

Family Separation Is an Urgent Human & Civil Rights Issue

Response to the United Nations Human Rights Committee Regarding the Fifth Periodic Report of the United States under the International Covenant for Civil and Political Rights

September 2023

**CHILDREN'S
RIGHTS**



JMACFORFAMILIES
ADVOCATE AND ORGANIZE FOR CHILD WELFARE TRANSFORMATION

Endorsements

upEND Movement
Center for Family Representation
Community Legal Services
National Center for Youth Law (NCYL)
The National Center for Lesbian Rights (NCLR)
NYU Family Defense Clinic
Sayra and Neil Meyerhoff Center for Families, Children and the Courts
The MJCF: Coalition
Mining For Gold, LLC
Neighborhood Defender Service-Harlem

Angelique Day, Associate Professor, School of Social Work, University of Washington Seattle; Legislative Director, Congressional Research Institute for Social Work Policy (CRISP)
Corey B. Best, Founder & Community Curator
Dorothy E. Roberts, George A. Weiss University Professor of Law & Sociology, University of Pennsylvania
Sarah Katz, Clinical Professor of Law, Temple University Beasley School of Law
Sarah Lorr, Assistant Professor of Law at Brooklyn Law School

ABOUT CHILDREN'S RIGHTS

Children's Rights is a national advocacy organization dedicated to improving the lives of children living in or impacted by America's child welfare, immigration, juvenile legal, education, and healthcare systems.

We use civil rights impact litigation, advocacy and policy expertise, and public education to hold governments accountable for keeping kids safe and healthy. Our work centers on creating lasting systemic change that will advance the rights of children for generations.

For more information, please visit childrensrights.org.

ABOUT JMACFORFAMILIES

Just Making A Change for Families, better known as JMACforFamilies, is a non-profit organization working to dismantle the family policing system while investing in community support that keeps families together. We are a team of impacted people, social workers, advocates, and organizers working towards the ultimate goal of abolition.

JMACforFamilies works towards this goal through legislative advocacy, storytelling and narrative change, and programming for people who have been directly impacted by the family policing system. For more information, please visit jmacforfamilies.org.

ABOUT ANGELA OLIVIA BURTON, ESQ.

Angela Olivia Burton, Esq. is a public service lawyer who supports the leadership of people impacted by the family policing system. She has published numerous articles about the family policing system, and has served in the faculty at New York University School of Law, Syracuse University College of Law, and the City University of New York (CUNY) School of Law. Attorney Burton is the Convenor of the National Coalition, RepealCAPTA, which works to end the devastating impact of CAPTA on children, families, and communities. Attorney Burton works with a variety of other organizations and initiatives to advance justice for Black families.

In 2022, Attorney Burton joined advocates in Geneva and provided testimony before the Committee on the Elimination of Racial Discrimination. In May, 2023, she facilitated a UN Side Event on Family Integrity, in furtherance of her advocacy before the Permanent Forum on People of African Descent.

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Family Separation Is an Urgent Human & Civil Rights Issue

Introduction

Every day in the United States, thousands of children are separated from their families and taken into government custody. This includes migrant children separated from their parents at the border, but also Black, Indigenous, and other children forcibly removed from their parents by the U.S. child welfare system.* In fact, both groups of children often end up in the same government system, a system that places children at tremendous risk of harm.

Although the child welfare system purports to provide for child safety and well-being, in practice, the system separates families for poverty-related concerns and disproportionately regulates and separates Black and Indigenous families. The system's surveillance and separation of families occurs without adequate due process protections and within a set of racially discriminatory laws and policies. For these reasons, the child welfare system is more aptly referred to as the "family policing system."

The separation of families violates children's and families' rights under Articles 17, 23, and 24 of the International Covenant on Civil and Political Rights (ICCPR). Moreover, children placed in the foster system face tremendous risk of harm, including a high risk of becoming homeless, sex trafficked, or involved with the criminal legal system while in government custody.** Thus, the government's forcible placement of children in the foster system also implicates their wider rights, including the right to life (Art. 6).

The human rights violations occurring in the U.S. family policing system, including racial discrimination against Black and Indigenous children and families, have been increasingly recognized by other international bodies. In 2022, for example, the United Nations Committee on the Elimination of Racial Discrimination (CERD) expressed concern regarding "the disproportionate number of children of racial and ethnic minorities removed from their families and placed in foster care."

This report aims to highlight for the Human Rights Committee key areas in which the U.S. government has failed to uphold its human rights commitments under the ICCPR regarding its separation of children from their parents and families, and the resulting harms inflicted on them by the immigration and family policing systems.

We look forward to engaging with the Committee and the U.S. government and hope that the concerns and recommendations raised in this submission will be meaningfully addressed by the U.S. government during its appearance before the Committee.

