

Cuadro 51
Amplio concepto de familia
(A broad concept of family)

¿Por qué es una buena práctica?

Favorece la reunificación familiar y el principio de no discriminación.

Entre las legislaciones extractadas, destacan Argentina, Bolivia, Chile

***(A BROAD CONCEPT OF FAMILY FAVOURS FAMILY REUNIFICATION
AND THE PRINCIPLE OF NON-DISCRIMINATION)***

País	Fuente	<i>Summarized non official translation</i>
Argentina	<p>Ley 26.165 de reconocimiento y protección al refugiado.</p> <p>Artículo 5: La unidad de la familia, elemento natural y fundamental de la sociedad, es un derecho esencial del refugiado y de los miembros de su familia.</p> <p>Artículo 6: Para determinar la extensión del derecho mencionado en el artículo precedente, los efectos del reconocimiento de la condición de refugiado se aplicarán por extensión, a su cónyuge o a la persona con la cual el refugiado se halle ligado en razón de afectividad y de convivencia, ascendientes, descendientes y colaterales en primer grado que de él dependan económicamente.</p> <p>Las autoridades competentes resolverán las solicitudes en cada caso y de manera fundada, teniendo en cuenta el derecho vigente, las necesidades invocadas por los solicitantes y los valores culturales de sus países de origen. La decisión que rechace una solicitud basada en la aplicación del principio de la unidad familiar no podrá fundarse en la falta de reconocimiento legal de las relaciones invocadas. En ningún caso se concederá asilo, por extensión a persona alguna que haya incurrido en alguna de las</p>	<p><i>Family unity is considered an essential right of refugees.</i></p> <p><i>The derivative refugee condition shall be granted to the following persons: spouse, persons with whom the refugee maintains an affective relation or cohabitation; ascendant and descendants; and in the lateral line, relatives to the first degree who economically depend on the refugee.</i></p> <p><i>Competent authorities shall solve the requests reasonably, taking into account the current regulations, the necessities claimed by the refugees and the cultural values in the country of origin. The requests cannot be rejected based on the legally recognized nature of the relations. Asylum shall not be granted to persons who fall under exclusion clauses.</i></p>

	<p>causales previstas en la presente ley.</p> <p>http://www.acnur.org/t3/fileadmin/Documents/BDL/2006/4658.pdf</p>	
Bolivia	<p>Constitución Política del Estado</p> <p>Artículo 29 II Toda persona a quien se haya otorgado en Bolivia asilo o refugio no será expulsada o entregada a un país donde su vida, integridad, seguridad o libertad peligren. El Estado atenderá de manera positiva, humanitaria y expedita las solicitudes de reunificación familiar que se presenten por padres o hijos asilados o refugiados. http://www.acnur.org/t3/fileadmin/Documents/BDL/2009/7068.pdf</p> <p>Ley 251 de protección a las personas refugiadas.</p> <p>Artículo 9: I. La unidad de la familia como elemento natural y fundamental de la sociedad, es un derecho esencial de la persona refugiada y su familia. II. En virtud a dicho principio, se extenderá la condición de persona refugiada al cónyuge o conviviente, ascendientes, descendientes, y a las hermanas y hermanos que dependan económicamente de la persona refugiada, así como a las niñas, niños, adolescentes y adultos que se encuentren bajo su tutela. III. En ningún caso se extenderá la condición de refugiada a la persona que haya incurrido en alguna de las causales de exclusión previstas en el Artículo 17 de la presente Ley. http://www.acnur.org/t3/fileadmin/Documents/BDL/2012/8855.pdf</p>	<p><i>Constitution Article 29</i></p> <p><i>Applications regarding family unification shall be attended in an expedited and humanitarian manner</i></p> <p><i>Family unity is considered an essential right of refugees.</i></p> <p><i>The derivative refugee condition shall be granted to the following persons: spouse, partner; ascendant and descendants; brothers and sisters who economically depend on the refugee, and children, adolescents and adults under their tutelage.</i></p> <p><i>Asylum shall not be granted to persons who fall under exclusion clauses.</i></p>
Chile	<p>Ley 20.430</p> <p>Artículo 9: Reunificación Familiar. Tendrán derecho a que se les reconozca el estatuto de refugiado por extensión, el cónyuge del refugiado o la persona con la cual se halle ligado por razón de convivencia, sus</p>	<p><i>The derivative refugee condition shall be granted to the following persons: spouse, partner; ascendant and descendants; and underage persons under their tutelage.</i></p>

