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WHY FOCUSING ON THE RIGHT TO FAMILY REUNIFICATION?

Upcoming Human
Rights Council
resolution on the
rights of the child and
family reunification



FRAMEWORK OF FAMILY REUNIFICATION UNDER THE UNCRC

- **Preamble:** all children should grow up in a family environment...
- **Article 9:** children should not be separated from their parents against their will, except when competent authorities determine, according to the law, that such separation is in the best interests of the child.
- **Article 10:** applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
- **Article 22 (2):** States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to **protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family.** In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.
- The **4 General Principles of the UNCRC.**

The Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families,

- The right to family life should be fully respected, protected and fulfilled in relation to every child without any kind of discrimination, regardless of their residency or nationality status. States should comply with their international legal obligations in terms of maintaining family unity, including siblings, and preventing separation, which should be a primary focus, in accordance with the Guidelines for the Alternative Care of Children.
- Protection of the right to a family environment frequently requires that States not only refrain from actions which could result in family separation or other arbitrary interference in the right to family life, **but also take positive measures to maintain the family unit, including the reunion of separated family members.**

STANDARDS AND TRENDS IN THE UN HUMAN RIGHTS SYSTEM REGARDING THE HUMAN RIGHTS OF CHILDREN IN THE CONTEXT OF INTERNATIONAL MIGRATION: UNPACKING THE GENERAL COMMENTS OF THE COMMITTEE ON THE RIGHTS OF THE CHILD AND THE COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

Children in the context of migration must be treated first and foremost as children

- All children, regardless of age, should be treated equally and enjoy the full range of human rights, including equal standards of protection, regardless of the children's or their parents', legal guardians' or family members' age, gender, gender identity or sexual orientation, ethnic or national origin, disability, religion, economic status, migration/documentation status, statelessness, race, colour, marital or family status, health status or other social conditions, activities, expressed opinions, or beliefs.
- The child's best interests should always take precedence over migration management objectives or other administrative considerations.

Family registration and reunification processes should recognize that various forms of family exist

- The term “parents” must be interpreted in a broad sense to include biological, adoptive or foster parents, or, where applicable, the members of the extended family or community as provided for by local custom.
- The term “family” means “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.”

Prevention of family separation at every stage of the migration context

- Take steps to ensure that migrant families are not separated during disembarkation and border controls, at reception or registration, or in the course of detention and deportation.
- Best-interests determination procedures should be put in place in any decision that would separate children from their family. Separating a family by deporting or removing a family member from a State party's territory, or otherwise refusing to allow a family member to enter or remain in the territory, may amount to arbitrary or unlawful interference with family life.
- Families with children should be accommodated together in a safe and child-friendly environment.
- States provide avenues for status regularization for migrants in an irregular situation residing with their children, particularly when a child has been born or has lived in the country of destination for an extended period of time, or when return to the parent's country of origin would be against the child's best interests.

Steps to reunify families and keep them together

- States should develop and strengthen regular channels for family reunification. These should not discriminate and should include no disproportionate restrictions with respect to age, income, or language.
- Applications for family reunification are dealt with in a positive, humane and expeditious manner, including facilitating the reunification of children with their parents. Decisions on family reunification:
 - Based on best interest assessment and determination: preservation of the family unit should be taken into account when assessing the best interests of the child in decisions on family reunification;
 - Ensure that children are entitled to express their views freely when decisions are taken about possible reunification with their families.
- Ensure that migrants and members of their families who request family reunification do not suffer adverse consequences for doing so.
- Family reunification should never be used to justify expedited return in the absence of due process.
- Country of destination refuses family reunification to the child and/or to his/her family, it should provide detailed information to the child, in a child-friendly and age-appropriate manner, on the reasons for the refusal and on the child's right to appeal.

Unaccompanied or separated children

- Children separated from their parents due to the enforcement of immigration laws: efforts to find sustainable, rights-based solutions for them should be initiated and implemented without delay, including the possibility of family reunification.
- Make every effort to trace and reunite unaccompanied or separated children with their parents, in accordance with the best interests of the child, noting that reunification in the country of origin may not always be in the child's best interests.
- The decision as to whether a child should be reunited with his or her family in the country of origin, transit and/or destination should be based on a robust assessment in which the child's best interests are upheld as a primary consideration and family reunification is taken into consideration, and which includes a sustainable reintegration plan where the child is guaranteed to participate in the process.

CONCLUSIONS:

A potential resolution of the Human Rights Council on child rights and family reunification should:

- Recognise that measures for family reunification should go hand in hand with the prevention of family separation.
- The need for all children to be treated equally, including migrant children, and enjoy the full range of rights.
- Recognise the diversity of families.
- Build on the progressive interpretation of the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families with regards to:
 - The steps to avoid the separation of migrant families;
 - The steps to reunify migrant children with their families: looking at effective family tracing and reunification procedures and the application of the best interests assessment and determination procedures.