

**Committee on the Elimination of Racial Discrimination (CERD)
85th Session 11-29 August 2014
Examination of the United States 7th, 8th and 9th Periodic Reports of June 2013**

**Response to the United States 2013 Periodic Report:
Joint Submission of Two Alternative Reports
regarding the violations of Indigenous Children's Right to Culture and
Continuing Legacy of the Boarding School Policies**

**Submitted on June 4, 2014 by:
National Native American Boarding School Healing Coalition
International Indian Treaty Council
National Indian Child Welfare Association**

**Alternative Report A:
Indigenous Children and the Legacy and Current Impacts of the Boarding
School Policies in the United States and the Lack of Redress, Restitution and
Restoration by the United States to Address these Impacts or to Acknowledge
Responsibility for Them**

**Alternative Report B:
The Continued Removal of Indigenous Children from Their Families and
Communities and its Impact on The Right to Culture**

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**U.N. Committee on the Elimination of Racial Discrimination
85th Session, 11-29 August 2014**

Examination of the United States 7th, 8th and 9th Periodic Reports

**Indigenous Children and the Legacy and Current Impacts of the Boarding
School Policies in the United States and the lack of Redress, Restitution and
Restoration by the United States to Address These Impacts or to Acknowledge
Responsibility for Them**

Alternative Report A

**Joint Submission of the National Native American Boarding School Healing
Coalition, International Indian Treaty Council and the National Indian Child
Welfare Association**

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EXECUTIVE SUMMARY: SUGGESTED QUESTIONS AND RECOMMENDATIONS

PROPOSED QUESTIONS

1. The forcible removal of Indigenous children from their families, communities, culture, and language is grounded in practices established during the era of Indian boarding schools in the United States. This is only further compounded by a long history of land appropriation, breach of treaties, and discrimination in the United States:

Under the ICERD and through the lens of the UN Declaration on the rights of Indigenous Peoples, how will the United States address, through policy or otherwise, the current impact of the boarding school era on Indigenous Peoples, Nations and Tribes?

PROPOSED RECOMMENDATIONS

1. That the United States rescind and nullify laws and regulations relating to the establishment of Indian boarding schools, reform schools or similar that remain “on the books.”
2. That the United States facilitate the gathering of data and statistics relating to the era of Indian boarding schools, including but not limited to the number of children who were forced to attend boarding schools and the number of children that disappeared while attending boarding school.
3. That the CERD call on the United States to, in conjunction with impacted Indigenous Peoples, develop and provide a process or mechanism with regard to Indian boarding schools to determine ongoing damages and impacts, collect relevant data, information and testimonies and implement appropriate responses and remedies. Such a process or mechanism should specifically include individual harms experienced by boarding school attendees, the intergenerational harms experienced by their descendants, the residual harms communities face in the form of historical trauma, and the systemic insidious forms of discrimination that have arisen as a byproduct of the attitudes and bias perpetuated by the boarding school era (see in particular Articles 5 and 6 of the ICERD).

[The United States] forbade the speaking of Indian languages, prohibited the conduct of traditional religious activities, outlawed traditional government, and made Indian people ashamed of who they were. Worst of all, the [U.S.] Bureau of Indian Affairs committed these acts against the children entrusted to its boarding schools, brutalizing them emotionally, psychologically, physically, and spiritually. . . . The trauma of shame, fear and anger has passed from one generation to the next, and manifests itself in the rampant alcoholism, drug abuse, and domestic violence that plague Indian country. Many [Native American] people live lives of unrelenting tragedy as Indian families suffer the ruin of lives by alcoholism, suicides made of shame and despair, and violent death at the hands of one another.¹

Articles 7 and 8 of the *United Nations Declaration on the Rights of Indigenous Peoples*:

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, **including forcibly removing children of the group to another group**. (Emphasis supplied)

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossession of their lands, territories or resources;
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - (d) Any form of forced assimilation or integration;
 - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

INTRODUCTION

The long history of forced assimilation of the Indigenous Peoples of the United States has taken many forms, including: decimation by disease that was in some cases deliberately introduced; destruction of economies and related appropriation of lands reducing tribes, pueblos and Alaskan Natives to “reservations; “long walks” to relocate them far from their traditional homelands; the abrogation by United States of every treaty entered into with Indigenous Peoples within what is now the United States; the forced removal of children from their homes and placement in boarding schools with the express purpose to eradicate their language and culture; the “opening” of lands set aside by treaty and other agreements for the exclusive use and occupation of Native people to settlement by non-tribal people and the breaking up of the lands by allotment to

¹ Remarks of Kevin Gover, Assistant Secretary - Indian Affairs, U.S. Department of the Interior at the Ceremony Acknowledging the 175th Anniversary of the Establishment of the Bureau of Indian Affairs, September 8, 2000.

individual tribal members resulting in the further loss of 90 million acres of indigenous lands; the unilateral “termination” of the government-to-government relationship with the United States – abrogating all of the treaty promises; and the relocation of individuals and families from reservations and homelands to urban settings with the purpose of destruction of Native culture.

All were, in their own way, devastating, but the devastation wreaked by the era of enforced and involuntary removal of Indigenous children has significance that has persisting impacts on the social, cultural and economic rights of Native Americans, and continues to play out in every Native community today.

The History

The era of consciously separating children from family and community in order to destroy their culture, language and community ties began in the United States in 1879.² During the 19th and 20th centuries, American Indian and Alaska Native children were forcibly abducted from their homes to attend Christian boarding schools as a matter of United States law and policy. The first “Civilization Act” to fund church run schools for Native Children in the United States was adopted in 1819. The “Peace Policy” was adopted in 1869 and the first allocation of reservations to churches was made in 1872.

In 1879, Captain Richard H. Pratt opened the first federally sanctioned boarding school: the Carlisle Industrial Training School in Pennsylvania (U.S.). The Chemawa Indian School near Salem, Oregon was established immediately thereafter. Within three decades of Carlisle’s opening, nearly 500 schools extended all the way to California.

The Bureau of Indian Affairs (BIA) controlled 25 off-reservation boarding schools while churches ran 460 boarding and day schools on reservations with government funds. An estimated 100,000 children passed through these schools between 1879 and the 1960s.³ Attendance at such schools was officially mandated by U.S. law and policies. Many of the laws passed by the United States to facilitate the forcible removal of Indigenous children remain in force.⁴ These laws include the authorizing of “Indian Reform Schools” where children may be placed without the consent of parents, guardians or next of kin – a law considered as recently as 1976.

All this in spite of the assertion of the United States in their 2013 Periodic Report to the CERD in paragraph 145 that “*de jure* racial segregation in education has been illegal in the United States since the landmark decision in Brown v. Board of Education (1954)...”⁵ It is apparent to us as

² See “Bibliography and References” at the end of this Joint Submission.

³ Lajimodiere, Denise K. “American Indian Boarding Schools in the United States: A Brief History and Their Current Legacy” in Stamatopoulou, Elsa and Wilton Littlechild *Indigenous Peoples’ Access to Justice, Including Truth and Reconciliation Processes* Institute for the Study on Human Rights at Columbia University, 2014 pp. 255-261. “The boarding school, whether on or off the reservation, became the institutional manifestation of the government’s determination to completely restructure the Indians’ minds and personalities. Boarding schools were established for the sole purpose of severing the Indian child’s physical, cultural and spiritual connection to his or her tribe.” (at page 257)

⁴ See “6 Boarding School Laws Still on the Books,” by Christina Rose, *Indian Country Today* 4/30/14 online at: <http://indiancountrytodaymedianetwork.com/2014/04/30/6-boarding-school-laws-still-books-154579>

⁵ See page 72 para 145 of the US Periodic Report to the UN Committee on the Elimination of Racial Discrimination dated June 12, 2013.

Joint Submitters of this Alternative Report, that much of the law and policy of the US intended to combat racism and discrimination has been created and applied to the exclusion of Indigenous Peoples.

Under Article 2 (c) of the ICERD, the United States is required to “review governmental, national and local policies and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists...” **We submit that the United States must therefore rescind or nullify all the laws that are still on the books relating to the establishment or facilitation of boarding schools targeted at Indigenous children.**

Unfortunately, there are no recognized sources of statistics or data which provide definitive documentation of the numbers of Indigenous students attending boarding schools, nor the numbers who died while in boarding school or who disappeared.⁶ It is next to impossible to quantify the true impact of the boarding school era and its ongoing impacts on economic, social and cultural rights of Indigenous Peoples in the United States.