	<p>ascendientes, descendientes y los menores de edad que se encuentren bajo su tutela o curatela.</p> <p>El Subsecretario del Interior resolverá, en cada caso, las solicitudes de reunificación familiar, teniendo en cuenta la existencia de un genuino vínculo de dependencia, así como las costumbres y valores sociales y culturales de sus países de origen.</p> <p>La reunificación familiar sólo podrá ser invocada por el titular de la solicitud de la condición de refugiado y en ningún caso por el reunificado.</p> <p>No se concederá por extensión protección como refugiado a una persona que resulte excluyente, de acuerdo con lo dispuesto en el artículo 16 de la presente ley.</p> <p>http://www.acnur.org/t3/fileadmin/Documentos/BDL/2010/7733.pdf</p>	<p><i>The Undersecretary of the Interior will resolve each case taking into account the existing dependency, and the social and cultural costumes and values of the country of origin. Family reunification can only be requested by the holder of the refugee status and not by the reunified family members. Asylum shall not be granted to persons who fall under exclusion clauses</i></p>
<p>Costa Rica</p>	<p>Ley General de Migración y Extranjería No. 8764</p> <p>ARTÍCULO 106.-</p> <p>“(…) La unidad familiar, elemento natural y fundamental de la sociedad, es un derecho esencial del refugiado. En consecuencia, la condición de refugiado le será reconocida al núcleo familiar primario y a otros familiares dependientes y parientes dentro del primer orden de consanguinidad o afinidad.”</p> <p>http://www.acnur.org/fileadmin/Documentos/BDL/2009/7261.pdf</p> <p>Reglamento de Personas Refugiadas No. 36831-G</p> <p>“Artículo 64.-De conformidad con el artículo anterior, los siguientes familiares podrán ser reclamados por una persona refugiada por medio de procesos de reunificación familiar o de reconocimientos por extensión: cónyuge, los hijos menores de edad, hijos mayores solteros hasta 25 años de edad, que demuestren continuar siendo dependientes económicamente y que continúen estudiando, hermanos menores de edad o solteros hasta 25 años de edad, que demuestren continuar siendo dependientes económicamente y que continúen estudiando, sus padres naturales</p>	<p><i>Refugees have the right to family unity. Law No. 8764 enshrines this right to the primary family nucleus, dependents and relatives of first degree through birth or marriage.</i></p> <p><i>Refugee Regulations No. 36831-G specifies that refugee protection can</i></p>

y políticos, que sean mayores de 60 años con relación de dependencia o menores en relación de dependencia que sea acreditada, si son otros familiares bajo la custodia legal de la persona reconocida como persona refugiada. Este criterio será inclusivo a parientes con discapacidad que no entren en los anteriores supuestos y exista una relación de dependencia demostrada. Las relaciones de dependencia, serán comprobadas, por los medios que el ordenamiento jurídico prevé.”

“Artículo 65.-La unidad de la familia de la persona refugiada contemplada en este capítulo se garantizará mediante la aplicación de dos procedimientos: la reunión familiar y el reconocimiento por extensión. En ambos supuestos, la persona refugiada deberá presentar una solicitud de su parte, fotocopia del carné que lo acredita como tal.”

<http://www.acnur.org/t3/fileadmin/Documentos/BDL/2011/8171.pdf>

(Note: Existen dos tipos de procesos según la ubicación del familiar de la persona refugiada, si esta se encuentra en su país de origen o residencia habitual la protección será vía ‘reunificación’, artículos 66 a 74 del Reglamento No. 36831-G, si la persona ya se encuentra en Costa Rica el proceso será vía reconocimiento por extensión, artículos 75 a 82, Reglamento No. 36831-G).

