basis for discrimination.** – Beijing +5 (2000), 60.
- **Safe motherhood must be promoted** in all possible ways. – Children’s Summit (1990), 14.
- **Programmes and education to engage men's support for maternal health and safe motherhood** should be developed. ICPD (1994), 8.22.
- The social significance of **maternity and paternity** continue to be inadequately addressed. **Motherhood and fatherhood . . . must not be a basis for discrimination.** – Beijing +5 (2000), 60.
- **Special efforts should be made to emphasize men's shared responsibility and promote their active involvement in responsible parenthood . . .** – ICPD (1994), 4.27.
- **Governments should consider changes in law and policy to ensure men's responsibility to and financial support for their children and families.** Such laws and policies should also encourage maintenance or reconstitution of the **family unit.** – ICPD (1994), 4.28.
- **Make every effort to ensure that fathers have opportunities to participate in their children's lives.** – Children’s Summit +10 (2002), 24.

## **The Child's Right to be Cared for by their Parents**

- **The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.** – CRC (1990), Article 7-1.\*
- **Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.** – Disabilities (2006), Article 18-2.\*
- **The child has the right to be cared for, guided and supported by parents, families and society.** – ICPD (1994), II, Principle 11.
- **The right to know and be cared for by his or her parents;** – Beijing (1995), 274(b).

## **The Parents' Rights to Raise Their Children and Guide Their Development**

- **Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child.** – CRC (1990), Article 18-1.\*
- **The primary responsibility for the protection, upbringing and development of children rests with the family.** Children's Summit +10 (2002), 15.
- **Parents, families, legal guardians and other caregivers have the primary role and responsibility for the well-being of children,** and must be supported in the performance of their child-rearing responsibilities. – Children Summit +10 (1990), 32(2).
- **The best interests of the child shall be the guiding principle of those responsible for his or her education and guidance; that responsibility lies in the first place with the parents.** – ICPD (1994), II, Principle 10.
- **States Parties shall respect the responsibilities, rights and duties of parents.** – CRC (1990), Articles 5, 14-2.\*
- **Parents and other persons legally responsible for children have responsibilities, rights and duties.** – Habitat (1996), 13.
- **Ensure that fathers have opportunities to participate in their children's lives.** – Children's Summit +10 (2002), 24.
- **Parents have a prior right to choose the kind of education that shall be given to their children.** – Universal Declaration (1948), Article 26(3).
- **Recognizing the rights, duties and responsibilities of parents** – ICPD (1994), 7.45
- **Parents and other persons legally responsible for children have responsibilities, rights and duties,** consistent with the Convention on the Rights of the Child – Habitat (1996), 13
- **The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.** – CRC (1990), Article 27-2.\*

- **With due respect for the rights, duties and responsibilities of parents;** – ICPD +5 (1999), 73(e).
- **Strengthen strategies, policies and programmes, which recognize the importance of the family** in reducing vulnerability, inter alia, **in educating and guiding children** – HIV/AIDS (2001), 63.
- **Access to, as well as confidentiality and privacy of, these services** [education and communication activities and services concerning reproductive and sexual health, including the prevention of early pregnancies, sex education and the prevention of HIV/AIDS and other sexually transmitted diseases] **must be ensured with the support and guidance of their parents** and in line with the Convention on the Rights of the Child. – ICPD (1994), 6.15

## **Respect for the Religious and Cultural Values of Families**

- **Respect for the liberty of parents . . . to ensure the religious and moral education of their children in conformity with their own convictions.** – ICESCR (1976), Article 13-3.\*
- The States Parties to the present Covenant undertake to have **respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.** – ICCPR (1976), Article 18-4.\*
- Our societies must respond more effectively to the material and **spiritual needs** of individuals, **their families** and the communities in which they live throughout our diverse countries and regions. – Social Summit (1995), Declaration, 3.
- **It is also important to protect documented migrants and their families** from racism, ethnocentrism and xenophobia, **and to respect their physical integrity, dignity, religious beliefs and cultural values.** – ICPD (1994), 10.9.

## **Support for Extended and Multigenerational Families**

- States Parties shall, where the immediate family is unable to care for a child with disabilities, **undertake every effort to provide alternative care within the wider family.** – Disabilities (2006), Article 23(5).\*
- States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, **the members of the extended family.** – CRC (1990), Article 5.\*
- Coordinate multisectoral efforts to **support the continued integration of older persons with their families** – Ageing (2002), 98(b).
- Support research and develop comprehensive strategies . . . **to enhance the ability of families and communities to care for older family members; the ability of the elderly to care for family members . . . and generational solidarity** – ICPD +5 (1999), 21-c.
- **Providing assistance to grandparents** who have been required to assume responsibility for children; – Social Summit (1995), 40(d).



- **Reinforce the positive role of grandparents in raising grandchildren;** Ageing (2002), 106(c).
- **Support the viability of multigenerational families.** – ICPD (1994), 5.11.

## Support for Single Parent Families

- **Governments should assist single-parent families,** and pay special attention to the needs of widows and orphans. All efforts should be made to assist the building of family-like ties in especially difficult circumstances – ICPD (1994), 5.13
- Governments, in cooperation with employers, should provide and promote means to facilitate compatibility between labour force participation and parental responsibilities, **especially for single-parent households with young children..** – ICPD (1994), 5.3.
- **Particular attention should be paid to needy single parents, especially those who are responsible wholly or in part for the support of children and other dependants,** through ensuring payment of at least minimum wages and allowances, credit, education, funding for women's self-help groups and stronger legal enforcement of male parental financial responsibilities. – ICPD (1994), 5.4.
- Assisting women and men in reconciling employment and family responsibilities . . . **paying particular attention to the needs of single-parent households.** – Social Summit +5 (2000), 49(c).
- In many societies, **female-headed households, including divorced, separated and unmarried women and widows, are at particular risk of poverty.** Special social protection measures are required to address feminization of poverty, in particular among older women. – Ageing (2002), 46.