* The child welfare system is a misnomer. It isn't protecting children, it is destroying them - and their families, and communities. Daunting and complex government systems perpetuate cycles of poverty, racism, abuse, and discrimination. We remain committed to holding them accountable. Source: Children's Rights, Is Child Welfare an Accurate Name for a System that Hurts Kids?, Children's Rights (July 7, 2023), <https://www.childrensrights.org/news-voices/is-child-welfare-an-accurate-name-for-a-system-that-hurts-kids#:~:text=The%20child%20welfare%20system%20is,committed%20to%20holding%20them%20accountable.>

** See Section 2 below.

The U.S. Government Separates Families

Relevant Questions in the Human Rights Committee's List of Issues

20. Please provide information on the specific safeguards in place during the implementation of the zero-tolerance policy. In addition, provide information on the number of individuals who were prosecuted pursuant to the memorandums on zero tolerance for offences under Title 8, section 1325 (a) of the United States Code and on a renewed commitment to criminal immigration enforcement, for illegally crossing the border with children, and on the number of children placed into the custody of the Department of Health and Human Services. Comment on reports that despite a court order mandating the reunion of migrant families, over 300 children are still separated from their parents. Please indicate whether any investigations have commenced into the deaths of migrant children in the care and custody of the Customs and Border Protection authorities and whether there are any newly enacted safeguards to ensure that such deaths do not happen again.

Issue Summary

Separating children from their parents or caregivers and placing them in detention in the custody of government “child protection” or “child welfare” agencies has life-long impacts on children’s psychological and physical health and development. The American Academy of Pediatrics has found that separating children from their families, even for short amounts of time, “can cause irreparable harm, disrupting a child’s brain architecture and affecting his or her short and long-term health [and] can carry lifelong consequences for children.”¹

Even when children are later reunified with their

families, the trauma and harm of family separation persist.²

Family separation also violates the legal rights of children and their parents, including the right to family integrity and to be free from arbitrary interference in family life. While family separation of migrant children at the border has received the most media attention, similar cases of child removal and family separation happen every day in the United States, disproportionately affecting Black and Indigenous communities.

Separation of Migrant Children

Beginning in the Spring of 2018 the Trump administration began separating migrant children from their parents upon entry into the U.S., under a policy known as the “Zero Tolerance” policy. Under this policy, parents were criminally prosecuted for illegally entering the U.S. Because children could not legally be held in federal criminal custody, these children were separated from their parents and placed into the custody of the federal Department of Health and Human Services. Over 5,000 children were separated from their parents under this policy.³ Although many children have since been reunified, as a result of both changes in immigration policy and a Biden administration Task Force, there continues to be hundreds of children still not returned to their families. As of July 16, 2023, there were still 811 children who had not yet had a confirmed reunification with their parents.⁴ For 86 of these children, the government still had no contact information to even identify their parents.⁵



As of July 16, 2023

811 CHILDREN

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U.S. policies and practices continue to result in family separation for migrant children. Many children placed in government holding facilities are separated from at least one parent while in custody due to overcrowding and gender-segregated placements.⁶ In addition, children who are taken into custody with a family member or other adult who is not their legal guardian (for example, an adult sibling, grandparent, or aunt) are considered “unaccompanied” and therefore transferred to the custody of the Department of Health and Human Services and separated from their relatives. Finally, ongoing immigration policies that expel families seeking asylum, but that allow unaccompanied children to stay, have created a perverse incentive system whereby thousands of families make the heart-wrenching decision each year to separate from their children prior to the border-crossing, sending their children on ahead to safety and the chance of being granted asylum.⁷ These unaccompanied children come into the United States, and are then frequently apprehended by Customs and Border Protection (CBP)

and are placed into government in the custody of the Department of Health and Human Services.

Conditions for children and families who cross the border together and are placed in CBP family detention facilities also remain inadequate and unsafe. A recent report by a court-appointed monitor found that these immigration facilities for children and families have, in recent months, been dangerously over-crowded, with unsafe and unsanitary conditions, including inappropriately cold temperatures, inadequate clothing, failure to provide age-appropriate food, and a lack of child-friendly environments.⁸ In May 2023, an eight-year-old girl died while placed in one such facility, and a subsequent report found that there were systemic failures in the medical system and conditions at the immigration facilities that were, in part, responsible for her death.⁹

Separation of Black and Indigenous Children

While family separation at the border has received the most media attention, every day hundreds of non-migrant children are also taken by state government agents from their families in the United States, with Black and Indigenous children disproportionately targeted. These children are taken pursuant to U.S. laws, policies, and practices governing the so-called “child protective” or “child welfare” system, operationalized under the oversight of the U.S. Department of Health and Human Services. The stated goal of the system is to provide for the safety, stability, and well-being of children; in practice, however, the system operates to unjustly surveil and regulate disenfranchised communities and punish families experiencing poverty. Many of the migrant children separated from their parents at the border are detained in this same U.S. “child welfare” system, and subjected to the same oppressive and destructive experiences and outcomes inflicted on non-migrant U.S. children. The experiences of migrant children placed in the custody of the Department of Health and Human Services exposes the urgent need for a broader investigation of the U.S. “child welfare” system and its destructive impacts on Black, Indigenous, and other people of color.

In a recent publication, the Department of Health and Human Services acknowledged that the system “is responsible for many structural barriers and racial

biases that have contributed to family dysfunction, separation, and destruction under the guise of safety and well-being” and recognized that families entangled in the system “are often embarking on a seemingly continuous journey of surveillance, interruption, removal, and for many, eventual breakdown, leading to lasting adverse outcomes impacting generations.”¹⁰ Noting that “[n]ational child welfare data has consistently provided evidence that systemic racism and disproportionality has been an intractable reality that has negatively impacted families of color at every stage of the child welfare continuum for decades,” the Department of Health and Human Services affirmed that “[e]conomically disadvantaged families of color are, oftentimes, the targets of surveillance and prolonged oversight by the child welfare system, due to perceived safety and well-being concerns.”¹¹



1 in 3 children in the U.S. will be subjected to a child welfare investigation by age 18.