*only be extended to the following family members: married spouse (**note:** excluding civil unions, de facto unions, and same sex couples); minor children under 18 years of age, and dependent children aged 18 to 25 who are studying; dependent single siblings under 25 years of age, who are studying; and dependent parents of 60 years of age or above.*

(Note: Refugee family protection is guaranteed through two types of procedures, depending on the location of the principal applicant's family member location:

- a) If the family member is outside Costa Rica, such protection can be exercised through a family reunification procedure; and*

		<i>b) If the family member is in Costa Rica, derivative status can be granted.</i>
Ecuador	<p>Reglamento a la Ley Orgánica de Movilidad Humana (2017) Art. 77 reagrupación familiar http://www.acnur.org/fileadmin/scripts/doc.php?file=fileadmin/Documentos/BDL/2017/11200</p>	<i>"Right to family reunification"</i>
Guatemala	<p>Código de Migración (2016)</p> <p>Artículo 4. Derecho a la familia. Se reconoce el derecho de las personas extranjeras a establecerse en el país con sus familias, o bien con el ánimo de formarla o reunirla dentro del territorio nacional, conforme a lo estipulado en la Constitución Política de la República, el presente Código y otras normas aplicables.</p> <p>Artículo 15. Familia. Las personas migrantes y sus familias tienen derecho a permanecer juntas en todo momento. Si por razones administrativas y de manera estrictamente excepcional, deben ser separadas, esto deberá ser únicamente por el tiempo que dure la gestión, debiendo informar a la familia el lugar donde se encontrará, la gestión que debe realizarse y la autoridad que ha requerido y por la cual se le separará temporalmente. En el caso de niños, niñas y adolescentes, podrán ser separados de su familia, también de manera estrictamente excepcional y exclusivamente en razón de su interés superior. Los miembros de la familia tienen derecho a presentar recursos de exhibición personal ante autoridad competente, por lo cual siempre se les deberá facilitar el acceso.</p> <p>El funcionario que no cumpla con lo previsto en este artículo, será sancionado conforme la legislación penal del país. http://www.acnur.org/fileadmin/Documentos/BDL/2017/10978.pdf</p>	
Honduras	<p>Ley de Migración y Extranjería (2004)</p> <p>"Art. 42: (...)</p> <p>4) También serán considerados como refugiados todas aquellas personas, que</p>	<i>Art. 42, 4): The derivative refugee condition shall be granted to the</i>

	<p>dependan directamente del refugiado y que constituyan un grupo familiar; asimismo, las personas que acompañen al refugiado o se hayan unido a él posteriormente, siempre y cuando se encuentren bajo su dependencia.</p> <p>Artículo 47. Derecho a la reunificación familiar.</p> <p>Todo refugiado tiene derecho a obtener la reunificación familiar con los parientes que conforman dicho grupo, la cual se sustentaría en criterios de consanguinidad, afinidad o dependencia, de acuerdo a lo establecido en el Reglamento de la presente Ley. Las solicitudes para el restablecimiento de la unidad familiar serán consideradas de especial interés y prioridad.”</p> <p>http://www.acnur.org/t3/fileadmin/Documentos/BDL/2004/2528.pdf</p>	<p><i>following persons:</i></p> <ul style="list-style-type: none"> • <i>All those who depend directly on the refugee and that constitute a family group</i> • <i>All those persons who are accompanying the refugee at the moment of the asylum claim or that have joined him later, as long as they are his dependents</i> <p><i>Art. 47. Right to Family Reunification</i></p> <p><i>Every refugee is entitled to family reunification with relative based on criteria of consanguinity, affinity or dependence.</i></p> <p><i>Applications for family reunification will be considered of special interest and priority.</i></p>
<p>México</p>	<p>Ley sobre refugiados y protección complementaria (2011)</p> <p>“Artículo 12. La Secretaría reconocerá la condición de refugiado, mediante un acto declarativo, a los extranjeros que se encuentren en cualquiera de los supuestos establecidos en el artículo 13 de esta Ley, y que por tanto serán sujetos de los derechos y obligaciones contenidos en la misma. Al cónyuge, concubinario, concubina, hijos, parientes consanguíneos hasta el cuarto grado, parientes consanguíneos del cónyuge, concubinario, concubina, hasta el segundo grado que dependan económicamente del solicitante principal, que de igual forma se encuentren en territorio nacional con el solicitante, se les reconocerá por derivación la condición de refugiado. En los casos en los cuales no exista prueba documental de una relación de filiación y dependencia se analizarán otras fuentes de evidencia, incluyendo la</p>	<p><i>The principal applicant shall be granted a refugee condition.</i></p> <p><i>The derivative refugee condition shall be granted to the following persons if they find themselves within the national territory:</i></p> <p><i>Spouse, common law partner, sons-daughters, blood relatives up to the fourth degree, blood relatives of the spouse or the common law partner, up to the second degree and dependents of the principal applicant</i></p>

