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A right to family reunification
Réunification de la famille : un droit
[Famille migrante et droits fondamentaux]

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Family life is a natural right, and yet, we see today a general and undeniable trend towards the proliferation of national immigration policies that *hinder*, rather than help, efforts to reunify family members separated for reasons relating to migration and the search for greater opportunities to live in dignity and safety.

In the context of international migration, “family reunification” generally refers to the legal process by which close family members join another member of the family who is living either as a citizen or with authorization in another country. A number of international human rights instruments address both the right to leave one’s country and the importance of family life and unity, but not one puts the two fully together in an unequivocal right to family reunification *across international borders*. While there has been clear, if slow movement at the international level in that direction over the years, the right of families of refugees and migrants to actually reunite continues to be left to national discretion and authorities, where the trend is not so positive. The result is a patchwork of national immigration regimes that are inconsistent among themselves (even within individual States over time), and in conflict with realities of modern international mobility, markets and labour, as well as with the Church’s teaching on the dignity of the human being, the central importance of family, the right to migrate and pursuit of the universal common good.

Today, as States increasingly meet together to discuss the phenomena of modern migration, including within the unprecedented process of the new Global Forum on International Migration, the role and voice of the Church is critical, and at times singular, on the question of family reunification.

National policy trends impeding family reunification

Despite a clear demographic and economic need for foreign labour, increased immigration has resulted in public responses among migrant receiving countries that demonstrate growing support for the application of decisively more restrictive immigration policies. Unfortunately, examples illustrating this troublesome trend are in no short supply, and the shift towards more prohibitive

immigration policies and practices of social exclusion, detention and forced returns, among other measures, are having an unequivocal effect on the family – preventing the reunification of family members and forcing prolonged family separations.

If I may highlight but five examples of indicators illustrative of the growing propensity to prevent family reunification on national levels:

1. Numerous new legal constraints

- Family reunification has traditionally accounted for the majority of legal immigrants admitted to western industrialized countries—the majority within that majority being admitted to join citizen spouses or relatives. Regulations introduced in recent years, however, have called this tradition of family reunification into question. In many countries, financial thresholds increasingly block the admission of even close family members. In the US, laws force the separation of marriages between citizens and non-citizens, where husbands and wives found in an irregular situation are required to return to their country of origin and apply for visas that may only be processed after extensive waiting periods.
- Visiting permits are now being considered in some countries for the families of migrant workers. While this initiative looks, at first, to be a positive step for the rights of migrant workers and their families, it clearly illustrates a growing propensity, not to facilitate family reunification on a broader and possibly permanent basis, but to allow families to be together only for the most temporary of reasons, e.g., weddings and funerals.
- Quota systems represent yet another legal constraint, whereby there is a clear tendency to establish the highest possible quota for migrant workers and a significantly lower quota for family members wishing to rejoin a loved one already living and/or working in the host country. New Zealand, for instance, has established that 60% of its annual legal immigration admission quota will go towards highly skilled migrant workers, with just 30% available for family reunification.

2. A second indicator of national trends to reduce family reunification lies within the substantial delays and complicated application procedures which have made the path to legal migration a long, arduous, frustrating and expensive experience for the family members involved. It is no longer uncommon for families to be subjected to ten, and as many as twenty, years of separation prior to reunification. What such long periods of separation do to family unity, to the education of children and to the long term vision of society, has rarely been taken into consideration. It comes as no surprise then that many family members do not even attempt such processes, or at some point abandon them, turning in large numbers to irregular, abusive and often life-threatening forms of migration.

3. A third indicator of increasingly restrictive family reunification policies on the national level is the growing gap between a narrow, genetic approach to family based upon DNA and the broader, more cultural definition of family. A number of countries now require DNA testing as a means to verify and/or expedite some requests for family reunification, thereby narrowing the definition of “family” to include only biological relationships. This is an inherently Western approach which, even in Western countries no longer matches with contemporary realities of adoption of children and children from second marriages, not to mention the broader concepts of family in many other cultures.