The pervasive, intrusive, and harmful nature of this system is well-documented:

Nearly eight million children were referred to a child maltreatment hotline in 2019 and **three million** were investigated. **More than 80%** were found not to have actually been abused or neglected.¹²

One in three children in the U.S. will be subjected to a child welfare investigation by age 18.¹³

Over half – 53% - of Black children will be subjected to a child welfare investigation by age 18.¹⁴

Black children make up just **14%** of the U.S. child population but **24%** of child abuse or neglect reports and **21%** of children entering the foster system.¹⁵

Indigenous children enter the foster system at nearly **double** the nationwide rate. Indigenous parents are up to **four times** more likely to have their children taken into custody than their non-Indigenous counterparts.¹⁶

1 out of 41 Black children and **1 out of 37** Indigenous children will have their parents' parental rights terminated before the age of 18, making them nearly **3 times more** likely to be permanently separated from their families than white children.¹⁷

3X



Black and Indigenous children are 3 times more likely to be permanently separated from their families than white children.

Violation of the Right to Privacy and Family

Current U.S. child welfare laws, policies, and practices violate the right to family integrity and interfere with privacy and family life. Article 23(1) of the Convention states that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” Likewise, Article 17(1) requires that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home.”¹⁸ Yet instead of respecting these fundamental rights regarding family, the United States family policing system routinely separates families, even when there is no evidence of actual serious harm or immediate risk of serious harm to the child.

The majority of children taken into government custody by the family policing system are separated from their families not because of physical or sexual abuse, but under a category called “neglect,” a broad and amorphous term that often operates as a code word for conditions of poverty. Reasons government agents take children from their families under the category of “neglect” can include parents’ inability to provide adequate food, housing, or medical care.¹⁹ In 2021, 63% of children taken into state custody (130,289 children) were separated from their families solely under the category of “neglect.”²⁰ Research shows that “inadequacy of income, more than any other factor, constitutes the reason that children are removed.”²¹ However, rather than providing support to alleviate these factors related to lack of adequate income and

access to basic necessities, government agents instead frequently separate families under the guise of “child safety” or “child protection.”

In fact, federal legislation, in particular the Child Abuse Prevention and Treatment Act of 1974 (CAPTA), requires that individual states include “neglect” as legal grounds for child welfare removals, for those states to receive federal funding.²² In many states, neglect is defined as (1) lack of medical, dental, surgical, child care, behavioral, and other services; (2) failure to provide for basic needs including food, nutrition, clothing, education, and shelter; (3) failure to supervise a child; (4) parental needs including mental illness, developmental disorders, and domestic violence.²³ These conditions of “neglect” are often the predictable results of a lack of access to basic material needs – that is, symptoms of poverty. In certain states, provisions intended to differentiate between symptoms of poverty and true neglect do exist. However, whether they are successfully applied to an individual case depends on a multitude of factors, including the court’s understanding of the complex relationship between poverty and neglect.²⁴ Even in states with “poverty defense” laws, government agents use poverty-related conditions to rationalize unnecessary investigations resulting in the removal of children from loving, yet economically disadvantaged, homes. In addition, the lasting legacies of chattel slavery, targeted economic oppression, and systemic and structural racism have led

to an overrepresentation of Black families in under-resourced communities, resulting in disproportionate and unjust removals of Black children for reasons of poverty.²⁵

Notably, the Committee has indicated that measures required to “ensure that children fully enjoy the other rights enunciated in the Covenant, may also

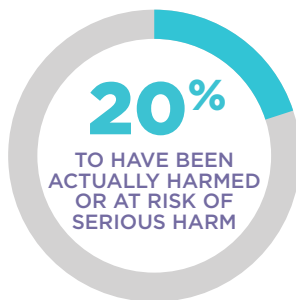
Arbitrary Family Separation Without Due Process Protections

Families involved with the U.S. family policing system are routinely separated without adequate due process protections, in violation of the Article 17(1) requirement that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home.”

When families are first investigated by government “child protective services” (CPS) agents, there is typically no warrant required, and parents are not provided information regarding their legal rights or access to legal representation during the investigation. In fact, often the intrusive and traumatic investigations conducted by the child welfare worker, which can include invasive strip searches of children, have nothing to do with the actual reason for the report of alleged abuse or neglect.²⁶ Moreover, after investigation, the majority of reports of parental child maltreatment are found to be baseless. Nearly three million children were investigated for potential abuse in 2019, and yet in only 20% of those cases was the child found to have been actually harmed or at risk of serious harm.²⁷

NEARLY 3M

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be economic, social and cultural.” See Human Rights Committee, General Comment No. 17. Yet, rather than providing adequate social and economic measures to support families struggling with poverty, the family policing system forcibly separates thousands of children from their families each year, undermining the full enjoyment of their rights.

