ACCESS TO CIVIL JUSTICE FOR PARENTS IN THE U.S. CHILD WELFARE SYSTEM

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INTRODUCTION

There is an access to justice crisis in the United States. We live in a time of profound unmet legal need, and the U.S. civil justice system fails ordinary Americans daily.1 On average, 92% of the civil legal needs of low-income individuals goes unaddressed.2 Civil legal issues vary but many affect peoples’ basic needs, including their access to housing, healthcare, welfare benefits, and child custody. While access to civil justice should be guaranteed in all cases where basic needs are at stake, this Essay focuses on child custody cases, specifically on parents’ access to adequate representation when navigating the child welfare system.3

For the United States to uphold its obligations under international human rights law, it must provide adequate representation to all parents ensnared in the child welfare system.4 American society places great value on the family unit, and freedom of personal choice in matters of family life has long been viewed as a fundamental right.5 According to the National American Family Survey, people place more importance on their identity as a parent than any other identity, and 70% of people polled said their family identities were “very” or “extremely” important to them while much fewer said the same of their religion (43%), career (37%), community (30%), and political party (28%).6 However, when parents face child welfare intervention and are

3. See infra Part II. The “child welfare system” is used consistently throughout this Essay to refer to and include all state and federal child welfare agencies and departments of children’s services. Family advocates often refer to the system as the “family regulation system” or “family policing system,” but for consistency and clarity purposes, I will refer to it by using the traditional term.
4. Throughout this paper I use the term “parents” as an umbrella term for anyone who has legal custody of a child.
5. See Troxel v. Granville, 530 U.S. 57, 66 (2000) (“[I]t cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.”); Lassiter v. Dep’t. of Soc. Servs., 452 U.S. 18, 38 (1981) (Blackmun, J., dissenting) (stating that “freedom of personal choice in matters of family life” has been long viewed as a “fundamental liberty interest worthy of protection under the Fourteenth Amendment”).
6. The American Family Survey is an annual survey on the family in America. See Christopher F. Karpowitz & Jeremy C. Pope, Ctr. for the Study of Elections &
confronted with the potential breakup of their families, they do not have a constitutional right to counsel.\textsuperscript{7}

The lack of access to civil counsel in child welfare cases negatively affects parents across the country, exacerbating systemic racial and economic inequalities. Every year child welfare agencies investigate millions of parents, and more than 200,000 children enter the foster system each year.\textsuperscript{8} Families impacted by the system are disproportionately families of color and families living in poverty.\textsuperscript{9} Despite the extreme consequences of a parent’s involvement with the child welfare system, interventions often happen without judicial oversight, and many parents do not have legal support throughout the process, especially during the investigation stages.\textsuperscript{10} Family courts provide few procedural protections and state laws on the matter vary, leaving parents across the country with varying degrees of protection when confronting the threatening, complex world of child welfare and family court,\textsuperscript{11} violating international human rights standards.

Part I of this Essay describes the background and context of the issue, providing information about the lack of a civil right to counsel in the United States and about the U.S. child welfare system. Part II analyzes the international law violations implicated, including those based on treaties, customary international law, and soft law. Part III offers a two-part solution to the issue and recommends advocacy efforts to achieve it.

I. BACKGROUND

Parents in U.S. child welfare cases are afforded fewer due process protections than other litigants confronting comparably significant outcomes

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\textsuperscript{7} See Lassiter, \textit{452 U.S. 18} at 27, 31–32 (describing the application of the \textit{Mathews} balancing test to determine whether a state must appoint counsel to indigent parents in termination proceedings).


\textsuperscript{9} See id. at 3.

\textsuperscript{10} See id. at 4; see also Michael Fitzgerald, Hearings: Emergency Removals to Foster Care Have Surged in New York. Here’s One Case, \textit{Imprint} (Apr. 24, 2019, 5:48 AM), https://imprintnews.org/featured/hearings-emergency-removal-new-york-city/34685 [https://perma.cc/NYD2-9RGQ]. For example, in New York, if courts are closed, child welfare workers may remove a child from a home without seeking a judge’s permission first. \textit{Id.}

\textsuperscript{11} See Naveed, supra note 8, at 124–25.
in criminal cases. Parents may be left to face these grave outcomes without legal support, “unaware of their rights and how they can assert them.” Part I of this Essay starts with an overview of why the United States lacks a civil right to counsel, surveying Supreme Court precedent on the matter. Next, it discusses the U.S. child welfare system, identifying the significant role that race and ethnicity play in its functioning.

A. The Right to Counsel & the Civil Justice Gap

In 1963, the U.S. Supreme Court in Gideon v. Wainwright established the right to free counsel for indigent criminal defendants. The right is grounded on notions of fundamental fairness based on the Sixth Amendment and the Fourteenth Amendment’s Due Process Clause which states that the government cannot deprive someone of life, liberty, or property without due process. In response to the Gideon holding, legal advocates and scholars questioned whether the Court, based on parallel concerns of fundamental fairness, would next extend the right to counsel to indigent litigants in civil cases to create a “civil Gideon.” In 1981, the Court provided its answer: no.

In Lassiter v. Department of Social Services of Durham County, North Carolina, the Supreme Court refused to categorically establish a constitutional right to counsel in civil matters, finding that the Constitution and notions of fundamental fairness do not require the appointment of


14. The “civil justice gap” refers to “the difference between the civil legal needs of low-income Americans and the resources available to meet those needs.” The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans, LEGAL SERVS. CORP. 1, 6 (2017), https://lsc-live.app.box.com/s/6x4wbb5d2gqxwyv094os1x2k6a39q74 [https://perma.cc/VN86-FD5U].


16. See id. at 339–43.

counsel for indigent parents in every parental termination proceeding. In its consideration, the Court employed the procedural due process test established in *Mathews v. Eldridge*, concluding that “an indigent litigant has a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty.” Although *Lassiter* concerned the termination of parental rights — a consequence arguably more serious than a one-day jail stint — since physical liberty was not at stake, the provision of counsel was not required, and the Court left it up to trial courts to determine on a case-by-case basis whether counsel need be appointed. As such, states have been left to determine for themselves whether and when to provide a civil Gideon, resulting in a lack of uniformity across the country and serious social, legal, economic, and political consequences. Thus, for indigent parents involved in the child welfare system, the state they live in may determine the likelihood that their parental rights are permanently terminated.