Eliminating Native languages – considered to be an obstacle to the ‘acculturation’ process – was a top priority, and teachers devised an extensive repertoire of punishments for uncooperative children. The loss of language cut deep into the heart of the Native community. As a result, of the approximately 155 Indigenous languages still spoken [in the U.S.], it is estimated that 90% will be extinct in 10 years. By 2050, there will be only 20 languages left, of which 90% of those will be facing extinction by 2060. Native scholars describe the destruction of their culture as a “soul wound” from which Native Americans have not healed.⁷

Importantly, the Organization of American States Inter-American Commission on Human Rights held a hearing of general interest on October 28, 2010 (140 Period of Sessions)⁸ on the continuing effects of abuses of Native American children compelled by U.S. law to attend boarding schools, and the failure of the U.S. to protect those children from physical, sexual, emotional, cultural and spiritual abuse, or to provide any redress to the individuals and communities that continue to experience the results of that policy.

⁶ See International Indian Treaty Council Indigenous Shadow Report to the Committee on the Elimination of Racial Discrimination on their Review of the United States (72nd Session, 2008) online:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=314&Lang=en

“Thousands of children have died in these schools, through beatings, medical neglect, and malnutrition. The cemetery at Haskell Indian School alone has 102 student graves, and at least 500 students died and were buried elsewhere. These deaths continue today. On December 6, 2004, Cindy Sohappay was found dead in a holding cell in Chemawa Boarding School (Oregon) where she had been placed after she became intoxicated. She was supposed to be checked every fifteen minutes, but no one checked on her for over three hours. At the point, she was found not breathing, and declared dead a few minutes later. The US Attorney declined to charge the staff with involuntary manslaughter. Sohappay’s mother is planning to sue the school. A videotape showed that no one checked on her when she started convulsing or stopped moving. The school has been warned for past fifteen years from federal health officials in Indian Health Services about the dangers of holding cells, but these warnings were ignored. Particularly troubling was that she and other young women who had histories of sexual assault, abuse, and suicide attempts were put in these cells of solitary confinement.” (at page 68)

⁷ Boarding School Healing Project Request for Hearing with the Inter-American Commission on Human Rights, January 24, 2010.

⁸ Inter-American Commission on Human Rights, 140 Period of Sessions, October 28, 2010, “Situation of Indigenous Children in Schools in the United States” Participants: State of the United States, Boarding School Healing Project and others. Online: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=en&Topic=16>

The era of residential schools has received more comprehensive academic, political and historical attention in Canada resulting in a more robust set of resources and research than found in the United States, including data and statistics. The other countries that established residential schools modeled on the American plan include Canada, Australia and New Zealand. Each has offered acknowledgement in their role in adopting and implementing this culturally genocidal policy and offered an apology to the Indigenous communities for that action. The Canadian government mandated a Truth and Reconciliation Commission (TRC) in 2009 to learn the truth about what happened in the residential schools and to inform all Canadians about what happened in those schools. The Commission, among other things, will document the truth of what happened, and its subsequent impacts.⁹

The United States may prefer to cast this era of boarding schools as an historical one. However, as explained in greater detail in Alternative Report submitted by the National Indian Child Welfare Association regarding the 85th Session of the CERD Periodic Review of the United States this era continues today in the form of the ongoing legacies of the assimilation era as well as the development of child welfare systems that apprehend Indigenous children without complying with the Indian Child Welfare Act of 1978¹⁰; removing them far away from culture, and community, posing serious risk to their identities.

We submit that the forcible removal of Indigenous children from their families, communities, cultures, languages and identities has actually intensified, compounded by the long history of appropriation and desecration of Indigenous lands and territories, breach of treaties, discrimination and racism in the United States.

The harms experienced among the targeted Indigenous Peoples continue to reverberate in those communities as a result of the impact of historical and inter-generational trauma with no apparent plan for treatment or health to stem the continuing traumatic response.

⁹ See website of the Truth and Reconciliation Commission online at: <http://www.trc.ca/websites/trcinstitution/index.php?p=4>

¹⁰ 25 U.S.C. 1901 *et seq.* In 1978, Congress found that “an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions.” 25 U.S.C. §1901(4)(2000). To offset cultural bias Congress found in state child welfare and private adoption systems and to ensure that Indigenous families receive due process in child custody proceedings, the Indian Child Welfare Act (ICWA) was enacted. The Act establishes minimum federal standards for child custody proceedings involving tribal members in state court, recognizes tribal jurisdiction over matters pertaining to child custody, and provides funding to tribal welfare programs. Widespread non-compliance with this law leaves Indigenous children and families to navigate state child welfare systems without the protections ICWA requires. See for example: Brenda Bellonger & Dawn Marie Rubio, National Center for State Courts & North American Indian Legal Services, *An Analysis of Compliance with the Indian Child Welfare Act in South Dakota* (2004); Brown, Limb, Ric Munoz & Chey Clifford, National Indian Child Welfare Association, *Title IV-B Child and Family Service Plans: An Evaluation of Specific Measures Taken by States to Comply with the Indian Child Welfare Act* (2001); Eddie Brown, Gordon Limb, Toni Chance & Ric Munoz, National Indian Child Welfare Association, *The Indian Child Welfare Act: An Examination of State Compliance in Arizona* (2002); B.J. Jones, Jodie Gillete, Debora Painte & Susan Paulson, National Indian Child Welfare Association, *Indian Child Welfare Act: A Pilot Study of Compliance in North Dakota* (2000); Susan Waszak *Contemporary Hurdles in the Application of the Child Welfare Act* 34 Am.Indian Culture & Res. Journal 1, 121-135 (2010).

Boarding School Impacts on the Rights of Indigenous Peoples further to US Obligations under the ICERD

United States boarding school policies and laws have contributed to insidious and systemic racism and discrimination against Indigenous Peoples.

It was not always the case. The time since contact between Indigenous and non-Indigenous Peoples in the Americas has been marked by nation-to-nation, sovereign relations developed through treaty-making (from the 1600s until 1871) and other congressional and Executive branch actions. In the United States, these treaties remain the “supreme law of the land” and are constitutionally protected. Their implementation in accordance with the true spirit and intent of such agreements is a never ending challenge. The acquisition of Indigenous lands and settlement was always foremost in the minds of the settlers. Indigenous Peoples were, for lack of a better term, “in the way.” Along with this impetus came racist and discriminatory perceptions of Indigenous cultural patterns, languages, forms of social organization, governance and law, characterized as “savage” and not “civilized.” Throughout the history of interactions between Indigenous Peoples and the government of the United States, the economic and social underpinnings of Indigenous cultures were eroded through the purposeful and aggressive forcible removals of Indigenous children and their “civilization” through education.¹¹

The stories of what Indigenous children experienced during their time in boarding schools is tragically similar – children punished for speaking their language, banned from acting in any way representative of traditional or cultural practices, estranged from family relations, stripped of traditional clothing, hair and all aspects reflective of their cultures. They were intentionally and systematically inculcated with shame of being Indigenous through ridicule of their spirituality and life-ways.¹² Moreover, there is significant documentation that children were subject to malnourishment, overcrowding, compulsory labor, substandard living conditions, physical abuses, emotional abuses, sexual abuses, disease, lack of access to medical care, widespread epidemics and death.¹³ We do not know how many children simply disappeared from the records and by extension, from their families and communities. A recent report contained in a Masters thesis describes the terrible conditions, high mortality, and inadequate care suffered by children in the United States’ flagship boarding school, Carlisle.¹²

Disappearances and forcible removals generally violate the right to a family life as well as various economic, social and cultural rights such as the right to an adequate standard of living in accordance with Indigenous cultures and economies. In fact, the disappearance and forcible removal of family members, particularly in Indigenous communities, frequently leaves the family in a desperate socio-economic situation, experiencing a loss of culture and language, **in which the majority of the rights enumerated in Article 5 of the ICERD cannot be realized.** The

¹¹ David Wallace Adams characterized this period as “education for extinction” in the title of his book on boarding schools in the United States (see “Bibliography and References” at the end of this Joint Submission).