	<p>declaración del solicitante”.</p> <p>“Artículo 58. Para efectos de la reunificación familiar, la Secretaría podrá autorizar, por derivación de la condición de refugiado, la internación a territorio nacional del cónyuge, concubinario, concubina, hijos, parientes consanguíneos hasta el cuarto grado, parientes consanguíneos del cónyuge, concubinario, concubina, hasta el segundo grado que dependan económicamente del refugiado, así como la capacidad económica para su manutención”.</p> <p>“Artículo 38. Durante la substanciación de un procedimiento de cesación, revocación o cancelación, la Secretaría deberá informar a los extranjeros que gozan de la condición derivada de refugiado mencionados en el artículo 12, que podrán presentar por escrito una nueva solicitud de reconocimiento de la condición de refugiado independiente del solicitante principal. En este supuesto, la condición derivada se mantendrá hasta que se llegue a una determinación final de la solicitud.</p> <p>En relación con el cónyuge, concubinario, concubina, hijos y aquellos dependientes del extranjero cuyo reconocimiento de la condición de refugiado fuere cesado, revocado o cancelado, tendrán el derecho de solicitar el reconocimiento de la condición de refugiado. En caso de no presentar la solicitud correspondiente, la cesación, revocación o cancelación será efectiva, transcurrido el plazo de 30 días hábiles a partir de la determinación correspondiente al refugiado principal. No obstante, podrán solicitar a la autoridad migratoria les sea concedida legal estancia en el país”.</p> <p>http://www.acnur.org/t3/fileadmin/Documentos/BDL/2010/8150.pdf</p>	<p><i>Considering family reunification, the same persons listed in article 12 supra “may” be authorized to enter the national territory</i></p> <p><i>The same persons listed in article 12 supra shall be informed of their right to present an asylum claim independently of the principal applicant.</i></p> <p><i>Should the principal applicant be subjected to a cessation, cancellation or revocation procedure, the same persons listed in article 12 supra shall have the right to request the condition of refugee.</i></p>
Nicaragua	<p>Ley de protección a refugiados (2008)</p> <p>“Art. 3 Principio de la unidad familiar y reconocimiento derivativo de la condición de refugiado.</p> <p>A) En consideración del principio de la unidad familiar, la condición de refugiado será extendida al cónyuge o a la pareja en unión de hecho estable y a los hijos</p>	<p><i>The derivative refugee condition shall be granted to the following persons:</i></p> <p><i>Spouse</i></p>