In *Lassiter*, the Court failed to acknowledge that for low-income individuals, a civil penalty, while not the deprivation of physical liberty, can be just as devastating — if not more — than a criminal penalty. Access to a lawyer may be the only way for individuals to protect themselves when confronted with the possibility of losing their home, healthcare, welfare benefits, immigration status, or custody, and there is little doubt that having

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18. See 452 U.S. 18, 33–34 (1981) (holding that a mother who lost custody of her child to the Department of Social Services does not have a constitutional right to counsel under the Due Process Clause of the Fourteenth Amendment). But see generally Airey v. Ireland, 32 Eur. Ct. HR. Ser. A (1979) (noting the finding by the European Court of Human Rights two years before *Lassiter* that the right of effective access of a litigant to the courts in a family law case required the provision of free legal assistance).

19. 452 U.S. at 26–27. The three *Eldridge* factors are: “the private interest that will be affected by the official action”; “the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and the governmental interest, including the function involved and any associated administrative burden or societal costs. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).


21. See, e.g., *Justice Needs and Satisfaction*, supra note 1; Sankaran, supra note 20.


23. See, e.g., Sankaran, supra note 20, at 6.
legal representation has a positive effect on outcomes in civil cases.\textsuperscript{24} However, in the United States, the justice gap is stark. At least one party is unrepresented in over three-fourths of all U.S. civil trials.\textsuperscript{25} Federal funding for the Legal Service Corporation (LSC), the federal government’s greatest source of funding for civil legal aid, continuously falls short of providing sufficient resources to meet the demand for civil legal aid across the country and is also often the subject of proposed budget cuts.\textsuperscript{27} In the 2023 World Justice Project’s Rule of Law Index, the United States ranked in the bottom 20\% of countries on “accessibility and affordability of civil justice.” Conversely, other countries have acknowledged the importance of access to civil justice when basic needs are at stake, including child custody, and a civil right to counsel is provided by the Council of Europe’s

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\textsuperscript{25} Rebecca Buckwalter-Poza, Making Justice Equal, CTR. AM. PROGRESS (Dec. 8, 2016), https://www.americanprogress.org/article/making-justice-equal/ [https://perma.cc/W33E-KDXY]. Former Legal Services Corporation president, Jim Sandman, remarked that “[i]f you go to any metropolitan courthouse or state courthouse, what you’re going to see is more than 90\% of tenants facing eviction without a lawyer,” in contrast to the more than 90\% of landlords that do have lawyers. Kathryn Joyce, No Money, No Lawyer, No Justice, NEW REPUBLIC (June 22, 2020), https://newrepublic.com/article/158095/civil-legal-system-no-money-no-lawyer-no-justice [https://perma.cc/BSH9-8EJF]. The vast majority of people in child support or custody cases appear without counsel. Id. Sandman also noted that “[y]ou’ll see victims of domestic violence trying to get protection orders on their own.” Id.

\textsuperscript{26} See Buckwalter-Poza, supra note 25 (including domestic violence, housing, and small-claims legal issues).


\textsuperscript{28} See In the US, Weakened Rule of Law Persists, WORLD JUST. PROJECT (Nov. 8, 2023), https://worldjusticeproject.org/news/us-weakened-rule-law-persists [https://perma.cc/EES5-GGD5]. The “accessibility and affordability of civil justice” factor measures “the accessibility and affordability of civil courts, including whether people are aware of available remedies, can access and afford legal advice and representation, and can access the court system without incurring unreasonable fees, encountering unreasonable procedural hurdles, or experiencing physical or linguistic barriers.” U.S. Rank on Access to Civil Justice in Rule of Law Index: 116th Out of 142 Countries, NCCRC (Oct. 25, 2023), http://civirlighttocounsel.org/major_developments/217# [https://perma.cc/7SXV-UFYJ] (reporting that the U.S. rank has continuously worsened and dropped over 40 spots from 2015 to 2021).
B. The U.S. Child Welfare System

“Child welfare proceedings occupy a nebulous space between criminal and civil justice,” underscoring parents’ need for adequate representation throughout the process. Like the criminal legal system, the child welfare system is organized around surveillance, monitoring, regulation, compliance, and control — hence why advocates call it the family regulation system or “family policing system.” The child welfare system is not a single entity, but rather encapsulates multiple different organizations and actors primarily at the state level. Specific state child welfare organizations and actors may vary, but generally, every state child welfare system includes public state or local child protective services agencies and their caseworkers, mandated reporters, and law enforcement agencies.

29. Following the ruling in Airey v. Ireland, the Council of Europe required its member states to provide free counsel. See Lidman, supra note 17, at 771, 775–76.


32. See NAVEED, supra note 8, at 48 (according to U.S. Child welfare scholar Dorothy Roberts: “[t]o me, the most accurate term is ‘family policing system’ . . . it polices families with the threat of taking children away . . . ,[i]t is a form of punishment, harm[,] and oppression.”); see also ‘Abolition Is the Only Answer’: A Conversation with Dorothy Roberts, RISE (Oct. 20, 2020), https://www.risemagazine.org/2020/10/conversation-with-dorothy-roberts/ [https://perma.cc/N5TW-CVQ3].


34. Additionally, some states utilize the assistance of private child welfare agencies. See NAVEED, supra note 8, at 31.

including the police, prosecutors, and the courts. At the federal level, the U.S. Department of Health and Human Services’ Administration for Children and Families division is in charge of implementing federal child and family legislation, and the federal government provides funding for state child welfare services.

Families usually first come into contact with the child welfare system based on reports to state or local hotlines of alleged abuse or neglect, often from mandated reporters. Reports may be anonymous and unsubstantiated, but the creation of a report, and the subsequent opening of a case against a parent, can lead to “ripple effect[s]” with lasting ramifications. The report enables government officials, whether state or local child protective services caseworkers or law enforcement officers, to enter families’ homes, usually without warrants, and conduct searches and interrogations of often unrepresented parents. State attorneys can then use the evidence obtained during these searches and interrogations against the parents in court. There are various possible punishments, including parents having their parental rights terminated indefinitely — a result referred to as the civil “death penalty.”

However, unlike the criminal death penalty, a parent may be facing this punishment without legal representation, as some state statutes permit courts to terminate parental rights without ever appointing the parent counsel.

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36. SYLVIA I. MIGNON, CHILD WELFARE IN THE UNITED STATES: CHALLENGES, POLICY, AND PRACTICE 7–8 (Nov. 2016). In most states, child welfare cases occur in family court. See NAVEED, supra note 8, at 31.