¹² See *infra* note 13, see also the Presentation of the National Native American Boarding School Healing Coalition, attached to this Joint Submission.

¹³ For a case study on the high numbers of deaths at one boarding school in the United States, see “A Blueprint for Death in US Off-Reservation Boarding Schools: Rethinking Institutional Mortalities at Carlisle Indian Industrial School, 1879-1918”, A Thesis by Preston McBride May 15, 2013, available on request.

disappearance of a child is a clear contravention of international law,¹⁴ including the right to a personal identity.

While we recognize that the United States has undertaken some programming related for example to the revitalization of Indigenous languages, these programs are limited in application. If the United States spent as much money as they did in the boarding school era trying to “kill the Indian in the child”, and put that money towards supporting Indigenous language and cultural programs, as well as recognition, anti-racism and anti-discrimination initiatives related to Indigenous Peoples in particular, the lived reality for such Indigenous Peoples would be markedly improved.

In his 2012 report on the situation of Indigenous Peoples in the United States, the Special Rapporteur on the Rights of Indigenous Peoples found as follows:

45. Historically, added to the taking of indigenous lands was the direct assault on indigenous cultural expression that was carried out or facilitated by the federal and state governments. Likely the programme of this type with the most devastating consequences, which are still felt today, was the systematic removal of indigenous children from their families to place them in government or church-run boarding schools, with the objective of expunging them of their indigenous identities. Captain Richard Pratt, founder of the Carlisle Indian school, coined the phrase, “kill the Indian in him, save the man,” in instituting the boarding school policy in the 1880s which continued well into the mid 1900s.

46. Emotional, physical, and sexual abuse within the boarding schools has been well-documented. Typically, upon entering a boarding school, indigenous children had their hair cut, were forced to wear uniforms and were punished for speaking their languages or practising their traditions. The compounded effect of generations of indigenous people, including generations still living, having passed through these schools cuts deep in indigenous communities throughout the United States, where social problems such as alcoholism and sexual abuse are now pervasive and loss of language is widespread.

47. Additionally, a pattern of placing indigenous children in non-indigenous care under state custody proceedings, with similar effects on indigenous individuals and communities, continued until well into the 1970s, only to be blunted by passage of the Indian Child Welfare Act in 1978, federal legislation that advances a strong presumption of indigenous custody for indigenous children but that continues to face barriers to its implementation.¹⁵

More recently in September of 2013, the Special Rapporteur called upon the United States to take measures to ensure the well-being and human rights of baby ‘Veronica’ a four year old Cherokee child at the center of a highly contentious custody dispute that exemplifies the crisis of indigenous child apprehension without consideration of social and cultural rights (individual and collective).¹⁶

There is little or no meaningful access to justice to seek redress for these wrongs. The courts of the United States are closed to claims that arose more than 6 years past, precluding claims for abuse in the Boarding School era. Where there may be a claim in a state court, again statutes of

¹⁴ The Convention on the Rights of the Child, the Convention on the protection of all persons from enforced Disappearance Article 20, amongst others.

¹⁵ A/HRC/21/47/Add.1 Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya *The situation of indigenous peoples in the United States of America*, presented to the Human Rights Council at its 21st Session.

¹⁶ See press release “UN Expert urges respect for the rights of Cherokee child in custody dispute” online: <http://unsr.jamesanaya.org/statements/un-expert-urges-respect-for-the-rights-of-chokeee-child-in-custody-dispute>

limitations are interposed, and in one case an order of the Catholic Church went to the South Dakota legislature to secure a statute precluding claims from that era.¹⁷ **This is in breach of the obligations of the United States further to Article 6 of the ICERD, which requires that the US “assure to everyone in their jurisdiction effective protection and remedies, through competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”**

Finally, in a recently launched publication entitled *Indigenous Peoples’ Access to Justice, Including Truth and Reconciliation Processes*,¹⁸ a chapter on “*The Case of Boarding Schools in the United States of America*” authored by Andrea Carmen and Denise Lajimodiere recommended as follows:

We affirm that without access to justice as defined and agreed by the victims and survivors themselves, there can be no true reconciliation.

The initiation of actions to secure justice and reparations for Native American individuals, families, communities, Tribes, Pueblos and Native Alaskans in the US impacted by the US Boarding School policy must include acknowledgment of responsibility by government and churches for the implementation of this policy of cultural genocide and forced removal of children. In addition, redress in the form of financial and other resources must be made available to Indigenous communities to plan, design, implement and manage programs and processes for healing the longstanding inter-generational and historical traumas that continue to plague them, including programs to reverse language loss. These programs and processes must be locally conceived and administered with input from impacted families as well as traditional spiritual and cultural knowledge-holders, healers and other practitioners....The quest for a fully participatory process that results in meaningful and just reparations, redress, reconciliation and restoration of what can be restored will involve engaging impacted Indigenous individuals and Peoples to define what justice, healing and redress looks like for them, recognizing this may differ among and between distinct communities. It will include collecting input as to what measures are needed in each Nation and community to begin to reverse the bitter legacy of this policy, which many define as deliberate genocide.

We respectfully submit the attached supporting documentation in this Joint Submission below in ‘Bibliography and References’ for your consideration in reviewing the compliance of the United States with the Articles of the ICERD as understood through the lens of the *UN Declaration of the Rights of Indigenous Peoples*.

We ask that you include the discriminatory impacts on indigenous individuals and communities and their ongoing effects on economic, social and cultural rights that have occurred because of the boarding schools in the United States as well as recognize the effect that these policies and disappearances have on the present day U.S. child welfare and adoption system.

¹⁷ See article at <http://indiancountrytodaymedianetwork.com/2012/02/09/south-dakota-legislature-quashes-new-childhood-sexual-abuse-bill-96429>.

¹⁸ Published by the Institute for the Study on Human Rights at Columbia University and Edited by Wilton Littlechild and Elsa Stamatopoulou, launched at the United Nations Permanent Forum on Indigenous Issues 13th Session in New York City, May 19th 2014.

Note on Co-Submitters:

The International Indian Treaty Council (IITC) is an organization of Indigenous Peoples from North, Central, South America, the Pacific and the Caribbean. The mission of IITC is to work for sovereignty and self-determination for Indigenous Peoples and for the recognition and protection of their human rights, treaties, traditional cultures and sacred lands. IITC was founded in 1974 and in 1977 IITC became the first Indigenous organization to receive Consultative Status with the United Nations Economic and Social Council. In 2011 IITC was the first Indigenous organization to be upgraded to “General Consultative Status” in recognition of its wide range of work in a number of UN bodies and processes including the UN human rights system. (See website at: www.iitc.org) **International Indian Treaty Council (IITC) Affiliates in Lands and Territories currently part of or under the jurisdiction of the United States:** *Indigenous Tribal and Traditional Nation Governments:* Pit River Tribe (California), Wintu Nation of California, Redding Rancheria (California), Tule River Nation (California), Muwekma Ohlone Nation (California), Coyote Valley Pomo Nation (California), Round Valley Pomo Nation (California), Independent Seminole Nation of Florida (Florida), Native Village of Venetie Tribal Government/Arctic Village Traditional Council (Alaska), Chickaloon Village Traditional Council/Chickaloon Native Village (Alaska), Stevens Village Traditional Council (Alaska), Native Village of Eklutna (Alaska). *Indigenous Organizations, Networks, Communities and Societies:* National Native American Prisoners' Rights Coalition, White Clay Society/Blackfoot Confederacy (Montana), Indigenous Environmental Network (National), Columbia River Traditional Peoples (Washington/Oregon), Rural Coalition Native American Task Force (Minnesota), Yoemem Tekia Foundation, Pascua Yaqui Nation (Arizona), Tohono O'odham Nation Traditional community (Arizona), Oklahoma Region Indigenous Environmental Network (Oklahoma), Wanblee Wakpeh Oyate (South Dakota), IEN Youth Council, Cactus Valley/Red Willow Springs Big Mountain Sovereign Diné Community (Arizona), Leonard Peltier Defense Committee, Eagle and Condor Indigenous Peoples' Alliance (Oklahoma), Seminole Sovereignty Protection Initiative (Oklahoma) Mundo Maya (California), Los Angeles Indigenous Peoples Alliance (California) American Indian Treaty Council Information Center (Minnesota), Vallejo Inter-Tribal Council (California), Three Fires Ojibwe Cultural and Education Society (Minnesota), California Indian Environmental Alliance (CIEA), Wicapi Koyaka Tiospaye (South Dakota), Indigenous Peoples Working Group on Toxics (National), North-South Indigenous Network Against Pesticides (multi-regional based in US), the International Indian Women's Environmental and Reproductive Health Network (multi-regional based in US) and United Confederation of Taino People: Borikén (Puerto Rico/United States), Kiskeia, (Dominican Republic), Barbados, Guyana (Arawaks), Bimini (United States), Jittoa Bat Natika Weria (Yaqui Nation, US and Mexico).