	<p>menores de edad de la persona que ha sido reconocida como refugiada. Igualmente se extenderá a los demás miembros del grupo familiar que dependan del refugiado.</p> <p>B) Si el refugiado es menor de edad, tal condición será extendida a sus padres, hermanos menores de edad y demás miembros del grupo familiar de que el menor dependa.</p> <p>C) La resolución negativa en relación con el solicitante principal del reconocimiento de la condición de refugiado, no evitará la tramitación de las solicitudes presentadas de manera separada por cualquier miembro de la familia”.</p> <p>http://www.acnur.org/t3/fileadmin/Documentos/BDL/2008/6435.pdf</p>	<p><i>Common law partner Minor sons-daughters of the principal applicant Other members of the family group if dependants of the refugee</i></p> <p><i>If a minor is recognized as a refugee, such condition will be extended to his parents, minor siblings and other members of the family group with respect to whom the minor is dependant</i></p> <p><i>The rejection of the application of the principal applicant does not prejudice the processing of asylum applications presented by members of his family</i></p>
Paraguay	<p>Ley 193. Ley general sobre refugiados.</p> <p>Artículo 2: A fin de asegurar que mantenga la unidad familiar, los efectos de la concesión de la condición de refugiado se aplicarán, por extensión, a su cónyuge o a la persona con la cual estuviera unido de hecho, descendientes y ascendientes en primer grado.</p> <p>Sin embargo, en ningún caso se concederá el refugio, por extensión, a persona alguna incurso en alguna de las causales previstas en el Artículo 6° de la presente ley.</p> <p>http://www.acnur.org/t3/fileadmin/Documentos/BDL/2002/1565.pdf</p>	<p><i>The derivative refugee condition shall be granted to the following persons: spouse, partner; ascendants and descendants to the first degree.</i></p> <p><i>Asylum shall not be granted to persons who fall under exclusion clauses.</i></p>
Perú	<p>Decreto Legislativo No.1350, Migraciones (2017)</p> <p>Artículo V.- Principio de unidad migratoria familiar: El Estado garantiza y vela por la unidad familiar de los extranjeros y nacionales.</p> <p>Artículo 37°.- De la Reunificación Familiar 37.1 El nacional que tenga vínculo familiar con extranjero o extranjera, puede solicitar ante MIGRACIONES y el Ministerio de Relaciones Exteriores según corresponda, la calidad migratoria de residente de cualquiera de los integrantes de su núcleo familiar. Lo dispuesto también le asiste al</p>	<p><i>Family unit of foreigners and nationals is guaranteed</i></p> <p><i>Right to family reunification</i></p>

extranjero para solicitar la reagrupación familiar en las situaciones previstas en el Reglamento.

37.2. A los familiares del extranjero con la calidad migratoria temporal con permanencia mayor a 90 días, se les asigna por reunificación familiar, la misma calidad migratoria que el titular extranjero. La calidad migratoria del titular extranjero se extiende a sus familiares.

37.3. Los familiares del extranjero con categoría migratoria residente pueden o no optar por la calidad migratoria de residente u otra a su elección, si reúnen los requisitos exigidos por la normatividad. La calidad migratoria del titular extranjero

Artículo 64º.- Formalización y ejecución de las sanciones migratorias

a. Las sanciones de salida obligatoria y expulsión se formalizan por resolución administrativa de MIGRACIONES y son de ejecución inmediata, de acuerdo a lo establecido en el Reglamento del presente Decreto Legislativo.

b. MIGRACIONES en aplicación de los principios de unidad familiar e interés superior del niño y adolescente, **evaluará la suspensión de la ejecución de la sanción de salida obligatoria, en aquellos casos en los que se compruebe su evidente e inminente riesgo de vulneración, de acuerdo a las condiciones y procedimientos que se establezcan en el reglamento.**

<http://www.acnur.org/fileadmin/scripts/doc.php?file=fileadmin/Documentos/BDL/2017/10995>

Ley 27.891 del refugiado

Artículo 25: Reunificación Familiar. La calidad de Refugiado podrá hacerse extensiva al **cónyuge del refugiado, o a la persona con la que mantiene una unión de hecho estable**, a sus hijos o a otras personas dependientes económicamente del mismo, cuando ello haya sido requerido y debidamente acreditado.

<http://www.acnur.org/t3/fileadmin/Documentos/BDL/2003/1938.pdf>

An expulsion of an alien may be suspended in cases where the superior interest of a child is jeopardized by the expulsion

When required and certified, the derivative refugee condition shall be granted to the following persons: spouse, partner; children; and other persons who depend economically on the refugee.

