



Via E-mail: OHCHR-cerd@un.org

May 16, 2022

UN Committee on the Elimination of Racial Discrimination

Re: NGO contribution for development of list of themes for United States periodic report

Dear Committee Member:

We write to ask the Committee to address racial discrimination within the child welfare system in its list of themes for review of the United States' combined tenth to twelfth periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination.

Although the child welfare system purports to protect children's safety and well-being, decades of research, data, and lived experiences reveal that the system has a long history of subjecting families of color, particularly Black families, to unjust and racist practices and policies.¹ This Committee has previously noted its concern over the "ongoing removal of indigenous children from their families and communities through the U.S. child welfare system."ⁱⁱ The Committee Chair has similarly expressed concerns over the separation of migrant children from their parents at the border.ⁱⁱ In addition to these ongoing concerns, the discriminatory surveillance, investigation, and separation of Black families by the U.S. child welfare system, and the devastating harm it inflicts on Black children within this system, warrants the Committee's attention.

As advocates working in both the children's rights and human rights fields, the recommendations we include below stem from our years of experience working with children and families in child welfare systems throughout the country and knowledge of international law. Children's Rights is a national non-profit organization that for over 25 years has advocated for the legal rights of children impacted by government systems, including the child welfare, juvenile justice, education and healthcare systems. The Human Rights Institute at Columbia Law School advances international human rights through education, advocacy, fact-finding, research, scholarship, and critical reflection, and has for the last 25 years advocated for respect of fundamental human rights in the United States.

¹ We recognize that racially disproportionate outcomes are experienced by many communities of color in the United States, but we focus here on the experiences of Black children because we are best positioned to speak meaningfully on the experiences of Black children, given the scope of our work, and because we feel these children have previously been left out of the Committee's review.

Discriminatory Treatment of Black Families

The United States child welfare system refers to a set of state and federal laws and agencies mandated to protect and support victims of child abuse and neglect, jointly referred to as “child maltreatment.” Under the current system, state agencies receive reports with allegations of child maltreatment, investigate these allegations, determine if they believe abuse or neglect occurred, and, often, remove children from their homes and place them into the physical and/or legal custody of the state. At each of these stages—reporting, investigation, substantiation, and removal—Black children face racial discrimination and unequal treatment. Moreover, the majority of Black children are removed from their families due to “neglect,” a broad and poorly defined category that often results in children removed for concerns related to poverty rather than abuse.

Today, Black children are greatly overrepresented in the number of children who are placed in the custody of child welfare agencies. Although only 14 percent of the general child population is Black, Black children make up 22 percent of children in foster care.ⁱⁱⁱ Recent data reveals that 9.1 percent of Black children will experience at least one foster care placement during their childhood, compared to only 5 percent of white children.^{iv}

At every stage of the child welfare process, Black children and families face racial discrimination and unequal outcomes compared to their white counterparts. Black families are more likely to be the subject of maltreatment reports.^v Black families are almost twice as likely to be investigated,^{vi} and more likely to have their cases substantiated by caseworkers who exercise vast discretion.^{vii} Black children are more likely to be separated from their parents and placed in out-of-home care.^{viii} One 2020 study found that Black children were 15 percent more likely to be removed from home.^{ix} Once removed, Black children remain in foster care for longer,^x experience more frequent placement moves,^{xi} are less likely to be adopted,^{xii} and are 2.4 times more likely to experience termination of parental rights.^{xiii} Black children also face worse outcomes when transitioning out of the child welfare system. Twenty three percent of Black youth who age out of foster care experience homelessness and 29 percent experience incarceration, far higher rates than for non-Black youth.^{xiv}

Moreover, the majority of Black children are removed from their families for conditions related to poverty, not for abuse. Over 63% of Black children removed from their families in 2019 were due to “neglect.”^{xv} Reasons for this type of removal include “inadequate housing,” “poor nutrition,” and other reasons related to poverty.^{xvi}

U.S. Laws Expand Discriminatory Surveillance and Separation of Black Families

These unequal outcomes are not coincidental. They are the product of federal and state laws, regulations, and policies that subject Black families to unjustifiable surveillance and policing by the child welfare system. In particular, several federal laws, including the Child Abuse Prevention and Treatment Act of 1974 (“CAPTA”), the Adoption and Safe Families Act of 1997 (“ASFA”),

and the Adoption Assistance and Child Welfare Act of 1980 (“AACWA”), have exacerbated racial inequality within the child welfare system.