The **National Indian Child Welfare Association (NICWA)** is a national voice for American Indian children and families. They are the most comprehensive source of information on American Indian child welfare and the only national American Indian organization focused specifically on the tribal capacity to prevent child abuse and neglect. NICWA is a private, nonprofit, membership organization based in Portland, Oregon. Their members include tribes, individuals – both Indian and non-Indian – and private organizations from around the United States concerned with American Indian child and family issues. (See website at: www.nicwa.org)

The **National Native American Boarding School Healing Coalition (N-NABS-HC)** was incorporated in June of 2012 under the laws of the Navajo Nation. The Coalition was formed to discuss and develop a national strategy to focus public and political attention and provide redress for the wrongs visited upon individuals, families, communities, American Indian and Alaska Native Tribal Nations by the United States Indian Board School Policy. The mission of N-NABS-HC is to work to ensure a meaningful and appropriate response from responsible agencies for those Native American individuals, families and communities victimized by the United States' federal policy of forced boarding school attendance and to secure redress from responsible institutions in order to provide resources in support of lasting and true community-directed healing.

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**U.N. Committee on the
Elimination of Racial Discrimination**

Examination of the United States of America

7th, 8th And 9th Periodic Reports

Of June 12, 2013

**The Continued Removal of Indigenous Children from Their Families and
Communities and its Impact on the Right to Culture**

Alternative Report B

Submitted By

National Indian Child Welfare Association

July 4, 2014

Supported by:

National Congress of American Indians
Association on American Indian Affairs
Alliance of Colonial Era Tribes
California Association of Tribal
Governments
Eight Northern Indian Pueblos Council, Inc.

Montana Wyoming Tribal Leaders Council
United Tribes of Michigan
United South and Eastern Tribes, Inc.
International Indian Treaty Council
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Executive Summary

Under the International Convention on the Elimination of All Forms of Racial Discrimination (“Convention”), Indigenous peoples and children have a right to culture. This right is infringed when Indigenous children are removed from their families and communities preventing them from enjoying their culture and their ability to be educated in their culture.

In 1978, the United States enacted legislation to address the long-standing practice of removing Indigenous children from their families and placing them with non-indigenous families in an effort to assimilate them into the majority culture. By advancing a strong presumption of indigenous custody for Indigenous children, the Indian Child Welfare Act of 1978 (“ICWA”) marked a significant policy change and recognition of indigenous peoples’ right to self-determination. However, Indigenous children are still being removed from their homes and communities at disproportionate rates, preventing Indigenous children from fully exercising their rights to culture and community. The recent case involving the adoption of a Cherokee child outside her family and tribe, which was addressed by the UN Special Rapporteur on the Rights of Indigenous Peoples,¹ is indicative of the ongoing harm that is arising from the lack of federal oversight and proper application and implementation of ICWA. This is just one of many cases in which the protections of ICWA were not afforded to Indigenous children in the United States.

Indigenous children endured almost two centuries of assimilationist policies such as the forcible placement of Indigenous children in military-like boarding schools and the removal of Indigenous children from their families and tribes to be placed in non-indigenous homes. Studies in the 1960s highlighted the negative impact those policies had on children and their tribes. The same studies also highlighted disproportionate rates of Indigenous children in state² child welfare systems. Although ICWA was designed to counterbalance the biases in the child welfare system, and did much initially to reduce these numbers, recent studies show widespread non-compliance with the law and continued overrepresentation of Indigenous children in the child welfare system.

For instance, where abuse has been reported, Indigenous children are two times more likely to be investigated, two times more likely to have allegations of abuse substantiated, and four times more likely to be placed in foster care than their Caucasian counterparts. Further, nationwide, Indigenous children are overrepresented in foster care at a rate of 2.4 times greater than the rate of Indigenous children in the general population. The impact of this trend is that Indigenous children who grow up outside their communities are not only being discriminated against, but also prevented from fully exercising their right to culture.

Provisions of ICWA are meant to correct the implicit and structural biases which may exist in child welfare systems by protecting the sovereign rights of tribes to jurisdiction and intervention, by providing minimum standards for court proceedings involving the custody of an Indigenous child, and by providing basic funding for tribally-run child welfare services. Because of the

¹ UN expert urges respect for the rights of Cherokee child in custody dispute (Sept. 10, 2013) available at <http://unsr.jamesanaya.org/statements/un-expert-urges-respect-for-the-rights-of-cherokee-child-in-custody-dispute>; see also Kristen Carpenter and Lorie Graham, Human Right to Culture, Family and Self-determination at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2401886.

² “State” in this context means the individual states of the United States.

documented non-compliance by individual states, however, Indigenous children continue to be removed from their homes and communities at a disproportionate rate. Contributing factors to this situation include:

1. Lack of federal oversight (ICWA is the only federal child welfare law in the United States without a regular and comprehensive federal review.)
2. Lack of education and understanding of ICWA (One study shows that only 45% of one's state social workers read ICWA and 55% were familiar with its active efforts requirement.)
3. Lack of binding regulations on ICWA (Individual state courts are free to interpret the law as they see fit. Given this opportunity, states systematically chipped away at its mandates.)
4. Inadequate funding for tribes (Existing funding is insufficient to ensure ICWA compliance and the tribes' ability to care for their own children and families as sovereign entities.)

Indigenous children growing up in their community are able to participate in ceremonies and celebrations, learn the language and be part of the intergenerational transmission of cultural knowledge and experience that is critical to the survival of indigenous peoples and well-being of Indigenous children. Removal and placement outside a child's indigenous community not only violates the right to culture, but also threatens the continued existence of indigenous peoples. Under the Convention, the United States must both respect an indigenous child's right to culture, but also "take effective measures to review" its laws, regulations and policies to ensure that they effectively guarantee the protections to all Indigenous children.

Suggested Questions for the United States

ICWA provides for national uniform procedural and substantive protections to prevent the removal of Indigenous children from their families, communities, and culture. However, a disproportionate number of Indigenous children are unnecessarily removed from their families and placed in foster care outside their communities. Front-end family preservation services could protect children while keeping them safely in their homes and community. Additionally, Indigenous foster care placements could better serve those children for whom removal is necessary to ensure their safety. How does the United States plan to address this problem?

One of the most important aspects of ICWA is its recognition of tribes' inherent jurisdiction in child custody proceedings. Yet due to insufficient resources many tribes remain unable to fully exercise jurisdiction under the provisions of ICWA. How does the United States plan to address this problem?

Overwhelming anecdotal evidence suggests that Indigenous families face bias treatment in the public child welfare and private adoption systems and that there is wide spread non-compliance with ICWA. How will the United States investigate, verify, and correct these systemic rights violations?

Suggested Recommendations for the United States

The Committee recommends that the United States, in consultation with tribes, establish a robust federal review system to ensure that ICWA is fully implemented and enforced, including promulgating federal regulations to ensure that individual states are complying with their ICWA obligations.

The Committee recommends that the United States provide tribes with sufficient funding to provide family and child care services and provide individual states' protection and child welfare systems with sufficient funding to ensure ICWA compliance.

The Committee recommends that the United States conduct an investigation into the biased treatment of Indigenous families in individual states' child protection and child welfare systems.

I. The Continued Removal of Indigenous Children from Their Families and Communities and its Impact on the Right to Culture

1. In 1978, the United States enacted legislation to address the long-standing practice of removing Indigenous children from their families and placing them with non-indigenous families in an effort to assimilate them into the majority culture. By advancing a strong presumption of Indigenous custody for Indigenous children, the Indian Child Welfare Act of 1978 (“ICWA”) marked a significant policy change and recognition of indigenous peoples’ right to self-determination. However, Indigenous children still remain at risk for removal, preventing Indigenous children from fully exercising their rights to culture and community.

