



NGO submission on the CERD Draft General Recommendation n°37 on racial discrimination in the enjoyment of the right to health

AUGUST 2023

This submission responds to the call for inputs to inform the CERD draft General Recommendation No. 37 on the right to health. 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

Successful efforts to ensure enjoyment of the right to health must encompass broader health metrics, including not only access to direct medical care, but also broader social determinants of health such as access to adequate housing, nutrition, and other social services.

Although the Committee's draft General Recommendation discusses and acknowledges this fundamental relationship, this critical piece of the right to health is not explicitly set forth in the Section IV Recommendations for state parties. To effectuate change premised on a more comprehensive understanding of the right to health, we request that the Committee consider adding the following language to Paragraph 39 of its Recommendations:

Adopting and implementing national strategies and practices, including through legislation, administrative measures, and federal funding, that reflect the critical role social determinants of health play in achieving the right to health and in eliminating racial discrimination in health.

As an illustration of the importance of this recommendation, an examination of health outcomes for children and youth who have been subjected to the United States (U.S.) child welfare system demonstrates the close connection between social determinants of health and health outcomes.¹ Children in this government system have the worst health outcomes of any child population in the U.S. Their right to health is harmed by a social protection system that fails to provide necessary social and health care services, and instead separates families and removes children into a punitive government system. Entry into this system causes long-lasting harm and decreased lifetime health outcomes for thousands of children and young adults, disproportionately affecting those who are Black and Indigenous.

¹ This submission refers to the "child welfare system" and "foster system" when referring to the U.S. child protection systems.

THE RIGHT TO HEALTH INCLUDES SOCIAL DETERMINANTS OF HEALTH

There is increasing recognition that health must be addressed broadly and holistically. The [World Health Organization](#) has emphasized the importance of considering and promoting the wider conditions that impact an individual's health. These "social determinants of health," include factors such as access to stable housing, adequate nutrition, and sanitation.

Research shows that social determinants of health play an outsized role in determining health outcomes. [One study](#) found that up to half of modifiable determinants of health are socioeconomic or environmental factors, as opposed to clinical care, which contributes only 10-20%. The World Health Organization has indicated that social determinants of health account for at least [30-55%](#) of health outcomes. It is particularly important to consider the impact social determinants of health have on children, who are in a sensitive period for physical, emotional, and social development, and for whom early intervention can have lifelong effects.

Other international treaty bodies have acknowledged the importance of social determinants of health. The Committee on the Convention on the Rights of the Child, for example, has clarified in its [General Comment No. 15](#) that children's right to health is an "inclusive right," meaning that not only do children have a right to "timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services," but also "a right to grow and develop to their full potential and live in conditions that enable them to attain the highest standard of health." This standard of health can be achieved, "through the implementation of programmes that address the underlying determinants of health."

Social determinants of health play a particularly critical role in ensuring equity and non-discrimination. Differing access to the social determinants of health can play an important role in creating and maintaining health inequities. Due to these inequalities, health and well-being follow a "[gradient](#)" with those with the lowest socioeconomic position suffering the worst health outcomes. Both the [U.S. Department of Health and Human Services](#), and the [World Health Organization](#), have emphasized the critical role that addressing social determinants of health plays in addressing health disparities and inequities.

The current draft of General Recommendation No. 37 acknowledges this important connection, but fails to include it in its Section IV Recommendations. At paragraph 8 of the draft, the Committee indicates that it "has always identified social services and social security as strategic areas in eliminating racial discrimination in health." Likewise, the Committee acknowledges that an approach that considers social determinants of health is consistent with the Sustainable Development Goals, and the 2030 Agenda: Leave No One Behind. However, this connection is not yet spelled out in the Committee's Section IV Recommendations, which inform how state parties should implement the Convention.

CASE EXAMPLE: U.S. CHILD WELFARE SYSTEM AND RIGHT TO HEALTH

The importance of including wider social determinants of health in the right to health is exemplified by the failures of the U.S. government to meet the health needs of children in the U.S. child welfare system. Children in this system have the worst health outcomes of any child population in the U.S. There is a direct link between these poor health outcomes and government

policies that promote separating families rather than providing social services that would support the families' broader health and well-being. The majority of children separated from their families into the child welfare system in the U.S. are removed because of poverty related factors that include access to basic health care and supportive services, the very social determinants of health required under a more holistic view of the right to health. Increased attention to wider social determinants of health, such as access to housing and nutrition, would support children's rights to remain with and be cared for by their parents and support their overall right to health.

Despite the purported aim of the U.S. child welfare system to provide for children's "welfare," children's health and well-being metrics instead decline once they enter U.S. government custody. The [American Academy of Pediatrics](#) has concluded that, "[c]hildren and adolescents in foster care have a higher prevalence of physical, developmental, dental, and behavioral health conditions than any other group of children" in the United States. Almost [half of all children](#) in the system suffer from a chronic medical condition and 70% have mental health conditions.