37. See MIGNON, supra note 36.

38. See NAVEED, supra note 8, at 49.

39. See NAVEED, supra note 8, at 49, 55 (quoting a parent in New York whose children were removed from her custody, “[m]andated reporters don’t understand the ripple effect once they make that call. They don’t understand that they have now invited these strangers to intrude and invade on the population, on our communities’ privacy, and do with them what they will and take the children and have the power to do all of this for years to come.”).

40. See Hager, supra note 13.

41. See Hager, supra note 13.

42. From 2015 to 2019, the parents of about 327,000 children lost their parental rights, and in 20% of those cases parents lost their rights in under one year. See Agnel Philip, Eli Hager & Suzy Khimm, The “Death Penalty” of Child Welfare: In Six Months or Less, Some Parents Lose Their Kids Forever, ProPublica (Dec. 20, 2022, 8:30 AM), https://www.propublica.org/article/six-months-or-less-parents-lose-kids-forever [https://perma.cc/UNN9-PU62].

43. See Sankaran, supra note 20, at 2, 6–7; Wells, supra note 24, at 552–58. Multiple states leave the appointment of counsel fully up to the court’s discretion. For example, in Delaware, Minnesota, Mississippi, Missouri, Nevada, Vermont, and Wyoming, courts are allowed to determine on a case-by-case basis whether to appoint counsel for an indigent parent or whether a parent’s request for counsel is “appropriate.” See, e.g., DEL. FAM. CT. R. CIV. P. 206(a)(b); MINN. STAT. § 260C.163(3)(c) (2017); MISS. CODE ANN. § 43-21-201(2) (West
Other states mandate that parents must be appointed counsel before the court can remove children from their custody, while in other states parents are not appointed counsel until the termination of parental rights stage, which is after multiple court hearings and often years after a child has already been placed in foster care.\textsuperscript{44} In most states, the effectiveness of the lawyer’s assistance also depends on the often inadequate state and federal funding provided, which is rarely enough and results in lawyers being overworked, undertrained, and underpaid.\textsuperscript{45}

The child welfare system is “rooted in value judgments about parents whose children are in the child welfare system” and disproportionately impacts people of color and people living in poverty who cannot afford to hire a lawyer.\textsuperscript{46} Compared to the general population, parents subject to child welfare intervention have lower levels of education, “lower incomes, and are more likely to be socially isolated and learning disabled.”\textsuperscript{47} Low-income families are also more likely to be exposed to mandated reporters because they have a greater need for social services, increasing the chance that they will be “surveilled, scrutinized, and reported.”\textsuperscript{48} Conversely, affluent families are more likely to avoid the system altogether by having the resources to immediately call a lawyer if a child welfare agent attempts to

\textsuperscript{44} See Sankaran, \textit{supra} note 20, at 2 (emphasizing that by then, the case’s outcome may be “preordained due to the series of interim decisions leading up to the hearing). For example, Illinois law provides indigent parents with an absolute right to counsel not only in termination proceedings but also at all hearings leading up to it. See 705 ILL. COMP. STAT. ANN. 405/1-5(1) (West 2020). Kentucky law provides indigent parents with a right to counsel in “proceedings which threaten their fundamental right to care and custody of their children,” including dependency, neglect, and abuse proceedings and involuntary termination of parental rights proceedings. Cabinet for Health & Fam. Servs. v. K.S., 610 S.W.3d 205, 209–10 & n.4 (Ky. 2020); KY. REV. STAT. ANN. §§ 620.100, 625.080(3) (West 2020). Conversely, in Wisconsin, courts “may” appoint counsel for parents during initial proceedings but “shall” appoint counsel in any termination of parental rights proceedings. WIS. STAT. ANN. §§ 48.23(2)-(3) (West 2020).

\textsuperscript{45} See Sankaran, \textit{supra} note 20, at 2; Wells, \textit{supra} note 24, at 559–60. For example, in Washington state, the Office of Public Defender aimed to improve the quality of parental representation by increasing pay rates and training and decreasing caseloads, and the changes implemented resulted in a 50% increase in reunifications for families and a 45% decrease in parental rights terminations. See Wells, \textit{supra} note 24, at 560.


\textsuperscript{47} Lucas A. Gerber et al., \textit{Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare}, 102 CHILD. & YOUTH SERVS. REV. 42, 42 (2019); \textit{The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans}, \textit{supra} note 14, at 18 (“88% of low-income adults do not have a college degree, including 62% who have no more than a high school education”).

\textsuperscript{48} \textit{Naveed}, \textit{supra} note 8, at 3.
enter their home, or because they are more likely to refuse officials entry
due to a higher expectation of privacy.\textsuperscript{49} Diana Rugh Johnson, a child welfare
attorney in Georgia, said that “well-off parents often hire her immediately
upon finding out they are being investigated,” while “low-income parents
typically go without legal counsel,” and she has never had a well-off client’s
case end in the removal of their child.\textsuperscript{50}

Every day though, across the country, 700 children are removed from their
parent’s custody, which can cause lifelong harm.\textsuperscript{51} The removals are mostly
based on allegations of abuse or neglect,\textsuperscript{52} and almost one in three children
in the United States will be part of a child welfare investigation before they
turn 18.\textsuperscript{53} Every U.S. state in its legal definition of child maltreatment
includes at least one factor related to poverty or income,\textsuperscript{54} and in a recent
study by the American Civil Liberties Union and Human Rights Watch,
parents living in poverty described how their lack of access to reliable
information, resources, housing, or services was often interpreted as parental
unfitness.\textsuperscript{55} Over 40 years ago, the Supreme Court acknowledged in
\textit{Santosky v. Kramer} the inherent inequality and prejudice in parental
termination cases, stating “[t]he State’s ability to assemble its case almost
inevitably dwarfs the parents’ ability to mount a defense,” and that
“[b]ecause parents subject to termination proceedings are often poor,

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[https://perma.cc/8ZYB-46QW]. Child protective agencies are also less likely to search affluent individuals’ homes or are more likely to seek a
warrant in advance. \textit{See id.}

50. \textit{See id.} She always instructs her clients to decline any home inspection until she can
be present. \textit{Id.}

51. \textit{See Naveed, supra} note 8, at 70. Children who are removed from their homes are
more likely to be incarcerated, become teen mothers, experience poor outcomes related to
cognitive development, education, and employment and also have higher likelihoods of
suffering from mental health conditions and substance use disorders. The American Academy
of Pediatrics has found that family separation “can cause irreparable harm, disrupting a child’s
brain architecture and affecting his or her short- and long-term health.” Shereen White &
Stephanie Marie Persson, \textit{Racial Discrimination in Child Welfare is a Human Rights Issue},

52. \textit{See Naveed, supra} note 8, at 70. The most common reason for these investigations is
neglect, not physical abuse, which only accounts for 13% of the removals. \textit{See Naveed, supra}
note 8, at 34–35.