4. I would also like to highlight the numerous policies based upon the now famous principle of “*migration choisie et non subie*”. In 2007, the President of France, as well as the President of the United States, spoke openly and with determination about discarding longstanding priorities for family reunification in their national immigration laws in favour of a preference for the admission of migrant labour.
5. Last but not least, I would like to underscore the subjectivity with which things are taking place. In so many countries, the definition of “family” is inexorably being reduced for admission purposes and yet, where forced *repatriation* is concerned, the family might then - according to some countries - include all members of the family, for instance, when one of its members is convicted of a crime. Perhaps the paroxysm of increasingly exclusionary national sentiments, a proposal to install such a mechanism was one of the promises in the electoral campaign of a Swiss political party that recently won the largest vote in the nation’s history.

Clearly troubling, all of these indicators—and indeed many others—illustrate the link between increasingly restrictive national immigration policies, reduced respect for family unification and, worse yet, a willingness to induce family de-unification.

Economy-centered policies versus migrant needs and ambitions

In addition to diminishing family in fundamental aspects, existing national policies fail to reflect the convergence of mobile workers and global economies; economies which tend to define its needs for the ‘quantity’ as well as the ‘quality’ of migrants. On the “receiving” side of these movements, France, for example, recently announced an urgent need for 200,000 nurses and indicated that 700,000 migrant workers would be needed each year until at least 2015. On the “sending” side of contemporary migration, an increasing number of countries now set formal national goals for annual out-migration—and the remittances that result, including Indonesia, the Philippines and Sri Lanka. Such an approach is worrying: firstly, because economies are gradually defining migration as an economic imperative, selecting those people who will serve specific purposes; and secondly, because adequate rights-based national and international legal frameworks that must accompany this movement have not yet been developed between the countries of origin and destination. At the heart of the worry is the dominant focal point, which seems to put the human person at the service of economy. Both the insufficient legal mechanisms and this skewed focus on the economy open a very wide door for abuses, including the trafficking of human beings.

Much of this economic-oriented discourse reflects tensions in international labour migration, and defies our sense of modern realities, fairness, and human dignity. Increasingly, the discourse leads to false and alarming oppositions: migrants who can work (as “units of labor”) against “mere” families and family members; the admission of highly skilled migrant workers against the lesser-skilled workers (even in economies that have demonstrated a clear structural need for both); the tendency to provide long-term and family reunification rights to the highly skilled, while relegating the lesser-skilled to short-term contracts, with minimal rights and only occasional renewability. Attempts to organize migration in cyclic movements or to limit migration flows to include only temporary workers follow, yet again, a restrictive logic that prioritizes response to the economic needs of the host countries rather than to the needs or ambitions of the migrant worker. Today, as in countless migration experiences in the past, migrant workers need more than just a few years to save sufficient money to allow them to feel

that they no longer need to be abroad to live in dignity. Many sacrifice enormously for their children to be educated in the schools of the countries to which they have migrated so that the children might have a future better than their own. Planning in five-year increments—or even shorter periods of time—reduces migrants to an utilitarian functionality responding to an economic need, whereby the migrant’s culture and social life, including the existence of his or her family, are all but fully ignored.

Doubts around social integration are among the primary driving forces promoting reduced time of stay for migrant workers. We must ask ourselves then, what are the moral and legal grounds for requiring short-term stays—not least, what is the effect for migrant families for whom reunification is then inevitably considered less necessary? Aside from seasonal workers, largely engaged in agriculture and tourism activities, can migrants and their families be expected to accept the *de jure* “temporariness” of most guestworker schemes, or the *de facto* permanency of separation that such schemes seem to demand? Unfortunately, we are accustomed to silence when we ask what models or experiences can be raised up to demonstrate “success” in that regard.