“
Ms. M, a single mother of two, received a knock on her door. The Administration for Children’s Services (ACS) caseworker told Ms. M that they must enter her home and speak to her children separately. The caseworker searched every room and inspected the cupboards for adequate food. They interviewed the kids privately and strip searched them to check for bruises or marks. They then questioned Ms. M about her most intimate details: her sexual history, drug and alcohol use, and mental health diagnoses. Ms. M was not informed of the allegations against her, even though she asked multiple times. Ms. M, who had never dealt with ACS before, did not know that she could have refused the caseworker entry or that she could have contacted a legal service provider before being interviewed. She thought that if she didn’t let them in, the caseworker would take her children away.”²⁸

In the criminal legal system, an individual detained by a police officer has a right to be read a “Miranda warning,” advising them of their right to refuse to answer questions or provide information to law enforcement. No such federal rights currently exist in the United States for parents when government officials are investigating and determining the removal of their children. To combat this, families and advocates have begun to call for the creation of “civil Miranda warnings.” This would require child welfare workers to explain to parents what their rights are before they investigate them for child abuse or neglect. These rights would include the right to: be told what the allegations are that triggered the investigation; to refuse the worker entry into the home, unless a court order is issued; to speak to an attorney; refuse a physical search or interrogation of their child; and refuse to sign a release of privately protected medical information or to take a drug test.²⁹

In addition, the family policing system does not adequately protect family integrity when deciding whether to legally terminate a parent-child relationship. Under current federal law, state court judges legally sever the relationship of thousands of children and parents each year under mandatory timelines that have little to do with the system’s stated goals of child safety, stability, and well-being. This legislation, the Adoption and Safe Families Act (ASFA), requires that if a child has been in foster care for fifteen out of the past twenty-two months, the state must begin the process of “termination of parental rights.” For many parents, particularly those engaged in mental health treatment or drug treatment, or whose children have been taken due to lack of permanent housing, this standard has been impossible to meet. Thus, family rights are often legally destroyed not in order to protect children, but rather because a parent failed to satisfy court-ordered mandates, such as attending parenting classes, that have nothing to do with why the child was removed in the first place.³⁰

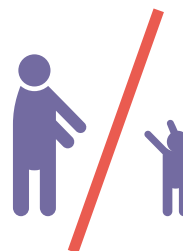
Since ASFA came into effect, the number of children whose family rights are legally severed has increased dramatically. On average, 1 out of every 100 children living in the U.S. will have their parent’s legal rights terminated before they turn eighteen.³¹ More children have their legal relationship to their parents terminated each year than are adopted out of the child welfare system.³² This has created a whole category of children called “legal orphans”—children who have no legal relationship to either of their birth parents but also have no adoptive parent.³³ Legal termination of parental rights has been called “the family law equivalent of the death penalty.”³⁴

Goldie Tibbs was separated from her son by a child welfare agency in June 2019 because she could not secure stable housing.

After 15 months, Goldie’s parental rights were terminated because she still did not have permanent housing, despite her continuous efforts to improve her living situation and numerous requests for housing assistance and government support so she could reunify with her son.

On average
1 OUT OF EVERY 100

children living in the U.S. will have their parent’s legal rights terminated before they turn eighteen.



Discrimination in Family Separation

The family policing system in the United States disproportionately removes and harms Black and Indigenous children, in violation of Article 24, which mandates that “every child shall have, without any discrimination based on race... the right to such measures of protection as are required by his status as a minor, on the part of his family, society, and the State.” “Non-discrimination constitute[s] a basic and general principle relating to the protection of human rights.” See Human Rights Committee, General Comment 18. And non-discrimination applies not only to discrimination in the law, but also “any problems of discrimination in fact.” General Comment No. 18.

Black children are reported to Child Protective Services (CPS) twice as often as white children.³⁵ Over half (53%) of all Black children in America will be subjected to a CPS investigation, though less than a quarter—an estimated 18.4%—will have a substantiated maltreatment case prior to turning 18.³⁶ 64% of those with substantiated maltreatment cases will be removed from their homes due to neglect.³⁷ Black children are 15% more likely than white children to be taken from their families instead of being provided in-home services after an investigation.³⁸ Similar statistics for Indigenous populations impacted by the system rival or even exceed those for Black children. Indigenous children are two times more likely to experience a CPS investigation compared to white children, and four times more likely to be removed from their homes, with 11.4% of Indigenous children experiencing the foster system before their 18th birthday.³⁹

The family policing system also enlists “helping professionals” such as doctors, teachers, police officers, and social service providers to surveil and regulate the families of targeted groups. These professionals are legally required to scrutinize families for signs of child maltreatment, but their assessments are entirely discretionary. Nearly half of the reports made by these professionals are unsubstantiated,⁴⁰ and most of the substantiated reports from these “helping professionals” are for conditions of poverty framed as “neglect.”⁴¹ Mandated reporters, such as medical doctors, have been found to have lower thresholds for Black children than white children when reporting families to CPS during medical visits.⁴² A Stanford University study found that doctors are more

likely to report Black children, and for less severe injuries, than they are for white children who demonstrate severe injuries.⁴³

Black pregnant mothers in particular face disproportionate surveillance in health care settings.^{***} Black pregnant mothers are four times more likely to be subjected to a toxicology test, even absent any reports of substance abuse, than white pregnant mothers.⁴⁴ Similarly, professionals are twice as likely to screen Black infants for maternal drug use than white infants.⁴⁵ And a Black pregnant mother’s refusal of medical care is more likely to result in reports to child protective services.⁴⁶

Mandated reporters in school settings are also more likely to refer Black children and other children of color from low-income communities to child protective services for mild behavioral indiscretions or material deficiencies such as broken eyeglasses.⁴⁷