53. \textit{See Naveed, supra} note 8, at 2.

54. \textit{See Naveed, supra} note 8, at 89 (including “inadequate food, clothing, shelter,
medical care, hygiene, nutrition, and supervision”).

55. \textit{See Naveed, supra} note 8, at 7.
uneducated, or members of minority groups, such proceedings are often vulnerable to judgments based on cultural or class bias.  

Indeed, the racial and ethnic disparities in the child welfare system are still stark, and determinations of abuse and neglect are subject to both conscious and unconscious bias based on race, socio-economic status, ethnicity, and nationality.  

Black children are three times as likely to live in poverty than White children, and Hispanic and Indigenous children are twice as likely.  

The system disproportionately investigates and removes children from over-policed and underserved Black and Indigenous communities, and Black children’s parents are almost twice as likely to be investigated and have their children removed from their custody as White children’s parents.

As a result, Black children are overrepresented in the child welfare system. They make up only 14% of the U.S. child population but 24% of the child abuse or neglect reports and 21% of the children entering the foster system, and “by some estimates, the likelihood of Black youths experiencing an investigation by a child welfare agency is far higher than their likelihood of being stopped by police.”

The U.S. child welfare system’s disparate racial impact, coupled with the lack of access to adequate representation for indigent parents, is central to the international human rights violation analysis. While the U.S. child welfare system may need a total overhaul, providing indigent parents, who are often people of color, with proper representation from the outset of any child welfare investigation is an essential step for the United States to protect parents’ human rights.

57. See Naveed, supra note 8, at 4.
58. See Naveed, supra note 8, at 89.
59. See Naveed, supra note 8, at 32.
60. See Naveed, supra note 8, at 32, 59; Dorothy E. Roberts, Prison, Foster Care, and the Systemic Punishment of Black Mothers, 56 UCLA L. REV. 1474, 1483 (2012) (“If you go into a dependency court in Chicago, New York, or Los Angeles without any preconceptions, you might conclude that the child welfare system is designed to monitor, regulate, and punish black mothers.”).
61. Naveed, supra note 8, at 39 (contrasted to White children who comprise 50% of the U.S. child population and only 46% of abuse or neglect reports and 46% of the children entering the foster system).
62. Agnel Philip, Eli Hager & Suzy Khimm, How We Analyzed Child Welfare Investigations, ProPublica (Dec. 20, 2022), https://www.propublica.org/article/how-we-analyzed-child-welfare-investigation-data [https://perma.cc/6HVH-48W8]. Over 50% of Black children in the U.S. will experience a child welfare investigation before their 18th birthday (nearly double the rate of white children) and a “shocking 1 out of 41 Black children in the U.S. will have their legal relationship with their parent or parents terminated (compared with 1 out of every 100 children in the U.S.)” White & Persson, supra note 51.
II. LEGAL ANALYSIS

Part II describes how the lack of uniform and adequate access to civil justice for parents in U.S. child welfare cases violates international law. This Part first discusses international human rights treaties to which the United States is a party, before turning to customary international law, and finally to soft law.

A. The United States is Violating International Human Rights Treaties

The United States has ratified and is legally bound by two key human rights treaties: the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). Both treaties have been construed by their respective United Nations monitoring bodies as obligating ratifying countries to provide a civil right to counsel, as discussed below.

1. ICCPR: True Equality Before the Law Requires Access to Civil Counsel

While the ICCPR does not explicitly require ratifying countries to provide a civil right to counsel, it has been interpreted to encompass the right in order to ensure notions of fundamental fairness and “equality of arms.” Article 14 provides that:

> [a]ll persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

The Human Rights Committee (HRC), the principal interpretive body of the ICCPR, has continuously found the availability of civil legal assistance relevant to a State party’s compliance with Article 14.


66. ICCPR, supra note 63, at art. 14(1).

In 2007, the HRC issued General Comment No. 32, directing all State parties to provide free legal aid in noncriminal cases for individuals who cannot afford legal representation in order for them to participate in relevant proceedings in “a meaningful way.” The comment also guarantees access to justice “in all such cases to ensure that no individual is deprived, in procedural terms, of his/her right to claim justice.” The United States has failed to comply with this direction and is not upholding its obligations under the treaty.

Further, in regards to children and family rights, the ICCPR calls for heightened due process protections, stating that “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State,” and that every child shall have the right to “such measures of protection as are required by their status as a minor, on the part of their family, society, and the State.” In the United States, parents’ lack of uniform access to adequate legal representation prevents parents from participating in child welfare proceedings in “meaningful way[s],” as many parents are not even aware of their rights and responsibilities in these cases that concern their families, a unit that is supposed to be guaranteed protection.

In October 2023, the HRC assessed U.S. compliance with the ICCPR and specifically expressed concerns regarding “the high number of children who are separated from their families and placed in child welfare facilities . . . [and] at the overrepresentation of children belonging to racial and ethnic minorities, in particular children of African descent and Indigenous children.” The HRC instructed the United States to increase due process protections for parents in order to reduce the harmful impact of child welfare interventions. To ensure compliance with the ICCPR, the United States must increase due process protections and seek redress for the violations highlighted by ensuring parents are provided with adequate representation throughout all child welfare interventions.