CAPTA for example, required states to expand their definitions of maltreatment to include the poorly defined category of “neglect,” and to maintain a “mandated reporting” system in order to receive federal funding.^{xvii} This has sanctioned the surveillance and reporting of under-resourced families, particularly Black families, for conditions of poverty. Research has shown that “mandated reporters” are far more likely to report Black families than white families.^{xviii} Exacerbating these concerns, laws like AACWA and ASFA have made it legally easier for children to be separated from their families, and have accelerated timelines for state agencies to terminate parental rights, meaning permanent legal separation between children and parents.^{xix}

Despite the harms these laws have caused, the U.S. Government has not taken concrete action to end the ongoing racism and discriminatory impact of these laws on Black children and families. Article II of the Convention requires State Parties to “ensure that all public authorities and public institutions” on both a “national and local” level “engage in no act or practice of racial discrimination;” “take effective measures to review” laws and policies; and “amend, rescind or nullify any laws” that perpetuate racial discrimination.^{xx} This includes laws and policies that result in “an unjustifiable disparate impact.”^{xxi} Current U.S. law and practice contravenes this basic commitment. The Committee should utilize this opportunity to hold the U.S. Government accountable to its commitments under the Convention.

Below are suggested lines of inquiry for the U.S. delegation:

1. Does the United States recognize systemic racism in the child welfare system as a racial justice issue? What steps is it taking to remedy this ongoing discrimination?
2. What steps will the United States Government take to review CAPTA, AACWA, ASFA, and other laws that perpetuate racism and harm children and families? Is the Administration committed to drafting, recommending, and sponsoring legislation that rescinds harmful policy and enhances protections for Black children?
3. How does the government define “neglect?” Is the government taking steps to address the underlying factors that lead families to child welfare involvement for poverty reasons? How is the government working to prevent poverty-based removals?

We urge the Committee to address the issue of racism within the United States child welfare system during its country review later this year. For further information, please contact Anjali Parrin (hri@law.columbia.edu) or Shereen A. White (swhite@childrensrights.org).

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ⁱ U.N. Comm. on the Elimination of Racial Discrimination, Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America, ¶ 24, U.N. Doc. CERD/C/USA/CO/7-9 (Sept. 25, 2014).

ⁱⁱ Nouredine Amir, Letter from the Chair of the U.N. Committee on the Elimination of Racial Discrimination to the United States of America, U.N. Doc. CERD/96th/EWUAP/MJA/USA/2018 (Aug. 30, 2018).

ⁱⁱⁱ In 2019, Black children were also disproportionately represented in 41 out of 52 child welfare jurisdictions in the United States. *Fighting Institutional Racism at the Front End of Child Welfare Systems: A Call to Action to End the Unjust, Unnecessary, and Disproportionate Removal of Black Children from Their Families*, CHILDREN’S RIGHTS (May 15, 2021) [hereinafter *Call to Action*], at 12, <https://bit.ly/3hGX2jj>. In 2000, Black children made up only 15.1 percent of the general child population, but represented 36.6 percent of the children in the child welfare system. Robert B. Hill, *Synthesis of Research on Disproportionality in Child Welfare: An Update*, CASEY-CSSP ALLIANCE FOR RACIAL EQUITY IN THE CHILD WELFARE SYSTEM (Oct. 2006), [hereinafter *Synthesis of Research on Disproportionality*], at 15, <https://www.issuelab.org/resources/11355/11355.pdf>.

^{iv} Elisa Minoff & Alexandra Citrin, *Systematically Neglected: How Racism Structures Public Systems to Produce Child Neglect*, CTR FOR THE STUDY OF SOC. POL’Y (Mar. 2022), at 5, <https://cssp.org/resource/systemically-neglected/>.

