



**NGO submission for the UN Office of the High Commissioner for Human Rights' Report
for the 54th session of the Human Rights Council on the Rights of the Child and
Inclusive Social Protection**

JANUARY 2023

This submission responds to the call for inputs by OHCHR to inform its report on the rights of the child and inclusive social protection, pursuant to Human Rights Council Resolution A/HRC/RES/49/20. Children's Rights is a non-profit that holds governments accountable for the health and safety of children involved in the United States child welfare, juvenile legal, education, and healthcare systems. Our advocacy and legal action have made a lasting impact for hundreds of thousands of children. For more information, visit childrensrights.org.

INTRODUCTION

Children cannot enjoy the right to social protection when the systems responsible for protecting their welfare fail to support their families.¹ In the United States (U.S.), a child's right to social protection is threatened by inadequate and punitive welfare systems. Instead of providing under-resourced families with critical supports, such as housing, health care, and financial assistance, to enable them to live healthy, productive lives, U.S. social protection systems actively punish them, including through the separation of families. The rhetoric of "[personal responsibility](#)" underlying these systems minimizes the government's role in addressing structural inequities and places blame on society's most under-resourced. This problem is particularly evident in the U.S. child welfare system, which is governed by federal laws and policies that license states to surveil, investigate, and separate families experiencing poverty.² As discussed below, this directly impacts the rights and well-being of children, disproportionately children of racial and ethnic minorities.

THE U.S. CHILD WELFARE SYSTEM PUNISHES UNDER-RESOURCED FAMILIES

Instead of providing proactive, preventive social services and protections, the U.S. child welfare system separates under-resourced families in response to their social and financial need. Almost [all states](#) in the U.S. have [laws](#) that place children in state custody for "neglect"—a category that includes inadequate food, clothing, shelter, medical care, or supervision. Classifying

¹ This submission uses the terms "social protection," "social security," and "social welfare" interchangeably, see OHCHR's *Overview on the Right to Social Security/Social Protection*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R (Oct. 7, 2022), <https://www.ohchr.org/sites/default/files/documents/issues/socialsecurity/2022-10-07/One-pager-social-protection-Socialsecurity.pdf>.

² This submission refers to the "child welfare system" and "foster system" when referring to the U.S. child protection system.

neglect as an offense [falsely equates](#) intentional abuse and harm with conditions of poverty. As a result, families who cannot access basic necessities are forcibly separated by the U.S. child welfare system.

Poverty-based removals of children into the U.S. child welfare system come at a steep human cost. As of 2020, there were over [400,000 children](#) and youth in the foster system. Each day in the U.S., around [700 children](#) are separated from their families and placed in state custody. The majority of these children are removed due to “neglect.” In 2020, [64% of children](#) separated from their families (139,225 children) were removed due to neglect, while [9% of children](#) separated from their families (20,534 children) were removed due to inadequate housing, including homelessness. Removing a child from their family because they don’t have access to shelter, only to pay a foster parent to house the child—while also leaving the birth parents homeless—underscores the child welfare system’s misalignment with social protection. Shockingly, many children removed from their homes are never reunited with their families. Each year, around [60,000 children](#) in the U.S. experience what is called a “termination of parental rights”—meaning that they are permanently legally separated from their parents.

In addition to poverty-based removals, the absence of universal healthcare and a robust mental health infrastructure means that families living with disabilities and mental illness also fall under the scrutiny of the U.S. child welfare system. In 2020, [13% of children](#) separated from their families (28,771 children) were removed due to “physical or emotional illness or disabling condition adversely affecting the caretaker's ability to care for the child.” In the same year, [8% of children](#) separated from their families (16,298 children) were removed due to a child’s behavioral problem, while [2%](#) (3,595 children) were removed due to the child’s disability. Families with limited access to services for youth with behavioral and mental health needs are often forced into placing their children into the child welfare system to receive necessary medical services.

Even when families are not separated, the U.S. child welfare system is not equipped to provide services that address the deeply entrenched structural, economic, and racial inequities that leave families without basic necessities. Currently, the provision of resources and services within the system are often of poor quality, [misaligned with family needs](#), and coercive, with the threat of child removal hanging over participation in services.

By contrast, there is strong evidence for the effectiveness of social protections provided separate and apart from the coercive child welfare system. For example, in 2021, the U.S. Congress [expanded the Child Tax Credit](#) (CTC)—in effect increasing the provision of direct income to families. Though a far cry from a universal basic income, the CTC expansions were responsible for cutting the U.S. child poverty rate nearly in half, from 9.7% in 2020 to 5.2% in 2021, [lifting 3 million children above the poverty line](#). The enhanced monthly tax credits brought the U.S. child poverty rate to its [lowest recorded level](#), by allowing households with children to catch up on rent and utilities, buy food and clothes, and pay for child care. When Congress voted against renewing the program for the 2022 tax year, the expansion expired and roughly [4 million children](#) fell back into poverty and food insufficiency rates among households with children increased 25%.

