

Influential or Insignificant?

The Potential for the CRC's Framework to Inspire the US to
Respect and Ensure Black Children's Right to Non-
discrimination



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List of abbreviations

CRC	United Nations Convention on the Rights of the Child
CRC Committee or Committee	Committee on the Convention on the Rights of the Child
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEDAW Committee	Committee on the Elimination of All Forms of Discrimination Against Women
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
CERD	Committee on the Elimination of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
CESCR	Committee on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
HRC	Human Rights Committee
UDHR	Universal Declaration of Human Rights
COs	Concluding Observations
US	United States of America
EPC	Equal Protection Clause of the Fourteenth Amendment
<i>Brown</i>	<i>Brown v. Board of Education</i> , 347 U.S. 483 (1954)
<i>Graham</i>	<i>Graham v. Florida</i> , 560 U.S. 48 (2010)
<i>Milliken</i>	<i>Milliken v. Bradley</i> , 418 U.S. 717 (1974)
<i>Roper</i>	<i>Roper v. Simmons</i> , 543 U.S. 551 (2005)

EXECUTIVE SUMMARY

Long before the adoption of the CRC, the landmark case *Brown v. Board of Education* was decided by the US Supreme Court. It is apparent that the litigators in *Brown*, including Thurgood Marshall (prior to his time as an esteemed US Supreme Court Justice), employed a child's rights approach in this seminal case. At the time of the ruling, segregation was still rampant in the Southern US. Despite this, the challenge made in *Brown* was not that segregation was illegal under the US Constitution's Equal Protection Clause (EPC). Instead, the argument was framed in a child's rights manner and contended that segregated education and separate school facilities for children violated the EPC. The focus was on the fact the schools for Black children were not equal to the schools for White children. Furthermore, research was submitted that showed that segregated education harmed Black children, including lowering their self-esteem. Therefore, it is meaningful that before the existence of a convention specifically promoting children's rights, a child rights approach led Justice Warren to conclude that "[s]eparate educational facilities are inherently unequal" (see note 310).

Future advancements in children's rights in the US also demonstrated the importance of conscientiously framing the issue with a child rights focus. Both *Roper* and *Graham* emphasized the incompatibility of cruel and unusual punishments (death penalties or life sentences without the possibility of parole) for children who are still developing, maturing, and susceptible to negative influences. Furthermore, the Supreme Court acknowledged that US law, in permitting these practices was inconsistent with international standards. Therefore, through the use of systemic challenges to the law, research, and international and other opinions, significant advances were made for children's rights.

These anecdotes illustrate that while ratification of the CRC is preferable, meaningful progress can still be made in its absence. This thesis aims to examine how the CRC's framework can inspire the US in respecting and ensuring Black children's right to non-discrimination.

The right to non-discrimination is an important principle that is woven throughout human rights law. Concerning the CRC, the right to non-discrimination is the only general principle that is referenced in most other international human rights treaties. Yet, there is limited literature on the CRC's right to non-discrimination and its impact. This thesis aims to expand the field by focusing on how beneficial the CRC's framework is and how it may be a source of inspiration for attaining the right for Black children in the US, considering that the treaty has not been ratified.

Chapter 1 introduces the topic of discrimination and the CRC. This chapter establishes the research question to be explored and informs on the methodology used to conduct the research.

Chapter 2 considers the rights to non-discrimination and equality as provided in international human rights law, including the CRC. The chapter explains how children's right to non-discrimination has evolved and what benefits the CRC framework provides in ensuring and respecting this right. This chapter makes extensive use of Annex 1, which is a summary of the right to non-discrimination as it is incorporated in the Committee's twenty-five General Comments. Furthermore, the Concluding Observations for six countries are reviewed to understand how the CRC Committee treats implementation of this right. Therefore, extensive references are also made to Concluding Observations throughout the chapter. In conjunction with Chapter 4, this chapter aims to assist in responding to the first sub-question in the research question: What benefits exist in the CRC Committee's approach to the right to non-discrimination, and how nuanced is this approach to address racial discrimination against children? Ultimately, it will be shown that there are significant benefits, as the CRC Committee pays specific attention to children's vulnerabilities, but the

Committee can dedicate greater attention to recognizing and proposing measures for discrimination based on race.

Chapter 3 explores the concept of children's rights in the US. It demonstrates how international opinion can be influential in achieving rights for children. This chapter establishes that the protections from discrimination provided in US law are inadequate to combat structural racism and fall short of the standards established by international human rights law, including the CRC.

Since the US has ratified the ICCPR and the ICERD, Chapter 4 compares the CRC Committee, HRC and CERD's review of the right to non-discrimination. Chapter 4 relies on Annex 3, which is a summary of the most recent concluding observations from all committees for the six selected countries. This chapter adds to the foundation established in Chapter 2 and demonstrates that the CRC Committee takes the most nuanced approach in reviewing racial discrimination against children. In addition, this Chapter examines US responses to the HRC and CERD recommendations regarding the implementation of the right to non-discrimination. Ultimately, it will be shown that the US has not fully met its obligations under either treaty and that the ratification is merely symbolic; thus, the same may be expected if the US ratifies the CRC.

Chapter 5 demonstrates the extent of the discrimination against Black children in the US. The chapter demonstrates that although the US refuses to take certain measures proposed by the HRC and CERD to respect and ensure the right to non-discrimination, the CRC framework can still be of significant influence. Through the use of a case study, this chapter will make recommendations regarding how the CRC's child rights framework can be used to inspire change and promote the right to non-discrimination for Black children in the US.

Finally, the thesis will conclude by demonstrating that the CRC framework can successfully inspire change in the US, even though the treaty is not ratified. In this case, the framework may influence the country's legal and societal norms, and the benefits which flow from the approach may be more impactful than ratification. Ultimately, it will take a multifaceted approach, as envisioned by the CRC Committee to inspire the US to better respect and protect Black children's right to non-discrimination.

Keywords

Children, non-discrimination, equality, CRC, discrimination, race, racism, United States

OVERVIEW OF MAIN FINDINGS

While much of the existing literature on children's right to non-discrimination summarizes Article 2 of CRC, this thesis makes significant contributions by analyzing the CRC Committee's approach to implementing and monitoring the right, mainly as it concerns racial discrimination. More importantly, this thesis emphasizes how the CRC framework can influence approaches to combat discrimination in a country that has not ratified the CRC.

This thesis underscores that, outside of the context of indigenous children, the CRC Committee lacks attention to the causes, effects, and remedies for racial discrimination against children in its General Comments. The review of the Concluding Observations shows that racial or ethnic discrimination occurs in all world regions and is not a problem isolated in the US. As such, it would be beneficial for the Committee to pay particular attention in the future to this form of discrimination in its General Comments.

This thesis acknowledges that although the right to non-discrimination is extensive in international human rights law, there are significant benefits to the CRC's framework and approach. In recognizing the vulnerabilities of children, the CRC Committee acknowledges multiple forms of discrimination suffered by children and its impact on exercising other rights in the CRC. As such, the CRC Committee addresses the right in most of its General Comments. Yet, this thesis recommends that the CRC Committee take a more coherent approach to the right to non-discrimination. The Committee should adopt a General Comment specifically on the right to non-discrimination and compile how the right applies within the CRC framework, similar to actions taken by the CESCR.

Notwithstanding these recommendations, this thesis demonstrates how the CRC's framework can influence the US to better ensure and respect Black children's right to non-discrimination. This thesis establishes that while the US is a democracy containing extensive rights for its citizens and inhabitants, children's rights are still evolving. However, this thesis shows that international norms and opinions have been considered in propelling children's rights, and the CRC framework can be influential. It is hoped that this can be done with the right to non-discrimination, as the current protections in US law fail to acknowledge structural racism, which is inconsistent with international standards. Moreover, in implementing the State's obligations to respect and ensure the right to non-discrimination, the US can help Black children attain this right.

Chapter 1. Introduction

1.1. Problem Statement

Thirty-two years after the adoption of the United Nations Convention on the Rights of the Child (“CRC”),¹ the United States of America (“US”) is the only country remaining to ratify it.² Dohrn believes that “[t]he continuing failure of US executive and legislative bodies to ratify the CRC cannot be understood without reference to the long, contested, sordid, and continuing struggle over racism.”³ In her words, “[j]ustice for children, the recognition of children as persons, with both rights and special protection needs, has historically and intrinsically been bound to the abolition of slavery and to challenging white supremacy in the US.”⁴

In 2020, while the COVID-19 pandemic swept the world, the US had to reckon with its own brooding turmoil. Spurred by George Floyd’s killing, the already existing Black Lives Matter movement gained momentum, swept the nation, and raised awareness about the ever-existing inequities and systemic racism in the US.⁵ As a result, the Committee on the Elimination of Racial Discrimination (“CERD”) urged the US to “recognize the existence of structural racial discrimination in the society” and take measures to eliminate it along with disparate racial impacts.⁶ Child rights advocates also agree that “structural racism is a pernicious threat to human rights and children’s rights.”⁷

Racial disparity has been an issue in the US since its inception. The US Constitution stated that each enslaved individual counted as three-fifths of a person.⁸ Upon the ratification of the Fourteenth Amendment to the Constitution (“Fourteenth Amendment”),⁹ *all* persons born or naturalized in the US, including Black Americans, were recognized as citizens and entitled to equal protection of the laws.¹⁰ Yet, following the ratification of the Fourteenth Amendment, challenges remained for Black Americans to achieve equality under the law, and racism and discrimination persist in the US today.

Concerning Black children, bias is evident across several sectors of society, including health, education, and the justice system.¹¹ As such, it can be argued that the Fourteenth Amendment is inadequate at combatting discrimination and ensuring equality. So, while all children in the US could benefit from the protection, provision, and participation rights provided in the CRC, can a child’s rights framework influence the realization of the right to non-discrimination for Black children in the US?

¹ UNGA (1989), United Nations, Treaty Series, vol. 1577, p. 3..

² President Bill Clinton signed the CRC in 1995. The CRC has not been sent to the Senate for ratification.

³ Dohrn, B. (2015), at 73.

⁴ *Ibid.*

⁵ <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> (last visited 25.05.2021).

⁶ CERD Early Warning Statement, available at <https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Statements/USA.pdf> (last visited (15.06.2021)).

⁷ <https://www.savethechildren.ca/in-solidarity-black-lives-matter/> (last visited 25.06.2021).

⁸ *U.S. Const.*, Article I, § 2.

⁹ *U.S. Const.* amend XIV

¹⁰ *U.S. Const.* amend XIV, § 1.

¹¹ Chapter 5 contains a detailed discussion of discrimination experienced by Black children in the US.

The principles of non-discrimination and equality are so intertwined with human rights law that they “may be regarded as part of the *jus cogens*.”¹² Therefore, it is not surprising that the CRC, the first treaty to truly view children as rights holders, contains a right to non-discrimination for children. Article 2 of the CRC requires States to respect and ensure the rights in the CRC to each child within the State’s jurisdiction, without discrimination of any kind. Therefore, Vandenhole denoted that the right to non-discrimination is an “accessory right” to be applied in conjunction with the other rights in the CRC and is not an independent right in and of itself.¹³ Hence, States have a negative obligation to respect the child’s right to non-discrimination and a positive obligation to ensure that the rights set forth in the CRC are provided in a non-discriminatory manner.¹⁴

Furthermore, along with the best interest of the child (Article 3(1)), the right to life, survival, and development (Article 6), and the right to be heard (Article 12), the right to non-discrimination is one of the four general principles identified by the Committee on the Rights on the Child (“Committee” or “CRC Committee”).¹⁵ The general principles are cross-cutting rights and, according to Peleg, “anyone who makes decisions that affect the lives and rights of children, should implement the UNCRC in accordance with its four guiding principles.”¹⁶

Abramson stated that generally, the right to non-discrimination is a problematic concept and likely the most misunderstood right in international law.¹⁷ Therefore, one may question whether the CRC’s right to non-discrimination is effective and if it truly adds value for discrimination against children? Since some countries are still attempting to fully incorporate or meaningfully translate the CRC into their domestic law,¹⁸ to what extent does the Committee act to monitor this right, and how does a strong child’s rights framework allow for robust implementation of this right on the ground?

While there are laws in the US that prohibit discrimination, this thesis will show that discrimination against Black children is still prevalent in modern times. Also, because the current political climate in the US is unlikely to yield a vote from two-thirds of the Senate to approve an international treaty, the country’s ratification of the CRC is an improbable aspiration at the moment. However, the CRC’s child’s rights framework may still be a source of inspiration in advancing the right to non-discrimination for Black children in the country. It has been stated that “[t]here is a well-known general rule that the greater the awareness of rights, the more chance there is of securing respect for them.”¹⁹ Therefore, the US may use the CRC framework as a source of inspiration to raise awareness and advance the realization of the right to non-discrimination for Black children.

¹² Lord A. Lester (1993), at 1653.

¹³ Vandenhole, W. (2005), at 28.

¹⁴ Detrick, S. (1999), at 68.

¹⁵ CRC Committee (1991), *General Guidelines*, CRC/C/5, at para. 13.

¹⁶ Peleg, N. (2018), at 139.

¹⁷ Abramson, B. (2008), at para. 2.

¹⁸ Arts, K. (2014), at 286-288.

¹⁹ Detrick, S. et al. (1992), at 29-30.

1.2. Research Question

The main question this thesis wishes to address is how can the CRC's children's rights framework influence the US to better ensure and respect the right to non-discrimination for black children? The sub-questions which must be answered in relation to this question are:

- What benefits exist in the CRC Committee's approach to the right to non-discrimination, and how nuanced is this approach to address racial discrimination against children?
- How responsive is the US to recommendations made by the HRC and CERD regarding the right to non-discrimination?
- What impact can be expected from the ratification of the CRC?

1.3. Methodology

Empirical research was not used to prepare this thesis. This thesis was compiled based on desk research relying on primary legal sources, including international treaties and domestic case law, and secondary sources. As part of the desk research, all twenty-five of the CRC Committee's General Comments were analyzed for the treatment of the principles of non-discrimination and equality. Furthermore, the desk research involved a review of the Concluding Observations adopted by the CRC Committee, CERD, and Human Rights Committee (HRC) for six countries: Australia, Canada, France, Hungary, South Africa, and the United Kingdom. The review included the CRC Committee's last three (if available) Concluding Observations and the most recent Concluding Observations for the CERD and HRC. The six countries were selected due to historical discrimination against ethnic, indigenous, or racial minorities.

1.4. Structure

The thesis includes three Annexes. Annex 1 summarizes the CRC Committee's approach to non-discrimination as it is presented throughout twenty-five general comments. Annex 2 is a summary of US case law referenced in the thesis. Annex 3 presents a comparison of the HRC, CERD, and CRC's Committee's concluding observations addressing racial or ethnic discrimination against children.

Chapter 2 considers the rights to non-discrimination and equality as provided in international human rights law, including the CRC. The chapter focuses on the CRC Committee's approach to the right to non-discrimination for children and concludes with observations of the benefits and shortcomings in the Committee's method.

Chapter 3 explores the concept of children's rights in the US. It demonstrates how international opinion can be influential in achieving rights for children. This chapter establishes that the protections from discrimination provided in US law are inadequate to combat structural racism and fall short of the standards established by international human rights law, including the CRC.

Since the US has ratified the International Covenant on Civil and Political Rights ("ICCPR")²⁰ and the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD"),²¹ Chapter 4 compares the CRC Committee, HRC, and CERD's review of the right to non-discrimination. This chapter adds to the foundation established in Chapter 2 and demonstrates that the CRC Committee

²⁰ UNGA (1966), United Nations, Treaty Series, vol. 999, p. 171.

²¹ UNGA (1965), United Nations, Treaty Series, vol. 660, p. 195.

takes the most nuanced approach in reviewing racial discrimination against children. In addition, this Chapter examines US responses to the HRC and CERD recommendations regarding the implementation of the right to non-discrimination. Ultimately, it will be shown that the US has not fully met its obligations under either treaty and that the ratification is merely symbolic; thus, the same may be expected if the US ratifies the CRC.

Chapter 5 demonstrates the extent of the discrimination against Black children in the US. Through the use of a case study, this chapter will make recommendations regarding how the CRC's child rights framework can be used to inspire change and promote the right to non-discrimination for Black children in the US.

Finally, the thesis will conclude by demonstrating that the CRC framework can successfully inspire change in the US, although the treaty is not ratified. In this case, the framework may influence the country's legal and societal norms, and the benefits which flow from the approach may be more impactful than ratification.

Chapter 2. The Right to Non-discrimination and Equality under International Human Rights Law

2.1. Chapter Overview

The United Nations has stated that “[t]he principles of equality and non-discrimination are part of the foundations of the rule of law.”²² The adoption of the Universal Declaration of Human Rights (UDHR) underscored “that basic rights and fundamental freedoms are inherent to all human beings, inalienable and equally applicable to everyone, and that every one of us is born free and equal in dignity and rights.”²³ The HRC has also recognized that “[n]on-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.”²⁴

Hence, the rights to non-discrimination and equality are fundamental to the human rights framework and apply to everyone, including children. The chapter will explore the evolution of the right to non-discrimination for children, which ultimately culminated in the right as provided in the CRC. The CRC framework, including General Comments and Concluding Observations adopted by the CRC Committee, will be used to explore the meaning of the right to non-discrimination and the implementation of the right. This exploration will also be supplemented by references to the other international human rights treaties. Ultimately, this chapter seeks to determine how the CRC Committee approaches the right to non-discrimination, the strengths and weaknesses of its method, and what attention does it pay to discrimination based on race.

2.2. Evolution of the Child’s Right to Non-discrimination under International Human Rights Law

In 1919, Japan first attempted to have the principle of racial equality included in the Covenant of the League of Nations.²⁵ Unfortunately, this endeavor failed.²⁶ However, the Charter of the United Nations (“UN Charter”), adopted in 1945, unequivocally stated that two of the purposes of the UN was “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”²⁷ and to encourage “respect for human rights and for fundamental freedoms for all *without distinction* as to race, sex, language, or religion (emphasis added).”²⁸

Following the atrocities of the Second World War, the UN General Assembly adopted the UDHR in 1948,²⁹ and it marked the establishment of universal protection of fundamental rights. Despite being non-binding, the UDHR set out the principles of equality and non-discrimination on an international

²² <https://www.un.org/ruleoflaw/thematic-areas/human-rights/equality-and-non-discrimination/> (last visited 02.06.2021).

²³ <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law> (last visited 02.06.2021).

²⁴ HRC (1989), *General Comment No. 18* (“HRC GC 18”), at para. 1.

²⁵ <https://www.un.org/ruleoflaw/files/training9chapter13en.pdf> at 634 (last visited 02.06.2021).

²⁶ <https://www.un.org/ruleoflaw/files/training9chapter13en.pdf> at 634 (last visited 02.06.2021).

²⁷ United Nations (1945), 1 UNTS XVI, Article 1(2).

²⁸ UN Charter, Article 1(3).

²⁹ UNGA (1948), 217 A (III).

level. It provided that “[a]ll human beings are born free and equal in dignity and rights”³⁰ and that individuals are entitled to the rights and freedoms contained in the UDHR “without distinction of any kind.”³¹ Furthermore, it stated that individuals are “equal before the law and are entitled without any discrimination to equal protection of the law.”³² The UDHR also indicated a specific right of non-discrimination for children and declared that “[a]ll children, whether born in or out of wedlock, shall enjoy the same social protection.”³³

Subsequently, the Declaration on the Rights of the Child (“1959 Declaration”)³⁴ recognized a child’s right to non-discrimination. Principle I of the non-binding 1959 Declaration provides:

The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

The grounds for discrimination set forth in Principle I are the same as those grounds in the ICCPR and the International Covenant on Economic Social and Cultural Rights (“ICESCR”)³⁵ (collectively the “International Covenants”). Both International Covenants include the rights to non-discrimination and equality. While the rights contained in these apply to all people, including children, the International Covenants also incorporated children’s rights to special measures of protection without discrimination.³⁶ Thus, the HRC directed States to adopt and implement special measures to protect children and remove threats of discrimination.³⁷ While neither of the International Covenants defined child, these measures were to address that the needs of children differ from those of adults³⁸ and “to give the principles proclaimed in the 1959 Declaration on the Rights of the Child status as legal norms binding on Covenant Parties.”³⁹

Furthermore, certain treaties also explicitly prohibit discrimination and promote equality on specific grounds. These include the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”),⁴⁰ the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”),⁴¹ and the Convention on the Rights of Persons with Disabilities (“CRPD”).⁴² The right to non-discrimination is so entrenched in international human rights law that out of the nine core UN human rights treaties (collectively referred to as the “Core International Human Rights

³⁰ UDHR, Article 1

³¹ UDHR, Article 2.

³² UDHR, Article 7.

³³ UDHR, Article 25(1).

³⁴ UNGA (1959), A/RES/1386(XIV), 14 U.N. GAOR Supp. (No. 16), at 19.

³⁵ UNGA (1966), United Nations, Treaty Series, vol. 993, p. 3.

³⁶ ICCPR, Article 24; ICESCR, Article 10(3).

³⁷ HRC (1989), *General Comment No. 17*, at paras. 1 and 5.

³⁸ Taylor, P.M. (2020), at 742.

³⁹ *Id.*, at 660.

⁴⁰ UNGA (1965), United Nations, Treaty Series, vol. 660, p. 195.

⁴¹ UNGA (1979), United Nations, Treaty Series, vol. 1249, p. 13.

⁴² UNGA (2006), United Nations, Treaty Series, vol. 2515, p. 3.

Instruments”),⁴³ only two do not have a right to non-discrimination.⁴⁴ Also, six of the Core International Human Rights Instruments include the right to equality in some manner.⁴⁵ Additionally, regional treaties also have a right to non-discrimination. As their scopes encompass all people, including children, the rights to non-discrimination and equality are integral to human integrity and dignity and protecting human rights.

However, some commentators believe that the rights to non-discrimination in the Core International Human Rights Instruments, including the International Covenants, were ineffective in combatting the multiple forms of discrimination against children.⁴⁶ Children are subject to discrimination for being children (compared to adults)⁴⁷ and experience different forms of discrimination based on their age.⁴⁸ The CRC Committee noted that “young children are especially at risk of discrimination because they are relatively powerless and depend on others for the realization of their rights,”⁴⁹ and discrimination also harms adolescents.⁵⁰ Children may also be treated differently than other children based on race, sex, disability, and many other characteristics.⁵¹ Moreover, parental actions may lead to discrimination against children.⁵²

Additionally, children may be subject to double discrimination or multiple grounds of discrimination. This occurs when they are first discriminated against because they are children and second because of a characteristic shared by a group.⁵³ An example of this is female genital mutilation, where females, often girl children, are subjected to this harmful practice.⁵⁴

Hence, it is clear that children are susceptible to forms of discrimination that differ from adults. Furthermore, the CRC has acknowledged discrimination’s role in heightening the vulnerability of children and impacting their lives.⁵⁵ Ultimately, discrimination against children offends human dignity and well-being and may result in stigmatization, violence, and exploitation.⁵⁶ Therefore,

⁴³ See *The Core International Human Rights Instruments and their monitoring bodies* for a complete list of the Core International Human Rights Instruments.

<https://www.ohchr.org/en/professionalinterest/pages/coreinstruments.aspx> (last visited 02.06.2021).

⁴⁴ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) and the International Convention for the Protection of All Persons from Enforced Disappearance do not include the right to non-discrimination.

⁴⁵ The ICERD, ICCPR, ICESCR, CEDAW, CRPD, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families all contain rights to equality.

⁴⁶ Besson, S. & Kleber, E. (2019), at 47.

⁴⁷ Besson, S. (2005), at 445.

⁴⁸ Ibid.

⁴⁹ CRC Committee (2006), *General Comment No. 7*, CRC/C/GC/7/Rev.1 (“CRC GC 7”), at para. 11(a).

⁵⁰ See CRC Committee (2003), *General Comment No. 4*, CRC/GC/2003/4 (“CRC GC 4”), at para. 6; CRC Committee (2016), *General Comment No. 20*, CRC/C/GC/20 (“CRC GC 20”), at para. 21.

⁵¹ Besson, supra note 47.

⁵² Besson & Kleber, supra note 46, at 42.

⁵³ Besson Kleber, supra note 46, at 46.