II. Reporting Organization

2. The National Indian Child Welfare Association (“NICWA”), based in Portland, Oregon, is the national voice for American Indian and Alaska Native children and families—the Indigenous children of the United States. NICWA has over 30 years of experience providing technical assistance and training to tribes, states, and federal agencies on issues pertaining to Indian child welfare, child maltreatment, children’s mental health and juvenile justice. NICWA also provides leadership in the development of public policy that supports tribal self-determination in these areas and compliance with ICWA.³

III. Background and Issue Summary

A. Removal of Indigenous Children from Their Families: A History of Assimilation

3. The movement to assimilate the indigenous peoples located in the United States, including its children, began during the colonial period with early colonial educators believing that separation from the kinship community was essential to the affair of “Christianizing” and “civilizing” the Indian. One of the earliest U.S. federal laws that embraced this policy of assimilation was the Indian Civilization Fund Act of 1819, which provided funding to religious groups to educate young Indigenous children in the arts and habits of western civilization.
4. As described in great detail in the Alternative Report submitted by the National Native American Boarding School Healing Coalition, et al., regarding the 85th Session of the CERD Periodic Review of the United States, the United States also created a system of Indian boarding schools that lasted through the 1800 and 1900s. These schools were designed to quicken the assimilation process by forcibly severing a child’s ties with his or her community. In the mid-1900s, other mechanisms were put in place that achieved the same consequences. For instance, in 1958, the Bureau of Indian Affairs and the Child Welfare League of America through contract with the U.S. Children’s Bureau established the Indian

³ The following organizations support this submission: National Congress of American Indians, Association on American Indian Affairs, Alliance of Colonial Era Tribes, California Association of Tribal Governments, Eight Northern Indian Pueblos Council, Inc., Montana Wyoming Tribal Leaders Council, United Tribes of Michigan, United South and Eastern Tribes, Inc., International Indian Treaty Council, Alaska Inter-Tribal Council, Midwest Alliance of Sovereign Tribes. (Descriptions of these organizations is included in Addendum.)

Adoption Project, which was designed to facilitate adoptions of American Indian children by Caucasian parents.⁴

5. Throughout the middle of the century the attitudes and biases that drove the Indian Adoption Project were also impacting the public child welfare process. In 1969, the Association on American Indian Affairs conducted studies showing that in states with high populations of American Indians, 25%-35% of young Indian children were removed from their homes and placed with non-Indian families. Furthermore, the studies found that Indian children were 19 times more likely to be placed in adoptive homes than their counterparts. This information was presented at a U.S. Senate hearing on Indian child welfare in 1974, leading to the drafting and adoption of the Indian Child Welfare Act in 1978.⁵ Today, many adults continue to feel the effects of these policies.⁶

B. The Indian Child Welfare Act

6. The Indian Child Welfare Act is a federal law designed to protect the best interest of Indian children and to promote the wellbeing, stability and security of Indian tribes and families. The law applies to federally recognized tribes (a political designation) and children who are members of, or whose parents are members of, and are themselves eligible for membership in those tribes.⁷ For purposes of this report, the core components of the law are described below.
7. First, ICWA recognizes a **tribe's inherent jurisdiction** in proceedings involving the welfare of its children. A tribe has exclusive jurisdiction over member children living on the reservation. In addition, tribes may intervene in state⁸ child custody proceedings involving member children who live off the reservation or member children who have been deemed wards of the tribe's court, regardless of whether they reside on or off the reservation. ICWA also provides for the transfer of state cases involving member children to tribal court regardless of the child's residence.
8. Second, ICWA sets **minimum standards** for state court proceedings involving the custody of an Indian child. These include, but are not limited to:
 - Heightened burdens of proof for foster care placements and termination of parental rights make it difficult to breakup an Indigenous family unless there is strong evidence that continued parental custody would place the child in imminent risk of harm;
 - Requirements of active efforts to prevent the breakup of an Indigenous family and testimony of a qualified expert witness before an Indigenous child can be removed from the home; and

⁴ To learn more about this history see: <http://www.srwoodbridge.com/wordpress/wp-content/uploads/Factors.pdf>

⁵ For more details from the legislative hearings that lead to the passage of ICWA see H.Rep. 95-1386 at www.narf.org/icwa/federal/lh.htm for a summary see: <http://www.narf.org/icwa/federal/lh.htm>.

⁶ For a more in-depth review of the continued trauma of adults who were placed outside of their tribal community see the Split Feathers Report: http://www.nativecanadian.ca/Native_Reflections/split_feather_syndrome.htm.

⁷ For the text of the Act: <http://www.gpo.gov/fdsys/pkg/USCODE-2012-title25/pdf/USCODE-2012-title25-chap21.pdf> and a thorough description of the law: <http://narf.org/icwa/index.htm>

⁸ "State" in this context means the individual states of the United States.

- Placements preferences that favor extended family, other tribal families and tribe-approved institutions are meant to prevent the separation of Indigenous children from their culture.
9. Finally, by formally acknowledging the federal government's trust responsibility to ensure that Indian children are protected, ICWA **extends funding to tribes** to provide culturally relevant services to Indian children and their families on and off the reservation. These programs must endeavor to prevent the breakup on Indian families while providing culturally relevant services to children and their families. These funds are necessary to ensure that tribal and state child welfare agencies have the capacity to meet ICWA requirements. Today, funding is insufficient given the needs and the number of tribes.⁹

C. Disproportionate Rates of Removal of Indigenous Children

10. Although ICWA was designed to counterbalance the biases in the child welfare system that led to disproportionate rates highlighted by the AAIA in the 1960s and 1970s, and did much initially to reduce these numbers, Indigenous children remain disproportionately overrepresented in the child welfare system nationwide. This means that higher percentages of Indigenous children are found in the child welfare system than in the general population. These high levels of disproportionality are related to institutional racism and institutional bias.
11. The overrepresentation of Indigenous children often starts with reports of abuse and neglect at rates proportionate to their population numbers, but grows higher at each major decision point from investigation to placement, culminating in the overrepresentation of Indigenous children in placements outside the home.¹⁰ One study has found that, although rates of abuse and neglect for Indigenous children do not differ significantly from rates of abuse or neglect for all children, where abuse has been reported, **Indigenous children are two times more likely to be investigated, two times more likely to have allegations of abuse substantiated, and four time more likely to be placed in foster care than their Caucasian counterparts.**¹¹
12. Further, nationwide, **Indigenous children are overrepresented in foster care at a rate of 2.4 times greater than the rate of Indigenous children in the general population.** This means that although Indigenous children are only 0.9% of all children in the United States, they are 2.1% of all children who are placed outside their homes in foster care. Compare this to Caucasian children who are underrepresented nationwide at a rate of 0.8 times lower than their rate in the general population. Caucasian children make up 53.5% of all children in the United States but only 41.6% of all children placed outside their homes in foster care. Although national data highlights the overrepresentation of Indigenous children in the child

⁹ For more information on tribal child welfare funding see NICWA's FY2015 budget testimony: http://www.nicwa.org/government/documents/Input%20on%20the%20FY%202015%20NCAI%20Tribal%20Budget%20Recommendations_Dec2013.pdf)

¹⁰ For an overview of the child welfare system: <http://www.casey.org/Resources/Publications/pdf/HowChildrenMoveThroughCW.pdf>

¹¹ Hill, R. B. Casey-Center for the Study of Social Policy Alliance for Racial Equity in Child Welfare, Race Matters Consortium Westat. (2007), *An analysis of racial/ethnic disproportionality and disparity at the national, state, and county levels*. Seattle, WA: Casey Family Programs.

welfare system, the chart below highlights those states with the worst disproportionality rates in 2012.¹²

Foster Care Placement of Indigenous Children by Individual States - 2012¹³

State	Disproportionality Rate	% of children who are Indigenous	% of children in foster care who are Indigenous
Minnesota	13.9	1.4%	18.8%
Nebraska	7.7	1.1%	8.7%
Iowa	4.5	0.3%	1.6%
Washington	4.3	1.5%	6.6%
Wisconsin	4.1	1.1%	4.3%
New Hampshire	3.9	0.2%	0.8%
South Dakota	3.8	13.5%	50.8%
Montana	3.7	9.4%	35.1%
Idaho	3.7	1.2%	34.3%
Oregon	3.5	1.3%	4.4%
North Dakota	3.3	8.5%	28.4%
Utah	3.2	1.0%	3.1%
Alaska	2.9	17.7%	51.0%

13. A similar story exists with the rate of adoption of Indigenous children. In 2011, 56% of Indian children who were adopted were not placed in American Indian homes as dictated by ICWA.¹⁴ This number reflects a pattern of adoptions cases where ICWA is purposefully avoided or conveniently forgotten, including a 2013 U.S. Supreme Court case involving a Cherokee child, in which the requirements of ICWA were not properly followed. As noted below, the U.N. Special Rapporteur on the Rights of Indigenous Peoples issued a statement on this case.