Finally for all the good they make possible, even the remittances that migrants send home present concerns. The more that remittances are calculated, studied, and invested, whether at family, local or national levels, the more they pose a considerable threat to reunification of migrant families. The more than US \$ 300 billion of remittances that migrants sent home each year—an amount that has doubled in five years—is greatly valued by countries of origin as an important input to the economy, one those countries fear would be greatly reduced—or evaporate—if migrant worker’s families were permitted to migrate to join them. Subject to enormous economic interests of both their countries of destination (which gain labour) and origin (which gain remittances), migrant families are therefore at risk to become hostages of a system that *induces* their separation.

In their search for greater opportunities and a dignified life, many families reluctantly accept the sacrifice of living apart, often leaving children behind, while they work to generate the money needed to meet their basic needs and send their children to school. Amid increasingly restrictive national policy trends, societal influences and the primacy of national economic interests, the fundamental natural right to be unified with one’s family has thus become, for millions, a distant prospect rather than a daily reality.

Family unity and reunification within international human rights frameworks

The increasingly restrictive trends impeding family unity at national levels are particularly disconcerting when one considers that family reunification *per se* is not recognized and protected by *international* human rights mechanisms, either—namely by the seven core UN human rights treaties. Keeping in mind the nature of international treaties and the involvement of States in their drafting, approval and implementation, it bears considering the extent to which international human rights frameworks are naturally shaped by the national interests of the States.

Notwithstanding the treaties’ failure to recognize family reunification as a human right, many of them nonetheless express profound respect for family unity itself, without going so far as to defend the physical act of unifying or reunifying. The Universal Declaration of Human Rights, for instance, recognizes the family as “*the natural and fundamental group unit of society, entitled*

to the protection by society and the States”¹, yet makes no mention of any right to unite the family together again following separation. Similarly, the International Covenant on Economic, Social and Cultural Rights suggests that “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 for the care and education of dependent children”². Although this article asserts not only the importance of family, but implicitly the value of unified families, the Covenant does not suggest the right to such unification for families that are separated.

The International Convention on the Protection on the Rights of All Migrant Workers and Members of their Families aimed to be a new and major step towards defining the rights of migrant families, however its ambition was probably too high to see it quickly ratified and implemented. Adopted in 1990 but coming into force only in 2003, the Convention is today ratified only by thirty-seven countries, including a small (though growing) number of migrant-receiving countries, which is to say that its implementation value remains, for the moment, comparatively low.

Its content and visionary value, however, are undeniable. Fully in agreement with the social teachings of the Catholic Church that consider “*work as a foundation for the formation of family life*” (*Laborem Exercens*), the Convention applies to “all migrant workers and members of their families without distinction”³. Moreover, the Convention embraces a progressive, broad definition of the family, recognising “*all persons married to a migrant worker or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreement between the States concerned.*”⁴

Unfortunately, and like most of the other UN human rights treaties, the Migrant Workers Convention stops short of articulating a right to family reunification for families separated across international borders. In fact, the Convention only *recommends* that “*State Parties shall take measures that they deem appropriate and within their competence to facilitate the reunification of migrant workers and their spouses...*”⁵ and certain other family members, and even then only in the case of *documented* migrant workers. Again, we see language that exhorts States, but which ultimately defers to them.

There is hope however, and indeed some movement in a better direction at least at the international level. In perhaps the furthest that any of the core UN human rights treaties has gone towards articulating a right to family reunification—*without expressly guaranteeing that right*—the almost- universally ratified Convention on the Rights of the Child stipulates that “*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 State Parties in a positive, humane and expeditious manner*”⁶. This provision clearly goes beyond the lesser exhortations of the other treaties by calling upon States to affirmatively facilitate family reunification, at least in the case of children

¹ Universal Declaration of Human Rights, Article 16 (3). Emphasis added.

² International Covenant on Economic, Social and Cultural Rights, Article 10 (1). Emphasis added.

³ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Article 1 (1). Emphasis added.

⁴ *Ibid.*, Article 4.

⁵ *Ibid.*, Article 44 (2). Emphasis added.

⁶ Convention on the Rights of the Child, Article 10 (1). Emphasis added.

*“separated from his or her parents against their will”, excepting only when “competent authorities” determine that “such separation is necessary for the best interests of the child”.*⁷

Beyond the core UN human rights treaties, the 1951 Convention Relating to the Status of Refugees has consistently been interpreted and applied to support the right to family reunification for recognized refugees which, thanks in large part to the work of the Holy See and various processes of the High Commissioner for Refugees over the years, represents a significant step forward in the protection of the family unit and in the family’s legal recognition as a societal value. Nonetheless, the Convention shares one of the shortcomings of the human rights treaties: even as one of the five recommendations formally and immediately adopted along with the Convention asserted that *“the unity of the family, the natural and fundamental group unit of society, is an essential right of the refugee”*, and governments should take the necessary measures *“ensuring that the unity of the refugee’s family is maintained”*,⁸ there is, yet again, no express provision for family reunification within the Convention itself. Further, the 57 year-old Convention is altogether inapplicable to so-called “economic migrants”—a population some twenty times greater than refugees, and sharing much of the same hopes and needs for family reunification.

Examining the issue of family reunification in all of these frameworks, one discovers what may well be the limits of such international agreements and conventions, and how international and national legal frameworks have designed their complementarity while omitting clear indicators and definitions to manage a number of “frontier chapters,” including family reunification. Indeed, there is a remarkable logic in this approach: while the fundamental rights to *“freedom of movement and residence within the borders of each state”*⁹ and *“to leave any country ... and to return to his country”*¹⁰ are internationally recognized, *national* interpretations and implementations become the arbitrary and at times, incoherent limits of international conventions and rights. Considered from a moral and ethical perspective, these limits frequently generate unacceptable contradictions affecting the lives of millions, and raise important questions regarding the extent to which existing international rights have met their initial goals. This brings us to reflect upon what might be done to redefine national sovereignty within an international perspective, whereby rights fully embracing human dignity would be granted and secured for all, regardless of the country in which one was born or resides.

Human prerequisites, Catholic perspectives and recommendations

Family life is a natural right, ordered both to fundamental human dignity and the universal common good. That right makes no distinction on the basis of national origin or status, nor does the need to support and preserve the unity of families, which is constitutive of family life, stop at borders. As the Holy Father Benedict XVI expressed in his message on the occasion of the 93rd World Day of Migrants and Refugees, the Church is committed *“not only in favour of the individual migrant but also of his family, which is a place and resource of the culture of life and a factor for the integration of values.”*

A family does not cease to be a family because its members have crossed borders, no matter how legal systems may otherwise suggest differences. The Social Teachings of the Catholic Church

⁷ Ibid, Article 9 (1).

⁸ Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 1951, Recommendation B. Emphasis added.

⁹ Universal Declaration of Human Rights, Article 13 (1).

¹⁰ Ibid, Article 13 (2).

are quite emphatic: “Regulating immigration according to criteria of equity and balance is one of the indispensable conditions for ensuring that immigrants are integrated into society with the guarantees required by recognition of their human dignity. Immigrants are to be received as persons and helped, together with their families, to become a part of societal life. In this context, the right of reuniting families should be respected and promoted.”¹¹ (Emphasis in original.) Family reunification promotes strong family values, and family values are powerful building blocks for any nation. In our encounters with and accompaniment of migrants in societies worldwide, the simple presence of family drives migrants to search for stability and peaceful integration. At the same time, the presence of family raises the migrant worker and the members of his or her family to a sociologic position comparable with the native born, promoting not only participation and contribution to the society, but genuine well-being. Were we to lose the human and sociologic dimensions of family unity, among migrant families as one group or among any other groups, individuals and society would lose one of the most powerful forces affecting social cohesion, coherence and societal development.