⁵⁴ CRC GC 7, at para. 11(b)(i)

⁵⁵ CRC Committee (2004), *General Comment No. 3*, CRC/GC/2003/3 (“CRC GC 3”), at para. 7.

⁵⁶ Annex 1, Part 2, “Effects”.

understandably during the drafting of the CRC, arguments were made that “the specific needs and vulnerability of children demanded responses from the international community which were not covered by the International Covenants, as they had not been drawn up with children in mind.”⁵⁷ The Preamble of the CRC reflects this view and “goes to great lengths to acknowledge the vulnerable status of children.”⁵⁸ Also, concerning discrimination, the Preamble recognized that the UDHR and International Covenants all proclaimed the entitlement of rights without distinction; therefore, the right to non-discrimination is the only general principle recognized in the Preamble to the CRC. Thus, the next section will explore how the CRC built upon the existing provisions of non-discrimination to create extra protection for children.

2.3. The Adoption of the CRC and the Right to Non-discrimination

The adoption of the CRC was monumental, as children were viewed as rights holders for the first time.⁵⁹ Furthermore, the CRC is the most ratified treaty, which establishes extensive coverage for the protection, participation, and provision rights of children worldwide.⁶⁰

To address the issues facing children outlined above, the CRC’s right to non-discrimination encompassed in Article 2 provides:

1. State Parties shall respect and ensure the *rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind*, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status (emphasis added).
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.

The first paragraph of the CRC’s right to non-discrimination is based on Article 2(1) of the ICCPR.⁶¹ Article 2(1) establishes several essential points. First, it shows the breadth of the Convention, as it requires States to respect and ensure the rights of all children, as defined in Article 1, found within their jurisdictions, including nationals, foreign and migrant children.⁶² The expanse of jurisdiction was a controversial point during drafting, as the US wished for the provision to apply to children lawfully within a State’s territory⁶³. Also, States must respect and ensure that all rights in the CRC are delivered without discrimination based on certain characteristics of the child or their parents or legal guardians.⁶⁴ Therefore, it is important to note that similar to the ICCPR, the CRC’s right to non-discrimination is not independent but is invoked concerning other Convention provisions and does not

⁵⁷ Detrick, supra note 14, at 2.

⁵⁸ Tobin, J. (2015), at 156.

⁵⁹ <https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRC25thAnniversary.aspx> (last visited 12.06.2021).

⁶⁰ [https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/642286/EPRS_ATA\(2019\)642286_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/642286/EPRS_ATA(2019)642286_EN.pdf) (last visited 12.06.2021).

⁶¹ Detrick, supra note 14, at 69.

⁶² Ibid.

⁶³ Detrick et al., supra note 19, at 142.

⁶⁴ Detrick, supra note 14, at 73.

extend beyond those rights provided in the Convention.⁶⁵ Finally, Article 2(1) stipulates the grounds of discrimination prohibited under the Convention, including race, colour, sex, and ethnic or social origin. The inclusion of “other status” signifies grounds other than those specified may be protected under this provision.

Furthermore, Article 2(2) protects children from discrimination based on the status or actions of their parents, legal guardians or family members. As the UDHR surmised, children may be discriminated against because they are born out of wedlock, and Article 2(2) protects against this form of discrimination.⁶⁶ However, Article 2(2) will not be discussed further due to this thesis's limited scope.

2.3.1. General Comments and Concluding Observations

The right to non-discrimination contained in Article 2(1) of the CRC leaves many questions. For instance, what constitutes discrimination, what does “other status” include, and how do States respect and ensure this right? To assist with interpreting the CRC's right to non-discrimination, one can turn to documents adopted by the CRC Committee, including their General Comments and Concluding Observations.

The CRC Committee's General Comments “act as authoritative statements on the implementation, interpretation, and meaning of provisions under the UNCRC.”⁶⁷ The Committee has adopted twenty-five General Comments covering a range of substantive rights contained in the CRC. Notably, the CRC Committee has not adopted a General Comment on the right to non-discrimination. In contrast, some human rights treaty bodies have drafted General Comments to guide States in fulfilling their obligations concerning this right. For instance, the HRC and the Committee on Economic, Social, and Cultural Rights (CESCR) have issued General Comments on the Right to non-discrimination.⁶⁸ Similarly, the CERD and CEDAW Committee have published General Recommendations on special measures.⁶⁹ However, since the right to non-discrimination is a general principle, it has been referenced, in a stand-alone section, in most of the CRC Committee's General Comments.⁷⁰

The CRC Committee's Concluding Observations (COs) in response to State Party reports are another means of correspondence that assists with interpreting the right to non-discrimination. The COs may be general in scope due to word limits, and they are non-binding, meaning there are no implications for a State that does not implement the Committee's recommendations.⁷¹ However, the COs are fruitful in determining how the CRC Committee views a child's right to non-discrimination in the context of the CRC.

⁶⁵ Detrick, *supra* note 14, at 72; HRC GC 18 at para. 12.

⁶⁶ CRC GC 7, at para. 12.

⁶⁷ Varadan, S. (2019), at 308.

⁶⁸ HRC GC 18; CESCR (2009), *General Comment No. 20*, E/C.12/GC/20 (“CESCR GC 20”). *See also* Committee on the Elimination of Discrimination Against Women (“CEDAW Committee”) (2010), *General Recommendation No. 28*, CEDAW/C/GC/28.

⁶⁹ CEDAW Committee (2004), *General Recommendation No. 25* (“CEDAW GR 25”); CERD (2009), *General Recommendation No. 32*, CERD/C/GC/32 (“CERD GR 32”).

⁷⁰ Annex 1, Part 1. Note that the Committee has issued General Comments on two other general principles: The right of the child to be heard (General Comment 12) and the right of the child to have his or her best interests taken as a primary consideration (General Comment 14).

⁷¹ Sloth-Nielsen, J. (2019), at 44-45.

Annex 1 summarizes the right to non-discrimination as addressed by the CRC Committee in its General Comments. Additionally, the Committee's COs over the past three cycles for Australia, Canada, France, Hungary, and the United Kingdom, and the last two cycles for South Africa, were reviewed to determine how the Committee treats this right in practice. Annex 1 and the COs will be referenced to expound upon the right to non-discrimination contained in Article 2(1).

2.3.2 Grounds for Discrimination

The CRC's non-discrimination provision is unique because it includes two additional grounds for protection than the International Covenants: ethnic origin and disability.⁷² Ethnic origin was added to the CRC to include ethnic minorities, a broad term intended to encompass racial and national minorities.⁷³ Disability was incorporated because children with disabilities are highly vulnerable and susceptible to multiple forms of discrimination based on other characteristics.⁷⁴ For example, indigenous girls with disabilities or children with disabilities living in rural areas have heightened vulnerabilities.⁷⁵

In its first General Comment, the CRC Committee referred to discrimination on several grounds, including gender, disability, HIV/AIDS,⁷⁶ race, xenophobia, and related intolerance.⁷⁷ As shown in Annex 1, in subsequent General Comments, the Committee has also included, within the scope of "other status" in Article 2(1), discrimination based on sexual orientation, gender identity, mental health, and childhood status.⁷⁸ Also, Article 2(1) prohibits discrimination based on prejudices toward separated and unaccompanied children, pregnant adolescents, commercially sexually exploited children, children in street situations, children in conflict with the law, or based on children's clothing and behaviour.⁷⁹ Additionally, protections for certain groups of children exist in the CRC, including refugee children,⁸⁰ children with disabilities,⁸¹ and children of indigenous origin or belonging to ethnic, religious, or linguistic minorities.⁸² The Committee also addresses discrimination against certain groups of children in separate General Comments.⁸³

⁷² Abramson, *supra* note 17, at para. 14.

⁷³ Detrick, *supra* note 14, at 74. Note that ethnic origin is included in the ICERD, Article 1(1).

⁷⁴ CRC Committee (2007), CRC/C/GC/9 ("CRC GC 9"), at para. 8.

⁷⁵ CRC GC 9, at para. 8 ; *See also* CRC Committee (2016), South Africa Concluding Observations, CRC/C/ZAF/CO/2*("CRC South Africa 2016 COs"), at paras. 24, 52, and 60 addressing discrimination based on multiple forms.

⁷⁶ CRC Committee (2001), *General comment No. 1*, CRC/GC/2001/1 ("CRC GC 1"), at para. 10.

⁷⁷ CRC GC 1, at para. 11.

⁷⁸ Annex 1, Part 1.

⁷⁹ Annex 1, Part 1.

⁸⁰ CRC, Article 22.

⁸¹ CRC, Article 23.

⁸² CRC, Article 30.

⁸³ Annex 1.

Furthermore, in its Concluding Observations, the Committee has urged states to combat discrimination against children born out of wedlock or living with same-sex parents,⁸⁴ child labourers,⁸⁵ stateless children and children with albinism,⁸⁶ children from poor families, children in care, detained children and children aged between 16 and 18 years old,⁸⁷ and adolescents.⁸⁸ Therefore, the Committee has liberally used “other status” to offer protections to vulnerable children.

However, an important observation is that while race is the first ground for protection recited in Article 2(1), and notwithstanding the General Comment on Indigenous Children, the Committee infrequently addresses this ground independently in the General Comments. In fact, CRC GC 7 specifically discusses discrimination on several grounds which may occur in early childhood, including discrimination against girl children, children with disabilities, children infected with HIV/AIDS, and discrimination based on ethnic origin, class/caste, or political and religious beliefs, but fails to discuss the impact of discrimination based on race.⁸⁹ This may be because the drafters of the CRC intended for race to be included under the broader umbrella of ethnic origin, as discussed above. Furthermore, in GC 20 on adolescents, the Committee goes into considerable detail outlining special measures for girls, children with disabilities, and children from minority or indigenous communities but does not explicitly discuss special measures for racial discrimination.⁹⁰ Ultimately, the Committee explicitly addresses racial discrimination, outside of the context of indigenous children or reciting the grounds for discrimination in Article 2, in the General Comments on the aims of education,⁹¹ juvenile justice,⁹² rest, leisure and play,⁹³ street children,⁹⁴ and migration.⁹⁵

2.3.3 Cross-cutting with substantive rights

The General Comments make evident that the right to non-discrimination, as a general principle, is intrinsically connected to the substantive rights in the CRC. The Committee frequently referenced how

⁸⁴ CRC Committee (2014), Hungary Concluding Observations, CRC/C/HUN/CO/3-5, at para. 20.

⁸⁵ CRC Committee (2000), South Africa Concluding Observations, CRC/C/15/Add.122 (“CRC South Africa 2000 COs”), at para. 18.

⁸⁶ CRC South Africa 2016 COs, at para. 23.

⁸⁷ CRC Committee (2002), United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add.188 (“CRC UK 2002 COs”), at para. 22.

⁸⁸ CRC Committee (2008), United Kingdom of Great Britain and Northern Ireland. CRC/C/GBR/CO/4 (CRC UK 2008 COs), at para. 24.

⁸⁹ CRC GC 7, at para. 11.

⁹⁰ CRC GC 20, at paras. 27-36.

⁹¹ CRC GC 1, at paras. 11 and 24.

⁹² CRC Committee (2007), *General comment No. 10*, CRC/C/GC/10 (“CRC GC 10”), at para. 6

⁹³ CRC Committee (2013), *General comment No. 17*, CRC/C/GC/17 (“CRC GC 17”), at para. 52.

⁹⁴ CRC Committee (2017), *General Comment No. 21*, CRC/C/GC/21 (“CRC GC 21”), at paras. 8 and 26.

⁹⁵ CRC Committee and Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (2017), *Joint General Comment No. 22* (CRC), CMW/C/GC/3-CRC/C/GC/22 (“CRC GC 22”), at para. 53; CRC Committee and Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (2017), *Joint General Comment No. 23* (CRC), CMW/C/GC/4-CRC/C/GC/23 (“CRC GC 23”), at para. 25.

discrimination impacts access to health, education, justice, and social services.⁹⁶ Also, the Committee is concerned about equality in the realization of other rights contained in the CRC, including Article 9 (family life), Article 15 (freedom of association and peaceful assembly), Article 16 (privacy), Article 19 (protection from violence), and Article 31 (rest, leisure and play).⁹⁷

In its Concluding Observations, the Committee also considered the interplay between the right to non-discrimination and preservation of identity,⁹⁸ access to appropriate information,⁹⁹ birth registration, and freedom of religion.¹⁰⁰ The Committee also pays close attention to the interconnectivity between poverty and discrimination,¹⁰¹ as poverty may be related to the protected ground of property delineated in Article 2(1).¹⁰²

Having established that children have a specific right to non-discrimination under Article 2(1) of the CRC, which offers several grounds of protection and is interconnected with the substantive rights of children, it is now important to ascertain what this right means and what it protects. The following section interprets the right to non-discrimination as provided in international human rights law, including the CRC.

2.4. Defining Discrimination and Equality

2.4.1. Overview

As indicated throughout this chapter, international human rights law makes clear that the rights of non-discrimination and equality are inherently tied to human dignity. In its first General Comment, the CRC Committee stated that “[d]iscrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities.”¹⁰³ As shown in Annex 1, the Committee consistently returns to the relationship between non-discrimination and dignity.

The Committee’s statement also indicates that discrimination can take different forms; it may be overt or hidden. The Committee has also stated that discrimination may be direct or indirect.¹⁰⁴ Yet, the CRC, similar to other human rights instruments, lacks a crucial element; a definition for

⁹⁶ Annex 1, Part 2.

⁹⁷ Annex 1, Part 2.

⁹⁸ CRC Committee (2012), Australia Concluding Observations, CRC/C/AUS/CO/4 (“CRC Australia 2012 COs”), at para. 38.

⁹⁹ CRC Committee (2019), Australia Concluding Observations, CRC/C/AUS/CO/5-6* (“CRC Australia 2019 COs”), at para. 27.

¹⁰⁰ CRC Committee (2004), France Concluding Observations, CRC/C/15/Add.240 (“CRC France 2004 COs”), paras. 24 and 26.

¹⁰¹ Annex 1, Part 2. *See for example* CRC Committee (2012), Canada Concluding Observations, CRC/C/CAN/CO/3-4 (“CRC Canada 2012 COs”), at para 33; CRC South Africa 2016 Concluding Observations, at para. 23, all referencing the standard of living while discussing the right to non-discrimination.

¹⁰² Vandenhoe, *supra* note 13, at 169.

¹⁰³ CRC GC 1, at para. 10.

¹⁰⁴ CRC GC 21, at para. 26.

discrimination.¹⁰⁵ This section will review the definition and forms of non-discrimination and equality in international human rights law.

2.4.2. Discrimination

In its General Comment 18, the HRC defines discrimination, as used in the ICCPR, as:

...any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.¹⁰⁶

This definition is commonly used¹⁰⁷ and consistent with the definition of discrimination used in the texts of other human rights treaties.¹⁰⁸ Therefore, it assists with interpreting the CRC's non-discrimination provision.¹⁰⁹ The HRC has also emphasized that "[t]he enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance."¹¹⁰ Also, the HRC underscored that "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant."¹¹¹ The CRC Committee has cited this standard in some of its General Comments.¹¹²

Additionally, the Office of the United Nations High Commissioner for Human Rights ("OHCHR") provided that the right to non-discrimination in the CRC means that "no child should be injured, privileged, punished or deprived of any right" based on the grounds contained in Article 2(1).¹¹³ The CRC Committee stated that "the general principle of non-discrimination in the Convention prohibits differences in treatment on grounds that are *arbitrary and objectively unjustifiable*" (emphasis added).¹¹⁴ This appears to be the negative construction of the HRC's legitimate purpose test cited above.

¹⁰⁵ Three of the Core International Human Rights Instruments contain definitions: ICERD defines "racial discrimination" (Article 1(1)); CEDAW defines "discrimination against women" (Article 1); and the CRPD defines "discrimination on the basis of disability" (Article 2).

¹⁰⁶ HRC GC 18, para. 7.

¹⁰⁷ Besson & Kleber, *supra* note 46, at 59.

¹⁰⁸ See the International Labor Organization Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation (1958), Article 1(1); and the UNESCO Convention Against Discrimination in Education (1966), Article 1(1).

¹⁰⁹ Besson & Kleber, *supra* note 46, at 59.

¹¹⁰ HRC GC 18, para. 8.

¹¹¹ HRC GC 18, para. 13.

¹¹² Annex 1, Part 3.

¹¹³ OHCHR (1997), HR/PUB/91/1 (Rev.1), at 418.

¹¹⁴ Vandenhoele, *supra* note 13, at 79 citing the Concluding Observations for Belgium (June 2002 UN Doc. CRC/C/15/Add.178, para. 6). *But see* Abramson, *supra* note 17, at para. 48, stating that the elements of Article 2(1) do not require that the right to non-discrimination pass "unreasonable", "unfair", "disproportionate", or "unjustified" test for the right to be invoked.

Accordingly, scholars have extracted different elements for the definition of discrimination, which may vary.¹¹⁵ Essentially, discrimination may be considered the treatment of similar situations differently, based on specific prohibited grounds, without a reasonable or objective justification to obtain a legitimate aim.¹¹⁶ Likewise, one should not treat different situations similarly unless there is a reasonable or objective justification.¹¹⁷ But, of course, what is reasonable, objective and constitutes a legitimate aim is open to interpretation and may result in subjective determinations based on cultural attitudes and other factors.¹¹⁸ Thus, this makes a universal standard for discrimination elusive and contributes to the right to non-discrimination being an evolving concept.

2.4.2.1. *De jure and de facto discrimination*

A distinction is also made between *de jure* and *de facto* discrimination. *De jure* discrimination refers to “discrimination in laws or policies.”¹¹⁹ South Africa’s apartheid laws are an example of *de jure* discrimination.

De facto discrimination occurs when the law does not mandate discrimination but when actions produce “a statistical disparity between groups.”¹²⁰ As such, *de facto* discrimination is “discrimination in practice.”¹²¹ Examples of *de facto* discrimination include housing policies that adversely impact minority groups or workplace policies that negatively impact female workers.

While the CRC committee has addressed *de jure* discrimination in its concluding observations,¹²² the bulk of the Committee’s comments involving discrimination surround *de facto* discrimination.¹²³ The Committee does not extensively use either term in its General Comments.

¹¹⁵ See Vandenhoe, supra note 13, at 34, establishing the four elements as: 1) whether there is differential treatment; 2) of equal cases; 3) whether there is objective and reasonable justification; and 4) whether there is proportionality between aims and means. See also Besson, supra note 47, at 435, quoting Bayefsky (1990, pp. 11–24): There are roughly four elements in this definition: (i) the differentiation of similar situations, (ii) the absence of legitimate ends, (iii.) the lack of proportionality of means to ends, and (iv.) and the use of suspect classifications.

¹¹⁶ Besson, supra note 47, at 435.

¹¹⁷ Lord Lester, supra note 12, at 1653.

¹¹⁸ Lord Lester, supra note 12, at 1658.

¹¹⁹ Vandenhoe, supra note 13, at 34.

¹²⁰ Abramson, supra note 17, at para. 101.

¹²¹ Vandenhoe, supra note 13, at 34

¹²² See, for example, CRC UK 2002 COs, at para. 23(d), recommending that the U.K. “[a]mend the nationality law to allow transmission of nationality through unmarried as well as married fathers.”

¹²³ See, for example, CRC Committee (2016), France Concluding Observations, CRC/C/FRA/CO/5 (“CRC France 2016 COs”), at para. 71(b) where the Committee observed, “[s]ome children, including Roma children, unaccompanied migrant children and children living in precarious housing, face numerous difficulties with regard to enrolling in ordinary schools or gaining access to school canteens, and in some cases have not been allowed to do so by municipalities.”

2.4.2.2. Direct and indirect discrimination.

Discrimination may also be direct or indirect (also referred to as overt or covert/hidden).¹²⁴ Direct discrimination occurs when there is a difference of treatment based on a protected characteristic.¹²⁵ Direct discrimination “involves the less favourable treatment on prohibited grounds of an *individual* compared to someone else in comparable circumstances.”¹²⁶

In contrast, indirect discrimination occurs when a law or policy is neutral on its face but has a disparate outcome for individuals with a protected characteristic, without a legitimate, objective aim.¹²⁷ Institutional and structural biases are a form of indirect discrimination.¹²⁸ Both the ICCPR and the ICERD specify that discrimination is a certain action (i.e., distinction, exclusion, restriction, preference) based on grounds (i.e., race, sex, religion), which has the *purpose or effect* of nullifying or impairing the enjoyment of a right.¹²⁹ The addition of the word *effect* indicates that indirect discrimination, which has a discriminatory impact, is also prohibited under the ICCPR and ICERD.¹³⁰ Also, the CRC Committee has requested that States take measures to eradicate structural inequality and discrimination.¹³¹

The CRC Committee explicitly mentioned that discrimination might be direct or indirect in CRC GC 21 and provided examples of how both can affect children in street situations.¹³² For instance, direct discrimination may result from the criminalization of street children for status offenses, such as loitering, or a professional’s refusal to work with street children.¹³³ Indirect discrimination occurs as a result of excluding street children from basic services.¹³⁴

2.4.3. Equality

Unlike the International Covenants, the CRC does not explicitly provide a right to equality, equal protection before the law, or equality protection under the law. However, similar to discrimination, the Core International Human Rights Instruments do not define equality. Judge Tanaka is often cited for discussing the principle of equality in his dissenting opinion in the South West Africa case,¹³⁵ where he stated:

¹²⁴ Besson & Kleber, supra note 46, at 61. See also Abramson, supra note 17, at paras. 98-99.

¹²⁵ Besson & Kleber, supra note 46, page 61.

¹²⁶ Vandenhole, supra note 13, at 35.

¹²⁷ Besson & Kleber, supra note 46, at 61.

¹²⁸ Vandenhole, supra note 13, page 25.

¹²⁹ This is a condense version of the definitions of discrimination contained in HRC, GC No. 18, para. 7 and ICERD, Article 1(1).

¹³⁰ Taylor, supra note 38, at 739. See also Daniel, A. (2011), at 270.

¹³¹ CRC South Africa 2016 COs, para. 24.

¹³² CRC GC 21, Para. 26.

¹³³ CRC GC 21, para. 26.

¹³⁴ CRC GC 21, para. 26.

¹³⁵ 4 South West Africa Cases, Second Phase, judgment, I.C.J. Reports 1966 (“South West Africa Cases, Second Phase”), at 250.

...the principle of equality before the law does not mean the absolute equality, namely the equal treatment of men without regard to individual, concrete circumstances, but it means...relative equality, namely the principle to treat equally what are equal and unequally what are unequal...To treat unequal matters differently according to their inequality is not only permitted but required. The issue is whether the difference exists.¹³⁶

Therefore, a distinction exists between *formal equality* and *substantive equality*. Formal equality strives for “equal treatment of similarly situated individuals.”¹³⁷ This does not take into account differences in individuals.¹³⁸ By contrast, substantive equality endeavors to achieve “equality in results”¹³⁹ or “equality of opportunity.”¹⁴⁰ Substantive equality may involve treating individuals in different situations differently to achieve equal results or equal opportunities.¹⁴¹ The CERD and the CEDAW Committee have referred to both terms in their General Recommendations on special measures.¹⁴²

Finally, a distinction is made between *de jure* and *de facto* equality. The first sentence of Article 26 of the ICCPR provides “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” Lord Lester stated that the “guarantee of equal protection of the law secures *de jure* equality”¹⁴³ and “the guarantee of equality before the law secures *de facto* equality.”¹⁴⁴ Hence, States must refrain from legislating discriminatory laws and policies to achieve *de jure* equality.¹⁴⁵ In contrast, a form of *de facto* equality occurs when a State applies legislation in an equal, non-discriminatory manner.¹⁴⁶ Furthermore, some have used *de facto* equality interchangeably with substantive equality, but there are divergent views about this practice.¹⁴⁷

Besson and Kleber argue that the CRC Committee uses non-discrimination and equality interchangeably.¹⁴⁸ The Committee stated that an example of discrimination is when “laws fail to offer

¹³⁶ South West African Cases, Second Phase, at 303-304.

¹³⁷ Vandenhoe, supra note 13, at 34.

¹³⁸ http://adapt.it/adapt-indice-a-z/wp-content/uploads/2014/08/interight_non-discrimination_in_international_law_2011.pdf, at 17 (last visited 07.06.2021)

¹³⁹ Vandenhoe, supra note 13, at 34.