A growing body of evidence demonstrates that this type of income support decreases the rates of child maltreatment. One [study](#) which found that a \$1,000 USD increase in income via the Earned Income Tax Credit led to a 3% to 4% decrease in child neglect and an 8% to 10% decrease in child welfare involvement among under-resourced single-mothers. These results evidence the power of effective social protections and their role in reducing family separations.

IMPLICATIONS FOR CHILDREN OF RACIAL AND ETHNIC MINORITIES

The harms of family separation by the U.S. child welfare system disproportionately affect racial and ethnic minorities. For example, although Black youth make up only around 14% of the general U.S. child population, they comprise [23.5%](#) of the total child welfare system population. In 2019, Black children in the U.S. were removed from their families at [1.66 times](#) the rate of white children. Indigenous children were separated from their families at [2.52 times](#) the rate of white children. A shocking [1 in 41](#) of all Black children in the United States and [1 in 37](#) Indigenous children will have their parental rights terminated before they reach the age of 18.

Children of racial and ethnic minorities are also disproportionately affected by the harms associated with family separation and child welfare involvement. Family separation breaks a critical source of attachment and support for a child, which can cause lasting and irreparable harm to a child's development. In addition, entry into the child welfare system increases a child's risks in nearly all aspects of life. For example, once in the child welfare system a child's likelihood of educational attainment drops dramatically. Children involved in the child welfare system are [three times less likely](#) to graduate from high school and six times less likely to graduate from college or postsecondary education, with only 4% graduating from college. Foster youth are also at heightened risk of experiencing medical or mental health issues. One study has found that youth in the system [experience PTSD](#) at two times the rate of U.S. war veterans. Additionally, former foster youth are at significantly increased risk for unemployment and poverty. Research shows that [around half](#) of all former foster youth are unemployed by age 24, and one study found that one out of four former foster youth are food insecure. Former foster youth make up [around 50%](#) of all homeless young people, and nearly one in three youth who have aged out of the foster system experience homelessness by age 26. Finally, entry into the foster system increases a child's risk of criminal legal system involvement in a phenomenon sometimes referred to as the "foster-to-prison pipeline." Approximately [25%](#) of former foster youth will become involved in the criminal legal system within two years of leaving the foster system.

Every year, over [20,000](#) young adults exit the system that separated them from their families, many leaving with no stable family connections, a place to call home, or access to financial resources. For a system that claims to offer "protection," these young people face steep challenges to their educational attainment, health, financial security, and housing stability. In each of these areas, disparities are higher for minority youth.

LACK OF SOCIAL PROTECTIONS VIOLATES CHILDREN'S RIGHTS

The Human Rights Council has noted its deep concern "that the effects of family separation may undermine the full enjoyment of a vast range of the rights of the child," including specifically "the right of the child to preserve his or her identity," "the right of the child to, as far as possible, know and be cared for by his or her parents," and a child's "right to education and the right to the enjoyment of the highest attainable standard of physical and mental health." [A/HRC/RES/49/20](#). The Council has also noted its concern that, "children are often deprived of their family environment owing to multiple and intersecting forms of discrimination." *Id.*

The failure by U.S. federal and local governments to ensure adequate social protections for children, and the resulting separation of families, is in direct contradiction of these fundamental rights as set out in the Convention on the Rights of the Child (CRC), including children's rights to

preserve their identity and to family integrity (Articles 8 and 9). The U.S. further fails to uphold the requirements set out in the CRC that states must provide “appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities.” (Article 18).

In addition, the disproportionate impact of these laws and policies on racial and ethnic minorities, violates Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) which obligates state parties to “undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms.” Therefore, the CERD Committee has called on the U.S. to “take all appropriate measures to eliminate racial discrimination in the child welfare system, including by amending or repealing laws, policies and practices . . . that have a disparate impact on families belonging to racial and ethnic minorities.” [CERD/C/USA/CO/10-12](#).

CONCLUSION AND RECOMMENDATIONS

In light of the ongoing violation of children’s rights by the U.S. child welfare system, and the resulting separation of families and ongoing harm to children, particularly children of racial and ethnic minorities, we request that the United Nations High Commissioner for Human Rights address in its report on inclusive social protections the following:

- The relationship between failed social protection systems, poverty, and entry into child protective systems, including specifically addressing the concern that, “children may be separated from their parents and placed in alternative care by child protection systems when doing so is not in their best interests, and stressing that financial and material poverty, or conditions directly and uniquely attributable to such poverty, should never be the sole justification for removing a child from parental care.” [A/HRC/RES/49/20](#).
- That states must ensure that social protections are viewed as a basic right, and that children are determined to be rights holders, entitled to basic care, support, and respect.
- The need for appropriate family and social support services that are multi-sector, as well as separate and distinct from any punitive child protection system.
- Recognition of the intersecting forms of discrimination in social protection systems, including the correlation between family separation and discrimination in child and family serving systems on the basis of race and ethnicity.