



**To:** Professor Philip Alston, Special Rapporteur on Extreme Poverty and Human Rights.  
**From:** Professor Cindy Soohoo, Co-Director of the Human Rights and Gender Justice Clinic at CUNY Law School, National Advocates for Pregnant Women.  
**Subject:** Response to request for civil-society input.  
**Date:** October 4, 2017

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## I. INTRODUCTION

National Advocates for Pregnant Women (NAPW) would like to thank the Special Rapporteur for requesting input from civil society organizations in the United States in preparation for the upcoming country visit. NAPW is a non-profit organization that works to secure the human rights of all people, focusing particularly on pregnant and parenting women and those who are most likely to be targeted for state control and punishment - low income women and women of color. NAPW supports the framework of reproductive justice. Specifically, NAPW would like to bring the child welfare system and accompanying civil legal proceedings in the United States to the attention of the Special Rapporteur, as these State interventions target and disproportionately impact people living in poverty and implicate the basic rights to family and to parent. This input includes suggested locations for the Rapporteur to visit as well as experts to speak with during the upcoming visit.

## II. HUMAN RIGHTS IMPLICATED BY THE CHILD WELFARE SYSTEM

NAPW and others have found that families living in poverty in the United States are disproportionately the subject of child welfare investigations, and poverty itself is being improperly treated as a form of child neglect in the resulting civil proceedings.<sup>1</sup> For example, families living in poverty are more likely to reside in subsidized housing facilities and receive state-funded assistance, being more likely to be surveilled and investigated by government agencies including the child welfare system. Further a parent may face a civil charge of neglect based on poverty itself.<sup>2</sup> Once in child neglect proceedings, parents do not always have the right to counsel. This punitive process prosecutes indigent parents, rather than addressing the conditions of poverty that have made it more difficult to parent, i.e. lack of appropriate housing; health care; food; & clothing.<sup>3</sup>

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<sup>1</sup> National Coalition for Child Protection Reform, Child Abuse and Poverty, *available at* [https://drive.google.com/file/d/0B291mw\\_hLAJsMW80MnhkbnB5bnM/view](https://drive.google.com/file/d/0B291mw_hLAJsMW80MnhkbnB5bnM/view) (Provides examples of state laws with case examples and citations).

<sup>2</sup> *Id.*

<sup>3</sup> “Poverty may impact health and development owing to poor housing and sanitation, lack of access to healthy food, health care, and other social services, exposure to toxic environments and hazardous working

The Special Rapporteur has expressed concern about “State interference in [women’s] private family lives” and has recognized that “[i]n particular, States’ ever-increasing preference for child protection interventions overwhelmingly affects poor women specifically, and persons living in poverty more generally.”<sup>4</sup> As a result of these types of policies, poor pregnant and parenting women in the United States are penalized by the child welfare system for living in poverty, and consequently denied their rights, including but not limited to: the right to legal counsel<sup>5</sup>; privacy in family life<sup>6</sup>; and the right to parent.<sup>7</sup>

The United States has not ratified the International Covenant on Economic and Social Rights, the Convention on the Rights of the Child or the Convention on the Elimination of All Forms of Discrimination Against Women, making it all the more crucial for the Special Rapporteur to examine the child welfare system and its impact in the United States.

### III. THE CIVIL CHILD WELFARE SYSTEM IN THE UNITED STATES

It is in a child's best interest not to disrupt the strong parent-child emotional bond by unnecessarily removing the child from the family home. Yet, in the United States poverty can be mistaken for child neglect<sup>8</sup> and children can be taken from their families as a result of disproportionate government scrutiny and lack of proper procedural protections. As a result, the nation’s poorest children “make up most of the foster care population.”<sup>9</sup> The intersection of poverty and institutional racism also has a particularly devastating effect upon the rights of parents of color.<sup>10</sup> “In 2013, African American

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conditions, behavioral risk factors, and exposure to psychosocial stressors.” John Eckenrode, et al., *Income Inequality and Child Maltreatment in the United States*, 133 *Pediatrics* 454 (2014).

<sup>4</sup> Report of the Special Rapporteur on extreme poverty and human rights, A/66/265, (August 2011).

<sup>5</sup> As the Special Rapporteur has noted, “Lack of legal aid for civil matters can seriously prejudice the rights and interests of persons living in poverty.”

<sup>6</sup> Article 17, ICCPR.

<sup>7</sup> Article 18, ICCPR.



<sup>8</sup> As the Special Rapporteur has noted in the past, “Poverty must not be mistaken for child neglect. Often States disproportionately target children in poor families for child protection proceedings instead of channeling their efforts towards addressing the root causes of child poverty.” A/67/278 (August 2012).