¹⁴⁰ http://adapt.it/adapt-indice-a-z/wp-content/uploads/2014/08/interight_non-discrimination_in_international_law_2011.pdf, at 17 (last visited 07.06.2021).

¹⁴¹ Ibid.

¹⁴² Supra note 69.

¹⁴³ Lord Lester, supra note 12, at 1654.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ See CEDAW GR 25, at para. 8: “In the Committee’s view, a purely formal legal or programmatic approach is not sufficient to achieve women’s *de facto* equality with men, which the Committee interprets as substantive equality”. *But see*, Vandenhoe, supra note 13, at 35 “Bossuyt does not seem to equate *de jure* equality with formal equality, and *de facto* equality with substantive equality. In his understanding of article 26, CCPR, *de jure equality* encompasses both form equality (equality before the law, *i.e.*, in the application of laws) and substantive equality (equality in the law). *De facto equality* does not so much refer to substantive equality (equality in the law), but to equality in practice.”

¹⁴⁸ Besson & Kleber, supra note 46, at 57.

equal protection against violence.”¹⁴⁹ Thus, the Committee frequently mentions the right to equal protection of the law in its General Comments on corporal punishment and freedom from all forms of violence but does not elaborate on what the right entails.¹⁵⁰ Yet, in the context of migration, the Committee has offered that “[t]he principle of equality of treatment requires States to eliminate any discrimination against migrant children and to adopt appropriate and gender-sensitive provisions to overcome educational barriers.”¹⁵¹ This is consistent with the Committee’s frequent recommendations for the State to promote equality to combat discrimination in its COs.¹⁵² It would be beneficial for the Committee to expound upon what is required of states to realize equality for children.

2.4.4. Affirmative action

Also connected with the right to non-discrimination is the concept of affirmative action.¹⁵³ Affirmative action is described as “...temporary legislative and administrative actions as a whole that are consistent with the goal of remedying situations of disadvantage or exclusion that a human group finds itself in when some aspect of its social life is discriminated against.”¹⁵⁴ The UN General Assembly acknowledged that “special measures, including affirmative action, contribute to achieving equal opportunity and combatting exclusion...”¹⁵⁵ Such actions are taken to obtain “equal enjoyment or exercise of human rights and fundamental freedoms”¹⁵⁶ for a group of people who have been subjected to differential treatment. Therefore, affirmative action is a means to achieve substantive equality.

Some of the Core International Human Rights Instruments have provisions allowing for special measures concerning the principle of equality.¹⁵⁷ Special measures are not a form of discrimination, so long as they do not result in separate rights for different groups.¹⁵⁸ Furthermore, any differentiation in treatment that arises out of affirmative action is legitimate so long “as such action is needed to correct discrimination in fact.”¹⁵⁹ Therefore, the CERD has distinguished between special measures and unjustifiable preferences, which amounts to discrimination.¹⁶⁰ Also, the special measures should be temporary and should only be in place for as long as the need for them exists.¹⁶¹

¹⁴⁹ CRC GC 7, para. 11(a)

¹⁵⁰ Annex 1.

¹⁵¹ CRC GC 23, at para. 62.

¹⁵² CRC Australia 2019 COs, at para. 43; CRC France 2016 COs, at para. 24.

¹⁵³ See Besson & Kleber, *supra* note 46, at footnote 117: ‘affirmative action’ is the term often used in the U.S., while ‘special measures’ is often used in the international context and ‘positive measures’ or ‘positive action’ is the term used in Europe.

¹⁵⁴ Martinez, E. (2011), at, page 1.

¹⁵⁵ UNGA (2007), *Rights of the Child*, Resolution No. 61/646, at para. 12(b).

¹⁵⁶ ICERD, Article 1(4).

¹⁵⁷ See ICERD, Article 1(4); CEDAW, Article 4(1); HRC GC 18, para. 10.; and CESCR GC 20.

¹⁵⁸ ICERD, Article 4.

¹⁵⁹ HRC GC 18, at para. 10.

¹⁶⁰ CERD GR 32, at para. 7.

¹⁶¹ Lord Lester, *supra* note 12, at 1660.

The Preamble of the CRC also recognizes that worldwide “there are children living in exceptionally difficult conditions, and that such children need special consideration”.¹⁶² As such, the CRC permits the use of “positive measures aimed at redressing a situation of real inequality”¹⁶³ and addressing discrimination against marginalized groups of children.¹⁶⁴ Hence, “temporary measures to achieve *de facto* equality is not discrimination.”¹⁶⁵

Having established that affirmation action or special measures are permitted, the methods used to pursue substantive equality may vary. Affirmative action may take the form of legislation, executive or budgetary items, or “plans, policies, programmes and preferential regimes in areas such as employment, housing, education, culture and participation in public life for disfavoured groups.”¹⁶⁶ Also, the affected group should take part in developing the measures.¹⁶⁷

According to Vandenhoe, “[t]he HRC, the CESCR Committee and the CRC Committee have been either restrictive, or at least unsystematic in recommending affirmative action.”¹⁶⁸ However, the COs demonstrate that the CRC Committee often recommends specific affirmative measures to address discrimination against marginalized groups. The Committee’s recommendations include budgeting for affirmative social measures to benefit disadvantaged groups of children¹⁶⁹ and using affirmative action to remedy discrimination and assist vulnerable children.¹⁷⁰ Moreover, the Committee further elaborates special measures in the section of the COs titled “Special protection measures.” Recommendations include: developing and implementing policies and programmes aimed to ensure equal access to social and health services and education for indigenous children;¹⁷¹ conducting a study on the systemic overrepresentation of Aboriginal and African Canadian children in the criminal justice system and developing plans, such as training law enforcement on the CRC, aimed at eliminating disparities in the sentencing and incarceration among these children;¹⁷² and taking measures to combat stigmatization of Roma and ensure their social integration, access to education and an adequate standard of living.¹⁷³

¹⁶² CRC, Preamble.

¹⁶³ CRC Committee, *General comment No. 14*, CRC /C/GC/14 (“CRC GC 14”), at para. 54.

¹⁶⁴ Annex 1.

¹⁶⁵ CRC GC 21, para. 27.

¹⁶⁶ CERD GR 32, para. 13.

¹⁶⁷ CERD GR 32, para. 18.

¹⁶⁸ Vandenhoe, *supra* note 13, page 287.

¹⁶⁹ CRC Committee (2016), United Kingdom of Great Britain and Northern Ireland Concluding Observations, CRC/C/GBR/CO/5 (“CRC UK 2016 COs”), at para. 13(c); CRC Canada 2012 COs, at para. 17.

¹⁷⁰ See CRC Australia 2012 COs, at para. 30; CRC Australia 2019 COs, at para. 19(b); CRC UK 2008 Cos, at para. 25(b).

¹⁷¹ CRC Committee (2005), Australia Concluding Observations, CRC/C/15/Add.268 (“CRC Australia 2005 COs”), at para. 77

¹⁷² CRC Canada 2012 COs, at para. 86(e).

¹⁷³ CRC Committee (2006), Hungary Concluding Observations, CRC/C/HUN/CO/2 (“CRC Hungary 2006 COs”), at para. 63.

The Committee has frequently addressed special measures in its General Comments.¹⁷⁴ It recommended that States implement positive measures to respond to structural causes of poverty and income inequality.¹⁷⁵ Examples of such actions include creating a violence-prevention strategy to address gender discrimination, empowering girls and investing in their secondary education, and implementing cash transfer programs to increase access to education for marginalized groups.¹⁷⁶

Finally, a distinction is made between affirmative action and reasonable accommodation,¹⁷⁷ typically used in the context of persons with disabilities enjoying their rights. While both strive for substantive equality, “reasonable accommodation benefits an individual, while affirmative action involves preferential treatment to groups of individuals with a shared characteristic.”¹⁷⁸ The CRC Committee stated that States are obliged to provide reasonable accommodations¹⁷⁹ to ensure equal access for children with disabilities.¹⁸⁰

Section 2.4 provided an overview of the meanings of discrimination, equality and affirmative action in international human rights law and used specific examples to show how the CRC Committee viewed each of these. The monitoring of the implementation of this right is also one of the treaty bodies’ duties and will be explored in the next section.

2.5. Implementing the Right to Non-discrimination.

2.5.1. Overview

As shown, the rights to non-discrimination and equality are intrinsically tied in the human rights framework. They represent positive and negative obligations of the same right.¹⁸¹ Equality can lead to non-discrimination, and discrimination may lead to inequality. Therefore, the prevention of discrimination is a negative obligation, and the promotion of equality is a positive obligation.¹⁸² As stated by the CRC Committee:

The right to non-discrimination is not a passive obligation, prohibiting all forms of discrimination in the enjoyment of rights under the Convention, but also requires appropriate proactive measures taken by the State to ensure effective equal opportunities for all children to enjoy the rights under the Convention...¹⁸³

This section will review who is responsible for fulfilling the right to non-discrimination and what the responsibilities entail.

¹⁷⁴ Annex 1, Part 3.

¹⁷⁵ Annex 1, Part 3.

¹⁷⁶ Annex 1, Part 3.

¹⁷⁷ CRPD, Article 2.

¹⁷⁸ Taylor, *supra* note 38, at 742.

¹⁷⁹ As defined in the CRPD.

¹⁸⁰ CRC GC 17, at para. 58(d).

¹⁸¹ Besson, *supra* note 47, at 434.

¹⁸² Besson, *supra* note 47, at 437.

¹⁸³ CRC GC 14, at para. 41.

2.5.2. State Obligations

The ICCPR and the CRC require States to “respect and ensure” individual rights without distinction or discrimination.¹⁸⁴ Respect is a negative obligation not to violate the right and ensure is a positive obligation for States to take measures and action to enable the enjoyment of the right.¹⁸⁵

The obligations to prevent discrimination and promote equality may also be reviewed in light of a State’s obligations to respect, protect and fulfil, often used to analyze a State’s provision of economic, social and cultural rights.¹⁸⁶ The obligations to respect and protect are negative obligations that require States not to discriminate and to prevent discrimination by third parties.¹⁸⁷ As such, a State must repeal any discriminatory laws and practices and not adopt discriminatory legislation.¹⁸⁸

However, as Lord Lester has pointed out, “[p]ositive action may be required to protect a particular group against discrimination by other groups.”¹⁸⁹ The obligation to fulfil is a positive obligation that may be divided into obligations to facilitate, promote and provide.¹⁹⁰ This duty requires States to take positive measures to achieve equality which includes legislative and budgetary measures (facilitate), raising awareness (promote), and implementing special measures (provide).¹⁹¹ The obligation to fulfil (facilitate) also involves ensuring remedies are in place for those whose rights are violated and may include ensuring private actors do not discriminate.¹⁹²

2.5.3. Implementation under the CRC

Article 4 of the CRC¹⁹³ provides the means for implementation of Article 2.¹⁹⁴ Although Article 4 distinguishes between the implementation of civil and political rights and economic, social, and cultural rights, the State’s obligation to respect and ensure the right to non-discrimination cannot be progressively realized and must be immediate.¹⁹⁵ This remains true even when the right to non-discrimination concerns economic, social and cultural rights, including rights to education and health.¹⁹⁶ States cannot defend the presence of discrimination by arguing a lack of resources.¹⁹⁷

¹⁸⁴ Article 2(1). It is agreed upon that the use of distinction is akin to discrimination. See Abramson, *supra* note 17, at para. 47.

¹⁸⁵ Detrick, *supra* note 14, at 68.

¹⁸⁶ Vandenhole, *supra* note 13, at 187.

¹⁸⁷ *Ibid.*

¹⁸⁸ See HRC GC 18, at para. 12.

¹⁸⁹ Lord Lester, *supra* note 12, at 1661.

¹⁹⁰ Vandenhole, *supra* note 13, at 187.

¹⁹¹ Vandenhole, *supra* note 13, at 188.

¹⁹² *Ibid.*

¹⁹³ Article 4 provides “State parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.”

¹⁹⁴ Besson, *supra* note 47, at 454.

¹⁹⁵ Detrick, *supra* note 14, at 69.

¹⁹⁶ Besson & Kleber, *supra* note 46, at 67. *But see* Vandenhole, *supra* note 13, at 188 distinguishing that the CESCR seems to allow for progressive realization in tackling *de facto* discrimination.

¹⁹⁷ Benson, *supra* note 47, at 455.

Furthermore, implementing the right to non-discrimination requires States to identify individual children or groups of children who may require special measures to realize their rights.¹⁹⁸

In 1996, the Committee delineated what State Parties should include in their periodic reports regarding non-discrimination.¹⁹⁹ First, States must inform whether children's right of non-discrimination, including all the grounds outlined in Article 2, is a binding principle in the States' constitution or domestic law.²⁰⁰ Thereafter, States must inform the Committee about actions taken to ensure that discrimination on the protected grounds is "prevented and combated, both in law and practice."²⁰¹ States must also indicate whether there are any specific measures to combat discrimination against disadvantaged children.²⁰² Measures may involve reducing economic, social and geographical disparities.²⁰³ Finally, States must provide information on data collection regarding non-discrimination²⁰⁴ and awareness measures to eliminate discriminatory attitudes and prejudice.²⁰⁵ Therefore, the full implementation of the right to non-discrimination requires a wide range of State action.²⁰⁶ However, the 1996 General Guidelines have been revised numerous times. The current guidelines are consistent with harmonizing the reporting process among the treaty bodies and, therefore, and require less information regarding the right to non-discrimination.²⁰⁷

This section will evaluate the Committee's monitoring of the implementation of the CRC's right to non-discrimination by again reviewing the Committee's General Comments and COs for the six countries listed earlier.²⁰⁸ The review will be conducted based on the elements established in the 1996 General Guidelines. However, because the Committee's recommendations for special measures were reviewed in Section 2.4.4, it will not be revisited here.

2.5.3.1. Protection in the Constitution and legislation

The CRC Committee has emphasized the importance of State Parties including the right to non-discrimination on all the grounds provided in Article 2(1) in the national Constitution (if enacted) or other domestic legislation.²⁰⁹ States should "strengthen [their] legislative efforts to fully integrate the

¹⁹⁸ CRC Committee (2003), *General comment No. 5*, CRC/GC/2003/5 (hereinafter "CRC GC 5"), at para. 12.

¹⁹⁹ CRC Committee (1996), *General Guidelines*, CRC/C/58 (1996) ("1996 General Guidelines").

²⁰⁰ 1996 General Guidelines, at para. 25.

²⁰¹ 1996 General Guidelines, at para. 26.

²⁰² 1996 General Guidelines, at paras. 27-28.

²⁰³ 1996 General Guidelines, at para. 27.

²⁰⁴ 1996 General Guidelines, at para. 29.

²⁰⁵ 1996 General Guidelines, at paragraph 30.

²⁰⁶ CRC GC 5, at para. 12 stating: "...For example, the Committee highlights...the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified. Addressing discrimination may require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes."

²⁰⁷ See CRC Committee (2015), *Treaty-specific guidelines*, CRC/C/58/Rev.3, at para. 40.

²⁰⁸ Note, only two Concluding Observations have been issued for South Africa.

²⁰⁹ See Vandenhoe, *supra* note 13, at 272, footnote 2251, highlighting many occasions where the Committee has made this request.

right to non-discrimination...in all relevant legislation concerning children.”²¹⁰ The Committee also urged States to repeal, amend, or not enact discriminatory legislation.²¹¹

2.5.3.2. Prevention and elimination of all forms of discrimination in law and practice

Once a State has legislated the right to non-discrimination, it must ensure that the law has full and effective implementation “throughout the territories under its jurisdiction.”²¹² Furthermore, States should have safeguards “to ensure that decentralization or devolution does not lead to discrimination in the enjoyment of rights by children in different regions.”²¹³ Therefore, when there is a separation of powers between the federal and state, provincial or territorial government, the State Party must ensure that the provinces, states, and territories are aware of and implement the rights of the CRC.²¹⁴

States must implement laws prohibiting discrimination²¹⁵ and enact measures to prevent and eliminate discrimination in practice.²¹⁶ Therefore, the implementation of the right should span all branches of government and levels of planning and policymaking.²¹⁷ Efforts include effectively applying the right “in all political, judicial and administrative decisions and in projects, programmes and services that have an impact on all children, in particular children belonging to minority and other vulnerable groups.”²¹⁸ In addition, States must act to eradicate structural inequality²¹⁹ and disparities in access to social services.²²⁰ The Committee has also stressed the importance of developing a national plan to respect and protect the rights of vulnerable children.²²¹

²¹⁰ CRC Committee (2003), Canada Concluding Observations, CRC/C/15/Add.215 (“CRC Canada 2003 COs”), at para. 23.

²¹¹ See Annex 1, Part 3; CRC South Africa 2000 COs, at para. 17; CRC Australia 2012 COs, at para 30; CRC UK 2002 COs, at para. 23(d). *But see* Vandenhoe, *supra* note 13, at 286, stating that the CRC Committee has issued least specific recommendations on the repeal of discriminatory legislation or practices.

²¹² CRC GC 5, para. 41.

²¹³ *Ibid.*

²¹⁴ CRC Committee (1995), Canada Concluding Observations, CRC/C/15/Add.37, at para. 9 and CRC Canada 2003 COs, at para. 9.

²¹⁵ CRC Committee (2020), Hungary Concluding Observations, CRC/C/HUN/CO/6* (“CRC Hungary 2020 COs”), at para 16(a); CRC South Africa 2000 COs, at para. 18.

²¹⁶ CRC South Africa 2000 COs, at para. 18. The Committee expressed concern because although the right to non-discrimination was in the Constitution and legislation insufficient measures were implement to ensure access to services for vulnerable groups.

²¹⁷ Vandenhoe, *supra* note 13, page 276.

²¹⁸ CRC Canada 2003 COs, para. 22.

²¹⁹ CRC South Africa 2016 COs, at para. 24(a).

²²⁰ CRC Australia 2012 COs, at para. 30.

²²¹ CRC Canada 2012 COs, at para. 86(e); CRC South Africa 2016 COs, at para. 66(b).

Furthermore, States may not directly or indirectly discriminate when making budget decisions.²²² Therefore, States should budget funds to address disparities,²²³ implement special measures²²⁴ and use appropriate resources to promote equality and remove discriminatory barriers.²²⁵ States should combat discrimination at all levels of society and create a climate of equality and tolerance.²²⁶ In practice, States may prevent and eliminate discrimination by taking disciplinary, administrative, and penal action, if necessary.²²⁷

Also, training professional groups²²⁸ and establishing complaints and monitoring mechanisms can facilitate the positive right to equality.²²⁹ In addition, every child has the right to be heard in all matters that concern them without discrimination.²³⁰

Furthermore, the Committee has echoed concerns and reiterated requests raised by other treaty bodies.²³¹ The Committee also repeatedly asked State Parties to advise on special measures taken regarding the Durban Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the outcome document adopted at the 2009 Durban Review Conference.²³²

2.5.3.3. Data Collection and Evaluation

The Committee has repeatedly mentioned the need for sufficient data to identify and combat discrimination adequately.²³³ Attention must be “be given to identifying and giving priority to marginalized and disadvantaged groups of children.”²³⁴ This allows states to determine whether

²²² General Comment 19, paras. 27(a) and 41

²²³ CRC Australia 2019 COs, at para. 10

²²⁴ CRC Committee (2016), *General Comment No. 19*, CRC/C/GC/19 (“CRC GC 19”), at para. 42; CRC Australia 2012 COs, at para. 20; CRC Canada 2012 COs, at para. 17 (funds should remain protected even in times of economic crisis or other emergencies).

²²⁵ CRC GC 19, at para. 61.

²²⁶ CRC France 2016 COs, at para. 24.

²²⁷ CRC UK 2008 COs, at para. 25.

²²⁸ CRC France 2016 COs, at para. 24.

²²⁹ CRC Committee (2009), France Concluding Observations, CRC/C/FRA/CO/4 (“CRC France 2009 COs”), at para. 28.

²³⁰ CRC Committee (2009), *General comment No. 12*, CRC/C/GC/12 (“CRC GC 12”), at para. 135.

²³¹ CRC Canada 2003 COs, at para. 21 (citing concerns by the CERD), and para. 59 (urging Canada to fulfil recommendations made by the HRC, CERD and CESCR).

²³² CRC Canada 2012 COs, at para. 33; CRC France 2009 COs, at para. 34; CRC Committee (2014), Hungary Concluding Observations, CRC/C/HUN/CO/3-5. (2014), at para. 20. *See also* CRC Committee (2009), *General Comment No. 11*, CRC/C/GC/11 (“CRC GC 11”), at para. 28. The Durban Declaration and Programme outlines specific measures to combat various forms of discrimination.

²³³ CRC GC 5, at para. 48.

²³⁴ CRC GC 5, at para. 30; CRC Canada 2003 COs, at para. 20; CRC Australia 2019 COs, at para. 11.

discrimination exists,²³⁵ how it impacts access to services,²³⁶ and who requires special protection.²³⁷ Furthermore, the Committee stresses that it is not enough to collect data, but that the data must be “evaluated and used to assess progress in implementation, to identify problems and to inform all policy development for children.”²³⁸ Another aim of the data collection should be effectively implementing the CRC through the design of policies and programs while focusing on vulnerable children.²³⁹

2.5.3.4. Awareness-raising or educational campaigns to eliminate prejudice

The focus of awareness-raising campaigns should be to eliminate prejudices and discriminatory attitudes and may involve the circulation of educational materials, children sharing personal experiences of discrimination, and action by the mass media, Members of Parliament, and NGOs.²⁴⁰ In a unique approach, the Committee has also encouraged the use of religious and community leaders to change negative attitudes towards groups of children.²⁴¹ The Committee has noted that other ways to raise awareness and address prejudices include updating textbooks with accurate information about the history of indigenous peoples²⁴² and fostering dialogue between migrants and their host communities.²⁴³

Awareness-raising also serves to inform children of their rights so that they can be realized.²⁴⁴ The Committee has often stressed the importance of awareness-raising campaigns and education in targeting racism and discrimination against children with disabilities, indigenous children, gender violence, children living with HIV/AIDS, and street children.²⁴⁵

2.5.3.5. The Role of National Human Rights Institutions (NHRIs)

The Committee has noted the role of NHRIs in implementing the rights contained in the CRC and encourages State Parties to establish these institutions on a federal level and within its states, provinces, or territories.²⁴⁶ When created, States should ensure that the NHRIs have sufficient resources to operate efficiently.²⁴⁷ The NHRIs should be multi-disciplinary and should include organizations that have an anti-discrimination focus.²⁴⁸ The Committee has also stressed that NHRIs

²³⁵ CRC GC 5, at para. 12.

²³⁶ CRC GC 9, at para. 12.

²³⁷ CRC Australia 2012 COs, at para. 22.

²³⁸ CRC GC 5, at para. 48; CRC Hungary 2020 COs, at para. 36.

²³⁹ CRC Canada 2012 COs, at para. 21.

²⁴⁰ Annex 1, Part 3; See also CRC UK 2016 COs, at para. 22; CRC Australia 2019 COs, at para. 19.

²⁴¹ Vandenhoe, supra note 13, at 287.

²⁴² CRC GC 11, at para. 58.

²⁴³ CRC GA 23, at para. 63.

²⁴⁴ CRC GC 5, at para. 66.

²⁴⁵ Annex 1, Part 3. See also CRC South Africa 2016 COs, paras. 38(d) and 46(d).

²⁴⁶ CRC Committee (2002), *General comment No. 2, CRC/GC/2002/2* (hereinafter “CRC GC 2”), at paras. 1-2. See also CRC Canada 2003 COs, at para. 15.

²⁴⁷ CRC Australia 2019 COs, at para. 12.