^v Kathryn Suzanne Kruse, *Child Maltreatment Reporting by Educational Personnel: Implications for Racial Disproportionality in the Child Welfare System*, 37 CHILD. & SCHOOLS 89 (2015), <https://doi.org/10.1093/cs/cdv005>; Benard P. Dreyer, *Racial/Ethnic Bias in Pediatric Care and the Criminalization of Poverty and Race/Ethnicity-Seek and Ye Shall Find*, 174 JAMA PEDIATRICS 751 (2020), <https://doi.org/10.1001/jamapediatrics.2020.1033>; *Violence Against Women in the Medical Setting: An Examination of the U.S. Foster System*, MOVEMENT FOR FAM. POWER & NAT’L ADVOC. FOR PREGNANT WOMEN (May 31, 2019), https://ccrjustice.org/sites/default/files/attach/2019/06/MFP_NAPW_UN_VAW_Submission-20190531-Final.pdf; Caroline Preston & Rebecca Klein, *When Schools Use Child Protective Services as a Weapon Against Parents*, HUFF. POST (Nov. 17, 2018, 5:00 AM) [hereinafter *When Schools Use CPS as a Weapon*], https://www.huffpost.com/entry/child-protective-services-schools_n_5beee8ae4b0860184a7f61c.

^{vi} Generally, 54.2 percent of reported cases are “screened in” and investigated further, while 45.8 percent are “screened out.” However, research has shown that Black families are almost twice as likely to be investigated for child abuse or neglect, compared to white families. *Child Maltreatment 2020*, CHILDREN’S BUREAU, ADMIN. FOR CHILD. & FAMILIES, U.S. DEP’T OF HEALTH & HUM. SERVS. (2021), at 9, <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2020.pdf>; *Call to Action*, *supra* note iii, at 14.

^{vii} Christopher Wildeman et al., *The Prevalence of Confirmed Maltreatment Among US Children, 2004 to 2011*, 168 JAMA PEDIATRICS 706, 706 (2014), <https://doi.org/10.1001/jamapediatrics.2014.410> (finding that in 2011, 12.5% of U.S. children experienced a substantiated report of child abuse or neglect, however, 20.9% of Black children, compared to 10.7% of white children, experienced substantiated reports); Michelle Burrell, *What Can the Child Welfare System Learn in the Wake of the Floyd Decision?: A Comparison of Stop-and-Frisk Policing and Child Welfare Investigations*, 22 CUNY L. REV. 124 (2019), <https://academicworks.cuny.edu/clr/vol22/iss1/14/>.

^{viii} Black children are more likely to be placed in out-of-home care, rather than receiving in-home support services. Research indicates Black children were “36 percent more likely than white victims of abuse and neglect to be placed in foster care” Another study reports that “[w]hite children who are abused or neglected are twice as likely as black children to receive services in their own homes, avoiding the emotional damage and physical risks of foster care placement.” *Synthesis of Research on Disproportionality*, *supra* note iii, at 21-22; Dorothy E. Roberts, *Child Welfare and Civil Rights*, 2003 UNIV. ILL. L. REV. 171, 173 (2003); E. Michael Foster et al., *Explaining the Disparity in Placement Instability Among African-American and White Children in Child Welfare: A Blinder-Oaxaca Decomposition*, 33 CHILD. & YOUTH SERVS. REV. 118, 122-123 (2011) (finding that Black youth were assigned to out-of-home placements more frequently than white youth).

^{ix} Kathryn Maguire-Jack et al., *Child Protective Services Decision-Making: The Role of Children’s Race and County Factors*, 90 AM. J. OF ORTHOPSYCHIATRY 48, 55 (2020), <https://doi.org/10.1037/ort0000388>.

^x Ruth McRoy & Amy Griffin, *Transracial Adoption Policies and Practices: The US Experience*, 36 *ADOPTION & FOSTERING* 38, 42-43 (2012) (reporting that Black children on average remain in foster care for nine months longer than white children); Megan Martin & Dana Dean Connelly, *Achieving Racial Equity*, *CTR. FOR THE STUDY OF SOC. POL'Y* (2015), at 8, <https://cssp.org/resource/achieving-racial-equity-child-welfare-policy-strategies-improve-outcomes-children-color/>; David L. Sandles & Kenneth R. Magdaleno, *Factors Impeding the Social and Academic Progress of African American Males in Foster Care*, 3 *CLEARVOZ J.* 1, 3-4 (2016), <https://repository.library.fresnostat.edu/bitstream/handle/10211.3/181786/Factors%20Impeding%20the%20Social%20and%20Academic%20Progress%20of%20African%20American.pdf?sequence=1>.