<p>Uruguay</p>	<p>Uruguay. Estatuto del Refugiado (2006)</p> <p>ARTICULO 21. (Derecho a la reunificación familiar).- La reunificación familiar es un derecho del refugiado. La condición de refugiado, a solicitud de éste, le será reconocida al cónyuge, concubino e hijos, así como a cualquier otro pariente por consanguinidad hasta el cuarto grado o afinidad hasta el segundo grado, salvo que a su respecto le sea aplicable una cláusula de exclusión o de cesación.</p> <p>http://www.acnur.org/t3/fileadmin/Documentos/BDL/2007/4752.pdf</p>	<p><i>A refugee has the right to family reunification.</i></p> <p><i>On the application of the refugee, except if a cessation or exclusion clause is applicable, such condition will be granted to the following persons:</i></p> <p><i>Spouse</i></p> <p><i>Common law partner</i></p> <p><i>Sons-daughters</i></p> <p><i>blood relatives up to the fourth degree</i></p> <p><i>Non blood relatives up to the second degree</i></p>
<p>INTER-AMERICAN COURT OF HUMAN RIGHTS.</p> <p>ADVISORY OPINION OC-21/14 OF AUGUST 19, 2014.</p> <p>RIGHTS AND GUARANTEES OF CHILDREN IN THE CONTEXT OF MIGRATION AND/OR IN NEED OF INTERNATIONAL PROTECTION</p> <p>http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf</p>	<p>“158. In addition, the Court has stressed that “[t]he child has the right to life with his or her family, which is responsible for satisfying his or her material, emotional and psychological needs.”²⁹⁴ In this way, in the case of children who are with their parents, keeping the family together owing to the child’s best interest does not represent a sufficient reason to legitimate or justify the exceptional admissibility of the deprivation of liberty of children together with their parents, because of the prejudicial effects on their emotional development and physical well-being. To the contrary, when the child’s best interest requires keeping the family together, the imperative requirement not to deprive the child of liberty extends to her or his parents and obliges the authorities to choose alternative measures to detention for the family, which are appropriate to the needs of the children.²⁹⁵ Evidently, this entails a correlative State obligation to design, adopt and implement alternative measures to closed detention centers in order to preserve and maintain the family unit and to promote the protection of the family without imposing an excessive sacrifice on the rights of the child by the deprivation of liberty of all or part of the family.²⁹⁶”</p> <p>²⁹⁴ Juridical Status and Human Rights of the Child, supra, para. 71, and Case of Fornerón and daughter v. Argentina. Merits, reparations and costs. Judgment of April 27, 2012. Series C No. 242, para. 46. See also,</p>	<p><i>(The State obligation to design, adopt and implement alternative measures to closed detention centers in order to preserve and maintain the family unit)</i></p>

Article 9 of the Convention on the Rights of the Child.

²⁹⁵ Cf. Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development, UN Doc. A/HRC/20/24, 2 April 2012, para. 40. See also, Committee on the Rights of the Child, Report of the 2012 Day of General Discussion on the rights of all children in the context of international migration, 28 September 2012, recommendation in paragraph 78 provides that “[c]hildren should not be criminalized or subject to punitive measures because of their or their parents’ migration status. The detention of a child because of their or their parent’s migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child. In this light, States should expeditiously and completely cease the detention of children on the basis of their immigration status.”

²⁹⁶ Cf. Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development, UN Doc. A/HRC/11/7, May 14, 2009, para. 62; Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante, UN Doc. A/65/222, 3 August 2010, para. 48; and ECHR, Case of Popov v. France, Nos. 39472/07 and 39474/07, Judgment of 19 January 2013, paras. 140, 141 and 147. See also, Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, Addendum: Mission to the United States of America, UN Doc. A/HRC/7/12/Add.2, 5 March 2008, para. 125.

“177. (...) In the case of children who are with their families, in accordance with Articles 17 of the Convention and VI of the Declaration, which establish the rights of the family, the rule must be that they remain with their parents or those acting in their stead, avoiding the separation of the family unit insofar as possible, ³³⁶ as indicated previously (supra paras. 158 and 160), unless the best interest of the child advises otherwise”.

³³⁶ Cf. Case of Vélez Loor v. Panama, supra, para. 209.

“272. It is also pertinent to recall that the family to which every child has a right is, above all, her or his biological family, including extended family, and which should protect the child and also be the priority object of the measures of protection provided by the State.⁵³¹ Nevertheless, the Court recalls that there is no single model for a family.⁵³² Accordingly, the definition of family should not be restricted by the traditional notion of a couple and their children, because other relatives may also be entitled to the right to family life, such as uncles and aunts, cousins, and grandparents, to name but a few of the possible members of the extended family, provided they have close personal ties. In addition, in many families the person or persons in charge of the legal or habitual maintenance, care and development of a child are not the biological parents. Furthermore, in the migratory context, “family ties” may have been established between individuals who are not necessarily family members in a legal sense, especially when, as regards children, they have not been accompanied by their parents in these processes. This is why the State has the obligation to determine, in each case, the composition of the child’s family unit.⁵³³ Consequently, in drawing up this opinion and in the context of the situation of migrants, the Court will apply the term “parents” of the child used in the question asked to the Court in a broad sense, including in it those who really constitute part of the child’s family and, therefore, are entitled to the protection of the family granted in Articles 17 of the Convention and VI of the American