²⁴⁸ CRC GC 2, at para. 12.

and children's ombudsman may assist with independent monitoring to ensure that States comply with their obligations under the CRC.²⁴⁹

2.5.4. Private individuals

Typically, the rights to non-discrimination or equality in the Core International Human Rights Instruments cannot be used to regulate the behaviors of private persons, partly because of the possibility of interference with certain civil and political rights.²⁵⁰ This concept of a treaty being used to regulate the behavior of individuals is known as a direct horizontal effect, and it has not been recognized with the principle of non-discrimination in international human rights law.²⁵¹ On the contrary, an indirect horizontal effect provides that "domestic judges and other institutions ought to refer to the principle of non-discrimination to interpret domestic private law and the law regulating inter-individual relationships in a way that prohibits discrimination among private parties."²⁵² The CRC's right to non-discrimination has an indirect horizontal effect,²⁵³ and it is directly justiciable, unlike many of the other Core International Human Rights Instruments provisions.²⁵⁴

Yet, neither the direct or indirect horizontal effect interferes with the State's obligation to prevent discrimination from occurring.²⁵⁵ The HRC states that "[t]he right to equality before the law and freedom from discrimination, protected by article 26, requires States to act against discrimination by public and private agencies in all fields."²⁵⁶ Also, both the CEDAW and the CERD emphasize that States should consider the role of private parties in addressing discrimination.²⁵⁷

The CRC Committee has made clear that even in circumstances where the State has delegated its duties under the CRC to private parties (i.e., privatized healthcare or education), the State has not absolved itself of its responsibility to fulfil the right to non-discrimination.²⁵⁸ Accordingly, the Committee declares that States are obliged to "prevent discrimination in the private sphere in general and provide remedy if it occurs."²⁵⁹ Moreover, the Committee's General Comments have demonstrated how States can interact with private parties regarding this right, including partnering with private health insurance companies to promote equality in access to services and regulation of mass media to prevent portrayals that perpetuate discrimination.²⁶⁰

²⁴⁹ See CRC Australia 2005 COs, at para. 15 and 16.

²⁵⁰ Abramson, *supra* note 17, at para. 101. See *also* Lord Lester, *supra* note 12, at 1661.

²⁵¹ Besson & Kleber, *supra* note 46, at 55.

²⁵² *Ibid.*

²⁵³ *Ibid.*

²⁵⁴ *Id.*, at 49.

²⁵⁵ Besson, *supra* note 47, at 438.

²⁵⁶ HRC (2000), *General Comment No. 28*, CCPR/C/21/Rev.1/Add.10, at para. 31.

²⁵⁷ See CEDAW, Article 2(e); ICERD, Article 2(1)(d); CERD GR 32, at para. 9.

²⁵⁸ UNICEF (2007), at 22.

²⁵⁹ CRC Committee (2013), *General comment No. 16*, CRC/C/GC/16, at para. 14.

²⁶⁰ Annex 1, Part 3. See *also* CRC France 2009 COs, at para. 33; CRC UK 2016 COs, at para. 23, recommending that the State take measures to address negative media portrayals of children in the media.

Ultimately, there is extensive research on the role of State and private actors with respect to fulfilling the obligations of the right to non-discrimination. In brief, suffice it to say that the primary duty bearers are State Parties, and they are responsible for monitoring and preventing discrimination by non-State actors. However, in certain circumstances, the obligation may also extend to private actors.

2.6. Chapter Conclusion.

The chapter demonstrated that the right to non-discrimination is intrinsic in the human rights framework and inherently connected to the dignity and respect of a person. The international framework shows that all forms of discrimination, *de facto* and *de jure*, direct or indirect, are prohibited. However, not all *differential treatment* is prohibited if it can be shown to be reasonable and objective and in pursuit of a legitimate aim.

Furthermore, the right to equality and equal treatment is also considered fundamental in human rights law. It is a positive obligation for States to ensure both formal and substantive equality. Also, while States are the main duty bearers, they are obligated to protect against acts of discrimination by private actors.

This chapter also showed the particular vulnerabilities of children and the evolution of their right to non-discrimination. The CRC's right to non-discrimination expanded on the right as it existed in the International Covenants by explicitly adding two additional protected grounds. The Committee has emphasized that achieving the right to non-discrimination is a multi-faceted approach, which involves legislation, budgeting, administration, enforcement, data, monitoring, and changing attitudes and public opinion.

When describing why a convention which specifically addressed child rights was beneficial, Detrick stated, "[t]rying to make known and explain an incomplete set of provisions to be found in a disparate selection of instruments is not likely to be effective."²⁶¹ Likewise, it can be argued that the Committee's approach to non-discrimination is disjointed, as the right is mentioned in different ways throughout the General Comments. Therefore, it will be beneficial for the Committee to compile a complete General Comment on the right to non-discrimination, as it applies to children generally and to marginalized groups, including special measures which may be taken. This is what the CESCR did. Although the CESCR explored the principle of discrimination as it applies to several rights in the ICESCR, it issued a separate General Comment to "clarify the Committee's understanding of the provisions of article 2, paragraph 2, of the Covenant, including the scope of State obligations (Part II), the prohibited grounds of discrimination (Part III), and national implementation (Part IV)."²⁶² Additionally, CESCR GC 20 defines the forms of discrimination that violate article 2(2),²⁶³ systemic discrimination,²⁶⁴ permissible differential treatment,²⁶⁵ and addresses discrimination in the private sphere.²⁶⁶ A similar comprehensive General Comment issued by the CRC would aid in understanding the scope of the right and State responsibilities under the CRC.

²⁶¹ Detrick et al., *supra* note 19, at 29.

²⁶² CESCR GC 20, at para. 6.

²⁶³ *Id.*, paras. 7-10.

²⁶⁴ *Id.*, para. 12.

²⁶⁵ *Id.*, para. 13.

²⁶⁶ *Id.*, para. 11.

The author's opinion is that the CRC Committee's General Comment 21 on children in street situations is the most comprehensive in addressing discrimination. It explicitly provides several examples of how discrimination may materialize regarding this group of vulnerable children and how such discrimination can be combatted, including through the use of special measures.

Yet, the Committee exceptionally displays how non-discrimination is interconnected to other rights and how children may be discriminated against on several grounds, including the mere fact that they are children. In this regard, the Committee extends a child's rights approach to the right to non-discrimination and measures which should be taken to address discrimination against children. It pays particular attention to discrimination against certain groups of children (girls, children with disabilities, indigenous children, street children). Furthermore, the Committee's broad use of "other status" allows for the protection of many vulnerable groups of children. However, the Committee does not often specifically address discrimination based on race or ethnic origin. Moreover, the Committee does not take the opportunity to expound upon the effects of discrimination.

Overall, the CRC is significant because it encourages a child rights approach to realize children's rights, including the right to non-discrimination. As the CRC Committee stated, "[a] child rights approach ensures respect for the dignity, life, survival, well-being, health, development, participation and non-discrimination of the child as a rights holder."²⁶⁷

The following chapter will review children's rights in the US. In addition, the legal framework for the right to non-discrimination in the US will be explored.

²⁶⁷ CRC GC 21, para. 10.

Chapter 3. The United States, Children, and Non-discrimination

3.1. Children's Rights (or lack thereof) in the US

In the US, the Constitution²⁶⁸ and all treaties made under the country's authority are the supreme law of the land.²⁶⁹ The Bill of Rights,²⁷⁰ which sets out fundamental rights, including freedom of speech and religion, and protection from unreasonable search and seizure and cruel and unusual punishment, are also included in the Constitution.²⁷¹ There is no specific provision in the Constitution that provides children with certain rights, but in *In re Gault*, the US Supreme Court ("Supreme Court" or "Court") held that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."²⁷² Other Supreme Court cases have echoed this sentiment and acknowledged that children have rights under the Constitution.²⁷³ However, the Court has also held that some constitutional rights are limited when applied to children. For example, children do not have the same Fourth Amendment protection from search and seizure or First Amendment freedom of speech rights while in school.²⁷⁴ Thus, it is evident that the Constitution may be applied differently between adults and children, prompting the realization that the Constitution and the Court's interpretation do not fully protect children's rights. The Supreme Court has acknowledged that conflicting interests, such as the parents/legal guardians' rights as custody holders, the State's role as *parens patriae*, protecting children from harm, and permitting children to exercise Constitutional freedoms, must be balanced.²⁷⁵

Interestingly, while no provision in the Constitution addresses children explicitly, a parental rights constitutional amendment was proposed in 2008,²⁷⁶ and it has the support of seven states.²⁷⁷ As presented, the amendment states, "[t]he liberty of parents to direct the upbringing, education, and care of their children is a fundamental right."²⁷⁸ The proposed amendment is due to concern over government intervention in family life, and that consideration of the best interest of the child principle may override parental rights.²⁷⁹ It is this mindset which also results in resistance to the ratification of

²⁶⁸ U.S. Const. ("Constitution").

²⁶⁹ U.S. Const., Article VI.

²⁷⁰ The first ten Constitutional Amendments are referred to collectively as the "Bill of Rights".

²⁷¹ <https://www.whitehouse.gov/about-the-white-house/our-government/the-constitution/> (last visited 25 May 2021).

²⁷² *In re Gault*, 387 U.S. 1 at 13 (1967), holding that the Due Process Clause contained in the 14th Amendment also applies to juveniles.

²⁷³ Annex 2. *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52; *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503 (1969).

²⁷⁴ Annex 2. *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646 (1995); *Bethel School District v. Fraser*, 478 U.S. 675 (1986).

²⁷⁵ Annex 2. *Schall v. Martin*, 467 U.S. 253 (1984).

²⁷⁶ See H.J.Res.36. <https://www.congress.gov/bill/116th-congress/house-joint-resolution/36> (last visited 21.06.2021)

²⁷⁷ Florida, Idaho, Louisiana, Montana, Oklahoma, South Dakota, and Wyoming have all passed resolutions urging Congress to move forward with ratification of the amendment.

²⁷⁸ H.J.Res.36, §1.

²⁷⁹ <https://parentalrights.org/amendment/> (last visited 23.06.2021).

the CRC in the US.²⁸⁰ But this is not to say that there is no support for children rights throughout the country. On the contrary, there is a respectable list of states and cities that support the CRC's ratification.²⁸¹ Furthermore, there is widespread public support for the principles that the CRC promotes, such as quality health care and education for children.²⁸²

While the US is the only remaining country to ratify the CRC, the Supreme Court has considered the CRC and its principles in landmark decisions. In *Roper v. Simmons*,²⁸³ the US Supreme Court banned capital punishment for individuals under 18 years old based on the reasoning that juveniles are still maturing, developing decision-making skills and are susceptible to negative influences.²⁸⁴ The Supreme Court also considered international human rights standards in *Graham v. Florida*, which prohibited the imposition of life sentences without the possibility of parole for juvenile offenders who committed nonhomicide offenses.²⁸⁵ These cases exemplify how to frame an issue with a child rights focus (i.e. the imposition of a life sentence without the possibility of parole is akin to sentencing a child to death).²⁸⁶ Furthermore, a diverse strategy of building a robust network, scientific research on child development and culpability, strategic litigation, powerful amici curiae briefs and international human rights opinion culminated in these meaningful victories for child rights.²⁸⁷

Another critical characteristic of the US is its federalist framework. The Constitution reserves to the fifty states any power which is not delegated to the federal government.²⁸⁸ Therefore, obligations such as the provision of education, health, safety, welfare, and criminal justice may fall within a state's or local government's purview.²⁸⁹ As such, each state has the right to develop its own laws and policies, which may vary drastically from state to state. Hence, another argument against the ratification of the CRC is that it will allow the federal government or international community to intervene in areas reserved to the states.²⁹⁰ However, as will be discussed in the next chapter, the US typically makes Reservations, Understandings and Declarations (RUDs) when ratifying international treaties to address this issue.²⁹¹

To conclude this brief overview of children's rights in the US, legal protections for children and their rights may be found in the Constitution, federal law, or state or local law. Children's rights are a controversial topic. Parents make decisions about their children, and states *may* intervene to protect

²⁸⁰ Dohrn, supra note 3, 73, fn 2 (2015).

²⁸¹ Todres, J. (2011), at 140.

²⁸² Id., at 148.

²⁸³ *Roper v. Simmons*, 543 U.S. 551 (2005).

²⁸⁴ *Roper* at 569. Court also acknowledged that at the time only the US and Somalia had not ratified Article 37 of the CRC. *Roper* at 576.

²⁸⁵ *Graham v. Florida*, 560 U.S. 48 (2010).

²⁸⁶ Dohrn, supra note 3, at 85.

²⁸⁷ Dohrn, supra note 3.

²⁸⁸ U.S. Const., Amend X.

²⁸⁹ The Constitution is complex in that there are expressed, enumerated powers provided to the federal government, in addition to implied powers. This creates conflicts between the federal government and states when it argued that the federal government is infringing on states powers.

²⁹⁰ Davidson, H. (2014), at 523.

²⁹¹ Ibid.

children when parents cannot do so, rather than allowing children to participate in realizing their rights as envisioned by the CRC.²⁹²

This chapter will review US law as it provides the right to non-discrimination for children. First, there will be an analysis of the right to non-discrimination as provided in the Constitution, followed by a review of protections in federal law. Ultimately, through a comparison to the international human rights framework, the chapter will show that the US legal protections from racial discrimination do not meet the standards established by the CRC or the Committee's interpretation of the principle.

3.2. US Laws for Protection from Discrimination.

US law first memorialized the concept of equality in the Declaration of Independence, which provides “[w]e hold these truths to be self-evident, that all men are created equal.”²⁹³ The Declaration of Independence exclusively refers to men and not women or children. Furthermore, since it was drafted when slavery was an acceptable practice, equality was not intended to extend to all people. Ultimately, the US ratified the Equal Protection Clause (“EPC”) in the Fourteenth Amendment of the Constitution. One of its primary purposes was to ensure the equal rights of freed slaves in the country.²⁹⁴ The next section will review the EPC's role in ensuring the right to non-discrimination in the US.

3.2.1. The Equal Protection Clause of the US Constitution

There is no constitutional provision that explicitly provides children with the right to non-discrimination. However, the EPC provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws”.²⁹⁵ So while the EPC does not apply specifically to children, children are encompassed within its scope, which is a significant improvement over the Declaration of Independence. The EPC has been used to challenge discrimination against children, especially in arguably one of the most seminal Supreme Court cases, *Brown v. Board of Education*,²⁹⁶ which involved discrimination based on race.

It is important to note that, unlike the CRC and International Covenants, the EPC does not delineate the grounds for equal protection. Since the ruling in *Brown*, the EPC has been used to challenge other forms of discrimination, including discrimination against children born out of wedlock,²⁹⁷ lawful migrants,²⁹⁸ undocumented migrant children,²⁹⁹ gender discrimination,³⁰⁰ and discrimination based on

²⁹² Bartholet, E. (2011), at 86.

²⁹³ Declaration of Independence (US 1776)

²⁹⁴ *Ex parte Commonwealth of Virginia*, 100 U.S. 339, 344–45, (1879).

²⁹⁵ *U.S. Const.* amend XIV, § 1.

²⁹⁶ *Brown v. Board of Education*, 347 U.S. 483 (1954) (hereinafter “*Brown*”).

²⁹⁷ Annex 2. *Levy v. Louisiana*, 391 U.S. 73 (1968)

²⁹⁸ Annex 2. *Graham v. Richardson*, 403 U.S. 365 (1971).

²⁹⁹ Annex 2. *Plyler v. Doe*, 457 U.S. 202 (1982).

³⁰⁰ Annex 2. *Reed v. Reed*, 404 U.S. 71 (1971).

sexual orientation.³⁰¹ However, the EPC has not been interpreted as guaranteeing equal protection of rights to other groups delineated in the CRC, including individuals with disabilities.³⁰²

Similar to the Core International Human Rights Instruments, the EPC applies only to State actors (federal, state and local) and not to individuals.³⁰³ A line of cases indicates “that the state action requirement is satisfied whenever the state enforces private discrimination.”³⁰⁴ Yet, due to the Constitution’s guarantee of exercising civil and political rights, such as freedom of speech, the US does not regulate purely private conduct (unless it involves the commission of a hate crime, etc.).³⁰⁵

3.2.1.1. *The Significance of Brown*

Prior to *Brown*, the Supreme Court sanctioned the use of “separate but equal” laws³⁰⁶ that permitted state-authorized segregation in the ill-famed case of *Plessy v. Ferguson*.³⁰⁷ *Brown* was a class-action lawsuit, and the plaintiffs were minors from the four states seeking the desegregation of schools.³⁰⁸ The *Brown* Court held that segregated public education based on race violated equal protection of laws.³⁰⁹ In rejecting *Plessy*, Justice Warren made the famous statement that “[s]eparate educational facilities are inherently unequal.”³¹⁰

However, while *Brown* was instrumental for Black children’s rights to equal education, it did not miraculously improve their circumstances around the US. A year after *Brown*, the Supreme Court issued a second ruling to implore the states to integrate the schools with “all deliberate speed.”³¹¹ Following this, the Supreme Court held that “all deliberate speed” was no longer acceptable for the desegregation of schools and that “every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools.”³¹²

The segregation laws at stake in *Brown* are examples of *de jure* segregation. *Brown* deemed these laws to be unconstitutional. However, *de facto* segregation, which occurred due to social and economic factors, was also prevalent in the US.³¹³ Therefore, at times, it was difficult to ascertain whether segregation was a result of state action and, thus, a violation of the EPC. Lines were blurred

³⁰¹ Annex 2. *Romer v. Evans*, 517 U.S. 620 (1996); *Obergefell v. Hodges*, 576 U.S. 644 (2015).

³⁰² Klein, L. (2017).

³⁰³ See *Civil Rights Cases*, 109 US 3 (1883); *Ex parte Commonwealth of Virginia*, 100 U.S. 339, (1879).

³⁰⁴ Custom as law within the meaning of the equal protection clause an approach to problems of racial-discrimination (1963), at 563.

³⁰⁵ US (2021), CERD State party report, CERD/C/USA/10-12 (“US CERD Report”), at paras. 2 and 11.

³⁰⁶ These laws were also referred as “Jim Crow” laws.

³⁰⁷ Annex 2. *Plessy v. Ferguson*, 163 U.S. 537 (1896).

³⁰⁸ *Brown* at 487.

³⁰⁹ *Id.*, at 495.

³¹⁰ *Ibid.*

³¹¹ *Brown v. Board of Education II*, 349, U.S. 294 (1955).

³¹² *Alexander v. Holmes County Bd. of Ed.*, 396 U.S. 19 (1969).

³¹³ See *Milliken v. Bradley*, 418 U.S. 717, 756 (1974) (hereinafter “*Milliken*”). In his concurring opinion, Justice Stewart indicated factors of *de facto* segregation including “in-migration, birth rates, economic changes , or cumulative acts of private racial fears”. All of these factors may have led to the result of a predominantly Black school district in Detroit. Refer to Annex 2 for additional facts.

because zoning and the creation of school districts often fostered segregation. In *Milliken v. Bradley*, the Supreme Court legitimized what was determined to be *de facto* segregation.³¹⁴ It established that a violation of the EPC would not result from “the mere fact of different racial compositions in contiguous districts...in the absence of a showing that such disparity was imposed, fostered, or encouraged by the State or its political subdivisions.”³¹⁵

In his dissent, Justice Thurgood Marshall said that the Milliken Court took a “giant step backwards” from *Brown*.³¹⁶ The Court guaranteed that Black children “will receive the same separate and inherently unequal education in the future as they have been unconstitutionally afforded in the past.”³¹⁷ Decades after this ruling, schools in the US remain *de facto* segregated, which results in inequality in education.³¹⁸

The following section will review the standards for protection from racial discrimination under the EPC outside of the context of segregation in schools. As the Court’s approach to discrimination and the EPC has evolved, the section will focus on the law as it exists today.

3.2.1.2 Classifications

Chapter 2 introduced the concepts of *de jure* and *de facto* discrimination and direct and indirect discrimination. As stated, the Jim Crow segregation laws are an example of *de jure* segregation that often resulted in *de jure* and direct discrimination. Laws also existed, which made suspect classifications, such as distinctions based on race, on their face.³¹⁹ The Court invokes the use of a strict scrutiny review when a law includes a suspect classification³²⁰ or impacts a fundamental human right.³²¹

Fundamental rights include voting³²² and movement between states.³²³ The proposed parental amendment to the Constitution mentioned above would also be a fundamental right if passed. In cases involving fundamental rights, the Supreme Court articulated the standard for review as whether there is a compelling state interest to justify the classification, resulting in denying the fundamental

³¹⁴ *Milliken v. Bradley*, 418 U.S. 717 (1974).

³¹⁵ *Id.*, at 756. Justice Stewart concurring opinion.

³¹⁶ *Id.*, at 781-

³¹⁷ *Id.*, at 782. Justice Marshall dissenting opinion.

³¹⁸ <https://www.nytimes.com/2019/05/02/learning/lesson-plans/still-separate-still-unequal-teaching-about-school-segregation-and-educational-inequality.html> (last visited 14.06.2021): providing that more than half of the country’s schools are in racially concentrated school districts (districts where 75% of the students are either white or non-white). The article also contains data received from the Department of Education and synthesized by ProPublica to show the extent of the issue. Inequality is shown because “school districts that predominantly serve students of color received \$23 billion less in funding than mostly white school districts in the United States in 2016.”

³¹⁹ *Korematsu v. United States* 323 U.S. 214 (1944).

³²⁰ *Id.*, at 215-216.

³²¹ *Roe v. Wade*, 410 U.S. 113 (1973).

³²² *Dunn v. Blumstein*, 405 U.S. 330 (1972).

³²³ *Shapiro v. Thompson*, 394 U.S. 618 (1969).

right.³²⁴ However, the Supreme Court held that while the right to education is an important right of “societal significance,” it is not a fundamental right that is explicitly or implicitly guaranteed in the Constitution.³²⁵ Therefore, the Court did not review the plaintiff’s allegations that using local property taxes to fund education was a form of wealth-based discrimination that violated the EPC under the strict scrutiny standard.³²⁶ Thus, the funding structure was upheld as it was *rationaly related* to a legitimate state interest.³²⁷

Regarding suspect classifications, the Supreme Court stated that “[a] racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification.”³²⁸ Other suspect classifications include national origin, religion, and alienage.³²⁹ As such, laws or policies that use racial classifications must be narrowly tailored to meet a compelling government interest. This includes affirmative action policies, which make distinctions based on race.

The U.S. Commission on Civil Rights has defined affirmative action as:

[A]ny measure, beyond simple termination of a discriminatory practice, that permits the consideration of race, national origin, sex, or disability, along with other criteria, and which is adopted to provide opportunities to a class of qualified individuals who have either historically or actually been denied those opportunities and/or to prevent the recurrence of discrimination in the future.³³⁰

Consistent with international standards, this definition acknowledges that measures may be used to address past discrimination against disadvantaged groups and prevent discrimination from occurring in the future.

Affirmative action programs have been subject to constant review by the courts and are subject to the same strict scrutiny standard of review as racial classifications described above; a narrowly tailored law or policy serving a compelling government interest.³³¹ The Supreme Court has held that programs that remedy past proven discrimination or encourage diversity serve compelling government interests, but quotas should not be used to achieve diversity.³³² Furthermore, when school admission uses race as a determination, such policies should be limited in time and have a “logical end point.”³³³

The reasoning for this approach is that the Constitution is colorblind.³³⁴ As Justice Powell explained:

³²⁴ *Kramer v. Union Free School Dist.*, 395 U.S. 621, 633 (1969).

³²⁵ *San Antonio Independent School Dist. V. Rodriguez*, 411 U.S. 1, 33 (1973).

³²⁶ *Ibid.*

³²⁷ *Ibid.*

³²⁸ *Personnel Adm’r of Massachusetts v. Feeney*, 442 U.S. 256, 272 (1979).

³²⁹ https://www.law.cornell.edu/wex/suspect_classification (last visited 06.17.2021).

³³⁰ Shuford, R.T. (2009), at 524, fn 12.

³³¹ Annex 2. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

³³² Annex 2. *United States v. Paradise*, 480 U.S. 149 (1987); *Grutter v. Bollinger*, 539 U.S. 306, 326, 341 (2003).

³³³ *Grutter* at 341.

³³⁴ Siegel, R.B. (2011), at 1281.

“[t]he guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal.”³³⁵

This statement ignores the concept of *substantive equality* discussed in Chapter 2 and is contrary to Judge Tanaka’s statement, which requires the different treatment of unequal matters.³³⁶ Furthermore, both the CRC Committee and HRC acknowledge that different treatment is appropriate so long as it is reasonable and objective and aims to achieve a legitimate purpose. Thus, the Supreme Court’s strict scrutiny analysis of affirmative action policies is inconsistent with international human rights standards and creates significant barriers to achieving equality.