<sup>9</sup> Tanya Cooper, *Racial Bias in American Foster Care: The National Debate*, 97 *Marquette Law Review* 215, 218 (2013).

<sup>10</sup> Erin Cloud, Rebecca Oyama, & Lauren Teichner, *Family Defense in the Age of Black Lives Matter*, 20 *CUNY L. REV. F.* 68 (2017); see also *National Council on Disability, The Child Welfare System: Removal, Reunification, and Termination* (2012), available at

<https://web.archive.org/web/20150716014729/http://www.ncd.gov/publications/2012/Sep272012/Ch5#end275> (“Because children from African American and Native American families are more likely to be poor, they are more likely to be exposed to mandated reporters as they turn to the public social service system for support in times of need. Problems that other families could keep private become public as a family receives TANF, seeks medical care from a public clinic, or lives in public housing.... Research has shown that exposure bias is evident at each decision point in the child welfare system.”)

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children comprised only 13.9% of the overall population of children in the United States but represented nearly double that percent in foster care at 26%.<sup>11</sup> Once a family has been brought into a child neglect proceeding it is likely their human rights as explained through the framework of reproductive justice will be violated. These rights include the right to “maintain personal bodily autonomy, have children, not have children, and parent . . . in safe and sustainable communities.”<sup>12</sup> Families are faced with the possibility of separation; loss of privacy; and a possible permanent severance of the parent/child relationship. It is particularly challenging for parents residing in states with no right to assigned counsel.<sup>13</sup>

There is no federal legal definition of “child neglect” in the United States, nor is there a federal process for child welfare investigations.<sup>14</sup> Every state in the United States has a separate agency mandated to investigate and charge parents accused of child neglect or maltreatment. The system includes state laws defining what constitutes child neglect or maltreatment; who must report suspected maltreatment; who will investigate it; and the legal process for parents facing charges of neglect/maltreatment in a civil court. Every state mandates certain individuals (including medical and childcare providers and school personnel) to report suspected child neglect to the relevant agency, even if that report discloses an individual’s confidential medical or other information. Subsequently, every state also allows a child welfare agency to initially remove a child from a parent’s care without having to prove that the parent has actually neglected/maltreated the child. There is no federal right to assigned counsel for low income parents in a civil child welfare proceeding<sup>15</sup>, even though the proceedings may result in: a child being removed from a parent’s custody; parents losing the right to make medical, educational, and other important decisions on behalf of their child; the disclosure of confidential records; and binding court orders against the parent including being adjudicated a child abuser.

**Poor families are disproportionately subject to government surveillance.** “The large number of low-income parents reported for child abuse and neglect results in the unfortunate separation of many low-income and minority families, making both children and parents victims of the United States’ child welfare system.”<sup>16</sup> Individuals already

<sup>11</sup> Tanya Cooper, *Racial Bias in American Foster Care: The National Debate*, 97 Marquette Law Review 215, 224 (2013).

<sup>12</sup> See Sister Song, <http://sistersong.net/reproductive-justice/>.

<sup>13</sup> As the Special Rapporteur has found, “Lack of legal aid for civil matters can seriously prejudice the rights and interests of persons living in poverty, for example when they are unable to contest . . . child custody decisions. Indeed, exclusion of certain categories of claims from the scope of free legal aid . . . discriminates against the poor.” <http://www.ohchr.org/Documents/Issues/Poverty/A-67-278.pdf>.

<sup>14</sup> There are federal laws that provide minimum requirements states must meet to receive funding. See ASFA and CAPTA; see also U.S. Dept. of Health and Human Services, Child Welfare Information Gateway, *Parental Drug Use as Child Abuse* (2016).

<sup>15</sup> University of Michigan, National Survey on a Parent’s Right to Counsel in Termination of Parental Rights and Dependency Cases, available at <http://youthrightsjustice.org/Documents/SurveyParentRighttoCounsel.pdf>.

<sup>16</sup> Candra Bullock, *Low-Income Parents Victimized by Child Protective Services*, 11 Am. UJ Gender Soc. Pol’y & L. 1023 (2003).

subject to government surveillance, including those who receive public welfare benefits or reside in subsidized housing, are far more likely to be included in such reports and then further scrutinized by child welfare case workers. Experts have found that poor children disproportionately suffer impositions of child welfare systems because families on public assistance are four times more likely than others to be investigated and have their children removed from the family home on the basis of alleged child maltreatment.<sup>17</sup> “Children who live in families with annual incomes of less than \$15,000 are 22 times more likely to be [the subject of a child neglect/abuse proceeding] . . . than those with annual incomes of \$30,000 or more.”<sup>18</sup> A national study showed “Two thirds of all cases of maltreatment identified by the study involved families with income below \$15,000.”<sup>19</sup>