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68. HRC, General Comment No. 32, supra note 65, at para. 10.
69. HRC, General Comment No. 32, supra note 65, at para. 9.
70. ICCPR, supra note 63, at art. 23(1).
71. ICCPR, supra note 63, at art. 24(1).
72. HRC, General Comment No. 32, supra note 65, at para. 10.
74. See id. at para 63.
2. CERD: Confronting the Racially Discriminatory Effect of the Lack of Access to Civil Counsel in the U.S. Child Welfare System

While the ICCPR enumerates generally applicable human rights, the CERD’s focus is on equality and nondiscrimination. Article 5(a) requires that “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone . . . [t]he right to equal treatment before the tribunals and all other organs administering justice.”\(^75\) The treaty requires that each State party review its policies and “amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.”\(^76\) Unlike under the Fourteenth Amendment’s Equal Protection Clause, where laws and regulations must have a racially discriminatory purpose, not just impact, to be deemed unconstitutional, the CERD covers both purpose and effect, measuring racial discrimination based on disparate impact.\(^77\) The CERD’s monitoring body, the Committee on the Elimination of Racial Discrimination (“CERD Committee”), has also elaborated that “indirect, or de facto, discrimination occurs where an apparently neutral provision, criterion or practice would put persons of a particular racial, ethnic or national origin at a disadvantage compared with other persons.”\(^78\)

For parents in the U.S. child welfare system, the lack of a Constitutional or statutory civil right to counsel may not have a discriminatory purpose, but it clearly has a discriminatory effect, and is at minimum indirect or de facto discrimination under the CERD, meaning the United States has the affirmative responsibility to amend its laws to stop perpetuating a racially

\(^{75}\) CERD, supra note 64, at art. 5(a). The ICCPR also has an equal protection clause, and the HRC has paid particular attention to both de jure and de facto discrimination in its reviews of State parties’ compliance with the ICCPR and has called on States to be proactive in addressing and remedying discrimination, acknowledging the important role that legal aid can play. See ICCPR, supra note 63, at art. 26.

\(^{76}\) CERD, supra note 64, at art. 2(1)(c) (emphasis added) (obligating State parties to “undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms”).

\(^{77}\) Compare Washington v. Davis, 426 U.S. 229, 239 (1976) (“[O]ur cases have not embraced the proposition that a law or other official act, without regard to whether it reflects a discriminatory purpose, is unconstitutional solely because it has a racially disproportionate impact.”) (emphasis added), with CERD, supra note 64, at art. 1 (“[T]he term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” (emphasis added)).

discriminatory system. As detailed above in Section I.B, Black and Indigenous children and families are grossly overrepresented in and targeted by the U.S. child welfare system, resulting in a disproportionate number of Black and Indigenous parents having to potentially face investigations, hearings, interviews, and court proceedings without legal assistance, not providing them equal protection under the law.\textsuperscript{79}

The CERD Committee has expressed concern multiple times with the disproportionate impact the lack of a constitutional or federal civil right to counsel has on indigent persons belonging to racial, ethnic, and national minorities in the United States.\textsuperscript{80} For example, in 2008, it instructed the United States to “increas[e] its efforts to improve the quality of legal representation provided to indigent defendants” and to “allocate sufficient resources to ensure legal representation of indigent persons belonging to racial, ethnic and national minorities in civil proceedings, with particular regard to those proceedings where basic human needs, such as housing, health care, or child custody, are at stake.”\textsuperscript{81}

Further, the CERD Committee, like the HRC, also recently expressed concern over the “disproportionate number of children of racial and ethnic minorities who are removed from their families and placed in foster care” and that families of racial and ethnic minorities are “subjected to disproportionately high levels of surveillance and investigation and are less likely to be reunified with their children.”\textsuperscript{82} The CERD Committee urged the United States 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.”\textsuperscript{83} It is time for the United States to take the appropriate measures, in response to both the CERD Committee’s and HRC’s concerns, to ensure legal representation for indigent, minority persons in cases where basic needs are at stake, especially in child welfare cases.

\textsuperscript{79} See supra Section I.B.


\textsuperscript{81} CERD Committee, \textit{supra} note 78, at para 22.


\textsuperscript{83} Id. at para. 44.
B. The United States is Violating Customary International Law

Customary international law is established from the “general and consistent practice of states” based on “a sense of legal obligation.” It exists independently of treaty law but imposes legal obligations on states arising from established international practices. Here, the relevant sources are the Convention on the Rights of the Child (CRC) and various U.N. General Assembly Resolutions.

1. CRC: Providing Parents with a Right to Civil Counsel Can Help Keep Families Together and Preserve Family Relations

The CRC, the most important human rights treaty governing children’s rights, details the measures of protection that states must provide for children. The treaty has been ratified by 195 countries, making it the most widely ratified human rights treaty in the world. The United States, however, is the only country that has not ratified it. While the CRC is a binding international treaty for its State parties, it still could be considered customary international law, since it represents the consistent practices of every other country. If not, at a minimum it carries persuasive authority regarding the rights the United States should provide to parents and children in the child welfare system.

Under the CRC, children have the right to know and be cared for by their parents and the right to preserve their family relations. Article 9 states that children should not be separated from their parents without due process before competent authorities. The interpreting body of the CRC, the U.N. Committee on the Rights of the Child, further emphasized that family separation should only be “a last resort measure” and that “separation should

84. See Restatement of the Law (Third), Foreign Relations of the United States, § 102(2).
85. See id. §§ 102(1)–(4).
90. See U.N. Committee on the Rights of the Child, General Comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration, U.N. Doc. CRC/C/GC/14 (2013), para 61.
not take place if less intrusive measures could protect the child.”

Additionally, the Committee found that “[e]conomic reasons cannot be a justification for separating a child from his or her parents” and instead, before turning to separation, “the State should provide support to the parents in assuming their parental responsibilities, and restore or enhance the family’s capacity to take care of the child.”

When viewed with the above provisions of the CRC in mind, the dearth of protections and safeguards afforded by the U.S. child welfare system constitute a violation of this customary international law. Children can be separated from their parents without due process protections — the most important of which is legal representation — and without judicial oversight. Further, economic reasons, mainly poverty, appear to often be the reason children are separated from their parents. Additionally, instead of investing in access to adequate representation and services for parents, the United States continues to disproportionately fund the foster care system and other systems working to keep parents separated from their children.


The U.N. General Assembly has issued Resolutions addressing children’s rights and, by extension, parents’ rights. The Resolutions mainly highlight and expand upon the protections in the CRC. Since the Resolutions are based on the CRC, which has been ratified by 195 countries, they could carry the weight of customary international law. If not, they are at least soft law and can have persuasive authority.