14. The experience of one young enrolled member of the Oglala Sioux Tribe, who found himself in a state child welfare system highlights the impact of growing up outside his community. As a child, he was raised in the Colorado foster care system far away from his Native American roots:

When I entered foster care, it was a stay that was supposed to be temporary, but turned into long-term foster care. While in care, I was slowly being disconnected from my American Indian culture and everything that I was ever taught as a young boy. I was

¹² Woods, S. & Summers, A. (2014). Technical assistance bulletin: Disproportionality rates for children of color in foster care (FY 2012). National Council of Juvenile and Family Court Judges: Reno, NV.
<http://www.ncjfcj.org/resource-library/publications/disproportionality-rates-children-color-foster-care-fiscal-year-2012>

¹³ *Id.*

¹⁴ Kreider, R.M. *Interracial Adoptive Families and Their Children: 2008* in *Adoption Factbook V* Alexandria, VA: National Council for Adoption, 109 (2011): <https://www.adoptioncouncil.org/publications/adoption-factbook.html>

being left behind. As my journey in the state care came to an end at the age of 18, I aged out to a world of uncertainty. I had little support and was culturally disconnected from my Lakota ways....I lost the connection to important family members who taught me to dance and sing and were there for everyday activities. I missed going to the local urban Indian center and interacting with other Natives and leaders in the community. I was 12 years old and getting ready to go to my first sweat and sun dance but foster care came into my journey and ripped me away from that.

Being 12 and entered into a new environment and home, I was scared and emotions came over me. Overwhelmed, the state workers gave me medicines with bad side effects. I really wanted sage, a smudging down and prayers with an elder, but that was not a choice for me.¹⁵ I know for sure that our cultural remedies do help in many ways and these cultural rituals shouldn't be stripped from youth entering foster care. It would have made a huge difference for me to have an elder or medicine man continue the connection while I was in care; I think it would make a difference for other Native youth in care.¹⁶

D. Factors Contributing to the Racially Disproportionate Rates of Indigenous Children in State Child Welfare Systems

1. Lack of Federal Oversight Causes Problematic Implementation by States

15. Provisions of ICWA are meant to correct the implicit and structural biases which may exist in child welfare systems; however because of the documented non-compliance by states, the disproportionate rates described above continue to exist. According to recent research studies, states are straying from the following key provisions of the law:
- Failure to identify Indian children and ensure they are receiving the protections of the law (which would lead to less removals);
 - Inadequate or lack of notice to tribes and family members (which would allow tribes and families to step in and care for the child before removal); and
 - Placement of children outside the ICWA placement preferences without good cause (which leads to a disproportionate number of Indigenous children being removed from their families as compared to non-Indigenous children).
16. The lack of federal oversight leads to ineffective and incomplete implementation of ICWA by states. ICWA is the only federal child welfare law in the United States without a regular and comprehensive federal review. The federal government funds the majority of all state child welfare programming. To receive this funding, the individual states must comply with numerous federal review processes. However, ICWA does not have similar requirements. In a 2005 United States Government Accountability Office study, this Congressional body

¹⁵ Sage is a traditional medicine used by many North American Indigenous cultures. Smudging is a traditional practice of burning sage and other medicines for cleansing purposes, as well as prayer and healing.

¹⁶ Daryle Conquering Bear Crow, *Disconnected From My Culture, Re-Discovering My Roots*, *Fostering Families Today*, Jan./Feb. 2013 (www.fosteringfamilies.com). Daryle Conquering Bear Crow (Oglala Sioux Tribe) is in his final years of earning a political science degree from Fort Lewis College. He serves as an active youth voice on the National Resource Center for Tribes Advisory Committee, the National Foster Care and Alumni Policy Council Board, and as a Denver Indian Family Resource Center volunteer.

found that the very little information that is being collected is not used by the federal and state governments to ensure that ICWA concerns are addressed in a meaningful way.¹⁷

17. Including ICWA-related information in a state's other reporting requirements would provide the information necessary to improve federal oversight, evaluate national ICWA compliance and identify corrective actions to ensure uniform nationwide ICWA compliance and the recognition of Indigenous children and peoples human rights. Additionally, ICWA does not provide for penalties or incentives for compliance. Again, incentives are in place for other federally-funded child welfare programs but not for ICWA allowing for non-compliant behavior to go unchecked. Without ICWA's protections, Indigenous children are vulnerable to bias treatment, unnecessary removal, and placement outside of their culture and community.

2. Practitioners Misunderstanding and Willful Avoidance of ICWA

18. Non-compliance is also due to a lack of education on, and understanding of, the law. Despite its enactment over 35 years ago, many state social workers are unfamiliar with ICWA's mandates. One study shows that only 45% of state social workers in one state in the Southwest part of the United States had ever read ICWA and only 55% were familiar with ICWA's active efforts requirement.¹⁸ Attorneys and judges also often lack knowledge of the federal law. Due to misunderstandings, Indigenous children are not properly identified in hundreds of child welfare cases each year, thwarting the application of ICWA and potentially leading to a situation where a child grows up without connection to her family, culture, and community. These misunderstandings also lead to inconsistent or incorrect application of ICWA's various requirements which often creates potential for a child's to be unnecessarily separated from her community and culture.
19. Worse still is some practitioners' willful avoidance of the law. In dozens of cases each year attorneys and social workers purposely circumvent ICWA in order to purposefully place children outside their families, communities, and culture. For example, some continuing legal education workshops teach practitioners how to avoid ICWA instead of how to abide by it. This lack of understanding and willful avoidance of ICWA on the part of practitioners whose responsibility it is to ensure ICWA's implementation contributes to the non-compliance. When those individuals charged with protecting Indigenous children do not have the knowledge necessary to do so, or are motivated by personal bias to circumvent mandated protections, Indigenous children are left vulnerable to a system that promotes unnecessary removal and placement without formal consideration of a child's culture or community.

3. Judicial Interpretations Minimize ICWA's Impact

¹⁷ U.S. Government Accountability Office (2005). Indian Child Welfare Act: Existing information on implementation issues could be used to target guidance and assistance to states. Washington, D.C.: Government Printing Office. <http://www.gao.gov/products/GAO-05-290>

¹⁸ Limb, G.E., Chance, T., & Brown, E.F. (2004). State compliance with Indian Child Welfare Act to improve outcomes for American Indian families and children. *Protecting Children*, 18(3), 13-23.

20. Because comprehensive regulations on ICWA's implementation were never issued by the United States, individual states are free to interpret the law as they see fit. Given this opportunity, some states have systematically chipped away at its mandates or found exceptions to ICWA's application entirely. For example, one area where ICWA's mandate has been weakened is its placement preferences provision. Courts sometimes allow Indigenous children to be placed with non-Indigenous families by broadly interpreting the good cause requirement; ICWA's placement requirements must be followed, "in the absence of good cause to the contrary."¹⁹ Good cause is one of the main areas of continuing litigation under the ICWA, and there is continuing development in the law.
21. Finally, the most widely and potentially problematic judicial interpretation creates an exception to the law in its entirety. Called the Existing Indian Family Exception, this judicial doctrine allows judges to avoid ICWA's application where an Indian child is born to a non-Indian mother and has an absent father. ICWA is avoided when the family in question is deemed "not Indian enough" based on a series of questions about cultural connectedness.²⁰ These interpretations promote non-compliance and minimize ICWA's impact by decreasing those protections intended to support the unnecessary removal of Indigenous children and their placement outside of their community and culture.