Experts have researched why poor families are more frequently accused of child neglect. One answer, as explained above, is that poor families are already subject to government scrutiny and surveillance.<sup>20</sup> While that makes it more likely to come to the attention of child welfare agencies, experts have further explained the more critical treatment of families living in poverty. “[S]tudies have found child maltreatment to be reported more often for low-income than middle- and upper-income families with similar presenting circumstances” demonstrating that child welfare investigations may be “informed and constituted by cultural discourses, [which] presuppose the dysfunction of poor mothers and poor parents while making no similar presupposition about their wealthier counterparts.”<sup>21</sup> After a family is placed under a government microscope, authorities may also treat poverty itself as the basis of a charge for civil child neglect.

**Rather than assisting poor families, current policies define poverty as grounds to separate families.** In the United States “[p]overty itself is often mistaken for neglect, resulting in increased rates of child- maltreatment reports.”<sup>22</sup> Statutory definitions of child neglect often, though not explicitly, include being poor.<sup>23</sup> Indeed, in many U.S. states the definitions of civil child neglect encompass the “circumstances that are direct result of poverty.”<sup>24</sup> For example the definition of physical neglect includes when a child is hungry; improperly clothed; or lacks proper hygiene. Medical neglect includes when a

<sup>17</sup> See generally Douglas J. Besharov, *Child Abuse Realities: Over-reporting and Poverty*, 8 VA. J. SOC. POLICY & L. 165, 183-84 (2000); see also Dana Mack, *The Assault On Parenthood: How Our Culture Undermines The Family* 67 (1997).

<sup>18</sup> Children’s Defense Fund, *State of America’s Children: Child Welfare* (2005); see also Candra Bullock, *Low-Income Parents Victimized by Child Protective Services*, 11 Am. UJ Gender Soc. Pol’y & L. 2 (2003).

<sup>19</sup> Khiara Bridges, *The Poverty of Privacy Rights* 114 (2017) citing Besharov 183 (2000)

<sup>20</sup> *Id.* at 122.

<sup>21</sup> “For example, research has revealed that doctors are more likely to diagnose physical injuries among poor families as “abuse” and to diagnose them as “accidents” among affluent families.” *Id.* at 125.

<sup>22</sup> Maren K. Dale, *Addressing the Underlying Issue of Poverty in Child-Neglect Cases*, American Bar Association (2014); See also *In re J.C.U.*, 670 N.W.2d 433 (Iowa App. 2003) (holding the court could terminate a mother’s parental rights where the mother’s residence and employment were unstable).

<sup>23</sup> National Coalition for Child Protection Reform, *Child Abuse and Poverty*, available at [https://drive.google.com/file/d/0B291mw\\_hLAJsMW80MnhkbnB5bnM/view](https://drive.google.com/file/d/0B291mw_hLAJsMW80MnhkbnB5bnM/view) (Provides examples of state laws with case examples and citations).

<sup>24</sup> Khiara Bridges, *The Poverty of Privacy Rights* 115 (2017) citing Kay Kindred 532-33 (1996).

child lacks health care or cannot attend medical appointments. Poverty itself is being treated as a form of child neglect and used as a basis to separate families. For example, “children may be removed from their parents because their families are facing homelessness and they have been forced to reside in unsafe housing. However, instead of addressing this risk by helping the parents secure safe housing, child welfare authorities attempt to reform the parents”<sup>25</sup> through an adversarial legal proceeding. Countless experts have noted the trauma faced by children who are removed from parents and placed in foster care.<sup>26</sup> Disturbingly, “experts estimate that 40 to 70 percent of children currently in foster care have not been abused and need not be separated from their families if society sufficiently assisted poor families in raising their children at home.”<sup>27</sup>

**Poor women are denied access to counsel in child neglect proceedings.** Legal experts including the American Bar Association and the National Council of Juvenile and Family Court Judges agree that “zealous legal representation for parents is crucial to ensure that the child welfare system produces just outcomes for children.”<sup>28</sup> However, significant barriers still exist for indigent parents to receive counsel in child welfare proceedings. Some states do not provide counsel at all for indigent parents in child neglect proceedings.<sup>29</sup> Other states only provide assigned counsel at the adjudicatory or termination of parental rights stage of a proceeding.<sup>30</sup> There are still other states that provide assigned counsel at different stages of a proceeding based upon the court’s discretion.<sup>31</sup> This is especially problematic as studies demonstrate “that the quality of parent representation improves outcomes for families. Those outcomes include more timely hearings, more family reunifications, and few terminations of parental rights.”<sup>32</sup>

<sup>25</sup> Khiara Bridges, *The Poverty of Privacy Rights* 126 (2017).