In 2010, the U.N. General Assembly adopted “The United Nations Guidelines for the Alternative Care of Children,” which establishes guidelines for the protection of children deprived of family care. Like the CRC, it provides that “[r]emoval of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be

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91. Id.
92. Id.
93. See NAVEED, supra note 8, at 89–90.
94. See NAVEED, supra note 8, at 9 (“State and local agencies within the child welfare system spend nearly ten times more on the foster system than on services that would support families in reunifying with their children.”).
temporary and for the shortest possible duration.”\textsuperscript{96} As shown above, this is not the reality of the U.S. child welfare system.\textsuperscript{97}

More recently, in 2019, the U.N. General Assembly adopted the “Resolution on the Rights of the Child” which expressed concern about children worldwide growing up deprived of parental care.\textsuperscript{98} Notably, the Resolution urges States to strengthen their child welfare systems through increased multisectoral collaboration, including collaboration with the justice system, and urges that States make “every effort” to enable children to remain in or swiftly return to the care of their parents.\textsuperscript{99} The Resolution also reaffirms that “financial and material poverty . . . should never be the only justification for the removal of a child from the care of his or her parents.”\textsuperscript{100} The realities for parents navigating the U.S. child welfare system does not reflect the practices advanced in this Resolution. “Every effort” is not being made to keep children in the care of their parents in the United States, as evidenced by the failure to establish a guaranteed civil right to counsel for parents in child welfare cases.

C. Soft Law

The civil right to counsel and the importance of protecting the family unit is also well established in soft law. Soft law includes written international agreements, principles, and declarations that enumerate international standards or norms.\textsuperscript{101} While soft law is not legally binding, as it is more “a type of social rather than legal norm,” it still can carry weight as a reflection of the views of the world community.\textsuperscript{102} The main relevant source here is the Universal Declaration on Human Rights (UDHR), but the U.N. General Assembly Resolutions discussed above could also be considered soft law and similarly carry persuasive authority.

In 1948, the United Nations published the UDHR as an international document highlighting the basic rights and freedoms of all human beings, the full realization of which all Member States to the United Nations must

\textsuperscript{96} Id. at para 14.
\textsuperscript{97} See supra Section I.B.
\textsuperscript{99} Id. at para 22, 31.
\textsuperscript{100} Id. at para 30.
\textsuperscript{102} Shelton, supra note 101, at 3.
strive to achieve.\textsuperscript{103} Article 10 of the UDHR provides that “[e]veryone is entitled in \textit{full equality to a fair and public hearing} by an independent and impartial tribunal, \textit{in the determination of his rights and obligations} and of any criminal charge against him.”\textsuperscript{104} While Article 10 does not explicitly include a civil right to counsel, it extends its provision of procedural fairness to the determination of all rights and obligations, civil and criminal, and any barriers to a “fair and public hearing,” like the lack of adequate representation, are contrary to humans rights as described in the UDHR.\textsuperscript{105} Article 16 specifically highlights the importance of the family unit as a “natural and fundamental group unit of society” that is “entitled to protection by society and the State.”\textsuperscript{106} Additionally, Article 12 states that “[n]o one shall be subjected to arbitrary interference with his privacy, family, home or correspondence” and “[e]veryone has the right to the protection of the law against such interference.”\textsuperscript{107}

Without a civil right to counsel, the United States fails to provide fair hearings in civil cases and therefore is arguably violating the UDHR. Further, the United States regularly fails to protect the family unit by allowing the removal of children from their parents’ care without providing parents a fighting chance to keep their families together. Based on the child welfare data discussed above in Section I.B., interference in American families’ lives is worse than just arbitrary, it is often consciously or unconsciously racially motivated.\textsuperscript{108}

While not binding, the UDHR is a key document on international human rights principles, and the United States is violating the UDHR by not providing a civil Gideon generally, and also by failing to respect and protect the family unit by denying parents a right to representation in child welfare proceedings.

\section*{III. Advocacy Strategies and Solutions}

As the above suggests, American parents’ current level of access to civil justice in the child welfare system violates a multitude of international law

\begin{itemize}
\item \textsuperscript{103} G.A. Res. 217 (III) A, Universal Declaration of Human Rights (UDHR) (Dec. 10, 1948) [hereinafter UDHR].
\item \textsuperscript{104} Id. at art. 10 (emphasis added).
\item \textsuperscript{105} See id. at art. 10; Davis, supra note 67, at 149-50.
\item \textsuperscript{106} UDHR, supra note 103, at art. 16, para. 3 (“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”).
\item \textsuperscript{107} UDHR, supra note 103, at art. 12.
\item \textsuperscript{108} UDHR, supra note 103, at art. 7 (“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”). Like with the CERD and the ICCPR, to violate the UDHR’s equal protection article, laws do not need a racially discriminatory purpose, only such an effect.
\end{itemize}
obligations, both binding and non-binding. To mitigate these violations, adequate representation should be provided to all parents for the full duration of their interactions with the child welfare system which can take the form of both legal representation and community-centered representation. Community-centered representation is where specialized, trained, non-lawyer advocates help represent, advise, and support local parents throughout their interactions with the child welfare system, playing a role often needlessly reserved only for lawyers. Child welfare cases can go on for years, and there are numerous stages of a child welfare case including agency investigations, reporting, petitioning, and planning — in addition to multiple types of hearings, including protective hearings, adjudicatory and dispositional hearings, permanency hearings, and parental rights terminations hearings.\textsuperscript{109} While in all states parents’ right to counsel would ideally attach at parents’ first contact with child welfare authorities, the reality of that is improbable.

To comply with international human rights obligations and standards, all parents in the United States should have the right to a lawyer for any and all court appearances, and then should additionally, in concert, be afforded representation through community-centered representation programs for their potentially numerous out-of-court interactions with the child welfare system, often including parents’ initial contact with the system. As such, this Essay proposes a two-fold solution: 1) the establishment of a civil Gideon providing for a right to counsel for parents in all state-level child welfare proceedings, coupled with 2) the provision of community-centered representation and services to all parents at the outset of their interactions with the child welfare system. To achieve this proposal, first a wave of cases must be brought on the state level, with arguments grounded in highlighting the international human rights violations at issue. Second, a concerted campaign aimed at legislatures and state bar associations should be launched that emphasizes the value and necessity of community-centered representation and draws attention to the parents whose rights have been violated because they were not provided adequate representation in their child welfare cases.