Black, Indigenous, and other non-white children taken from their families into the foster system receive inferior services relative to those provided to white children.⁴⁸ Their placements are disrupted more often, and they are at increased risk of inappropriate medication with dangerous psychotropic drugs, physical, sexual, and emotional abuse, and even death.⁴⁹ Non-white children in the custody of the U.S. family policing system, overseen by the Department of Health and Human Services, face a multitude of negative life outcomes. They are more likely than children in the general population to experience homelessness,⁵⁰ have contact with the criminal legal system, and run a greater risk of being sex trafficked. They are less likely to graduate from high school and college,⁵¹ and more likely to struggle in interpersonal relationships later in life.⁵² The targeting of Black, Indigenous, and other children of color and their parents by a system characterized by the American Bar Association as “one of the most complex and wide-reaching legal systems in our country today,”⁵³ results in worse outcomes for these groups in the long term, when compared to their white counterparts. Under federal policies such as ASFA, 1 out of 41 Black children and 1 out of 37 Indigenous children will have their parent’s rights terminated before the child turns 18, making them nearly 3 times more likely to be permanently separated from their families than white children.⁵⁴

*** For a more in-depth discussion of the over-policing of pregnant persons and the disproportionate impact on Black, indigenous and people with lower socio-economic status, see the report submitted to the Committee by the Human Rights & Gender Justice Clinic at CUNY School of Law, if/when/how and Pregnancy Justice.

U.S. Government Response to the Separation of Black, Indigenous, and Migrant Children by the Immigration and Family Policing Systems

On April 30, 2021, the Biden administration acknowledged the history of racism within the practices and policies of the “child welfare” system.⁵⁵ It condemned the disproportionate representation of Black and Indigenous children and the unnecessary removals associated with the child welfare system. However, despite this recognition and condemnation, the administration continues to support legislation such as the Child Abuse Prevention and Treatment Act (CAPTA) and the Adoption and Safe Families Act (ASFA), which respectively promote surveillance, regulation, and separation of families and the termination of parental rights. This creates a stark irony: while the Biden administration has expressed concern regarding, and has tried to be proactive in ending family separations at the southern border, it permits the separation of U.S. resident children from their families at a rate of one child removed from their home every 2.5 minutes.⁵⁶

These shocking outcomes have received international attention. In 2022, while reviewing the United States’ compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the United Nations Committee on the Elimination of Racial Discrimination recognized the government’s failure to address “the disproportionate number of children of racial and ethnic minorities removed from their families and placed in foster care.”⁵⁷ As a signatory of the ICERD and a ratifying state, the U.S. has agreed to comply with its requirement to eliminate racial discrimination and “amend, rescind, or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination.”⁵⁸ While the Committee has explicitly recommended that the United States “take all appropriate measures to eliminate racial discrimination in the child welfare system, including amending or repealing laws, policies and practices that have a disparate impact on families of racial and ethnic minorities, such as the Child Abuse Prevention and Treatment Act, the Adoption and Safe Families Act and the Adoption Assistance and Child Welfare Act,” the government has done little in the way of taking concrete steps toward those ends.

The Biden administration has chosen to respond to domestic and international outrage concerning the separation of migrant families by creating an Interagency Task Force on the Reunification of Families. The required Progress Reports of the Task Force reveal no efforts to address the core systemic and structural problems within the child welfare system.⁵⁹ By failing to identify and take concrete steps to rectify systemic and structural features of the child welfare system that target non-white children and families, the Administration has ensured that migrant children who have not been reunited with their families will languish in the same severe conditions, with the same severe outcomes experienced by non-migrant children in the foster system.

The U.S. Family policing system, designed to oppress, control, and punish Black and Indigenous communities, has ensnared migrant children as well. The parallels between the U.S. government’s treatment of Black, Indigenous, and other non-white children and families and its treatment of migrant children and families cannot be overstated. Just as the federal government has failed to meet the needs of disadvantaged migrant populations, it has persistently failed to meet the needs of politically and socially disenfranchised, economically disadvantaged communities of color within its own borders. Rather than providing financial assistance to people struggling under a discriminatory economic system, the United States government chooses to punish families for experiencing poverty by taking their children and detaining them in a family-destroying system of government custody with little to no recourse for timely and sustainable family reunification. The U.S. government’s failure to end these policies is the cause of continued and devastating trauma to both migrant and non-migrant children and families subjected to child welfare system intervention.

Family Separation Results in Additional Rights Violations

Relevant Questions in the Human Rights Committee's List of Issues

7. Please provide information on the steps taken to address racial disparities in the criminal justice system, such as the overrepresentation of individuals belonging to racial and ethnic minorities in detention, the disproportionate representation of minorities in pretrial detention, including on account of the bail system, and the disproportionate length of sentences for racial and ethnic minorities.
9. With reference to the Committee's previous concluding observations (para. 19), please provide information on the steps taken to decriminalize everyday activities associated with homelessness. Include information on measures adopted, including incentives given to local authorities to implement alternatives to criminalization, and to acknowledge, in practice, the relationship between homelessness and the right to life.
18. With reference to the Committee's previous concluding observations (para. 14), please indicate what steps have been taken to strengthen preventative measures against trafficking in persons, increase victim identification, systematically and vigorously investigate allegations of trafficking, prosecute and punish those responsible, and provide effective remedies to victims. In addition, indicate what steps the State party has taken to prevent the criminalization of victims of sex trafficking, including child victims.

Issue Summary

For the thousands of children who each year are forcibly separated from their families and placed in the U.S. family policing system, entry into the system exposes them to a significant risk of harm, including increased risk of contact with the criminal legal system, and exposure to sex trafficking, homelessness, and other harms implicating the right to life.