3.2.1.3. Discriminatory Purpose/Intent

Laws or policies which are neutral on their face but disparately impact groups of individuals that share characteristics, such as race or sex, may result in *de facto* or indirect discrimination. The Supreme Court has held that discriminatory purpose or intent must be shown to find that state action with a discriminatory impact violates the EPC.³³⁷ The Court acknowledged that “an invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another.”³³⁸ However, a discriminatory impact alone will not suffice to have a valid claim under the EPC.³³⁹ The onus is on the claimant to show the state’s intent to discriminate.³⁴⁰ This is a difficult standard to meet³⁴¹ and is at odds with international human rights standards, which acknowledges discrimination resulting from disparate impact.³⁴²

3.2.2. Federal Law Prohibiting Discrimination - Title IV and Title VI

Aside from the EPC, various federal laws act to protect people from discrimination in different circumstances.³⁴³ The Civil Rights Act of 1964 (“CRA”)³⁴⁴ contains protections from discrimination based on race, color, religion, national origin, or sex occurring in different contexts. The enactment of the CRA was a response to the Jim Crow laws and various other voter restrictions and discriminatory laws that impacted Black people in the US.³⁴⁵

³³⁵ *Regents of University of California v. Bakke*, 438 U.S. 265, 289-290 (1978).

³³⁶ *Supra* note 136.

³³⁷ *See Washington v. Davis*, 426 U.S. 229 (1976).

³³⁸ *Id.*, at 242.

³³⁹ *Ibid.*

³⁴⁰ *Ibid.*

³⁴¹ Annex 2. *McCleskey v. Kemp*, 481 U.S. 279 (1987).

³⁴² *Supra* notes 130 and 131.

³⁴³ For example, Title IX of the Education Amendments of 1973 prohibits discrimination based on sex, including sexual orientation and gender identity, in federally-assisted educational programs and activities. Also, the Americans with Disabilities Act and Individuals with Disabilities Education Act prohibit discrimination against individuals with disabilities in schools.

³⁴⁴ The Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241.

³⁴⁵ Congressional Research Service (2000). <https://fas.org/sgp/crs/misc/R46534.pdf> (last visited 27.05.2021).

Title IV of the CRA³⁴⁶ is a mechanism for federal enforcement of the EPC and seeks to ensure desegregation of public schools, as required by *Brown*.³⁴⁷ Public schools include schools operated by the state, or an entity thereof, and schools that operate “predominantly through the use of government funds or property, or funds or property derived from a governmental source.”³⁴⁸

Title VI of the CRA³⁴⁹ has a wide breadth and addresses discrimination based on race, color, or national origin in the context of federally funded programs, including schools, child welfare agencies, state court systems, and private institutions such as hospitals and universities that receive federal funds.³⁵⁰ Therefore, Title VI is a tool for encouraging non-discrimination and equality; as one US Representative said, “[s]top the discrimination, get the money; continue the discrimination, do not get the money.”³⁵¹

Unfortunately, Title IV and Title VI are consistent with the Supreme Court’s application of the EPC. Title IV only applies to *de jure* segregation and leaves *de facto* segregation unaddressed.³⁵² Section 601 of Title VI, which stipulates conditions for federal funding, is consistent with the EPC and only applies to intentional discrimination (not discrimination based on a disparate impact).³⁵³ Also similar to the EPC, any distinctions based on race are subject to strict scrutiny and must be narrowly tailored to meet a compelling government interest.³⁵⁴

The Department of Justice (DOJ) is responsible for enforcing Title IV and the Department of Education (ED) provides technical assistance to schools in the process of desegregating.³⁵⁵ Remedies for violation of Title IV are similar to remedies for violation of the EPC, and include court-ordered “goals for balancing the racial composition of students, and mandatory busing or transportation.”³⁵⁶ In addition, Title IV provides a private right of action regarding *de jure* segregation.³⁵⁷

Title VI is enforced through each public agency extending federal funds.³⁵⁸ Federal agencies have extensive options, including investigating complaints, terminating funding, or referring to the DOJ for litigation.³⁵⁹ Individuals also have a private right of action under Section 601.³⁶⁰

³⁴⁶ Civil Rights Act of 1964 § 4, 42 U.S.C. § 2000c *et seq.* (“Title IV”).

³⁴⁷ Congressional Research Service, *supra* note 346, at 31.

³⁴⁸ *Id.*, at 34.

³⁴⁹ Civil Rights Act of 1964 § 6, 42 U.S.C. § 2000d *et seq.* (“Title VI”).

³⁵⁰ Congressional Research Service, *supra* note 346, at 43.

³⁵¹ *Id.*, at 47, citing Rep. Lindsay in 110 Cong.Rec. 1542 (1964).

³⁵² Annex 2. *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1 (1971).

³⁵³ *Alexander v. Sandoval*, 532 U.S. 275 (2001)

³⁵⁴ Congressional Research Service, *supra* note 346, at 48.

³⁵⁵ *Id.*, at 35.

³⁵⁶ *Id.*, at 36 - 37.

³⁵⁷ *Id.*, at 38.

³⁵⁸ *Id.*, at 54.

³⁵⁹ *Id.*, at 58-60.

³⁶⁰ *Id.*, at 60.

3.3 Conclusion

This chapter shows that children rights are still an evolving concept in the US. While international opinion was significant in making advances for children's rights in juvenile justice cases, the US falls short compared to the standards established by the CRC and Core International Human Rights Instruments regarding the rights to non-discrimination and equality. The US does not have a constitutional guarantee for equality that delineates all the grounds of discrimination provided in the CRC.³⁶¹ Furthermore, the definition of what constitutes an actual claim for discrimination is very stringent. The requisite to prove intent increases the difficulty of having an actionable claim when the only evidence of discrimination is the disparate impact an action has on certain groups. This is inconsistent with international standards and disregards the presence of structural and institutional racism in the country.

Moreover, it is challenging for affirmative action measures to withstand the strict scrutiny standard. A framework exists that treats the Constitution as colorblind, and all distinctions based on race are subject to the same standard of review. However, it is questionable whether this is effective when society does not operate in a colorblind manner. This practice precludes the attainment of substantive equality for disadvantaged groups.

³⁶¹ See UNICEF, *supra* note 258, at page 21. The Convention does not require that States have Constitutions, but when a State has a national Constitution, the right to non-discrimination should be provided in it to be consistent with the Convention.

Chapter 4. Comparative Analysis - CRC, ICCPR, and ICERD

4.1. Overview

Of the Core International Human Rights Instruments, which address the right to non-discrimination or right to equality, the US has ratified the ICCPR³⁶² and the ICERD.³⁶³ To date, neither the ICCPR nor the ICERD has been used to advocate for advancing children's right to non-discrimination in courts.³⁶⁴ Still, it is crucial to know whether these treaties promote the right to non-discrimination for individuals in the US. Because if these treaties sufficiently operate to combat discrimination against children in the US, is there a need to ratify the CRC to realize the right to non-discrimination for children? This chapter will begin with an analysis of the treatment of racial or ethnic discrimination against children by reviewing the Concluding Observations issued by the CERD, HRC, and CRC Committee for the six countries mentioned earlier. The purpose of this analysis will be to see whether the CRC's child rights framework is truly more effective in combating racial discrimination against children than the treaties the US has ratified. It is important to note that because France is the only one of these countries to have ratified the Optional Protocol to the Convention on the Rights of a Child on a communications procedure, the review will be limited to COs.

Following the comparison, this chapter will briefly review whether the US has fulfilled its obligations under the ICCPR and the ICERD. The US' treatment of the ratified treaties will indicate how the US will approach implementing the right to non-discrimination in the CRC (if ratified).

This Chapter will establish two essential points. First, the CRC Committee takes a child's rights approach, which is more effective at recognizing and addressing racial discrimination against children. Next, this chapter will show that the US' ratification of the ICCPR and ICERD is primarily symbolic. Neither has been an effective tool in combatting the structural discrimination that exists in the US. Therefore, though the CRC is a more effective instrument for realizing a child's right to non-discrimination, it would likely join the ICCPR and ICERD in being symbolic if the US were to ratify it.

4.2. CRC Comparison to the ICCPR and ICERD

The HRC and the CERD both adopted Concluding Observations for the US in 2014.³⁶⁵ While the HRC generally discusses racial disparities in the criminal justice system,³⁶⁶ it does not explicitly address racial discrimination against children. The CERD also approaches racial or ethnic discrimination from a broad standpoint focusing on inequalities in the criminal justice system³⁶⁷ and access to health care,

³⁶² Signed by the US on 5 October 1977 and ratified on 8 June 1992.

³⁶³ Signed by the US on 28 September 1996 and ratified on 21 October 1994.

³⁶⁴ Based on a review of US case law. The majority of cases involving children or juveniles and the ICCPR involve the use of the death penalty for persons under 18 years of age and prior to the Supreme Court's ruling *Roper*. See *Domingues v. Nevada*, 112 Nev. 683, P.2d. 1364 (1996). The ICCPR has also been used to advocate for the termination of life sentences without the possibility of parole for juveniles. See *Loggins v. Thomas*, 654 F.3d 1204 (2011) and *See v. McDonald*, 2013 WL 1281621 (2013).

³⁶⁵ HRC (2014), US Concluding Observations, CCPR/C/USA/CO/4 ("HRC US 2014 COs") and CERD (2014), US Concluding Observations, CERD/C/USA/CO/7-9 (2014) ("CERD US 2014 COs").

³⁶⁶ HRC US 2014 COs, at para. 6.

³⁶⁷ CERD US 2014 COs, at para. 20.

including high maternal and infant mortality rates for African Americans,³⁶⁸ racial profiling in the context of immigration,³⁶⁹ and the rights of indigenous peoples.³⁷⁰ However, the CERD also considers discrimination against children by identifying disparities in the juvenile justice system, including the school-to-prison pipeline (to be discussed in the next chapter)³⁷¹ and the removal of indigenous children from their families by the child welfare system.³⁷² Furthermore, similar to requests made by the CRC, the CERD also focused on the formulation of a national action plan to combat racial discrimination.³⁷³

Given the expanse of the review by the CERD, it begs the question of whether the US' ratification of the CRC will ultimately mean more for Black children's rights to non-discrimination. Annex 3 compares the most recent Concluding Observations issued by the CERD, HRC, and CRC Committee for Australia, Canada, France, Hungary, South Africa, and the United Kingdom. The focus of the comparison is racial or ethnic discrimination against children specifically.

Annex 3 shows that the HRC focused the least on specific racial or ethnic discrimination against children.³⁷⁴ When the HRC discussed the right to non-discrimination, it was mainly in the context of groups of marginalized minorities, and not children specifically. The CERD proved more aggressive in tackling discrimination against children and discussed the issue in four of the COs.³⁷⁵ Annex 3 also shows that, similar to the US example summarized above, the CERD is more likely to address the impact of discrimination on multiple rights and make more extensive recommendations than the HRC. Still, the CRC Committee's COs are the most comprehensive in identifying discrimination related to other rights and proposing remedial measures for racial or ethnic discrimination against children. The CRC Committee recommendations typically encompassed the recommendations made by the HRC and CERD and acknowledged how racial discrimination impacts many of the other rights in the CRC. Furthermore, the Committee often makes specific recommendations, including special measures, to remedy racial discrimination against marginalized children.

Detrick stated, "[t]hrough the Convention, the human rights of the child are clear, coherent and comprehensive."³⁷⁶ Annex 3 demonstrates the comprehensive approach taken by Committee in considering children's rights to non-discrimination based on race or ethnic origin. To that end, the CRC will offer additional support for Black children's right to non-discrimination in the US.

4.3. US' Ratification of the ICCPR and ICERD

4.3.1. The Right to Non-discrimination

³⁶⁸ *Id.*, at para. 15.

³⁶⁹ *Ibid.*

³⁷⁰ *Id.*, at para. 24.

³⁷¹ *Id.*, at para. 21.

³⁷² *Id.*, at para. 24.

³⁷³ *Id.*, at para. 25.

³⁷⁴ The HRC discussed children specifically in the COs for Canada and Hungary.

³⁷⁵ Australia, Canada, Hungary, and South Africa.

³⁷⁶ Detrick et al., *supra* note 19, at 30.

As shown in Chapter 3, there are vast differences in protecting the right to non-discrimination under the EPC versus international human rights law. The Supreme Court's interpretation of the EPC, which requires a demonstrated discriminatory purpose or intent, is inconsistent with the human rights standard that recognizes discrimination with a disparate impact, as mentioned in Chapter 2. The HRC and the CERD have criticized the US for requiring proof of intent to have a valid discrimination claim because it is ill-equipped to combat implicit bias and structural racism.³⁷⁷ The CRC Committee has also stressed the importance of eliminating structural discrimination.³⁷⁸ However, the US is steadfast that the requirement of discriminatory intent is consistent with the obligations imposed by the treaties."³⁷⁹

Furthermore, the US has been un-swayed by requests to implement affirmative action measures³⁸⁰ and maintains that the treaties do not require affirmative action as a government policy.³⁸¹ Furthermore, the US reiterated the Supreme Court's position that any race classification must be narrowly tailored to meet a compelling government interest.³⁸² As previously stated, this strict scrutiny test conflicts with the standards set by international human rights law, including the CRC, that encourages special measures to achieve substantive equality.

4.3.2. Implementation

Upon ratifying the ICCPR and ICERD, the US made substantial reservations, understandings and declarations (RUDs) to the treaties.³⁸³ In its RUDs, the US has made clear that both the ICCPR and the ICERD are non-self-executing.³⁸⁴ A simplified distinction between self-executing treaties and non-self-executing treaties is "a self-executing treaty is one that may be directly applied in the courts, whereas a non-self-executing treaty is one that requires legislative implementation before it may be applied by the courts (and other domestic law-applying officials)."³⁸⁵ Therefore, the US' declaration that the treaties are non-self-executing means that individuals may not seek redress for the States violation of the treaties or private rights of enforcement through domestic courts.³⁸⁶ US Courts have also agreed that they cannot hear claims alleging violation of the ICERD or ICCPR due to their non-self-executing nature.³⁸⁷ The HRC and CERD asked the US to reconsider this reservation or ensure

³⁷⁷ See Daniel, *supra* note 130, at 285. See also Connor, C. (2008), at 524-525.

³⁷⁸ CRC South Africa 2016 COs, at para. 24.

³⁷⁹ Daniel, *supra* note 130, at 296.

³⁸⁰ Connor, *supra* note 378, at 524.

³⁸¹ *Ibid.*

³⁸² US CERD State Party Report, at 13.

³⁸³ A complete list of the United States' RUDs to the ICCPR are available at <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-4.en.pdf> (last visited 01.06.2021). A complete list of the United States' reservations and declarations to the ICERD are available at <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-2.en.pdf> (last visited 01.06.2021).

³⁸⁴ See paragraph 1 to the US' declarations to the ICCPR, which states "that the provisions of articles 1 through 27 of the Covenant are not self-executing." See also paragraph III to the US' declarations and reservations to the ICERD, stating "[t]hat the United States declares that the provisions of the Convention are not self-executing."

³⁸⁵ Vasquez, C. (2018).

³⁸⁶ *Maria v. McElroy*, 68 F.Supp.2d 206, 234 (E.D.N.Y.,1999).

³⁸⁷ *Johnson v. Quander*, 370 F.Supp.2d 79, 101 (D.D.C.,2005); *Ralk v. Lincoln County, Ga.*, 81 F.Supp.2d 1372, 1380 (S.D.Ga.,2000).

that there are effective remedies for violations of the treaties in domestic law, to no avail.³⁸⁸ Although Besson and Kleber state that the CRC's right to non-discrimination is justiciable,³⁸⁹ this demonstrates that it will likely not operate in that manner in the US.

Also, the US has not recognized the jurisdiction of the HRC or CERD to receive individual complaints. Therefore, individuals cannot seek recourse on an international level for the US' failure to comply with the terms of the treaties. Moreover, in its RUDs for the ICERD, the US stated that it must consent "before any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice."³⁹⁰ Therefore, the US has effectively ensured that the myriad of rights provided in the treaties cannot be enforced outside of provisions embedded in domestic law. And as Freeman has stated, "[r]ights without remedies are of symbolic importance, no more."³⁹¹

The US also made RUDs that addressed the federalist structure of the government and stated that the rights of the conventions would be implemented by the federal government so long as it falls within its jurisdiction.³⁹² Moreover, in response to concerns about the national application of the right to non-discrimination, the US maintains that it has sufficient provisions in its national legal framework to fulfill its obligations under the ICCPR and ICERD.³⁹³ However, both Committees have expressed concern over implementing the treaties at the national, state, and local levels.³⁹⁴

The CERD also recommended the creation of a NHRI to ensure implementation of the Convention.³⁹⁵ The US responded that "it has in place sufficient multiple and complementary protections and mechanisms to reinforce its ability to guarantee respect for human rights."³⁹⁶ However, it also acknowledged that these mechanisms are not independent as required by the Paris Principles.³⁹⁷

4.4. Chapter Conclusion.

This chapter builds upon the conclusion summarized in Chapter 2. It demonstrates that compared to the HRC and CERD, the CRC Committee performs a more comprehensive analysis of children's right to non-discrimination, based on the grounds of race or ethnicity. Based on this, the benefits of the US' ratification of the CRC to promote Black children's right to non-discrimination is apparent. Yet, this chapter also showed that ratification of the CRC would likely be symbolic in nature, comparable to that of the ICCPR and ICERD.

The HRC, CERD and CRC Committee all make similar recommendations regarding implementing the right to non-discrimination. The CRC Committee has expressed concern when the principles of the

³⁸⁸ HRC US 2014 COs, at para. 4; CERD US 2014 COs, at para. 5.

³⁸⁹ Besson & Kleber, *supra* note 46, at 49.

³⁹⁰ US RUDs to the ICERD, paragraph I(3), referencing Article 22 of the ICERD.

³⁹¹ Freeman (2007), at 8.

³⁹² US RUDs to the ICERD, Section II; US Understandings to the ICCPR, para. 5.

³⁹³ US (2021), HRC State party report, CCPR/C/USA/5, at para. 5; US CERD State Party Report, at 13.

³⁹⁴ See Report of HRC, A/69/40 (2014) 138 (4) USA; CERD US 2014 COs, at para. 5.

³⁹⁵ CERD US 2014 COs, at para. 6.

³⁹⁶ US CERD State Party Report, at para. 12.

³⁹⁷ *Id.*, at, para. 31.

CRC are not self-executing,³⁹⁸ and the US made RUDs to the ratification of the ICCPR and ICERD, which stated that both treaties are non-self-executing. The US also maintains that its national framework is sufficient to address the right to non-discrimination. However, this position is problematic because structural racism, which is prevalent, presents challenges in proving discriminatory intent and is seldom actionable under US law. Also, since the US has not consented to review by either the HRC or CERD, it is unlikely the US would ratify the CRC's Optional protocol on individual communications. Furthermore, the US has demonstrated that it is resistant to creating NHRIs, which aids in monitoring and enforcing rights. As such, if ratified, implementation and enforcement of the CRC's right to non-discrimination would likely not occur, resulting in symbolic rights.

Yet, there are still some areas where the CRC framework can influence the right to non-discrimination for Black Children in the US. Recommendations will be made in the next chapter through the use of a case study.

³⁹⁸ CRC France 2016 COs, at paras. 7-8.

Chapter 5. Case Study – The School-to-prison-pipeline

5.1. Historic discrimination against Black children in the US.

Historically, Black children in the US have been exposed to *de jure* and *de facto*, direct and indirect discrimination. Studies conducted over time display the prejudices which exist regarding Black children in the US. A doll study conducted in the 1940s showed the effects of segregation on children.³⁹⁹ The study exemplified that Black children thought of themselves as inferior to White children and exhibited lower self-esteem.⁴⁰⁰ Also, a recent study showed a tendency among pre-school teachers to observe Black boys more closely when misbehavior was expected.⁴⁰¹

Throughout the years, the media has also played its part in perpetuating the negative stereotypes of Black children. For example, black males are depicted as ominous and threatening while wreaking havoc,⁴⁰² and black girls are oversexualized and portrayed as aggressive.⁴⁰³ These depictions promote stereotypes and foster the belief that Black children are less “pure” or “innocent” than White children.⁴⁰⁴

Statistics from the US show that there are disparities in social well-being for Black children across several sectors. A significant portion of the Black community is poverty-stricken compared to the White community.⁴⁰⁵ As the CRC Committee has recognized, poverty also impacts access to other rights, services and programs.⁴⁰⁶ For example, infant mortality for Black children is twice that for White children,⁴⁰⁷ and one in four black children experience hunger.⁴⁰⁸ Furthermore, as exemplified by the lead water crisis in Flint, Michigan, Black children are less likely to have access to clean water.⁴⁰⁹ Research also shows that future prison capacity requirements are planned off of the third and fourth-grade reading tests results of Black children.⁴¹⁰ Studies among children born in 2001 showed that a Black boy had a 1 in 3 chance of imprisonment in his life, versus 1 in 17 for White boys born that

³⁹⁹ <https://www.naacpldf.org/ldf-celebrates-60th-anniversary-brown-v-board-education/significance-doll-test/> (last visited 16.06.2021). This study was cited in *Brown*.

⁴⁰⁰ *Ibid.*

⁴⁰¹ https://medicine.yale.edu/childstudy/zipf/publications/Preschool%20Implicit%20Bias%20Policy%20Brief_final_9_26_276766_5379_v1.pdf (last visited 16.06.2021).

⁴⁰² Bryan, N. (2017), at 336.

⁴⁰³ <https://marquettewire.org/4041391/featured/moses-oversexualization-of-black-girls-women-must-stop/> (last visited 21.06.2021).

⁴⁰⁴ See for example <https://marquettewire.org/4041391/featured/moses-oversexualization-of-black-girls-women-must-stop/> (last visited 21.06.2021). See also Martin, J.L. & Beese, J.A. (2017), at 1213.

⁴⁰⁵ See Shuford, *supra* note 331, at 519: “Nearly twenty-five percent of African-Americans live below the poverty line, three times the percentage of whites. That number increases to 33.5% for blacks under the age of eighteen, as compared to ten percent of white youth.”

⁴⁰⁶ See Annex 1, Part 2.

⁴⁰⁷ <https://tcf.org/content/report/racism-inequality-health-care-african-americans/?agreed=1> (last visited 21.06.2021).

⁴⁰⁸ *Ibid.*

⁴⁰⁹ Patel, A.I., & Schmidt, L.A. (2017), at 1354–1356.

⁴¹⁰ Bryan, *supra* note 403, at 333.

same year.⁴¹¹ Black girls born in 2001 had a 1 in 17 likelihood of imprisonment in their lifetimes versus a 1 in 111 for White girls.⁴¹²

Yet, despite experiencing persistent discrimination, Black children in the US are no strangers to advocating for their rights. Most recently, thousands of Black children, along with children of many races and ethnic groups, participated in the Black Lives Matter Movement's marches for justice after George Floyd's death. During the civil rights movement, Black children participated in the children's crusade, marched for desegregation, and were arrested during their non-violent protests.⁴¹³ As will be discussed below, Black children have also been instrumental in changing laws regarding the school-to-prison pipeline.

The following section will focus on the discriminatory effects of the school-to-prison pipeline. The Case Study will make recommendations regarding using a child rights approach to influence the realization of the right to non-discrimination by Black children.

5.2. The School to Prison Pipeline.

5.2.1. Summary of the School-to-Prison Pipeline

The school-to-prison pipeline ("STPP") is the term used to describe the societal apparatus that funnels children from the education system into the criminal justice system.⁴¹⁴ A multitude of factors contributes to the STPP. Poverty, continued *de facto* segregation of schools, zero-tolerance policies, close surveillance of Black children, and the presence of school resource officers (hereinafter "SROs") all contribute to the pipeline's flow.⁴¹⁵

The approach to school discipline changed in the US in the 1980s and 1990s, with campaigns to be tough on crime. The *Guns Free School Act of 1994* established zero-tolerance policies. It mandated compulsory expulsions⁴¹⁶ and a referral to law enforcement⁴¹⁷ for any student who brought a firearm to school. Schools have vastly expanded the zero-tolerance policies to encompass suspensions and expulsions for minor offenses, including "tardiness, class absences, disrespect, and noncompliance."⁴¹⁸

Although White males have predominately perpetrated the mass school shootings in the US, the STPP disproportionately impacts Black youth.⁴¹⁹ The American Civil Liberties Union (ACLU) analyzed data from the Civil Rights Data Collection (CRDC) and found that while Black children only account for 16% of public school enrolment (compared to 51% for White children), they represent 31% of the

⁴¹¹ Shuford, *supra* note 331, at 515.