4. Inadequate Funding for Tribes

22. Culturally competent programs, resources, and case management result in better outcomes for children and families involved in the child welfare system. Tribes are, therefore, in a position to make significant reductions in the foster care populations because of the intimate knowledge they have of the families in their communities and the resurgence of culturally based services, but the federal funding to integrate this knowledge in tribal child welfare systems and support more effective culturally based services is in very short supply. Funding for tribal child welfare programs and individual state ICWA compliance efforts is pieced together through various federal child welfare programs. Even when aggregating these different programs and funding mechanisms the funding is insufficient to ensure ICWA compliance and the tribes' sovereign right to care for their own children in their communities immersed in their culture.

IV. Concluding Observations

23. The Committee did not provide concluding observations on the issue presented in this alternative report.

V. U.S. Government Report

24. The United States' report did not address the issue presented in this alternative report.

¹⁹ For example [Seminole Tribe of Fla. v. Dept of Children & Families](#), (Fla. Dist. Ct. App. 2007); [In re F.H.](#), (Fla. Dist. Ct. App. 2007); [In re B.G.J.](#), (Kan. Ct. App. 2005), *affd*, 133 P.3d 1 (Kan. 2006).

²⁰ See L. Graham, *The Past Never Vanishes: A Contextual Critique of the Existing Indian Family Doctrine* (1999) at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=983109.

VI. International Human Rights Legal Framework²¹

A. International Convention Against All Forms of Racial Discrimination

25. Articles 1.1 and 5(e), which provide for the non-discrimination in cultural life and rights, are directly implicated by the disparate treatment of Indigenous children in the individual states' child welfare systems by preventing them from exercising their (and their tribes') rights to culture. Additionally, the United States' obligation under Article 2(c) of the Convention to "take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists" is particularly relevant to the issues raised in this alternative report.
26. As highlighted above, Indigenous children are disproportionately removed from their homes and communities at a higher rate than other racial groups preventing them from enjoying their culture and their ability to be educated in their culture. Indigenous children growing up in their community are able to participate in ceremonies and celebrations, learn the language and be part of the intergenerational transmission of cultural knowledge and experience that is critical to the survival of indigenous peoples and the well-being of Indigenous children. Although ICWA is meant to counterbalance the bias and address disparate treatment of Indigenous peoples in the child welfare system, the non-compliant implementation by states resulting in on-going racial discrimination necessitates that the United States "take effective measures to review... and amend" this law and its related regulations and policies.
27. The Committee addressed similar situations and histories in Canada (2012) and Australia (2010) and issued recommendations to both States:
- Provided with data and information by First Nations in Canada highlighting the large number of Indigenous child in state care, the Committee issued a Concluding Observation recommending that Canada, "in consultation with Aboriginal peoples, implement and reinforce its existing programmes and policies to better realize the economic, social and cultural rights of Aboriginal peoples, in particular through: (f) *Discontinuing the removal of Aboriginal children from their families and providing family and child care services on reserves with sufficient funding...*" Para. 19.
 - While recognizing the importance of Australia's apology for the forcible removal of 100,000 Indigenous children from 1910-1970 (often described as the "Stolen Generation"), the Committee "regret[ed] the absence of appropriate compensation payment schemes for Stolen Generations.... *The Committee reiterates its recommendation to the State party that it address appropriately and through a national mechanism past racially discriminatory practices, including through the provision of adequate compensation to all involved.*" Para. 26.

B. United Nations Declaration on the Rights of Indigenous Peoples

²¹ For a more in-depth description of how these provisions are related to the removal of Indigenous children in the United States, see Kristen Carpenter and Lorie Graham, Human Right to Culture, Family and Self-determination at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2401886.

28. The Committee recognizes the United Nations Declaration on the Rights of Indigenous Peoples as an instrument to "...a guide to interpret the State party's obligations under the Convention relating to indigenous peoples." Relevant provisions include:
- Article 3 (right to self-determination including freely pursuing "cultural development.")
 - Article 7 (prohibition on forcible removal of Indigenous children from their families and communities.) This provision was added in recognition of the well-documented experiences of Indigenous children who were historically taken or separated from their families and communities and removed to non-Indigenous families.
 - Article 8 (prohibition on forced assimilation or destruction of their culture and calls for effective mechanisms" for prevention of the denial of these rights.)
 - Article 9 (right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned.)
 - Article 14 (right of Indigenous children to "have access... to an education in their own culture and...language.")

C. Convention on the Rights of the Child

29. While the United States is not a party to this treaty, its principles are an accepted part of customary law regarding the unique cultural protections that need to be provided to Indigenous children, their families, and communities. Article 30 provides that no "indigenous child" shall be "denied the right, in community with other members of his or her group, to enjoy his or her own culture" or "language." General Comment No. 11 to the Convention explains that in determining best interest of indigenous child a state must "consider the cultural rights of the indigenous child" and ensure that "indigenous community" is "consulted and given an opportunity to participate in the process on how the best interests of indigenous children."

VII. The CERD Committee General Comments

30. The Committee's General Recommendation No. 23 addresses the rights of indigenous peoples. Of particular relevance to the concerns raised in this report, the Committee recognizes the importance of the cultural rights of indigenous peoples, calling on States parties to "[r]ecognize and respect indigenous distinct culture, history, language and way of life" as well as noting that "the preservation of their culture and their historical identity has been and still is jeopardized." The survival of indigenous culture, history, language and way of life is threatened by the non-compliant implementation of ICWA.

VIII. Other UN Body Recommendations: Special Rapporteur on the Rights of Indigenous Peoples

30. In his 2012 country report on the United States, the Special Rapporteur acknowledged the past practices of removal of Indigenous children from their families and communities have

been partially “blunted by passage” of ICWA, though recognized that the law “continues to face barriers to its implementation.”²²

31. Additionally, in response to information received by NICWA in 2013 on a recent U.S. Supreme Court decision addressing the scope of ICWA and the rights of Cherokee child, the Special Rapporteur released a statement “encourage[ing] the United States to work with indigenous peoples, state authorities and other interested parties to investigate the current state of affairs relating to the practices of foster care and adoption of indigenous children, and to develop procedures for ensuring that the rights of these children are adequately protected.”²³

IX. Suggested Questions for the United States

32. The Indian Child Welfare Act provides for national uniform procedural and substantive protections to prevent the removal of Indigenous children from their families, communities, and culture. However, a disproportionate number of Indigenous children are unnecessarily removed from their families and placed in foster care outside their communities. Front-end family preservation services could protect children while keeping them safely in their homes and community. Additionally, Indigenous foster care placements could better serve those children for whom removal is necessary to ensure their safety. How does the United States plan to address this problem?
33. One of the most important aspects of ICWA is its recognition of tribes’ inherent jurisdiction in child custody proceedings. Yet due to insufficient resources many tribes remain unable to fully exercise jurisdiction under the provisions of ICWA. How does the United States plan to address this problem?
34. Overwhelming anecdotal evidence suggests that Indigenous families face bias treatment in the public child welfare and private adoption systems and that there is wide spread non-compliance with ICWA. How will the United States investigate, verify, and correct these systemic rights violations?

X. Suggested Recommendations for the United States

35. The Committee recommends that the United States, in consultation with tribes, establish a robust federal review system to ensure that ICWA is fully implemented and enforced, including promulgating federal regulations to ensure that individual states are complying with their ICWA obligations.

²² Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: The situation of indigenous peoples in the United States of America, para. 46-47, U.N. Doc. A/HRC/21/47/Add.1 (August 31, 2012) available at http://unsr.jamesanaya.org/docs/countries/2012-report-usa-a-hrc-21-47-add1_en.pdf.

²³ UN expert urges respect for the rights of Cherokee child in custody dispute (Sept. 10, 2013) available at <http://unsr.jamesanaya.org/statements/un-expert-urges-respect-for-the-rights-of-cherokee-child-in-custody-dispute>.

36. The Committee recommends that the United States provide tribes with sufficient funding to provide family and child care services and provide individual states' protection and child welfare systems with sufficient funding to ensure ICWA compliance.
37. The Committee recommends that the United States conduct an investigation into the biased treatment of Indigenous families in individual states' child protection and child welfare systems.