The long-term effect of children's involvement with the child welfare system is severe.⁶⁰ Study after study documents poor long-term outcomes for children taken into government custody, including greater involvement with the criminal legal system,⁶¹ less educational achievement, higher teenage pregnancy rates, higher rates of substance use disorder, more psychological problems as adults, and less long-term financial success.⁶² Black children transitioning out of the child welfare system experience even worse outcomes than their white peers. An estimated 23% of Black youth who are expelled from the foster system once they reach age 18 (or age 21 in some cases) experience homelessness and 29% experience incarceration, far higher rates than for non-Black youth.⁶³

The failures of the so-called child welfare system are deeply related to other rights violations occurring in the United States, including those specifically asked about by the Committee during this review.

A survey of foster youth alumni showed that by their 25th birthday



Foster System to Prison Pipeline

The “Foster System-to-Prison Pipeline” is a recognized phenomenon that describes practices and policies that funnel young people from the family policing system into the juvenile and criminal legal systems, disproportionately targeting Black and Indigenous youth.⁶⁴ Current and former foster youth are much more likely to be incarcerated than their peers who were not detained in the foster system. A survey of foster youth alumni showed that, by their 25th birthday, 81% of males had been arrested, and 35% had been incarcerated.⁶⁵

One-quarter of youth will become involved with the juvenile or criminal legal systems within **two years** of exiting the foster system.⁶⁶

By age 17, **over 50%** of youth in the foster system experienced an arrest, conviction, or overnight detention in a jail or prison.⁶⁷

1 in 5 people detained in state prisons spent time in the foster system.⁶⁸

An estimated **29%** of Black youth who age out of the foster system experience incarceration, far higher rates than for non-Black youth.⁶⁹

On any given day, the United States incarcerates more than 48,000 youth. According to a May 2023 report, the U.S. incarcerates “more children as adults in our prison system than the total combined prison populations of Denmark, Iceland, Ireland, Northern Ireland, Norway, Sweden, and Scotland.”⁷⁰ State and local carceral systems send children as young as seven years old miles away from their families to grossly inappropriate facilities, with many detained for non-violent crimes, misdemeanors, and even offenses like underage drinking or missing curfew. The majority of incarcerated youth in the U.S. are children of color.⁷¹ They are more likely to be perceived as threatening, be unfairly punished in school and funneled into prison, and are less likely to receive mental or behavioral health services.⁷²

The risk of involvement in the criminal legal system is particularly high for youth in the foster system who are detained in institutions.⁷³ Today, there are over 50,000 children in institutions instead of with a family. Youth in institutions are 2.5 times more likely to become involved in the juvenile legal system than youth placed with foster families.⁷⁴ Youth detained in institutions are more likely to have the police called on them for behavioral indiscretions and non-compliance than those who are not in the system.⁷⁵

States fail to maintain even the most basic protections for system-involved youth. Documented cases of physical, sexual, and emotional abuse against children during imprisonment are common across the country, and corporal or physical punishment in carceral institutions still remains legal in 16 states.⁷⁶

1 IN 5



1 in 5 people detained in state prisons spent time in the foster system.

Sex Trafficking in Child Welfare

Evidence suggests that a majority of child trafficking victims in the United States had contact with the family policing system at some point in their lives.⁷⁷ Youth previously involved with the system are also more likely to be victims of crimes and experience intimate partner violence.⁷⁸

Across the U.S., **between 50% to more than 90%** of children who were victims of child sex trafficking had been involved with child welfare services.⁷⁹

An FBI operation across 76 U.S. cities in 2013 found that **60%** of sex trafficking victims were previously involved with the foster system.⁸⁰

A survey conducted by the Los Angeles Probation Department in 2015 revealed that **59%** of the 174 juveniles arrested on prostitution-related charges in the county were in the foster system; victims were often recruited by sex traffickers and pimps directly from foster system group homes.⁸¹

In 2019, 29 state child welfare systems reported **877 victims** of sex trafficking. In 2020, 35 states reported **953 victims** of sex trafficking.⁸²

In 2019, nearly 15,000 victims of child sex trafficking (more properly known as the commercial sexual exploitation of children (CSEC)) were identified in the United States.⁸³ Most of these individuals were first trafficked between the ages of 15 and 17. One study suggests that 50-80% of these individuals had prior interaction with the family policing system and that many were recruited directly out of institutions and group facilities.⁸⁴

Among children with prior foster system experience, one study found those who were subjected to trafficking were twice as likely to have experienced family separation, and just over five times as likely to have experienced congregate facility detention, and 10 times as likely to have run away from placements.⁸⁵

Traffickers are aware that adolescents in institutions and group facilities are vulnerable and prey on that vulnerability.⁸⁶ Traffickers often recruit in public places that are close to youth shelters, group homes, and schools likely to be attended by children in the foster system. In some cases, traffickers have sent girls to live in group homes for the sole purpose of recruiting.⁸⁷



60% of sex trafficking victims

An FBI operation across 76 U.S. cities in 2013 found that 60% of sex trafficking victims were previously involved with the foster system.

Children in the foster system have an increased susceptibility to being manipulated by false promises of security and acceptance – and traffickers know this.⁸⁸ They know, too, that children in the system likely have a trauma history, which can prime them for the types of messages traffickers need to instill in their prey: that their bodies are not their own, or that if they tell anyone about their victimization, they won't be believed.