\textbf{A. Civil Gideon & the States}

As long as \textit{Lassiter} remains binding precedent, the path to achieving a civil Gideon is through the states.\textsuperscript{110} Currently, state laws providing parents
a civil right to counsel in child welfare proceedings are patchwork and incomplete, leaving indigent parents’ access to representation “dependent entirely on geography and luck.” 111

According to the National Coalition for a Civil Right to Counsel, 38 states and the District of Columbia have a right to counsel for parents, but many states delay appointment until the termination of parental rights stage — after there have already been critical hearings deciding whether the state can temporarily remove a child. 112 In the remaining 12 states, local courts decide whether an indigent parent receives legal representation, sometimes resulting in the termination of parental rights without legal counsel ever being appointed. 113 Further, when parents are appointed a lawyer, parents may only meet that lawyer just minutes before a critical hearing where they risk losing their child forever. 114 Even the U.S. Administration for Children and Families has acknowledged that the lack of legal counsel generally, and the lack of competent counsel when appointed, is a “significant impediment to a well-functioning child welfare system” and has called on states to provide parents with “high quality” counsel “at or before the initial court appearance in all cases.” 115 Additionally, the American Bar Association has emphasized the importance of high-quality legal representation for parents, finding that parents’ counsel positively influences case results for all parties involved, including the parents, children, and the courts. Benefits include but are not limited to: (1) increasing parties’ participation in and out of court; (2) reducing delays in achieving permanency for children and families; (3) better judicial decision making; and (4) saving jurisdictions money by reducing time children spend in foster care. 116

Therefore, all states across the country should at minimum provide legal representation to parents for all child welfare court hearings and appearances. To advocate for this right in state courts, legal arguments should center around naming and shaming U.S. practices compared to other

111. Joyce, supra note 25.
113. Kelly, supra note 112; Sankaran, supra note 20, at 6–8. For example, state courts in Delaware, Mississippi, Minnesota, Missouri, and Oregon “may” appoint counsel. See Kelly, supra note 112.
114. See Kelly, supra note 112.
115. Sankaran, supra note 20, at 3.
developed countries, as well as capitalizing on the recent HRC and CERD Committee reports condemning the current U.S. child welfare system’s lack of adequate representation and access to justice for parents.

Public acknowledgment of the discriminatory harms perpetrated by the child welfare system has started to gain more momentum both domestically and internationally, as seen with the HRC and the CERD Committee reports. Legal arguments based on the ICCPR and the CERD equal protection violations may also have a higher likelihood of success in state courts than in federal court. While the Fourteenth Amendment’s Equal Protection Clause does not account for disparate impact, unlike the CERD and the ICCPR, state constitutions can and do go farther than the U.S. Constitution, and some states, including Ohio and New Jersey, have already found a constitutional right to counsel exists for indigent parents based on their respective state constitution’s equal protection clauses and their readings of the U.S. Constitution. Lastly, framing a parent’s right to counsel as a human rights issue and highlighting that two United Nations human rights bodies have publicly called out the United States for its human rights violations could motivate state courts, which are considered friendlier and more receptive forums to international human rights claims, to rule in favor of a civil Gideon for parents in all child welfare proceedings.

117. Arguments should also highlight that other developed democracies devote three to 10 times more funding to civil legal aid than the United States does. See Buckwalter-Poza, supra note 25.


119. See U.S. Compliance with the ICCPR, supra note 73; U.N. CERD Report, Concluding Observations on the Combined Tenth to Twelfth Reports of the United States of America, supra note 82.

120. See Margaret Y. K. Woo, Connor Cox, & Sarah Rosen, Access to Civil Justice, 70 Am. J. Comp. L. 89, i92–93 (2022). For example, the Ohio Supreme Court recently held that indigent parents faced with losing parental rights in an adoption proceeding in probate court are entitled to appointed counsel under the Equal Protection Clause of the United States and Ohio Constitutions. See Matter of Adoption of Y.E.F., 171 N.E.3d 302, 313 (Ohio 2020).

121. See Johanna Kalb, Human Rights Treaties in State Courts: The International Prospects of State Constitutionalism After Medellin, 115 Pa. St. L. Rev. 1051, 1055 (2011) (suggesting that “international human rights treaty law may be particularly pertinent in helping state jurists to contextualize and understand the positive rights embodied in state constitutions that have no federal analogues but that are similar to international human rights law and to provisions of modern constitutions around the world” (internal citations omitted)); Paul Hoffman & Beth Stephens, International Human Rights Cases Under State Law and in
B. Enhancing Parental Representation through Community-Centered Representation and Empowerment

In addition to adopting a civil Gideon for parents in child welfare court proceedings, parents also need quality representation in dealing with all of their interactions with the child welfare system, many of which can go on for years and occur outside of court. Studies show that many parents have a limited understanding of common court terms, professionals’ roles, and key processes in the child welfare system, and are in need of education.\(^{122}\) With the large access to justice gap in the United States and the absence of an abundance of lawyers, community representatives instead can fill that role, and likely better than lawyers, as involvement in the child welfare system is often a community-wide problem and such representatives can be more in touch with the needs of the community.

Multiple studies and pilot programs, including ones in cities,\(^{123}\) states,\(^{124}\) and other countries,\(^{125}\) have already shown that multidisciplinary

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\(^{122}\) See NAVEED, supra note 8, at 121–22; see also Cleveland, supra note 13, at 116–21; Kyndra C. Cleveland & Jodi A. Quas, Juvenile Dependency Court: The Role of Race in Decisions, Outcomes, and Participant Experiences, in THE LEGACY OF RACISM FOR CHILDREN: PSYCHOLOGY, LAW, AND PUBLIC POLICY 71–90 (M.C. Stevenson, B.L. Bottoms & K.C. Burke eds., 2020); Kyndra C. Cleveland & Jodi A. Quas, Parents’ Understanding of the Juvenile Dependency System, 24 PSYCH., PUB. POL’Y, & L. 459, 479, 484–89 (2018) (finding in a study of 105 parents in Florida with ongoing child welfare cases that on average they had a “limited or partial general understanding of the system” and over half of the parents had a “limited understanding of the judge’s specific decisions in their hearings”).