^{xi} In FFY 2019, 61.3 percent of Black children in care experienced 2 or fewer placements compared to 67.8 percent of white children. Adoption & Foster Care Analysis & Reporting System (“AFCARS”) 2019 Data Set (analysis by Children’s Rights’ Advocacy & Policy Department).

^{xii} In 2019, Black children and white children represented 18 percent and 50 percent of all adoptions respectively. Data also indicates that 13 percent of children adopted within two years of entering foster care in 2017 were Black, while 54 percent were white. Laura Radel et al., *The Multiethnic Placement Act 25 Years Later: Trends in Adoption and Transracial Adoption*, *MATHEMATICA* (Dec. 21, 2020), at 14-15, <https://www.mathematica.org/publications/the-multiethnic-placement-act-25-years-later-trends-in-adoption-and-transracial-adoption>.

^{xiii} Christopher Wildeman et al., *The Cumulative Prevalence of Termination of Parental Rights for U.S. Children, 2000-2016*, 25 *CHILD MALTREATMENT* 31, 33 (2020), <https://doi.org/10.1177/1077559519848499>.

^{xiv} National Youth in Transition Database Outcomes 2020 Cohort Wave 1 (analysis by Children’s Rights’ Advocacy & Policy Department).

^{xv} AFCARS 2019 Data Set (analysis by Children’s Rights’ Advocacy & Policy Department).

^{xvi} *Information Memorandum Log No: ACYF-CB-IM-21-02, Civil Legal Advocacy to Promote Child and Family Well-being, Address the Social, Determinants of Health, and Enhance Community Resilience*, *CHILDREN’S BUREAU, ADMIN. FOR CHILD. & FAMILIES, U.S. DEP’T OF HEALTH & HUM. SERVS.* (Jan. 12, 2021), at 5, <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2102.pdf>.

^{xvii} In the four years after Congress enacted CAPTA, 14 states introduced reporting requirements for nurses, 24 introduced reporting requirements for social workers, 25 introduced reporting requirements for educational personnel, and 31 introduced reporting requirements for law enforcement personnel. States also expanded their definitions of child maltreatment to meet federal funding requirements. Leonard G. Brown III & Kevin Gallagher, *Mandatory Reporting of Abuse: A Historical Perspective on the Evolution of States’ Current Mandatory Reporting Laws with a Review of the Laws in the Commonwealth of Pennsylvania*, 59 *VILL. L. REV. TOLLE LEGE* 37, 42 (2014), <https://digitalcommons.law.villanova.edu/vlr/vol59/iss6/5/>; Douglas J. Besharov, *The Legal Aspects of Reporting Known and Suspected Child Abuse and Neglect*, 23 *VILL. L. REV.* 458, 460-69 (1978), <https://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=2180&context=vlr>; Ben Mathews, *Mandatory Reporting Laws: Their Origin, Nature, and Development Over Time*, in *MANDATORY REPORTING LAWS AND THE IDENTIFICATION OF SEVERE CHILD ABUSE AND NEGLECT* 3, 9-10 (Ben Mathews & Donald C. Bross Eds., 2015)

^{xviii} *Call to Action*, *supra* note iii, at 13-14; *When Schools Use CPS as a Weapon Against Parents*, *supra* note v; *see also Call to Action*, *supra* note iii, at 15-16.

^{xix} *Call to Action*, *supra* note iii, at 9-10.

^{xx} International Convention on the Elimination of All Forms of Racial Discrimination art. 2, Jan. 4, 1969.

^{xxi} U.N. Committee on the Elimination of Racial Discrimination, General Recommendation XIV on Article 1, Paragraph 1, of the Convention, ¶ 2, (1993). The Committee has stated that “[i]n seeking to determine whether an action has an effect contrary to the Convention,” the Committee “will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin.” *Id.*