As discussed below, another risk factor produced by child welfare involvement is an increased likelihood of homelessness.⁸⁹ The unique vulnerability of homeless youth to traffickers is well documented. According to statistics from the OL Pathy Foundation, 75% of all sex trafficking victims were at one point homeless, and 1 in 3 homeless teens are lured into CSEC by a trafficker within 48 hours of leaving home.⁹⁰

When a trafficking victim is identified or rescued, “safe harbor” laws appropriately divert victims away from the criminal legal system, and adolescent victims are often referred to the child welfare system.⁹¹ However, sex trafficking survivors are often placed in institutions and group facilities, creating a revolving door of victimization. Sex trafficking victims have complex needs that institutions and group facilities often cannot meet. Victims have often endured physical and sexual abuse at the hands of their traffickers. Victims may be found in a state of malnutrition with related health complications. Many victims have drug or alcohol dependencies either because their trafficker controlled them with drugs and alcohol or as a coping mechanism.⁹² Victims commonly need sustained mental health services and many experience PTSD.⁹³ Victims may be part of ongoing criminal proceedings against their traffickers and may have a need for increased security. In addition to heightened physical and mental health needs, victims often need assistance with their education and basic life skills.⁹⁴

Youth Homelessness

Across the United States, youth involved with the child welfare system face alarming rates of homelessness in the time immediately after reaching the age of majority (18 or 21 years) and thereby becoming ineligible to remain in the foster system (“aging out”). According to The Midwest Evaluation of the Adult Functioning of Former Foster Youth—a landmark research study investigating youth outcomes post-system involvement—between 31% and 46% of all former foster youth surveyed in Iowa, Wisconsin, and Illinois, had experienced more than one episode of homelessness before turning 26 years old.⁹⁵ 33% of surveyed youth reported experiencing episodes of homelessness that lasted at least one month.⁹⁶ More than 50% reported repeated episodes of “couch surfing” lasting one month or longer.

Nationally, data indicates that nearly a quarter, 22%, of youth “aging out” of the foster system end up homeless.⁹⁷ Between 1999 and 2013, a staggering 230,000 youths were discharged from the U.S. foster system without a permanent place to live.

In Washington state
and California,

28%-33%

of “aged out” youth will
experience homelessness
within one year of leaving the
system, with the most severe
implications for Black youth.



A lawsuit recently filed against the City of Los Angeles alleged that current practice in the cities’ foster system funnels children into homelessness.⁹⁹

An estimated **23%** of Black youth who age out of the foster system experience homelessness at far higher rates than non-Black youth.¹⁰⁰

Rosie is a twenty-year-old Latina expecting mother. She has been involved in the foster system since she was eight years old. Rosie experienced early childhood abuse and neglect, family violence, frequent moves, and unstable placements. When she turned 18, Rosie left her foster placement and became homeless.

For over a year, Rosie was homeless and “couch surfed.” She then decided to enter extended foster care, but structural difficulties delayed her reentry for another year. When she did enter extended foster care, the foster agency failed to offer her a safe, stable, appropriate placement, and rather, referred her to homeless shelters.

Existing federal policy aimed at reducing rates of homelessness in aged-out youth populations are primarily comprised of training intended to teach youth independent living skills.¹⁰¹ The receipt of independent living services is not associated with reduced experiences of homelessness among aged-out youth, demonstrating the ineffectiveness of these interventions.¹⁰²

What has proven effective is family reunification. A national study investigating the prevalence of housing-related problems among youth exiting the family-policing system demonstrated a link between family reunification and housing stability.¹⁰³ Youth who were forcibly removed from their homes but reunified with family during adolescence experienced fewer housing-related problems than youth who were not reunified, further demonstrating the negative impacts of family separation.

The Impact of Homelessness on Family Separation

While housing instability is a consequence of involvement with the family policing system, it can also be the reason *for* involvement. While the government does not recognize homelessness in itself to be a reason for removal, 11% of all child welfare cases are linked to issues of inadequate housing.¹⁰⁴ This is likely a conservative estimate, as one in six families that experience system involvement need housing support.¹⁰⁵

As previously stated, the family policing system targets families experiencing issues related to poverty. Housing instability is just one symptom of poverty for which families can be targeted. Even if a family is not brought under the purview of the family policing system through a report or allegation related to housing instability, they might inadvertently put themselves at risk of separation by seeking social services (such as housing vouchers) to address their housing problems. Children of families struggling with housing insecurity are noted to have greater health and developmental concerns and are more likely to be exposed to violence.¹⁰⁶ These conditions may constitute reasons for removal if brought to CPS' attention by parents seeking housing support. As a result, families struggling with precarious housing situations have higher rates of system involvement than low-income families with stable housing.¹⁰⁷

This presents a clear racial disparity. Rates of homelessness among Black adults are already alarming; while the population of the United States is only 14% Black, Black adults comprise 37% of the homeless population. Black families are overrepresented at even higher levels, with Black families accounting for half of all families experiencing homelessness in the U.S. according to a report from U.S. Housing and Urban Development.¹⁰⁸

Additionally, housing instability at the time of removal or following removal can delay a family's reunification, keeping children in the system for longer stretches of time.¹⁰⁹ The stress related to a child's removal triggers or exacerbates mental health or substance use, further increasing their risks of homelessness even if they were not homeless at the time of separation. In some instances, children taken because of precarious living situations are never reunited with their families and are left to languish in the foster system until being discharged from the system without a permanent place to live at the age of 18 or 21, thus continuing the intergenerational cycle of homelessness and housing instability.¹¹⁰

By taking a punitive approach to homelessness overall, and by historically pushing Black families into homelessness through racist policies and practices, the U.S. government has created an unrelenting cycle in which populations struggling with housing instability are funneled into the family policing system, only to face a greater risk of that same housing instability upon leaving it.