⁴¹² *Ibid.*

⁴¹³ <https://www.biography.com/news/black-history-birmingham-childrens-crusade-1963> (last visited 20.06.2021)

⁴¹⁴ <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline> (last visited 21.06.2021).

⁴¹⁵ Chiang, E. (2014), at 860-861. See also Martin & Beese, *supra* note 405, at 1206.

⁴¹⁶ 20 U.S. Code §7961(b)(1)

⁴¹⁷ 20 U.S. Code §7961(h)(1)

⁴¹⁸ Smith, C.D. (2009), at 1028.

⁴¹⁹ Triplett, N.P., et al. (2014), at 361.

school-related arrests.⁴²⁰ Furthermore, Black children are three times as likely to be suspended or expelled than their White peers.⁴²¹ This trend spans all age groups — black children in preschool account for 18% of the student body but 42% of the suspensions.⁴²² Research also shows that Black children “were disciplined more harshly and more frequently because of their race than similarly situated white students.”⁴²³

Also, the increased presence of SROs in schools has allowed teachers and administrators to delegate discipline once handled by them. While initially placed in schools to promote safety, SROs have now evolved into school disciplinarians.⁴²⁴ Black students are increasingly surveilled by teachers, school administrators and SROs, which has resulted in increased student arrests and referrals to law enforcement agencies.⁴²⁵ Thus, Black students have been arrested for falling asleep in class, throwing temper tantrums in kindergarten, and accidentally causing an explosion in science class.⁴²⁶

Whether to station a SRO at school typically depends on “(1) school size, (2) percentage of children receiving reduced-price school lunch, and (3) school location.”⁴²⁷ Thus, larger schools located in urban areas, with a sizeable racial minority student base are more likely to have SROs.⁴²⁸ Therefore, the intersection between poverty and the STPP is evident.

Consequentially, the effects of the STPP may lead to Black students dropping out of school, having substance abuse issues, and subsequent involvement with the juvenile justice system.⁴²⁹

5.3. Recommendations based on the CRC Framework

The STPP is an example of the intersectionality of discrimination to the provision of other child rights. It results in the precise outcome the CRC Committee warns of in their General Comment 1; it offends human dignity while undermining or destroying Black children’s capacity to benefit from educational opportunities.⁴³⁰ The STPP’s disparate impact on Black children threatens their right to education⁴³¹

⁴²⁰ <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/school-prison-pipeline-infographic#:~:text=Black%20students%20represent%2031%25%20of,justice%20system%20the%20following%20year> (last visited 21.06.2021).

⁴²¹ *Ibid.*

⁴²² <https://www.njjn.org/uploads/digital-library/disparate-impact-memo-2015.authcheckdam.pdf> (last visited 21.06.2021).

⁴²³ *Ibid.*

⁴²⁴ See Nance, J. (2016), at 948-949; Merkwae, A. (2015) at 159.

⁴²⁵ See Merkwae, supra note 425, at 154; Allen, Q. and White-Smith, K. (2014), at 448.

⁴²⁶ <https://www.theguardian.com/commentisfree/2019/mar/14/black-brown-girls-school-prison-crime-jaquira-diaz> (last visited 24.06.2020).

⁴²⁷ Price, P. (2009), at 548.

⁴²⁸ *Ibid.*

⁴²⁹ <https://www.njjn.org/uploads/digital-library/disparate-impact-memo-2015.authcheckdam.pdf> (last visited 21.06.2021).

⁴³⁰ CRC GC 1, para. 10.

⁴³¹ CRC, Articles 28 & 29

and their rights to identity,⁴³² health,⁴³³ and equal access to justice.⁴³⁴ Additionally, because of the behavior of some SROs, Black children's right to freedom from violence⁴³⁵ is jeopardized.⁴³⁶

This section will make recommendations, influenced by the CRC's child rights approach, to address the STPP and aid in realizing the right to non-discrimination for Black children.

5.3.1. Recognize disparate impact discrimination and end de facto segregation in practice

Challenges made to the STPP under the EPC have been dismissed because the students could not prove the school's intent to treat them differently based on race, nor did the students demonstrate that the school treated similarly situated White students less harshly.⁴³⁷ Consequently, the effect of structural and institutional racism on Black children in the US is ignored⁴³⁸ and essentially leaves these children without any means of redress for violation of the right of non-discrimination. This conflicts with the principles of the CRC.

The CRC Committee has recommended amendments where legislation providing children with the right to non-discrimination is lacking.⁴³⁹ The Supreme Court has also stated that Congress may establish disparate impact standards in anti-discrimination legislation if it wishes.⁴⁴⁰ Thus, Congress should amend Title IV and Title VI of the CRA to acknowledge *de facto* segregation and discrimination which has a disparate impact, respectively. Moreover, since Titles IV and VI are federal laws that apply to entities receiving federal funding, such amendments should have a significant effect in combatting structural discrimination.

Although school segregation is no longer formally mandated by law, *de facto* segregation results in the exact outcome that *Brown* attempted to prohibit; inherently unequal separate educational facilities.⁴⁴¹ *De facto* segregation plays a role in the STPP, as SROs are more likely to be stationed in schools in underprivileged neighborhoods. Hence, as the CRC Committee recognized, "...addressing

⁴³² CRC, Article 8

⁴³³ CRC Article 24.

⁴³⁴ CRC, Articles 37 and 40.

⁴³⁵ CRC Article 19

⁴³⁶ See <https://www.nbcnews.com/news/us-news/video-appears-show-cop-body-slamming-student-s-c-classroom-n451896>, (last visited 21.06.2021). See also <https://edition.cnn.com/2019/12/17/us/north-carolina-student-slammed-charges/index.html> (last visited 21.06.2021).

⁴³⁷ *Fuller v. Decatur Public School Board of Education School District*, 78 F. Supp. 2d 812 (C.D. Ill. 2000).

⁴³⁸ Daniel, *supra* note 130, at 288: "Structural racism is yet another framework for understanding modern racism and examining how racism is woven into the very fabric of our society. Studies on structural racism examine how entire systems can function to discriminate through institutionalized practices and procedures, often built in over generations. Here, a discriminatory effect is not traced back to a single, specific action but rather is understood to result from the *cumulative impact* of interactions within a discriminatory system or set of systems."

⁴³⁹ CRC UK 2016 COs, para. 22(a)

⁴⁴⁰ *Washington v. Davis*, at 248.

⁴⁴¹ See Smith, *supra* note 419, at 1033: "[h]igh poverty schools are very likely to be poorly funded schools, marked by large, sometimes overcrowded classes; weak curricula; insufficiently trained teachers and high teacher turnover; low standardized test scores; high grade retention and [push]out rates; and low rates of parental involvement."

only de jure discrimination will not necessarily ensure de facto equality.”⁴⁴² Also, the Committee acknowledged that school segregation disadvantaged Roma children in Hungary and the UK and thus should be abolished.⁴⁴³ Furthermore, as the Committee emphasized in General Comment 1, there is a substantial benefit in human rights education, including respect for differences, tolerance, and “friendship among all peoples”.⁴⁴⁴ Therefore, the integration of schools can teach children first-hand to respect and forge friendships with those that are different from them and should be a priority in dismantling the STPP.

5.3.2. Create National Plans to combat structural discrimination and eradicate structural inequality

Article 4 of the CRC requires States to undertake all appropriate legislative, administrative and other measures to implement the rights of the CRC. As the Committee has stated, equality before the law does not necessarily translate to equal enjoyment of rights.⁴⁴⁵ Therefore, States are responsible for addressing *de facto* discrimination by eliminating conditions and attitudes which allow it to foster.⁴⁴⁶ Methods to do this may include creating national plans to combat discrimination.

The CRC Committee addressed the disparate treatment of minority Aboriginal and African-Canadian children through school disciplinary measures in Canada’s 2012 Concluding Observations.⁴⁴⁷ The Committee recommended that Canada develop a national strategy to address high dropout rates for these students⁴⁴⁸ and:

Take measures to prevent and avoid suspension and the referral of children to police as a disciplinary measure for Aboriginal and African Canadian children and prevent their reassignment to alternative schools while at the same time ensuring that professionals are provided with the necessary skills and knowledge to tackle the problems.”⁴⁴⁹

Therefore, through a national plan, the US could review this issue from a child’s rights perspective. A primary question is whether the presence of SROs in school is essential. Research does not substantiate that the presence of SROs increases safety in schools, as SROs were stationed at schools where mass shootings occurred.⁴⁵⁰ Moreover, as indicated in the Committee’s concluding observations for Canada, teachers, administrators and other staff should be trained on the appropriate methods to address behavioral problems in school. Training should also include addressing biases that exist among school staff.⁴⁵¹ The focus of the national plan should be on

⁴⁴² CRC GC 22, para. 26.

⁴⁴³ CRC Hungary 2006 COs, at para. 50; CRC UK 2002 COs, at para. 51.

⁴⁴⁴ CRC GC 1, paras. 11 and 19.

⁴⁴⁵ CRC France 2004 COs, para. 60.

⁴⁴⁶ CRC GC 22, para. 26; CRC Australia 2005 COs, para. 24; CRC Hungary 2006 COs, para. 19-20.

⁴⁴⁷ CRC Canada 2012 COs, paras. 69 and 70. The Committee also addresses exclusionary education tactics pertaining to Roma children in CRC UK 2016 COs, paras. 72 and 73 (b).

⁴⁴⁸ CRC Canada 2012 COs, para. 70(b).

⁴⁴⁹ Id., at para. 70(c).

⁴⁵⁰ See J. Nance, *supra* note 425, at 948; Merkwae, *supra* note 425, at 159.

⁴⁵¹ Annex 1.

ensuring that children continue to enjoy their right to education without discrimination, as envisioned by General Comment 1, rather than removing them from school.

Interestingly, the proposed George Floyd Justice in Policing Act of 2020 (Act) appears to conform with the Committee's recommendations to Canada. The Act recommends the development of uniform standards to be followed during officers' interaction and communication with children.⁴⁵² The Act requires that officers consider adolescent development when communicating with children.⁴⁵³ Also, the standards should encourage the creation of "positive school climates" and eliminate "school based arrest and referrals to law enforcement."⁴⁵⁴ The Act proposes measures to address the STPP from a child's rights perspective.

An example of a national plan to combat discrimination once existed in the US. In 2014, the US Department of Education (ED), under the Obama administration, attempted to rectify the disparities prevalent in the STPP.⁴⁵⁵ The ED reminded schools that federal law prohibits discrimination in the administration of discipline and made several recommendations for school districts, including: creating non-discriminatory, fair, and age-appropriate discipline policies; using law enforcement appropriately; training school personnel; engaging school communities, and; collecting data and taking responsive action.⁴⁵⁶ These actions are consistent with what the CRC has described as appropriate measures to combat discrimination. Unfortunately, the Trump administration rescinded this letter.⁴⁵⁷ The Biden administration is expected to review the STPP per his January 20, 2021, Executive Order, which directed federal agencies to address how they will promote racial equality.⁴⁵⁸ However, the directives contained in the ED 2014 letter should be reinstated immediately to aid in combatting the discrimination that results from the STPP.

Furthermore, the CRC Committee has recommended that States eradicate structural inequality and discrimination through legislative, policy and programmatic measures.⁴⁵⁹ Structural inequities are evident in educational budgeting, which typically comes from two sources: public funding and local property taxes.⁴⁶⁰ Low-income areas receive less funding, particularly from property taxes, which lead to resource deficient schools that perpetuate the STPP.⁴⁶¹ The Supreme Court has held that this funding scheme is not a violation of the EPC.⁴⁶² The CRC Committee has said that it is the State's responsibility to "ensure that all municipalities have sufficient resources for an effective performance

⁴⁵² H.R. 7120. <https://www.congress.gov/bill/116th-congress/house-bill/7120/text> (last visited 24.06.2021).

⁴⁵³ Ibid.

⁴⁵⁴ Ibid.

⁴⁵⁵ <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf> (last visited 22.06.2021).

⁴⁵⁶ *Id.*, at Appendix.

⁴⁵⁷ <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201812.pdf> (last visited 22.06.2021).

⁴⁵⁸ See Executive Order 13985 (2021). <https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government> (last visited 22.06.2021).

⁴⁵⁹ CRC South Africa 2016 COs, para. 24.

⁴⁶⁰ Smith, *supra* note 419, at 1038-1039.

⁴⁶¹ Ibid. See also <https://edbuild.org/content/dismissed> (last visited 06.24.2021): "high-poverty communities tend to get fewer school dollars than more advantaged ones; majority-minority districts usually get less than whiter ones; and poor, nonwhite communities are disadvantaged twice over when it comes to school funding."

⁴⁶² *San Antonio Independent School Dist. V. Rodriguez*, 411 U.S. 1, 33 (1973).

of their responsibilities in order to contribute to a reduction of the urban-rural disparities in the enjoyment of children's rights."⁴⁶³ Therefore, the US should remedy the structural inequalities in education by ensuring that lower-income schools are funded adequately – even if it must come from federal funds. This may result in experienced teachers and counselors and other resources (i.e. early intervention programs) that lead to disciplinary alternatives rather than relying on the STPP.⁴⁶⁴

5.3.3. Multifaceted strategies

Achieving substantive equality for Black children in the US may involve a multifaceted strategy, similar to what was employed to change juvenile justice standards in *Roper* and *Graham*. Through framing an issue in a child's rights manner, and using research, international opinion and strategic litigation, significant strides were made in the administration of juvenile justice. It is also important to note that both the death penalty and life without the possibility of parole for nonmurder offenses were applied disproportionately to Black youth.⁴⁶⁵ So, in essence, bans on these practices also constituted a small step in bringing these children closer to substantive equality.

Ultimately, international opinion may play a role in realizing the right non-discrimination, as it did in *Roper* and *Graham*.⁴⁶⁶ Failing to take measures to address systemic racism is contrary to the principles of human rights law. Furthermore, it has a significant impact on the well-being of black children.

Thus, it is essential to frame the right to non-discrimination with a child's rights perspective. The CRC Committee recognized that "[d]iscrimination related to ethnic origin, class/caste, personal circumstances and lifestyle, or political and religious beliefs (of children or their parents) excludes children from full participation in society" and "affects children's opportunities and self-esteem, as well as encouraging resentment and conflict among children and adults."⁴⁶⁷ The prevalence of discrimination experienced by Black adolescents in the US has materialized into depression, low self-esteem, poor academic performance, substance use and risky sexual behaviours.⁴⁶⁸ Moreover, studies show that Black children become increasingly aware of negative stereotypes, such as being less intelligent than White children, as they age.⁴⁶⁹ More focus should be on the research around the effects of discrimination on Black children. Instead of planning prisons on their third-grade reading skills and essentially throwing them away at a young age, the US should dedicate resources to improving access to quality education for this vulnerable group of children per child rights standards.

In addition, the CRC Committee has repeatedly emphasized that data collection is key to combating discrimination and promoting equality.⁴⁷⁰ Therefore, to properly combat the STPP, it is essential to obtain current data on economic, geographical, and social disparities in education. Also, data should be collected on the number of SROs in schools and the relation to the suspension and expulsion

⁴⁶³ CRC Hungary 2006 COs, para. 14.

⁴⁶⁴ Smith, *supra* note 419, at 1038-1039.

⁴⁶⁵ Dohrn, *supra* note 3, at 78 and 80.

⁴⁶⁶ *Id.*, at 83 and 85.

⁴⁶⁷ CRC GC 7, para. 11(b)(iv).

⁴⁶⁸ Benner, A.D., et al. (2018), at 868.

⁴⁶⁹ Hoffman A.J., et al. (2019) at 27. Study was conducted with Black and White American youth in grades 4, 6, and 8.

⁴⁷⁰ See Annex 1, Part 3.

rates. Furthermore, data on disciplinary measures by offense type and aggregated based on race and gender would be informative. The Office of Civil Rights conducts a Civil Rights Data Collection (CRDC) and obtains data on discipline throughout the country. The last CRDC for discipline was conducted for the 2017-2018 school year.⁴⁷¹ However, collected data should be evaluated and used to develop solutions to combat this issue.

Finally, as has been noted, the Committee has emphasized education and awareness-raising in combatting discrimination. The Committee stated in General Comment 1 that racism thrives where there is ignorance.⁴⁷² Therefore, education should be prioritized as an essential method in challenging discrimination and promoting respect for differences.⁴⁷³ The Committee also noted the importance of teaching about racism in school curricula.⁴⁷⁴

Consistently through the General Comments and Concluding Observations, the CRC Committee has recommended using awareness-raising campaigns as a tool to combat discrimination. The Committee has stated that multiple parties may partake in the awareness-raising, including those children impacted by the discrimination. The media can also play a part by ceasing its negative portrayals of Black children. As stated in General Comment 24, media portrayals often result in these “tough on crime” policies⁴⁷⁵ emblematic in the STPP.

Awareness-raising by Black children was an instrumental tool in eradicating the STPP in Illinois schools. A group of Chicago Black high school students exercised their right to be heard, shared their personal stories about discipline, and successfully lobbied the state government to ban zero-tolerance policies and limit exclusionary discipline.⁴⁷⁶ Before this, they had obtained the passage of a data transparency bill which required that “the state report their disciplinary statistics broken down by race.”⁴⁷⁷ Legislators appreciated hearing students’ personal stories directly rather than looking only at statistics and were shocked by the reasons for school suspensions and expulsions.⁴⁷⁸ If students in other states can successfully follow this footprint for combatting the STPP, children’s rights may be instituted from the ground up.

5.4 Chapter Conclusion

This chapter demonstrated that discrimination against Black children in the US is historical, structural, and institutional and encompasses many areas of their lives. The STPP case study revealed that the high prevalence of exclusion from schools among Black students is created by a multitude of factors, including poverty, segregation of schools, inadequate government funding, and the excessive presence of SROs. Furthermore, although the child’s right to education is unmistakably affected, so too are other rights. Thus, the case study is a prime example of how the right to non-discrimination impacts access to and realization of other substantive rights.

⁴⁷¹ <https://ocrdata.ed.gov/estimations/2017-2018> (last visited 06.24.2021).

⁴⁷² CRC GC 1, para. 11.

⁴⁷³ *Ibid.*

⁴⁷⁴ *Ibid.*

⁴⁷⁵ CRC Committee (2019), *General Comment No. 24*, CRC/C/GC/24*, para. 111.

⁴⁷⁶ Moyer, J., et al. (2020) at 173.

⁴⁷⁷ *Id.*, at 182.

⁴⁷⁸ *Ibid.*

Even if the US does not ratify the CRC, there is still a way for the CRC's framework to influence the attainment of the right to non-discrimination for Black children and dismantle the STPP. The US should prioritize the creation of national plans to provide guidance to schools regarding the administration of discipline, thus not impeding children's fulfilment of the right to education. While the US is currently collecting data on the disparities caused by the STPP, they must use this data to formulate solutions. Reform, such as that proposed by the George Floyd Act, may change the administration of justice concerning the STPP. Also, funds should be earmarked to prevent this issue, including budget allocation to address systematic inequalities in the school system and curb *de facto* segregation.

Additionally, the importance of a multidimensional approach to combatting discrimination should not be ignored. *Roper* and *Graham* demonstrated the significance of framing an issue from a child's rights approach and how it ultimately led to the realization of children's rights. Moreover, the role of awareness-raising, particularly by those children who have suffered discrimination, should not be forgotten. Therefore, while there are parallels between the CRC's framework and current ground-up occurrences in the US to combat discrimination, the US can take more of a role to embed the framework into its national policies and programs.

Chapter 6. Conclusion

The main question this thesis wished to address was how can the CRC's children's rights framework influence the US to better ensure and respect the right to non-discrimination for black children? To approach this issue, the thesis sought to consider the benefits of the CRC Committee's approach to the right to non-discrimination, the responsiveness of the US to recommendations made by other treaty bodies regarding this right, and what may be expected from the US' ratification of the CRC.

The CRC was drafted with children's vulnerabilities in mind. Its approach to the right to non-discrimination focuses on these vulnerabilities to ensure that children can exercise these rights without discrimination. Upon reviewing the Committee's General Comments and Concluding Observations, there is no question that the CRC Committee takes a far more robust approach than the HRC or CERD in urging States to recognize the right to non-discrimination for children.

Notwithstanding this, adopting a General Comment on non-discrimination can add value to the CRC Committee's approach. The current guidance provided by the Committee is fragmented. One General Comment that defines discrimination and its effects, offers guidance on protection from discrimination, and outlines special measures to combat it should be adopted.

While all can agree that a primary goal is to eradicate discrimination of any kind against children, the Committee pays particular attention to certain forms of discrimination, including gender and disability, in its General Comments. It shows little detail to discrimination based on race or ethnicity, outside of the context of indigenous children. This is a significant observation because, regrettably, racial discrimination is woven into much of the fabric of the US. But, it is not only the US that has this issue. The Concluding Observations demonstrated that countries in all regions of the world battle their own demons with racial discrimination. As such, it may benefit more children for the Committee to increase its attention toward this form of discrimination in its General Comments.

The US' legal framework to combat discrimination is inconsistent with international human rights standards. The framework is insufficient to combat structural prejudices and discrimination that has a disparate impact. While the US has ratified the ICCPR and the ICERD, it has been obstinate to recommendations made by the HRC and CERD to ensure the right to non-discrimination. Hence, the ratification of these treaties is somewhat symbolic. The review of the US' treatment of recommendations made by the HRC and CERD offered insight into how the country would address concerns raised by the CRC Committee if the CRC was ratified.

Yet, as evidenced by *Roper* and *Graham*, one cannot underestimate the value of international opinion. Perhaps international opinion may also be used to persuade the Supreme Court to reconsider its stance on *de facto* segregation, disparate impact, or affirmation action policies. The key is to frame the issue with a child's rights focus, as done in *Roper* and *Graham*.

But, even if this does not occur, the CRC's framework can still inspire change and promote the realization of the right to non-discrimination for Black children in the US. As has been shown, measures have been taken from the ground up, and children are using their own voices to influence change. While the CRC framework champions a societal structure that acknowledges children's right to advocate for change, the US must also be a critical actor and take proactive measures to combat discrimination. This can begin with utilizing special measures to achieve equality and recognizing claims for discrimination that are based on disparate impact. Also, the US may develop national plans, policies and programs and dedicate resources to eradicate *de facto* segregation, negative

stereotypes, and structural inequality. The US must act and can no longer take the colorblind approach, sanctioned by law, and pretend that inequities do not exist.

Ultimately, it will take a multifaceted approach, as envisioned by the CRC Committee, to influence a change in children's rights in the US. Therefore, it will be the combination of State action within its own framework and influence of the CRC framework which may propel the realization of the right to non-discrimination forward.

Annex 1– Part 1: Discrimination Generally

Notes:

- General Comment 10 was replaced with General Comment 24.
- General Comments 18, 22, and 24 are joint comments with other committees.