Children's health is also directly harmed when they enter the child welfare system, because of trauma caused by family separation and risks associated with being in the child welfare system. The [American Academy of Pediatrics](#) has found that separating children from their families "can cause irreparable harm, disrupting a child's brain architecture and affecting his or her short and long-term health. This type of prolonged exposure to serious stress – known as toxic stress – can carry lifelong consequences for children. In addition, [studies show](#) that children in child welfare systems often have their mental and physical needs go unmet, including basic medical screening and treatment. There is also significant evidence that children in the child welfare system are [overprescribed psychotropic medications](#), powerful drugs that directly affect chemicals in the brain that help to regulate emotions and behavior and have long-term impacts on health. Children in the system are also at increased risk of exposure to harmful circumstances such as [abuse](#), sex trafficking, and [criminal justice involvement](#).

The result is that children leaving the U.S. child welfare system demonstrate decreased lifetime health and well-being outcomes. Approximately [60% of children](#) who have been in the foster system have a lifetime prevalence of mental health disorders, and children transitioning from the foster system into adulthood are 4 times more likely to have a mental health disorder than peers who have not had foster system exposure. Across a child's lifetime, being subjected to the child welfare system increases a child's risks in nearly all aspects of life, impacting key determinants of health and well-being. For example, youth who experienced the system are at significantly increased risk for unemployment, poverty, [homelessness](#), [criminal justice involvement](#) and being victims of sex trafficking, which can lead to many other [negative health outcomes](#).

Implications for Black and Indigenous Children

The harms of family separation by the U.S. child welfare system disproportionately affect Black and Indigenous children. 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 separated 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 than white children. A shocking [1 in 41](#) Black children in the United States and [1 in 37](#) Indigenous children will have their parents' legal rights terminated before they reach 18 years old.

The Committee on the Elimination of Racial Discrimination (CERD) has directly expressed concern about racial disproportionality in the child welfare system and has recommended that the U.S. take steps to review its practices and policies in this regard. In 2022, the [Committee recognized](#), "...that racial disparities occur at almost every stage of the decision-making process in the child welfare system..." and "...recommends that the State party take all appropriate measures to eliminate racial discrimination in the child welfare system."

The U.S. government has also acknowledged the detrimental effects of the child welfare system on families of color. In April 2021, President Biden noted that, "the enduring effects of systemic racism and economic barriers mean that families of color are disproportionately affected," by the fact that in the child welfare system "poverty is often conflated with neglect."

Policies Regarding Social Determinants of Health

The poor health outcomes suffered by children in the child welfare system, and disproportionately borne by Black and Indigenous children, stem from government policies that promote separating families instead of addressing their underlying social and health needs. Increased attention to wider social determinants of health, such as housing and nutrition, would support children's rights to remain with and be cared for by their parents and to thrive in their own homes. Almost [all states](#) in the U.S. have [laws](#) that place children into state custody for "neglect" – a category that includes inadequate food, clothing, shelter, medical care, or supervision – factors that are themselves social determinants of health. 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. The punishment of poverty by the child welfare system is also directly codified into U.S. federal child welfare law. The Child Abuse Prevention and Treatment Act of 1974 (CAPTA) requires that individual States include "neglect" as legal grounds for child welfare involvement. These state and federal laws promote and even require separation of children and families, instead of promoting social services to ensure better health outcomes.

As discussed above, this harm is disproportionately borne by Black and Indigenous children and families. As a consequence of current and historic racism in the U.S., including residential segregation, discrimination in labor markets, and implicit and explicit biases, Black children and families are disproportionately represented in under-resourced communities, with Black children, for example, three times more likely to live in poverty than white children. In the U.S., socioeconomic status and race are so insidiously intertwined that it would be impossible to discuss their relationship to the child welfare system as unrelated to each other. In addition, under-resourced Black communities are, by design, highly surveilled by government systems. Individuals and agencies that could be providing supportive and health services, including health care workers, social service providers, educators, law enforcement officers, and child welfare staff, instead often act as agents of state surveillance. These agents report and separate families and remove children into the child welfare system instead of providing them direct support.

There is strong evidence for the effectiveness of social protections in promoting children’s health and well-being, if they are 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. This legislation [lifted 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, however, 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](#) found that a \$1000 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 and improving child health and well-being.

CONCLUSION AND RECOMMENDATIONS

Social determinants of health play a critical role in health outcomes and are a fundamental component of the right to health. This connection is illustrated by the ongoing violation of children’s rights to health by the U.S. child welfare system, and the resulting harmful separation of families, particularly Black and Indigenous children. In light of this, we request that the Committee amend the draft Recommendation to include the following language in [Section IV, Paragraph 39](#):

“Operationalization of the legislation against racial discrimination in the enjoyment of the right to health by:

- (v) Adopting and implementing national strategies and practices, including through legislation, administrative measures, and federal funding, that reflect the critical role social determinants of health play in achieving the right to health and in eliminating racial discrimination in health.