Unprecedented demographics driving international migration urgently call for coherent definitions to secure the rights of migrant workers and the members of their family in their integration in the new countries of residence. Policy coherence with respect to family reunification implies the extension of the right to remain together in the new society. Any modification to the status of a genuine family relationship brought about by the simple fact of crossing a border, is a new, artificial and unsustainable construct imposed upon the family. Working with the Council and with bishops conferences and other partners around the world, we at ICMC see all too well what happens when laws ask people to choose between compliance and the unity of their family: the terrible risks that migrants and families take, in *irregular* migration, when the law says “no” to *legal* reunification: deaths and disappearances at sea, in deserts and on so many other borders; the desperate travel of unaccompanied women and children; the exploitation, violence and enduring trauma in the smuggling and trafficking of vulnerable human beings. While the Church does not endorse irregular migration, these realities offer additional reason to recognize that it is the laws that are wrong and need to change, not the people migrating.

Before closing, may I offer just four brief recommendations.

1. The restriction of family reunification, and the procedures leading to de-unification of families, will have consequences on the longer term, and we would welcome a study identifying, for example, the effects of the separation of children and parents as a result of a parental decision to migrate. In the short term, the separation may result in some material improvement of the living conditions, but we must ask whether the value of this is outweighed by the psycho-social effects of longer absences? Indeed, how will these children value society—and family life—in tomorrow’s global society?
2. Not only opportunities, but important obligations are implied when the law says “yes” to legal reunification, including the duty of migrants to conform in general to the laws of his or her new country, to respect its core civic structures, and quite practically, to make reasonable efforts to manage within the language and social systems. We are constantly reminded of the role that perceptions of integration, and non-integration, of migrants plays in the construction of public opinions and policies concerning migration, very especially including questions of admitting family members. Increasing the understanding of the range of the Church’s welcome of migrants

¹¹ Compendium of the Social Doctrine of the Church, Pontifical Council for Justice and Peace, # 298.

would be of enormous societal value, highlighting spiritual, social services and mediating programming, especially in the major countries of destination, including successful public-private partnerships, transnational episcopal collaborations and related policy work.

3. Joining a migrant in his or her new country is only *one* of the three options that could be available to a family that is considering migration in order to preserve its unity. Actors and policy makers, need to devote much more attention to the other two: the right to not migrate in the first place; and return of the migrant to his or her family in the country of origin. Both options raise central questions of what development and what root causes must be addressed in order for the entire family to exercise their right—and in our experience, fulfil the common desire—to be able to live with dignity in their own country. As with the issue of family reunification, the need to address the root causes of migration and the role of development is a call that the Church raises distinctly, with particular fidelity and clarity (if uneven success), at national and international levels.

4. As global processes like the new Global Forum on International Migration and Development raise these issues in unconventional and dynamic ways, it would be beneficial to reflect upon the singular importance of the Church voice in defence of family: how to assert that voice more broadly, beginning with advocacy for much greater and reality-based avenues for legal migration, especially for close family members, but then going even beyond the current delimitations of the rights discourse. The Church has an important role to play in further defending, for example, “*the right to live in a united family and in a moral environment conducive to the growth of the child’s personality*” (*Centesimus Annus*), and to promote the many social rights related to the family situation of global migrants.

Conclusion

Rights should never be looked upon as final: they are tools to be shaped and continuously refined on the basis of longer term visions and moral principles. Family reunification should therefore not be understood solely as a legal right that addresses the permission and the conditions of reunification. There is a need to study and develop better legal frameworks—not only in the international context but at national levels—with a future and visionary perspective aiming at societies that offer real prospects for integration, social stability and cohesion for both nationals and migrants with their families to live in.

The construction of these legal frameworks will need to aim at policy coherence, transparency and equity as well as prove to be generous and at the service of the human person.