While programs aimed at preventing family separation related to housing instability do exist, they are woefully insufficient given the number of families in need. The Family Unification Program administered by the U.S. Department of Housing and Urban Development, for example, offers housing vouchers to families in precarious housing situations, however, they are not a long-term solution and serve a limited population.¹¹¹ Other programs aimed at keeping families together, such as rapid rehousing and transitional housing, are effective but are also temporary.¹¹²

These programs are palliative but they each fail to address the connection between institutional racism and homelessness in America. Until the United States acknowledges this history and implements racially conscious housing access policies aimed at remediating centuries of discriminatory and exclusionary housing laws and practices targeting Black Americans, they will continue to experience homelessness disproportionately and will continue to face the criminalization that accompanies it.

U.S. Government Response

The U.S. government has not sufficiently addressed the direct link between children's involvement with the family policing system, and their subsequent involvement with child sex trafficking, the criminal legal system, or homelessness. Nor did the U.S. submission address how these outcomes disproportionately impact Black and Indigenous youth.

In its 2014 Concluding Observations, the UN Committee on the Elimination of Racial Discrimination asked the U.S. to address racial disproportionality among its unhoused population.¹³ In its Combined tenth to twelfth periodic reports, the United States referred the Committee to its efforts to reduce the overrepresentation of Black Americans among the homeless population by preventing housing discrimination against minority populations and addressing issues of poverty that result in homelessness. No mention was made of the direct relationship between systemic racism and homelessness, or between the family policing system and homelessness. The Combined tenth to twelfth periodic report does address the issue of child homelessness by referring the Committee to the government's Early Care and Education for Homeless Children program. Though the program does ensure that children experiencing homelessness are able to enroll in early childhood education programs, it repeats previously explored mistakes by enlisting teachers as outreach professionals tasked with identifying homeless students, effectively increasing surveillance on disproportionately Black children. This program, in addition to the others highlighted in the U.S. response, demonstrates the federal government's failure to address the historical connection between race and housing instability.

The ICCPR Committee has also addressed this issue in Paragraph 22 of its Concluding Observations following the United States' third periodic report. In its concluding observations, the ICCPR Committee cited the U.S. government's insufficient response to the issue of the overrepresentation of Black Americans among the homeless population. In its fourth periodic report, the United States addresses these observations by expressing "concern that members of racial minority groups, particularly Blacks or African Americans are over-represented among homeless populations," and

listing several federal programs aimed at addressing issues of homelessness but failing to specifically address issues of homelessness among Black people. Additionally, in tandem with established historical trends, the U.S. argues that it does not target homeless populations for criminalization, but rather, homeless populations experience interactions with law enforcement "because they have violated otherwise valid laws regulating public behavior, such as laws prohibiting public drunkenness, public drug abuse, loitering, and vagrancy."¹⁴

This response ignores the impact of race and criminalization on how unhoused populations are treated. It refuses to acknowledge how federal laws and policies contribute to homelessness and/or interactions with the law related to homelessness. As evidenced above, the government's own policies have historically been linked to both issues. One of the clearest connections between government policy, homelessness, and law enforcement interaction is found in the design of the family policing system which targets Black families experiencing housing instability, weaponizes these conditions against them, and leaves children susceptible to more experiences with homelessness in the future.

Recommended Questions

1

What concrete steps will the United States take to ensure that the right to family integrity and the harm of family separation are given appropriate consideration in federal laws and policies regarding immigration and child welfare?

4

What concrete steps has the United States taken to remedy racial disparities and ongoing discrimination against Black and Indigenous families in the child welfare system and what are the documented results of those actions?

2

What data does the United States currently collect regarding voluntary family separation at the border prior to families entering the United States, and the role current immigration policies play in these separations?

5

When formulating legislation, policies, and practices regarding homelessness, trafficking, and criminal justice, how is the federal government considering the role child welfare policies play in contributing to these problems and developing appropriate solutions?

3

What concrete steps will the United States take to review, amend, and/or repeal federal laws, including CAPTA and ASFA, among others, that violate the right to family integrity and disproportionately harm Black and Indigenous families?

Suggested Recommendations

1

Ensure that federal and state systems and policies recognize the fundamental right to family integrity and center the known harms of family separation at every decision point in the child welfare and immigration systems, including initial decisions on removing a child.

4

Take all appropriate measures to eliminate racial discrimination in the child welfare system, including reviewing federal laws and policies, and amending or repealing any laws or regulations that perpetuate racial discrimination.

2

Collect additional data regarding the causes of family separation at the border, including laws and policies that result in voluntary family separation prior to families crossing the border.

5

Ensure that federal agencies, including in particular the Children's Bureau, communicate and collaborate across agencies regarding data collection, policies, practices, and initiatives to address homelessness, trafficking, and the foster system to criminal legal system pipeline.

3

Hold a series of Congressional Hearings with comprehensive public testimony to evaluate the harm of CAPTA and ASFA on families, and subsequently take appropriate action, including by amending or repealing the Acts in whole or in part.

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