(The definition of family should not be restricted by the traditional notion of a couple and their children because other relatives may also be entitled to the right to family life, such as uncles and aunts, cousins, and grandparents, to name but a few of the possible members of the extended family, provided they have close personal ties

Declaration”.

532 Cf. Committee for the Elimination of Discrimination against Women, General recommendation No. 21: Equality in marriage and family relations, 1994, para. 13 (“The form and concept of the family can vary from State to State, and even between regions within a State. Whatever form it takes, and whatever the legal system, religion, custom or tradition within the country, the treatment of women in the family both at law and in private must accord with the principles of equality and justice for all people, as Article 2 of the Convention requires.”); Committee on the Rights of the Child, General Comment No. 7. Implementing child rights in early childhood, supra, paras. 15 and 19 (“The Committee recognizes that “family” here refers to a variety of arrangements that can provide for young children’s care, nurturance and development, including the nuclear family, the extended family, and other traditional and modern community-based arrangements, provided these are consistent with children’s rights and best interests. [...] The Committee notes that in practice family patterns are variable and changing in many regions, as is the availability of informal networks of support for parents, with an overall trend towards greater diversity in family size, parental roles and arrangements for bringing up children.”); Committee on Human Rights, General Comment No. 19: The family (Article 23), UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008, para. 2 (“The Committee notes that the concept of the family may differ in some respects from State to State, and even from region to region within a State, and that it is therefore not possible to give the concept a standard definition”), and Committee on Human Rights, General Comment No. 16: Right to privacy (Article 17), UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 8 April 1998, para. 5 (“Regarding the

term “family”, the objectives of the Covenant require that for purposes of Article 17 this term be given a broad interpretation to include all those comprising the family as understood in the society of the State party concerned”); and, ECHR X, Y, and Z, v. the United Kingdom, No. 21830/93. Judgment of 22 April 1997, para. 36 (“When deciding whether a relationship can be said to amount to “family life”, a number of factors may be relevant, including whether the couple live together, the length of their relationship and whether they have demonstrated their commitment to each other by having children together or by any other means.”). See also, ECHR, Case of Marckx v. Belgium, No. 6833/74. Judgment of 13 June 1979, para. 31; ECHR, Case of Keegan v. Ireland, No. 16969/90. Judgment of 26 May 1994, para. 44, and ECHR, Case of Kroon and Others v. the Netherlands, No. 18535/91. Judgment of 27 October 1994, para. 30.

⁵³³ Cf. Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs, *supra*, para. 177.

...

Note:

Footnote 533 *supra* refers to Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs (2012)

(No single model of family, including same sex partners)

“172. With regard to the concept of family, various human rights organs created by treaties, have stated that there is no single model for a family, which may have many variations¹⁹². Similarly, the European Court has interpreted the concept of “family” in broad terms”.

http://www.corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf

(No single model of family, including same sex partners)

¹⁹² Cf. United Nations, Committee on the Elimination of Discrimination Against Women, General Recommendation No. 21 (13th period of sessions, 1994). Equality in marriage and in family relationships, para. 13 (“The form and the concept of a family can vary from State to State and even between regions within a State. Whatever form it takes, and whatever the legal system, religion, custom or tradition within the country, the treatment of women in the family, both at law and in private, must conform to the principles of equality and justice for all people, as Article 2 of the Convention requires”); Committee on the Rights of the Child, General Comment No. 7. Implementing Child Rights in Early Childhood, supra note 171, paras. 15 and 19 (“The Committee recognizes that ‘family’ here refers to a variety of arrangements that can provide for young children’s care, nurturance and development, including the nuclear family, the extended family and other traditional and modern community-based arrangements, provided that these are consistent with children’s rights and best interests. [...]The Committee notes that in practice family patterns are variable and changing in many regions, as is the availability of informal networks of support for parents, with an overall trend towards greater diversity in family size, parental roles and arrangements for bringing up children”); Human Rights Committee, General Comment No. 19 (39th period of sessions, 1990). The family (Article 23), HRI/GEN/1/Rev.9 (Vol.I), para. 2 (“The Committee notes that the concept of family may differ in some respects from State to State, and even between regions within a State, and that it is therefore not possible to give the concept a standard