<sup>26</sup> Martin Guggenheim, *The Role of Counsel in Representing Parents*, 35 ABA Child L. Prac. 17 (2016) (“Those placed in foster care are far more likely than other children to commit crimes, drop out of school, join welfare, experience substance abuse problems, or enter the homeless population”), [http://its.law.nyu.edu/faculty/profiles/representiveFiles/35ChildLPrac17\\_762EA072-C676-4691-0A5C88475A90F62D.pdf](http://its.law.nyu.edu/faculty/profiles/representiveFiles/35ChildLPrac17_762EA072-C676-4691-0A5C88475A90F62D.pdf).

<sup>27</sup> Martin Guggenheim, *The Role of Counsel in Representing Parents*, 35 ABA Child L. Prac. 17 (2016) (“Those placed in foster care are far more likely than other children to commit crimes, drop out of school, join welfare, experience substance abuse problems, or enter the homeless population”), [http://its.law.nyu.edu/faculty/profiles/representiveFiles/35ChildLPrac17\\_762EA072-C676-4691-0A5C88475A90F62D.pdf](http://its.law.nyu.edu/faculty/profiles/representiveFiles/35ChildLPrac17_762EA072-C676-4691-0A5C88475A90F62D.pdf).

<sup>28</sup> Judge Leonard Edwards, *Representation of Parents and Children in Abuse and Neglect Cases: The Importance of Early Appointment*, 63 *Juvenile and Family Court Journal*, 21 (2012); Vivek Sankaran, *Protecting a Parent’s Right to Counsel in Child Welfare Cases*, 8 *The Michigan Child Welfare Law Journal* 2 (2009).

<sup>29</sup> For example, Mississippi, which is also the state with the highest rate of child poverty in the United States. See *Children in Poverty*, available at <http://datacenter.kidscount.org/data/tables/43-children-in-poverty#ranking/2/any/true/573/any/322>.

<sup>30</sup> For example, Virginia, Va. Code Ann. § 16.1-266 (2011).

<sup>31</sup> These states include California, Delaware, Hawai’i, Indiana, Minnesota, Missouri, Nevada, New Jersey, Oregon, Vermont, Wisconsin, and Wyoming.

<sup>32</sup> Carolyn Gemma, *Quality Representation of Parents Improves Outcomes for Families*, (newsletter of the ABA Center on Children and the Law) 6 *Child Court Works* (April 2003); B. Bridge & J. Moore, *Implementing Equal Justice for Parents in Washington: A Dual Approach*, 53 *Juvenile & Family Court Journal* 1, 31-41 (Fall 2002).

Finally, the impact of a report of suspected child neglect or maltreatment has serious economic consequences for the person reported far after the conclusion of a civil proceeding, including placement on a registry which limits employment prospects for many years, creating further barriers for economic growth.<sup>33</sup>

#### IV. REGIONS TO VISIT & EXPERTS TO MEET DURING COUNTRY VISIT

NAPW would like to suggest the following experts to meet during the upcoming country visit to the United States. They are located in New York and Washington D.C. Their names and contact information are provided below.

##### National Experts on Civil Child Welfare System:

- i New York University (NYU) School of Law; Co-Director, NYU Family Defense Clinic
- ii National Coalition for Child Protection Reform

##### Legal experts on Parent Representation:

- i Center for Family Representation. (212) 691-0950.
- ii The Bronx Defenders (718) 838-7878.
- iii Neighborhood Defender Service of Harlem: (212) 876-5500.
- iv Brooklyn Defender Services: (347) 592-2510.

##### Legal experts on the Representation of Children in Civil Child Welfare Proceedings:

Legal Aid Society, Juvenile Rights Division (212) 312-2260.

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<sup>33</sup> See e.g., New York State Central Registry of Child Abuse and Neglect (each parent with an indicated report of suspected child neglect has his/her name on the Registry until the parent's youngest child turns 28 years-old. The Registry is accessible to employers, and certain employers (such as child care providers) may not employ an individual whose name is on the Registry).



## V. RECOMMENDATIONS

NAPW urges the United States to sign and ratify relevant international human rights agreements, including the International Covenant on Economic and Social Rights; Convention on the Elimination of all Forms of Discrimination against Women; and the Convention on the Rights of the Child.

NAPW recommends reform to the child welfare system to provide non-punitive, confidential, voluntary, assistance to families in need, outside of an adversarial system with a focus on preserving the family unit.

NAPW urges all state jurisdictions to establish an absolute right to assigned counsel for all parents at every stage of a child welfare proceeding.