General Comment	Separate section on the right to non-discrimination?	Discrimination or Equality Defined?	Grounds for Discrimination	Multiple grounds
No. 1 (Aims of Education)	No. Discussed in Paras. 10 and 11.	No	Gender (Para. 10); disabilities (Para 10.); HIV/AIDS (Para. 10); racism (Para. 11); xenophobia (Para. 11); ethnic, national and religious groups and persons of indigenous origin (Para. 19)	
No. 2 (Role of NHRIs)	No	No		
No. 3 (HIV/AIDS)	Yes (Paras. 7-9)	No	Gender (Para. 8); sexual orientation (Para. 8); HIV/AIDS status of parents (Paras. 9, 31 & 33)	HIV/AIDS & Rural (Para. 7); HIV/AIDS & Social or Economic Status (Para. 36)
No. 4 (Adolescent Health & Dev.)	Yes (Para. 6)	No	Article 2(1) (Para. 6); sexual orientation and health status (including HIV/AIDS and mental health) (Para. 6)	Adolescents & disabilities (Para. 19)
No. 5 (Implementation)	Yes (Para. 12 - all General Principles)	Non-discrimination does not mean identical treatment (Para. 12)		
No. 6 (Unaccompanied & Separated Children)	Yes (Para. 18)	No.	Children who are unaccompanied or separated, refugees, asylum-seekers or migrants (Para. 18)	Unaccompanied or separated children who have disabilities or who are girls (Para. 41)
No. 7 (Early Childhood)	Yes (Paras. 11-12)	No.	Young children (Para. 11); girl children (Para. 11(b)(i)); children with disabilities (Para. 11(b)(ii)) and affected by HIV/AIDS (Para. 11(b)(iii)); discrimination related to ethnic origin, class/caste, personal circumstances and lifestyle, or political and religious beliefs (Para. 11(b)(iv)); status of parents (i.e. children born in wedlock, children of refugees) (Para. 12)	Young Children suffering multiple forms of discrimination are especially at risk (Para. 11(b)(v))
No. 8 (Protection from Corporal Punishment and Cruel or Degrading Treatment)	No	No		

General Comment	Separate section on the right to non-discrimination?	Discrimination or Equality Defined?	Grounds for Discrimination	Multiple grounds
No. 9 (Children with Disabilities)	Yes (Para. 8-10)	No. However, Committee explicitly refers to <i>de facto</i> discrimination for the first time.	Disability	Indigenous girls with disabilities, children with disabilities living in rural areas and so on (Para. 8); Girls with disabilities (Para. 10); internally displaced children, refugees and internally displaced girls with disabilities (Para. 79)
No. 10 (Juvenile Justice)*	Yes (Paras. 6-9)	No	De facto discrimination against street children, children belonging to racial, ethnic, religious or linguistic minorities, indigenous children, girl children, children with disabilities and children who are repeatedly in conflict with the law (recidivists) (Para. 6); use of different ages of criminal responsibility may result in discrimination (Para. 30)	
No. 11 (Indigenous Children)	Yes (Paras. 23-29)	No.	Indigenous children (Para. 5)	Indigenous children in rural and urban situations, indigenous girl children, indigenous children with disabilities (Para. 29)
No. 12 (Right to be Heard)	Yes, addressing Articles 12, 2 and 6 (Paras. 75-79)	No.	Article 2 (Para. 75); Children are not a homogenous group, and participation needs to provide for equality of opportunity for all, without discrimination on any grounds. Programmes also need to ensure that they are culturally sensitive to children from all communities (Para. 134(f)).	Girl children experience difficulty in exercising the right to be heard (Para. 77); children with disabilities (Para. 78)
No. 13 (Freedom for all forms of violence)	Yes (Para. 60)	No.	Article 2(1) (Para. 60); discrimination based on prejudices towards commercially sexually exploited children, children in street situations or children in conflict with the law or based on children's clothing and behaviour (Para. 60).	Victims of Torture and other forms of cruel or inhuman treatment are often children who are marginalized and discriminated against, including children in conflict with the law, children in street situations, minorities and indigenous children, and unaccompanied children (Para. 26).
No. 14 (Best Interests)	Yes (Para. 41)	No.	Article 2	

General Comment	Separate section on the right to non-discrimination?	Discrimination or Equality Defined?	Grounds for Discrimination	Multiple grounds
No. 15 (Health)	Yes (Para. 8-11)	No.	Article 2 and sexual orientation, gender identity and health status, for example, HIV status and mental health and other forms of discrimination which may undermine a child's health (Para. 8)	Discrimination based on adolescent pregnancy (expulsion should be prohibited and continuous education opportunities ensured) (Para. 56)
No. 16 (Business Sector)	Yes (Para. 13-14)	No.	Article 2 (Para. 13)	
No. 17 (Rest, Leisure, Play & Culture)	Yes (Para. 16)	No.	Article 2, with particular attention paid to the groups, delineated in this paragraph, including but not limited to children living in poor or hazardous environments, children living in poverty, children in penal, health-care or residential institutions, children in situations of conflict or humanitarian disaster, nomadic groups, and children subjected to significant pressure for academic attainment. (Para. 16)	
No. 18 (Harmful Practices)**	No	No.	Gender	Girls, in particular, those belonging to disadvantaged groups (Para. 6); migrant women and children (Para. 86)
No. 19 (Budgeting)	Yes (Para. 41-44)	No.	Article 2(1) (Para. 41)	
No. 20 (Adolescence)	Yes (Para. 21)	No	Adolescence	Adolescents and: Gender (Paras. 27-30); Disability (Paras. 31-32); Lesbian, gay, bisexual, transgender and intersex (Paras. 33-34); Minority and Indigenous groups (Paras. 35-36); Alternative Care (Para. 53); HIV/AIDS (Para. 63); migration (Para. 76); armed conflict (Para.

General Comment	Separate section on the right to non-discrimination?	Discrimination or Equality Defined?	Grounds for Discrimination	Multiple grounds
No. 21 (Street children)	Yes (Para. 25-27)	The Committee specifically refers to systemic discrimination and provides extensive examples of direct and indirect discrimination (Para. 26)	Street children (Para. 25)	Gender, sexual orientation and gender identity/expression, disability, race, ethnicity, indigenous status, immigration status and other minority status (Para. 26)
No. 22 (International migration - General Principles)	Yes (Para. 21-26)	No.	All children in the international migration context (Para. 21)	Migrant children and: Gender (Para. 24); disability (Para. 25)
No. 23 (International Migration - origin, transit, destination & return)	No. General Principles discussed in GC 22	No.	Migrant children and their families	
No. 24 (Child Justice System)	No.	No.	The use of different ages of criminal responsibility may result in discrimination (Para. 26);	
No. 25 (Digital Environment)	Yes (Para. 9-11)	No.	Children excluded from using digital technologies and services, receiving hateful communications or unfair treatment through the use of those technologies. Automated processes that result in information filtering, profiling or decision-making are based on biased, partial or unfairly obtained data concerning a child (Para. 10).	Listed in Para. 11; children with disabilities living in poverty (Para. 90)

Annex 1 – Part 2: Relation to other Rights

General Comment	Intersectionality with other rights	Poverty & Discrimination	Impact on access	Effects
No. 1 (Aims of Education)		N/A	Education (Para. 10)	Offends Human dignity (Para. 10); capable of undermining or destroying child's capacity to benefit from education (Para. 10).
No. 2 (Role of NHRIs)				
No. 3 (HIV/AIDS)	Education & Health (Paras. 7, 8, 21, 28); Privacy (Paras. 20 & 40(c))	Para. 21	Education, health or social care services or community life (Para. 7); preventive measures (Para. 8); Health for other groups of marginalized children with HIV/AIDS (Para. 21); treatment and care (Para. 28)	Stigmatization (Para. 7); abandonment by their family, community and/or society (Para. 7)
No. 4 (Adolescent Health & Dev.)	Health (Para. 35)		Accessibility to health facilities (Para. 41(b))	Vulnerable to other types of abuse, violence, exploitation (Para. 6); risk to health (Para. 6)
No. 5 (Implementation)				
No. 6 (Unaccompanied & Separated Children)	Health and education (Para. 3); Education (Para. 41)		Denial of access to denied access to food, shelter, housing, health services and education (Para. 3); Education (Para. 41)	Stigmatization (Para. 18).
No. 7 (Early Childhood)	Laws that fail to offer children equal protection against violence are also a form of discrimination (Para. 11(a)); Reduced levels of nutrition; inadequate care and attention; restricted opportunities for play, learning and education; inhibition of free expression of feelings and views; harsh treatment and unreasonable expectations, which may be exploitative or abusive (Para. 11(b)); Birth registration (Para. 25); education (Para. 28)	Children living in poverty are a vulnerable group - ensure their equal access to services (Para. 24)	Health, care and education, paying close attention to access for vulnerable children listed in Paras. 24 and 36 (including but not limited to children who are orphaned or lack parental care children living in institutions, children living with mothers in prison, or children of alcohol- or drug-addicted parents)	Undermines well-being (Para. 1(f)); young children are at risk because they rely on others to realize their rights (Para. 11(a)); restricted capacity to contribute to society (Para. 11(b)(i) & (iv)); reduces quality of life (Para. 11(b)(ii)); affects self-esteem and encourages resentment (Para. 11(b)(IV))

General Comment	Intersectionality with other rights	Poverty & Discrimination	Impact on access	Effects
No. 8 (Protection from Corporal Punishment and Cruel or Degrading Treatment)	Right of the child to respect for the child's human dignity and physical integrity and equal protection under the law (Paras. 2, 16, 21)			Does not respect the inherent dignity of the child (Para. 7)
No. 9 (Children with Disabilities)	Survival and development, physical and mental violence, exclusion from education (Para. 8); birth registration (Para. 36); health (Para. 51); equal opportunities to play and leisure (Para. 71)		Denies access to health and social services (Paras. 8 and 51); education (Para. 62)	Social discrimination and stigmatization leads to their marginalization and exclusion and may even threaten their survival and development if it goes as far as physical or mental violence against children with disabilities (Para. 8)
No. 10 (Juvenile Justice)*			Impacts access to education and the labour market (Para. 7)	Negative publicity in the media leads to discriminatory and negative stereotyping of children who commit offenses and children in general; results in calls for a tougher approaches (e.g. zero-tolerance, three strikes and you are out, mandatory sentences, trial in adult courts and other primarily punitive measures) (Para. 96).
No. 11 (Indigenous Children)	Health (Para. 50); Education (Para 56);		Access to health care and education (Para. 5); reduced access to education due to a variety of factors including insufficient educational facilities and teachers, direct or indirect costs for education as well as a lack of culturally adjusted and bilingual curricula per article 30 & discrimination and racism in the school setting (Para. 59); See special measures in Annex 1, Part 3	

General Comment	Intersectionality with other rights	Poverty & Discrimination	Impact on access	Effects
No. 12 (Right to be Heard)	State parties should take adequate measures to ensure that all children are able to freely express their views (Para. 75); participation in health (Para. 104); Participation in education (Para. 105)			
No. 13 (Freedom for all forms of violence)	Freedom from violence; equal protection under the law (Para. 7(c)); children have equal value as adults (Para. 14).			Discriminatory elimination of girls before birth has the potential for increased violence against girls including abduction, early and forced marriage, trafficking for sexual purposes and sexual violence (Para. 16).
No. 14 (Best Interests)				
No. 15 (Health)	Gender-based violence, education (Para. 11);		Health and related services must be accessible to all children without discrimination of any kind (Para.114(a)); Lack of ability to pay for services, supplies or medicines should not result in the denial of access (Para. 114(c)).	Gender based discrimination results in harmful practices and female infanticide/foeticide to discriminatory infant and young child feeding practices, gender stereotyping and access to services (Para. 10)
No. 16 (Business Sector)	Participation (Para. 23); equality of opportunity in employment (Para. 29); labour/informal work (Para.35); parental responsibilities for child care (Para. 54)		Service delivery by the business sector should not threaten children's access to services on a discriminatory basis (Para. 34)	

General Comment	Intersectionality with other rights	Poverty & Discrimination	Impact on access	Effects
No. 17 (Rest, Leisure, Play & Culture)	Rest, leisure, play, recreational activities, cultural life and the arts (Paras. 3, 15,16)		Equal opportunities to access right for: refugee children (Para. 23), children with disabilities (Paras. 24, 50), minority communities including indigenous children and religious or linguistic minorities, girls (Paras. 48, 52), children living in poverty and street children (Para. 49); equality of opportunities to access internet (Para. 45); children in institutions (Para. 51); children in situations of armed conflict or other disaster (Para. 53)	
No. 18 (Harmful Practices)**	Violence (shown throughout the General Comment); education (Para. 69)		Migrant women and children do not have same access to services as nationals (Para. 86)	Violence and harmful practices (demonstrated throughout the General Comment); negative impact on their dignity, physical, psychosocial and moral integrity and development, participation, health, education and economic and social status (Para. 15)
No. 19 (Budgeting)				
No. 20 (Adolescence)	Violence, leisure, play, culture, exploitation, education (Paras. 27, 29, 31, 33); health (Para. 27, 31, 33, 56-58); freedom of religion (para. 43)	Children with disabilities (Para. 31); Minority or Indigenous children (Para. 35)	Education (Para. 27); reproductive health services (Paras. 31, 33, 59); access to justice (Para. 31); access to different forms of media and digital citizenship (Para. 47); health (Paras. 56 - 58)	Violence and exploitation (Paras. 27, 29, 31); forced sterilization (Para. 31); low self-esteem, depression, suicide, homelessness (Para. 33); social injustice, suicide, poor educational outcomes, high levels of detention in criminal justice systems (Para. 35)

General Comment	Intersectionality with other rights	Poverty & Discrimination	Impact on access	Effects
No. 21 (Street children)	Violence, health, education (Para. 26); juvenile justice (Para. 26); association and freedom of assembly (Paras. 36, 39); family life (Para. 43); rest, play, leisure, and cultural activities (Para. 56)	Poverty and inequalities based on economic status, race, and gender are among the structural causes of the emergence and exclusion of children in street situations (Para. 3)	Exclusion from education and health services (Para. 26); health (Para. 53)	Violence, abuse, exploitation, risk of sexually transmitted infections (Para. 26).
No. 22 (International migration - General Principles)			Access to services in an equal manner to nationals (Para. 22); including refugee children with disabilities (Para. 25)	
No. 23 (International Migration - origin, transit, destination & return)	Nationality (Paras. 25, 26); family life (Para. 27, 31); labour (Para. 45)		Equal access to complaint mechanisms for separated and unaccompanied children (Para. 16); social security and emergency social services (Para. 47); economic, social, and cultural rights (Para. 53); health (Paras. 55, 57); education (Paras. 59, 60)	
No. 24 (Child Justice System)		The requirement of monetary bail discriminates against poor and marginalized families (Para. 88)		Negative publicity in the media of children who commit offenses leads to discriminatory and negative stereotyping of these children and children in general; results in calls for a tougher approach (e.g. zero-tolerance, three strikes and you are out, mandatory sentences, trial in adult courts and other primarily punitive measures) (Para. 111).
No. 25 (Digital Environment)			Requires equal and effective access to the digital environment in a meaningful way (Para. 9); barriers for children with disabilities (Para. 90); access to health services online (Para. 94)	

Annex 1 – Part 3 – Combatting Discrimination

General Comment	Special Measures to Combat Discrimination (Affirmative Action / HRC Standard)	Right to Non-Discrimination in Law	Data Collection	Awareness-raising Campaigns
No. 1 (Aims of Education)	N/A	Generally (Para. 17)		Education (Para. 11)
No. 2 (Role of NHRIs)				
No. 3 (HIV/AIDS)	Protection measures for vulnerable children (Para. 30)	Para. 2	Regulate awareness-raising campaigns for the effectiveness of reducing discrimination (Para. 17)	By children (Para. 12); mass media or oral tradition (Para. 17)
No. 4 (Adolescent Health & Dev.)		Minimum ages for sexual consent should be the same for girls and boys (Para. 9).	Generally (Para. 13)	Generally (Para. 14.)
No. 5 (Implementation)	Special measures may be required per HRC (Para. 12. Also see Para. 30)	Legislation (Para. 12); Decentralization or devolution by State Parties should not lead to the disparity of enjoyment of the right in different regions (Para. 41); General Principles in domestic law (Para. 22)	To identify discrimination and children who may require special measures (Para. 12)	
No. 6 (Unaccompanied & Separated Children)	The principle may call for differentiation on the basis of different protection needs, including gender & age (Para. 18)	Para. 13	Generally (Paras. 13, 98-100)	
No. 7 (Early Childhood)			Monitor the availability of and access to quality services through systematic data collection, disaggregated in terms of major variables related to children's and families' background and circumstances (Para. 12)	Raise awareness about discrimination against young people and vulnerable groups within (Para. 12)

General Comment	Special Measures to Combat Discrimination (Affirmative Action / HRC Standard)	Right to Non-Discrimination in Law	Data Collection	Awareness-raising Campaigns
No. 8 (Protection from Corporal Punishment and Cruel or Degrading Treatment)	Eliminate corporal punishment and other forms of cruel and degrading treatment to ensure children have equal protection under the law (Para. 2).	Prohibit corporal punishment in law to ensure equal protection for children (Para. 38).		
No. 9 (Children with Disabilities)	Extra measures for girls with disabilities (Para. 10)	States should explicitly include disability as a ground for discrimination in constitutional provisions on non-discrimination and/or include a specific prohibition of discrimination on the ground of disability in specific anti-discrimination laws or legal provisions (Para. 9(a)).	Generally (Para. 19)	Conduct awareness-raising and educational campaigns targeting the public at large and specific groups of professionals with a view to preventing and eliminating de facto discrimination against children with disabilities (Para. 9(c))
No. 10 (Juvenile Justice)*		Enact legislation to ensure status offences are not criminalized (Para. 8).	Research disparities in the administration of juvenile justice which may amount to discrimination (Para. 99)	Conduct public campaigns emphasizing child offenders' right to assume a constructive role in society (Para. 7); conduct, promote and/or support educational and other campaigns to raise awareness of the need and the obligation to deal with children alleged of violating the penal law per the CRC and include Members of the Government, NGOs and media (Para. 96).

General Comment	Special Measures to Combat Discrimination (Affirmative Action / HRC Standard)	Right to Non-Discrimination in Law	Data Collection	Awareness-raising Campaigns
No. 11 (Indigenous Children)	Positive measures required in accordance with Art. 30 (Para. 17); use special measures to ensure that indigenous children have access to culturally appropriate services in the areas of health, nutrition, education, recreation and sports, social services, housing, sanitation and juvenile justice (Paras. 25, 50, 56, 74, 80); allocate targeted financial, material and human resources to implement policies and programmes which specifically seek to improve access to education for indigenous children (Para. 60)	Protection from discrimination in domestic legislation (Para. 23)	Data collection to identify existing and potential areas of discrimination of indigenous children is essential to implement appropriate positive measures through legislation, resource allocation, policies and programmes (Para. 26)	Educational measures to change attitudes (Paras. 24 and 27); Public campaigns, dissemination material and educational curricula, both in schools and for professionals, focused on the rights of indigenous children and the elimination of discriminatory attitudes and practices, including racism. Meaningful opportunities for indigenous and non-indigenous children to understand and respect different cultures, religions, and languages (Para. 27).
No. 12 (Right to be Heard)	Address discrimination, including against vulnerable or marginalized groups of children, to ensure that children are assured their right to be heard can participate in all matters affecting them on an equal basis with all other children (Para. 75).			Para. 76
No. 13 (Freedom for all forms of violence)	Consider children in vulnerable situations (list provided in Para. 72(g)) and make proactive efforts to ensure that such children are assured their Right to protection on an equal basis with all other children (Para. 60); Specific efforts are required to address discrimination in the provision of services and the range of intervention options available to indigenous and other minority communities (Footnote 26).		Identification and prevention of factors and circumstances which hinder vulnerable groups' access to services and full enjoyment of their rights (including indigenous and minority children and children with disabilities, among others) (Para. 43(a);	To combat gender discrimination, States should create a strategy which addresses gender-based stereotypes, power imbalances, inequalities and discrimination which support and perpetuate the use of violence and coercion in all settings. Involve men and boys as strategic partners and allies (Para. 72(b);

General Comment	Special Measures to Combat Discrimination (Affirmative Action / HRC Standard)	Right to Non-Discrimination in Law	Data Collection	Awareness-raising Campaigns
No. 14 (Best Interests)	The right to non-discrimination is not a passive obligation. It requires proactive measures to ensure equal opportunities for all children to enjoy the CRC rights. This may require positive measures aimed at redressing a situation of real inequality (Para. 41).			
No. 15 (Health)	Lack of ability to pay for services, supplies or medicines should not result in the denial of access. States should abolish user fees and implement health-financing systems that do not discriminate against women and children on the basis of their inability to pay. Risk-pooling mechanisms such as tax and insurance should be implemented on the basis of equitable, means-based contributions (Para. 114(c))	National laws should place a statutory obligation on the State to provide the services, programmes, human resources and infrastructure needed to realize children's right to health; provide a statutory entitlement for health irrespective of ability to pay; review laws to determine potential discriminatory effect or impediment to realizing this right and repealed where required; international agencies and donors should provide development aid and technical assistance for such legal reforms (Para. 94)	Identify factors Statewide that create vulnerabilities for children or that disadvantage certain groups of children; address factors when developing laws, regulations, policies, programmes and services for children's health (Para. 11).	
No. 16 (Business Sector)		Legislation, policies and programmes that deal with business issues should not be intentionally or unintentionally discriminatory towards children in their content or implementation (Para 13);	Data collection to identify discrimination in the business context (Para. 14)	Awareness-raising and sensitization among business enterprises should be aimed at challenging and eradicating discriminatory attitudes towards all children, especially those in vulnerable situations (Paras. 14; 82).

General Comment	Special Measures to Combat Discrimination (Affirmative Action / HRC Standard)	Right to Non-Discrimination in Law	Data Collection	Awareness-raising Campaigns
No. 17 (Rest, Leisure, Play & Culture)		Legislation to guarantee access for every child, without discrimination, to all recreational, cultural and artistic environments, including public and private spaces, natural spaces, parks, playgrounds, sporting venues, museums, cinemas, libraries, theatres, cultural activities, services and events (Para. 57(a))		
No. 18 (Harmful Practices)**		Safeguards to ensure that decentralization or devolution does not lead to discrimination with regard to protection of women and children against harmful practices in different regions and cultural zones (Para. 46); States should adopt or amend legislation that addresses root causes of harmful practices, including discrimination and allow for temporary special measures and equal access to justice and remedies (Para. 55)		Empowerment of Women and Girls measures including: challenge and change patriarchal ideologies and structures that constrain women and girls from fully exercising their human rights and freedoms; education and curriculum on human rights, building self-esteem (Paras 62-69); awareness-raising campaigns to challenge societal norms (Para. 74)

General Comment	Special Measures to Combat Discrimination (Affirmative Action / HRC Standard)	Right to Non-Discrimination in Law	Data Collection	Awareness-raising Campaigns
No. 19 (Budgeting)	Identify groups of children that qualify for special measures and use public budgets to implement such measures (Para. 42); address inequalities among children by reviewing and revising relevant legislation, policies and programmes, by increasing or reprioritizing certain parts of the budget, or improving the effectiveness, efficiency and equity of their budgets (Para. 44)		Para. 68 (b)	
No. 20 (Adolescence)	Introduce appropriate affirmative action measures to diminish or eliminate conditions that result in direct or indirect discrimination against any group of adolescents on any grounds (Para. 21); cites HRC standard (Para. 21); promote empowerment of girls, positive masculinities, and challenge harmful gender norms and stereotypes (Paras. 28, 30, 69); engage men, women, boys and girls in special measures to achieve gender equality (Para. 30); investment in secondary education for girls and take measures to ensure the continued education of boys (Para. 69); cash transfer programs to increase access to education for marginalized groups and promote inclusive education for children with disabilities (Para. 70); special measures recommended for adolescents and migration, trafficking, conflict and crisis, armed conflict, labour and justice (76-88)	Repeal all laws criminalizing or otherwise discriminating against individuals based on their sexual orientation, gender identity or intersex status and adopt laws prohibiting discrimination on those grounds (Para. 34); Age limits should be the same for girls and boys (Para. 38);		Protect all lesbian, gay, bisexual, transgender and intersex adolescents from all forms of violence, discrimination or bullying by raising public awareness and implementing safety and support measures (Para. 34)