\(^{123}\) For example, in New York City, the Center for Family Reproduction (CFR) uses a “Community Advocacy Team” approach, providing all clients with an attorney, social worker, and parent advocate, another parent who has directly experienced the child welfare system. See Elizabeth Fassler, Representing Parents During Child Welfare Investigations: Precourt Advocacy Strategies, ABA (Apr. 1, 2011), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practice online/child_law_practice/vol30/april_20110/representing_parentsduringchildwelfareinvestigationsprecourtadv/.\(^{124}\)

\(^{124}\) Studies done in California, Colorado, Michigan, Minnesota, New Mexico, Vermont, and Washington State found that child welfare case outcomes improve when a multidisciplinary team, usually involving at least a lawyer and social worker, is involved in the case. For example, Washington State has implemented the Parent Representation Program which partners social workers and legal professionals in the child welfare system, and the collaboration between the two professional fields is considered essential to successful outcomes for families. See Gerber et al., supra note 47, at 43–44.

\(^{125}\) For example, in Australia, the Independent Family Advocacy and Support Program uses a representational advocacy model to provide parents with support, including parental advocates, during any interactions with child welfare services. These parental advocates provide information to parents about the system and their rights and responsibilities. They also provide coaching for self-advocacy and will speak directly to child protection professionals on parents’ behalf with the overall goal of preventing investigations escalating to court proceedings. The program was successful at diverting approximately 20% of families
representation that encourages collaboration with legal and non-legal players, including some combination of social workers, parental rights advocates, interpreters, and experts, leads to quicker resolutions of cases and improves outcomes for indigent families. Findings show that a lawyer’s input is not necessary during all stages of the case and that non-legal advocates can take on magnified, positive roles throughout the legal process. Helpful non-legal advocates for example can be “Parent Advocates,” parents who use their prior direct experiences in the child welfare system to educate other parents on their rights and guide them through their cases, or “Cultural Brokers,” trusted community members of the same race or ethnicity who will come to a parent’s home whenever child welfare agents show up at their door. Parents represented by Parent Advocates report that the support of someone relatable but also knowledgeable about the child welfare process was critical to “preventing misunderstanding and communication” and “promoting positive efforts to keep a family safe and out of the court system.”

The provision of Parent Advocates and community-centered representation needs to become a reality for all indigent parents across the country. To achieve this goal, while lobbying legislatures and state bar associations to endorse and facilitate the creation of community-based advocacy organizations and allow unlicensed advocates to help represent parents, proponents should highlight the concrete, positive effects these types of organizations have on parents, children, and even lawyers.


126. Gerber et al., supra note 47, at 43. In New York City, research shows that when parents received interdisciplinary advocacy, they achieved overall “permanency, reunification, and guardianship more quickly.” Gerber et al., supra note 47, at 53. For example, the CFR’s Community Advocacy Team approach successfully diverted court filings in 70% of cases where they met with the client during the investigation and diverted foster care placements by 90% in cases where a dependency case was filed. See Fassler, supra note 123.

127. See, e.g., Gerber et al., supra note 47, at 43-45; Fassler, supra note 123.

128. See Fassler, supra note 123.


130. Fassler, supra note 123.

131. See, e.g., Wells, supra note 24, at 560 (“Parents’ counsel often face very difficult challenges in representing their clients, including low pay, high caseloads, [and] inadequate training.”).
cultural barriers, would narrow the justice gap and help protect against ongoing human rights violations in this area.

Proponents should further highlight that the spirit of community-centered representation is endorsed by Article 19 of the ICCPR. The article provides that “everyone shall have the right to hold opinions . . . [and the] freedom to seek, receive[,] and impart information and ideas of all kinds,”132 which can be construed as expanding the limits on who can provide legal support and representation. Additionally, advocates should point to the recent U.N. Report of the Special Rapporteur on the Independence of Judges and Lawyers.133 The Report accepts that there is no immediate future where every American who is in need of a lawyer is provided one, and it outlines the way that communities can utilize non-legal representatives to support individuals in specific areas of law with which they have expertise or firsthand experience,134 like Parent Advocates. Expanding the definition of who can represent parents throughout child welfare interventions will also likely alleviate reliance on lawyers who are juggling overflowing caseloads and may reduce the need for attorney intervention down the line by resolving cases at earlier stages, thereby increasing the legal system’s efficiency.135

Lastly, in advocating for both a civil Gideon and community-centered representation programs, proponents must present arguments that do not sugarcoat the child welfare system or make excuses for it. The emphasis should be on protecting the fundamental rights of parents, children, and families which can be achieved by highlighting the real plights of families in the child welfare system. Advocates should focus the public’s attention on the fact that the United States is the only country that has not ratified the CRC. They should also organize groups of parents who had their parental rights terminated without access to adequate representation and have them speak publicly about their experiences. The louder these groups are, the more pressure it will put on legislatures, bar associations, and courts. These parents could also lodge individual complaints with the HRC or the CERD.

132. ICCPR, supra note 63, at art. 19, paras. 1–2.
134. See id. at paras. 29–35.
135. See generally Gerber et al., supra note 47. For example, in Los Angeles, the child welfare courts are some of the busiest in the country where parental defense attorneys have about 171 cases each and a judge’s caseload can be over 1,000 cases. Jeremy Loudenback, Hearings: The Window is Closing, IMPRINT (Mar. 20, 2019), https://imprintnews.org/child-welfare-2/hearings-the-window-is-closing/34155 [https://perma.cc/8K4F-6RYD].
Committee,\textsuperscript{136} hopefully drawing even more attention to an issue that the HRC and the CERD Committee are already aware of and concerned about.

**CONCLUSION**

The United States is violating its international human rights law obligations by failing to provide parents with a civil right to representation in child welfare cases. For a country that claims to value the family unit and the right of all parents to raise their children, it has failed in a key way to protect and uphold these values, in contrast to many other developed democracies that provide a civil right to counsel not only in child welfare proceedings, but also in all civil actions where basic needs are at stake.

The time for change is now, especially due to the U.S. child welfare system’s continued disparate racial impact and targeting of poor, Black, and Indigenous parents and children. All parents, regardless of race and class, deserve an equal chance in keeping their families together. All states can work to make this a reality by both enacting a right to counsel for parents in all child welfare court proceedings, not only parental rights termination proceedings, and investing in community-centered representation programs. States that already provide a right to counsel for parents can act as a model for other states, hopefully creating a ripple effect across the country. Additionally, state investment in community-centered representation can help combat systemic racism in the child welfare system, achieve permanency for children and families faster, arm parents with the tools they need to both navigate and exit the system, and work to close the civil justice gap overall. With states’ investment in and adoption of this two part solution, states will be protecting parents and children’s basic international human rights and ensuring that no parent in the United States has to ever face “the civil death penalty” without adequate representation and support again.