definition”), and United Nations, C Human Rights Committee, General Comment No. 16 (32nd period of sessions, 1988). Right to Privacy (Article 17), HRI/GEN/1/Rev.9 (Vol. I), para. 5 (“Regarding the term “family”, the objectives of the Covenant require that for the purposes of Article 17, this term be given a broad interpretation that includes all those comprising the family, as understood in the society of the State Party concerned.”)

...

“275. Consequently, it is possible to observe that two conflicting interests arise in cases in which a decision must be taken on the eventual expulsion of one or both parents: (a) the authority of the State concerned to implement its own immigration policy to achieve legitimate purposes that ensure general welfare and observance of human rights, and (b) the right of the child to the protection of the family and, in particular, to enjoy family life by preserving family unit insofar as possible. However, the just demands of general welfare should in no way be construed so as to enable any hint of arbitrariness to the detriment of rights. In order to weigh the interests in conflict, an assessment must be made of whether the measure: is established by law,⁵⁴⁴ and complies with the requirements of (a) suitability; (b) necessity, and (c) proportionality; in other words, it must be necessary in a democratic society.”

“279. To this end, the State will subsequently have to evaluate the specific circumstances of the persons concerned, including in particular: (a) the immigration history, the duration of the stay, and the extent of the ties of the parent and/or the family to the host country; (b) consideration of the nationality, custody and residence of the children of the person to be expelled; (c) scope of the harm caused by the rupture of the family owing to the expulsion, including the persons with whom the child lives, as well as the time that the child has been living in this family unit, and (d) scope of the disruption of the daily life of the child if her or

his family situation changes owing to a measure of expulsion of a person in charge of the child so as to weigh all these circumstances rigorously in light of the best interest of the child in relation to the essential public interest that should be protected.

280. In those situations in which the child has a right to nationality – original ⁵⁵², by naturalization, or for any other reason established in domestic law – of the country from which one or both of the parents may be expelled owing to their irregular migratory situation, or in which the child complies with the legal conditions to reside there on a permanent basis, it is axiomatic that the child must conserve the right to continue enjoying her or his family life in said country and, as a component of this, mutual enjoyment of the cohabitation of parents and children. The Court finds, in application of the criteria described above, that the rupture of the family unit by the expulsion of one or both parents due to a breach of immigration laws related to entry or permanence is disproportionate in these situations, because the sacrifice inherent in the restriction of the right to family life, which may have repercussions on the life and development of the child, appears unreasonable or excessive in relation to the advantages obtained by forcing the parent to leave the territory because of an administrative offense”.

552 In most countries in the region *ius soli* applies, which determines that the person acquires the nationality of the State in whose territory she or he was born. Article 20(2) of the American Convention establishes the right to the nationality of the State in whose territory the person was born, if this person “does not have the right to any other nationality.” On this point, the Court underscores that it is necessary, as a guarantee of the right to identity and to the exercise of other rights, that

	<p>State ensure that all births in their territory are duly registered. See Article 7.1 of the Convention on the Rights of the Child, Article 29 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Cf. Inter-American Juridical Committee, Advisory Opinion “on the scope of the right to identity,” 71st regular session, Río de Janeiro, Brazil, Document CJI/doc. 276/07 rev. 1, of August 10, 2007, para. 18(3)(6), approved during the same session by Resolution CJI/RES.137 (LXXI-O/07), of August 10, 2007, second operative paragraph.</p> <p>“281. In short, in the Court’s opinion any administrative or judicial organ that must decide on family separation owing to expulsion based on the migratory status of one or both parents must, when weighing all the factors, consider the particular circumstances of the specific case, and guarantee an individual decision – in keeping with the parameters described in the paragraphs above – evaluating and determining the child’s best interest”.</p>	
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