General Comment	Special Measures to Combat Discrimination (Affirmative Action / HRC Standard)	Right to Non-Discrimination in Law	Data Collection	Awareness-raising Campaigns
No. 21 (Street children)	Equal opportunity requires positive measures aimed at redressing substantive inequality (Para. 26); temporary special measures to achieve de facto equality is not discrimination (Para. 27); Measures to reduce poverty and inequality (Para. 51)	Repeal laws that indirectly or directly discriminate against street children, including laws for status offences and moral offences and ensure that street children are equal under the law (Paras. 14, 27); introduce child protection legislation that specifically addresses street children (Para. 14)	Collection and use of data should not stigmatize the children (Para. 23)	Awareness-raising and education to combat discrimination and negative attitudes (Para. 26); use of media to broadcast de-stigmatization messages (Para. 27); children can share their own experiences (Para. 33)
No. 22 (International migration - General Principles)	Differential treatment of migrants must be lawful and proportionate, in pursuit of a legitimate aim and consider the child's best interests and international human rights norms and standards (Para. 22); positive measures to eliminate conditions that cause de facto discrimination towards migrants (Para. 26).	Amend any discriminatory gender restrictions in migration law (Para. 24)	Data should be collected to monitor intersectional discrimination (Para. 16); analyze migration policies on gender (Para. 24)	Promote inclusion of migrant families and address negative stereotypes (Para. 23)
No. 23 (International Migration - origin, transit, destination & return)	Additional language education, additional staff and other intercultural support, without discrimination of any kind (Para. 62); prohibit and prevent segregated education (Para. 62)	Repeal discriminatory nationality laws and enact laws that are non-discriminatory to respect, protect, and fulfil the child's right to nationality (Paras. 25, 26)		Dialogue between migrant and host communities to address and prevent xenophobia or any type of discrimination or related intolerance against migrant children (Para. 63); human rights education including non-discrimination (Para. 63)
No. 24 (Child Justice System)	Gender-sensitive attention should be paid to girls and to children who are discriminated against based on sexual orientation or gender identity, and accommodations should be made for children with disabilities (Para. 60)	States should change their laws to ensure a non-discriminatory full application of their child justice system to all persons below the age of 18 years at the time of the offence (Para. 30)		Members of the Government, NGOs and media to conduct and promote campaigns and education to ensure that CRC is upheld for children in the justice system and children who have been impacted should participate too (Para. 111).
No. 25 (Digital Environment)	Specific measures will be required to close the gender-related digital divide for girls (Para. 11); accessible format and technologies for children with disabilities (Para. 90)			

Annex 1 – Part 3: Combatting Discrimination continued

General Comment	Budgeting / Resources	Training	Other ways to combat discrimination	NHRIs	Private Parties
No. 1 (Aims of Education)			Education (Paras. 11, 19 and 24)	In relation to Art. 29	
No. 2 (Role of NHRIs)				NHRIs should encourage participation of anti-discrimination organizations (Para. 12)	
No. 3 (HIV/AIDS)	Para. 40(f)	General (Para. 9); Health Professionals (Para. 20)	Education (Para. 9)		
No. 4 (Adolescent Health & Dev.)			Combat discrimination and stigmatization associated with mental illness (Para. 29)		
No. 5 (Implementation)			Administration and resource allocation and education (Para. 12)		States use of the private sector does not lessen obligations under Article 2(1) (Para. 44)
No. 6 (Unaccompanied & Separated Children)		Para. 13	Administrative, research (Para. 13); Address misperceptions and stigmatization (Para. 18); Policing of this group should relate to principle of proportionality and should not be applied on a group basis (Para. 18)		
No. 7 (Early Childhood)			Measure and combat discrimination in all forms and wherever it occurs (family, communities, schools) (Para. 12); guarantee that all children have an equal opportunity to benefit from available services (Para. 12)		Potential discrimination in access to quality services for young children, especially where health, education, welfare and other services are not universally available and are provided through a combination of State, private and charitable organizations (Para. 12)

General Comment	Budgeting / Resources	Training	Other ways to combat discrimination	NHRIs	Private Parties
No. 8 (Protection from Corporal Punishment and Cruel or Degrading Treatment)					
No. 9 (Children with Disabilities)	Invest to the maximum extent of available resources in the elimination of discrimination against children with disabilities and towards their maximum inclusion in society (Para. 14(a)).	Training for teachers to prepare them to teach children with diverse disabilities (Para. 62)	Provide for effective remedies that are easily accessible to children with disabilities and their parents and/or others caring for the child (Para. 9(b)); fulfil the obligations of Art. 23 without discrimination (Para. 13); Protect from harmful information that promotes any form of discrimination and could potentially reinforce prejudices. (Para. 38)		
No. 10 (Juvenile Justice)*		Training of all professions working in juvenile justice to enhance equal treatment of child offenders (Para. 6)	Providing former child offenders with appropriate support and assistance in their efforts to reintegrate in society (Para. 7); abolish status offenses (Para. 8); Regulate police, prosecutors and/or other agencies and use diversion to protect children from discrimination (Para. 27)		

General Comment	Budgeting / Resources	Training	Other ways to combat discrimination	NHRIs	Private Parties
No. 11 (Indigenous Children)	Resource allocation (Para. 24)	Professionals working with indigenous children should be trained on how consideration should be given to cultural aspects of children's rights (Para. 80).	Recognize and respect distinct indigenous cultures, history, language and way of life (Para. 18); provide effective remedies (Para. 23); actively combat racism and ensure that education provides a fair, accurate and informative portrayal of the societies and cultures of indigenous peoples (Para. 58). Avoid restrictions on cultural or traditional dress (Para. 58).		Obligations with respect to the right to non-discrimination also extend to the private sector (Para. 23)
No. 12 (Right to be Heard)	States must invest in the child's Right to be heard without discrimination (Para. 135)		Peer education/ counselling to eliminate discrimination (Para. 109); consult with children to develop legislative, policy, educational and other measures to combat violence and ensure that that marginalized children, such as exploited children, street children or refugee children are included in the process (Para. 118).		
No. 13 (Freedom for all forms of violence)			Address barriers to participation for marginalized or discriminated groups of children (Para. 63); create a social environment that fosters pro-social, non-violent and non-discriminatory attitudes and behaviours ((Para. 72 (e)); recognizing family risk factors such as discrimination (Para. 72(f))		
No. 14 (Best Interests)					

General Comment	Budgeting / Resources	Training	Other ways to combat discrimination	NHRIs	Private Parties
No. 15 (Health)	Budget allocation decisions should strive to ensure availability, accessibility, acceptability and quality of essential children's health services for all, without discrimination (Para. 104)		Policies and programmes affecting children's health should strive for gender equality; social and economic empowerment; recognition of equal rights related to sexual and reproductive health; and equal access to information, education, justice and security, including the elimination of all forms of sexual and gender-based violence (Para. 10).		Private health insurance companies should not discriminate against pregnant women, children or mothers on any prohibited grounds and they should promote equality through partnerships with State health insurance schemes; ensure that inability to pay does not restrict access to services (Para. 83)
No. 16 (Business Sector)	Establish mechanisms to monitor and investigate discriminatory practices by the business sector (Para. 14)		Access to remedies (Paras. 30, 34, 68)	Agencies, including NHRIs, which focus on equality in the business sector can play a role in accessing remedies for children (Para. 30)	States must prevent discrimination in the private sphere (Para. 14); regulation of media to prevent discriminatory portrayals of children (Para. 58)
No. 17 (Rest, Leisure, Play & Culture)	Consider the cost of measures to ensure access for the most marginalized children, including reasonable accommodations for children with disabilities (Para. 58(d))		Universal design to promote inclusion and protect children with disabilities from discrimination (Para. 58(e)); municipal planning to ensure equality in access by all groups (Para. 58(f)); environments should have equal opportunities for play for girls and boys and for children with disabilities to participate equally (Para. 58(g))		

General Comment	Budgeting / Resources	Training	Other ways to combat discrimination	NHRIs	Private Parties
No. 18 (Harmful Practices)**		Develop and implement capacity-building programmes for stakeholders (judges, lawyers, etc.) on legislation prohibiting discrimination (Para. 87(c))	Address underlying systemic and structural causes of harmful practices, empower girls and women and boys and men to contribute to the transformation of traditional cultural attitudes that condone harmful practices (Para 17).		States must ensure that private actors do not engage in discrimination against women and girls (Para. 11)
No. 19 (Budgeting)	Budget decisions should not discriminate against certain groups of children (Paras. 27(a), 41, 61); retrogressive measures may not be discriminatory (Para. 31); allocate resources, to ensure that all branches of government, civil society and the business sector, actively advance the right of children to be free from discrimination (Para. 43); target resources to promote equality and remove discriminatory barriers (Para. 61); resources to enhance equality among children in different geographical regions (Para. 77(b)).				

General Comment	Budgeting / Resources	Training	Other ways to combat discrimination	NHRIs	Private Parties
No. 20 (Adolescence)			Laws, policies and programmes to guarantee rights of girls on equal levels with boys (Para. 28); Age-appropriate, inclusive sexual and reproductive health education in school curriculum and reach out-of-school adolescents (Para. 61); combat bullying and discriminatory attitudes in education; provide education in refugee camps (Para. 70).		
No. 21 (Street children)	Retrogressive measures should not impact children in street situations in times of crisis (Para. 33)	Training police (Para. 40)	Legal and policy change to address systemic discrimination. (Para. 26); support creative artistic, cultural and/or sports programmes involving children in street situations to address misconceptions in society (Para. 27)		Address media's role in perpetuating fear of crime committed by street children. Encourage the use of accurate data and evidence to respect child's dignity and integrity (Para. 27)
No. 22 (International migration - General Principles)		States should have policies that provide continuous and periodic training of child protection and migration officials on the rights of children (Para. 18)	Use all appropriate measures to combat xenophobia, racism and discrimination, collect data on measures (Para. 23); record, investigate and sanction incidences of discrimination against migrant children and/or their families (Para. 26)		
No. 23 (International Migration - origin, transit, destination & return)			Equal standards of protection for every child, including those above 15, and regardless of their immigration status (Para. 3)		

General Comment	Budgeting / Resources	Training	Other ways to combat discrimination	NHRIs	Private Parties
No. 24 (Child Justice System)		Training for professionals on disparities that may amount to discrimination against certain marginalized groups of children (Para 112).	Right to fair trial means safeguards against discrimination throughout and means of redress (Para. 40); State parties should conduct regular evaluations of their child justice systems to monitor discrimination (Para. 114)		
No. 25 (Digital Environment)			Providing free and safe access for children in dedicated public locations to address digital exclusion; invest in policies and programmes that support all children's affordable access to, and knowledgeable use of, digital technologies in educational settings, communities and homes (Para. 9)		

Annex 2 – Domestic Law, Table of Cases

Case Name	Relevant Holding / Facts
<i>In re Gault</i> , 387 U.S. 1 (1967)	The Due Process Clause contained in the Fourteenth Amendment applies not only to adult defendants but also to juveniles.
<i>Planned Parenthood of Central Missouri v. Danforth</i> , 428 U.S. 52, 74 (1976)	“Minors, as well as adults, are protected by the Constitution and possess constitutional rights.”
<i>Tinker v. Des Moines Indep. Community Sch. Dist.</i> , 393 U.S. 503, 506, 511 (1969)	“Students in school, as well as out of school, are ‘persons’ under our Constitution.” “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”
<i>Vernonia School Dist. 47J v. Acton</i> , 515 U.S. 646, 654 (1995)	Concerning the expectation of privacy in school, the Supreme Court’s reasoning centered on the fact that the subjects were children under the “temporary custody of the State as schoolmaster.” Therefore, the Court concluded that there was less of an expectation of privacy in the school setting. This allows for searches to be conducted based on reasonable suspicion instead of the usual standard of probable cause.
<i>Bethel School District v. Fraser</i> , 478 U.S. 675, 682 (1986)	The Court constricted the right to freedom of speech for children in public schools. The Court stated that “the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings.” Therefore, offensive speech which is protected for adults under the First Amendment is not protected for children in the school setting. Both <i>Vernonia</i> and <i>Bethel</i> demonstrate how children’s rights have been restricted in application when not explicitly restricted in the language of the Constitution
<i>Schall v. Martin</i> , 467 U.S. 253, 265 (1984)	“Children, by definition, are not assumed to have the capacity to take care of themselves. They are assumed to be subject to the control of their parents, and if parental control falters, the state must play its part as <i>parens patriae</i> In this respect, the juvenile’s liberty interest may, in appropriate circumstances, be subordinated to the state’s ‘ <i>parens patriae</i> ’ interest in preserving and promoting the welfare of the child.”
<i>Levy v. Louisiana</i> , 391 U.S. 73 (1968)	Holding that state law that prohibited illegitimate children from claiming the mother’s death benefits violated the Equal Protection Clause.
<i>Graham v. Richardson</i> , 403 U.S. 365 (1971)	A state’s restriction of welfare benefits for legal aliens but not citizens was a violation of the EPC.
<i>Plyler v. Doe</i> , 457 U.S. 202 (1982)	A state law that withheld state funding for the education of undocumented children and authorized local school districts not to enrol these students violated the EPC. Undocumented children met the definition of “any person within its jurisdiction” provided in the EPC.
<i>Reed v. Reed</i> , 404 U.S. 71 (1971)	Women are protected from discriminatory legislation under the EPC.
<i>Romer v. Evans</i> , 517 U.S. 620 (1996)	Discrimination based on sexual orientation is forbidden and conflicts with the EPC.
<i>Obergefell v. Hodges</i> , 576 U.S. 644 (2015)	The Fourteenth Amendment’s EPC and Due Process Clause provided same-sex couples with the right to marry.
<i>Plessy v. Ferguson</i> , 163 U.S. 537, 544 (1896)	While the objective of the Fourteenth Amendment was to “enforce the absolute equality of the two races before the law...it could not have been intended to abolish distinctions based upon color, or to enforce

	social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either.”
<i>Milliken v. Bradley</i> , 418 U.S. 717, 745, 756 (1974)	The evidence submitted in the District Court showed that Black families were essentially trapped within the Detroit school district due to discriminatory housing policies and the method by which the school districts were created. As such, the District Court approved a plan to integrate the schools with the predominately white suburban schools. The Supreme Court held that outlying suburban districts did not display discriminatory intent when creating their school districts. Therefore the remedy imposed by the District Courts could not be approved.
<i>Korematsu v. United States</i> 323 U.S. 214 (1944)	The case involved an Executive Order issued by the President, which required Japanese residents to be relocated to internment camps. Thus, the suspect classification was on the face of the Executive Order. The Court applied the strict scrutiny standard and upheld the Executive Order, finding that the government had a compelling government interest due to espionage concerns.
<i>McCleskey v. Kemp</i> , 481 U.S. 279, 280 (1987)	The petitioner, in this case, argued that his rights under the EPC were violated due to the disparate impact shown in the state’s administration of the death penalty based on an independent study which showed that the death penalty was more frequently imposed when the victim was white versus black. The data also showed that the death penalty was sought and assessed at a much higher rate when the victim was white and the defendant was black. The Court found that the petitioner did not prove that the Georgia capital punishment law had a discriminatory purpose, as the study was not sufficient to infer that the state intended to discriminate against him. The Court said, “[f]or the claim to prevail, McCleskey would have to prove that the Georgia Legislature enacted or maintained the death penalty statute <i>because of</i> an anticipated racially discriminatory effect.”
<i>Adarand Constructors, Inc. v. Peña</i> , 515 U.S. 200, 227 (1995)	“All racial classifications, imposed by whatever federal, state, or local government actor, must be analyzed by a reviewing court under strict scrutiny.”
<i>United States v. Paradise</i> , 480 U.S. 149 (1987)	The Court upheld the affirmative action program because it was remediating past, proven discrimination that was practiced directly by the government.
<i>Grutter v. Bollinger</i> , 539 U.S. 306, 326, 341 (2003)	Having a diverse student body, where race is just one factor to be considered, is a compelling interest. However, quotas for minority students in admission programs are not a narrowly tailored program to meet a compelling government interest.
<i>Swann v. Charlotte-Mecklenburg Bd. of Ed.</i> , 402 U.S. 1, 17-18 (1971)	Title IV cannot be used to expand “the existing powers of federal courts to enforce the Equal Protection Clause.” There is no right of action for “so-called ‘de facto segregation,’ where racial imbalance exists...but with no showing that this was brought about by discriminatory action of state authorities.”

Annex 3 – CRC, CERD and HRC Comparison*

* See note at end of table

Country / Concluding Observations	Specifically addresses racial or ethnic discrimination against children	Context of discrimination	Recommendations	Special Measures
Australia CERD (2017)	Yes, indigenous children Also discusses issues facing indigenous people	Fair treatment in the justice system (Para. 25)	Address disparities in incarceration and placement in alternative care; alternatives to detention, increase the minimum age of criminal responsibility; increase investment in family support services; ensure that adequate, culturally appropriate and accessible legal services are available (Para. 26)	
Australia ICCPR (2017)	Not specifically. Speaks about indigenous people generally (including juveniles)	Over-representation in the prison (Para. 39)	Identify and revise policies that lead to high incarceration; enhance diversion programs; ensure that adequate, culturally appropriate and accessible legal services are available (Para. 40)	
Australia CRC (2019)	Yes, indigenous children	Generally (Para. 19) Peaceful assembly (Para. 26) Health (Para. 36) Education (Para. 43)	Address disparities in access to services and engage awareness-raising campaigns (Para. 19). Ensure respect for this right (Para. 26) Address disparities in health status (Para. 36) Prioritize Close the Gap measures for indigenous children by reaching the targets on school attendance, retention rates, literacy and numeracy standards by paying particular attention to these children in remote areas and investing in teachers' cultural competency of these communities' history (Para. 43)	Involve indigenous children and their communities in the planning, implementation and evaluation of policies concerning them (Para. 46) Ensure that the Council on Closing the Gap has sufficient resources to operate (Para. 46) To address overrepresentation in the justice system, implement the 2018 recommendations of the Australian Law Reform Commission to reduce the high rate of incarceration among indigenous persons (Para. 48)

Country / Concluding Observations	Specifically addresses racial or ethnic discrimination against children	Context of discrimination	Recommendations	Special Measures
Canada CERD (2017)	Yes, indigenous and African-Canadian children	<p>Violence (Para. 23)</p> <p>Access to services and alternative care (Para. 27)</p> <p>Education (Para. 29)</p>	<p>End violence against indigenous girls and ensure access to services; determine barriers to equality (Para. 24)</p> <p>Ensure all children have access to services without discrimination; adequately fund child & family services in the indigenous community; address root causes of indigenous children being placed in foster care, including poverty (Para. 28)</p> <p>Ensure equal access to education for all children without discrimination; address funding discrepancies for schools attended by indigenous and African-Canadian children; develop a national strategy to prevent high dropouts, suspension and expulsion rates for African-Canadian children and track data on the discriminatory effects disciplinary measures (Para. 30)</p>	
Canada ICCPR (2015)	Yes, indigenous children	<p>Violence against girls (Para. 9)</p> <p>Underfunding of child welfare services (Para. 19)</p>	<p>Conduct a national inquiry into murdered and missing indigenous women and girls; investigate and prosecute offenders; provide reparation to victims; address root causes of violence (Para. 9)</p> <p>Sufficiently fund child welfare services (Para. 19)</p>	
Canada CRC (2012)	Yes, indigenous and African Canadian children	<p>Over-representation in alternative care and the criminal justice system; disparities in access to services; underfunding of child welfare programs (Para. 32)</p> <p>Preservation of identity (Para. 42)</p>	<p>Address over-representation of indigenous and African-Canadian children in alternative care and criminal justice system; address disparities in access to services, including child welfare (Para. 33).</p> <p>Ensure that indigenous children in alternative care receive education on their culture; revise laws so that both men and women can pass their status as indigenous peoples (Para. 43)</p>	<p>Conduct an extensive study on the over-representation of indigenous and African-Canadian children in the justice system and develop a plan to eliminate disparities, which should include training law enforcement (Para. 86)</p>

		Violence (Para. 46)	Address factors leading to the high level of violence for indigenous women and girls (Para. 47)	
		Standard of living (Para. 67)	Ensure that access to welfare services for indigenous and African-Canadian children is comparable to that provided to other children (Para. 68)	
		Education (Para. 69)	Address the high dropout rates nationally for indigenous and African-Canadian children; prevent the use of certain disciplinary measures for indigenous and African-Canadian children, including suspension and referrals to law enforcement or alternative schools (Para. 70)	
Country / Concluding Observations	Specifically addresses racial or ethnic discrimination against children	Context of discrimination	Recommendations	Special Measures
France CERD (2010)	Not specifically. Generally discusses Roma, Travellers, and indigenous peoples	Education (Paras. 16 and 18)	Ensure equal treatment and access to education (Para. 16 and 18).	
France ICCPR (2015)	Not specifically. Generally discusses Roma and Travellers	Education (Para. 13).	Ensure equal access to Education (Para. 14).	
France (2016) CRC (Yes, Roma children	Generally (Para. 24)	Foster a culture of tolerance and equality to discrimination against children (Para. 24).	
		Standard of living (Para. 69)	Take measures to promote inclusions of Roma children and their families (Para. 70)	
		Education (Para. 71)	Ensure equal access to education (Para. 72)	
Country / Concluding Observations	Specifically addresses racial or ethnic discrimination against children	Context of discrimination	Recommendations	Special Measures
Hungary CERD (2019)	Yes, Roma children	Structural discrimination, segregation in education (Para. 20)	Take measures to eliminate structural discrimination, end segregation in schools, and ensure equal access to health (Para. 21)	Special measures may be taken to end segregation in schools (Para. 21)
Hungary ICCPR (2018)	Yes, Roma children	Segregation of schools and placement in alternative schools for children with disabilities (Para. 15)	Ensure access to education on an equal basis, end school segregation, and use processes supported by scientific methods to assess whether a child has a disability (Para. 16)	
Hungary CRC (2020)	Yes, Roma children	Generally, education, health,	Implement laws that prohibit discrimination, educate public, introduce school programmes;	

		child protection, housing (Para. 16)	focus on equal access to education, health, child protection and housing, and terminating segregation; review school equal opportunity plans every three years (Para. 16).	
		Violence (Para. 23)	Develop a national strategy to prevent and address violence (Para. 24)	
		Disability (Para. 29)	Conduct a study to gain data (Para. 30)	
		Standard of living (Para. 34)	Invest in the eradication of poverty and pay special attention to Roma children (Para. 34)	
		Education (Para. 35)	Collect data on Roma children to inform policy needs and close the attainment gap between Roma and other children (Para. 36).	
		Rest, Leisure, recreation (Para. 37)	Ensure equal access to recreational, leisure, cultural and artistic activities (Para. 37).	
Country / Concluding Observations	Specifically addresses racial or ethnic discrimination against children	Context of discrimination	Recommendations	Special Measures
South Africa CERD (2016)	Yes, ethnic minorities, Black girls, indigenous people	Education (Para. 18) Poverty and no access to basic services (Para. 22)	Ensure equal access to education for all and counter racial and xenophobic tensions through public campaigns (Para. 19). Prevent discrimination and ensure equal access to services for Black girls. Collect data on the effects of discrimination and take measures to address (Para. 23).	Collect data on the impact of special measures in several areas, including education (Para. 15)
South Africa ICCPR (2016)	No.			
South Africa CRC (2016)	Yes, indigenous children, disparities based on race	Generally (Para. 23) Violence (Para. 33) Education (Para. 59)	Eradicate structural inequality and discrimination in law, policy and programmes (Para. 24) Prevent and address violence, paying attention to vulnerable children (Para. 34) Ensure access to education for all children without discrimination and improve quality of education (Para. 60)	Take special measures to address discrimination against indigenous peoples and children, including promoting education in indigenous languages in addition to the official language of the State (Para. 66)

Country / Concluding Observations	Specifically addresses racial or ethnic discrimination against children	Context of discrimination	Recommendations	Special Measures
United Kingdom CERD (2016)	Not specifically. Generally discusses discrimination against people of African descent, Gypsies, Roma and Travellers	Education (Paras. 22, 24, 34)	Develop national plans to combat discrimination against people of African descent, and Gypsies, Travellers, and Roma (Para. 23 and 25) Address bullying and exclusions based on race in schools, train educational personnel (Para. 35)	
United Kingdom ICCPR (2015)	No. Generally discusses Racism and xenophobia			
United Kingdom CRC (2016)	Yes, Roma, gypsy, traveller children and other ethnic minorities	Generally (Para. 21) Violence (Para. 48) Health (Para. 58) Standard of living (Para. 70) Education (Para. 72)	Strengthen awareness-raising and take other preventative measures to combat discrimination (Para. 22) Take measures to address bullying at school, including building respect for diversity among students and staff (Para. 49) Eliminate inequities in access to health services (Para. 59) Collect data to determine the impact of social security and tax credit reforms for children belonging to ethnic minority groups, provide safe and adequate sites for living (Para. 71) Disciplinary measures of exclusion, whether permanent or temporary, should be used as a last resort (Para. 73)	Juvenile justice – ensure that detention as a measure of last resort is not used discriminatorily against children from ethnic minority groups (Paras. 78-79)

*NOTE: These are the most recent Concluding Observations from all three committees. While the Concluding Observations for South Africa were all adopted in the same year, the author acknowledges there is some disparity in the Concluding Observations for other countries. Canada, for instance, has a five-year gap in the Concluding Observations from the different committees. It is possible that various issues took priority during this period, leading to the committees having different focuses.

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