Addendum

Association on American Indian Affairs (AAIA) AAIA, founded in 1922, is a national Indian organization headquartered in Rockville, Maryland. AAIA is governed by an all-Native American board of directors from across the country. Its mission is the preservation and enhancement of the rights and culture of American Indian and Alaska Natives. The Association's programs fall into three main categories: youth/education, cultural preservation, and sovereignty. AAIA began its active involvement in the Indian child welfare issues in 1967 and for many years was the only national organization active in confront the crisis in Indian child welfare. AAIA studies were prominently mentioned in committee reports pertaining to the enactment of ICWA and, at the request of Congress, AAIA was closely involved in the drafting of the Act. Since that time, the Association has continued to work with tribes in implementing the Act.

The National Congress of American Indians (NCAI), founded in 1944, is the oldest, largest, and most representative American Indian and Alaska Native organization serving the broad interests of tribal governments and communities. It is a membership organization and a non-profit with membership that fluctuates but has been estimated at up to 70 percent of federally recognized tribes. NCAI is the go-to organization for the Administration, federal agencies, and organizations working to consult with and partner with tribes on a range of policy and research initiatives. NCAI's founders established the organization at a time when tribes were being terminated by the federal government. As stated in the Preamble to the NCAI Constitution that governs the organization today, the first stated purpose of NCAI is, "to secure to ourselves and our descendants the rights and benefits the traditional laws of our people to which we are entitled as sovereign nations."

Alliance of Colonial Era Tribes (ACET) represents the interest of historic continuing American Indian Tribes of the colonial era of the eastern and southern seaboard of the continental United States, which share a common documented history of colonial and federal governmental contact. While most of the ten ACET member nations are active with the National Congress of American Indians (NCAI), supporting its efforts on behalf of all Indian Country, we have also elected to band together to heighten awareness of the unique concerns of historic eastern and southern non-BIA listed tribal nations, which have had a history of interaction with the federal government. We agree affirm the report's finding of rampant noncompliance with the Indian Child Welfare Act (ICWA) and the discriminatory treatment of American Indian and Alaska Native children in child welfare systems here in the United States. We further assert that the scope of ICWA protections should be reflective of the United Nations Declaration on the Rights of Indigenous Peoples and should not be limited to citizens of American Indian Tribes listed with the Bureau of Indian Affairs, but should apply to all historic American Indian Tribes and communities.

The California Association of Tribal Governments (CATG) is the state-wide, inter-tribal, non-profit association of federally recognized Indian Tribes in the State of California. Chartered in 2008 under Hoopa Valley Tribe non-profit code, CATG provides its 32 active member tribes with a means for careful but swift action on fast moving events that affect the interests of tribes collectively and individually, educates federal and state government elected officials about tribal governments' sovereign status and interests and concerns, develops standards or benchmarks that promote tribal sovereignty and strengthen tribal governments, and measures the impact of federal or state policy, regulation and legislation on tribal interests.

Eight Northern Indian Pueblos Council, Inc. (ENIPC, Inc.) is established to provide community-based services in the areas of education, employment and training, behavioral health, domestic violence counseling, senior services, environmental support services, child care providing, commodity distribution, woman and infant services, and administrative support services. ENIPC is comprised of the Northern

New Mexico Pueblos of Taos, Picuris, Ohkay Owingeh, Santa Clara, San Ildefonso, Pojoaque, Nambe and Tesuque.

The International Indian Treaty Council (IITC) is an organization of Indigenous Peoples from North, Central, South America, the Pacific and the Caribbean. The mission of IITC is to work for sovereignty and self-determination for Indigenous Peoples and for the recognition and protection of their human rights, treaties, traditional cultures and sacred lands. IITC was founded in 1974 and in 1977 IITC became the first Indigenous organization to receive Consultative Status with the United Nations Economic and Social Council. In 2011 IITC was the first Indigenous organization to be upgraded to “General Consultative Status” in recognition of its wide range of work in a number of UN bodies and processes including the UN human rights system. (See website at: www.iitc.org) **International Indian Treaty Council (IITC) Affiliates in Lands and Territories currently part of or under the jurisdiction of the United States:** *Indigenous Tribal and Traditional Nation Governments:* Pit River Tribe (California), Wintu Nation of California, Redding Rancheria (California), Tule River Nation (California), Muwekma Ohlone Nation (California), Coyote Valley Pomo Nation (California), Round Valley Pomo Nation (California), Independent Seminole Nation of Florida (Florida), Native Village of Venetie Tribal Government/Arctic Village Traditional Council (Alaska), Chickaloon Village Traditional Council/Chickaloon Native Village (Alaska), Stevens Village Traditional Council (Alaska), Native Village of Eklutna (Alaska). *Indigenous Organizations, Networks, Communities and Societies:* National Native American Prisoners' Rights Coalition, White Clay Society/Blackfoot Confederacy (Montana), Indigenous Environmental Network (National), Columbia River Traditional Peoples (Washington/Oregon), Rural Coalition Native American Task Force (Minnesota), Yoemem Tekia Foundation, Pascua Yaqui Nation (Arizona), Tohono O'odham Nation Traditional community (Arizona), Oklahoma Region Indigenous Environmental Network (Oklahoma), Wanblee Wakpeh Oyate (South Dakota), IEN Youth Council, Cactus Valley/Red Willow Springs Big Mountain Sovereign Diné Community (Arizona), Leonard Peltier Defense Committee, Eagle and Condor Indigenous Peoples' Alliance (Oklahoma), Seminole Sovereignty Protection Initiative (Oklahoma) Mundo Maya (California), Los Angeles Indigenous Peoples Alliance (California) American Indian Treaty Council Information Center (Minnesota), Vallejo Inter-Tribal Council (California), Three Fires Ojibwe Cultural and Education Society (Minnesota), California Indian Environmental Alliance (CIEA), Wicapi Koyaka Tiospaye (South Dakota), Indigenous Peoples Working Group on Toxics (National), North-South Indigenous Network Against Pesticides (multi-regional based in US), the International Indian Women's Environmental and Reproductive Health Network (multi-regional based in US) and United Confederation of Taino People: Borikén (Puerto Rico/United States), Kiskeia, (Dominican Republic), Barbados, Guyana (Arawaks), Bimini (United States), Jittoa Bat Natika Weria (Yaqui Nation, US and Mexico).

The Montana Wyoming Tribal Leaders Council (TLC), based in Billings, Montana serves its 11 member Tribes by coordinating a unified approach on policy initiatives and strategies that advance Tribal perspectives on issues of concern. Obviously, the well-being and care of our children is of utmost concern; and TLC is committed to seeing that all of our children's real needs are being met, and that the current overall system of care be improved.

The United Tribes of Michigan (UTM) provides a forum for the Tribes in Michigan to address issues of common concern and is committed to joining forces to advance, protect, preserve and enhance the mutual interests, treaty rights, sovereignty, and cultural way of life throughout the next seven generations.

Alaska Inter-Tribal Council (AITC) was created by a gathering of over 170 Tribal Governments who formed a treaty amongst themselves in 1991. AI-TC was provided non-profit status in 1992 and acts as a foundation to advocate, protect and promote the Tribal Nations, the Tribes of Alaska; provides training opportunities; enters into grants with Tribal Resolutions; acts as a clearinghouse of information for the

Tribes: sending, receiving information, articles, documents, invitations and opportunities for training, steps up to Public Notices and Public Comment periods on matters essential and critical to preserving, protecting and promoting our ways of lifeways-ancient, historical and spiritual, our culture, our tradition while asserting our political will for our tribal governments, the recognized public authority while advancing with new technologies into the future—for our next seven generations. At the annual convention in 2005 Tribal Government representatives passed Resolution 2005-10 to promote, protect and advance our return to list of Territories, as agreed to in the 1945 United Nations Charter Chapter 11, Article 73e. Several ‘Shadow Reports’ have been submitted to the UN Human Rights Committee since 2001 noting the abuses and violations and denial of our full self-governance, lack of Tribal Government representatives sitting at ‘the table’ on matters that affect our lands, territories, waters and airways, violating our intellectual property rights including our languages, cultures, traditions, our spiritual ways, lack of peace and security for our communities, families, women and children, lack of full self-governance, violations of our subsistence rights of fishing, hunting, gathering, bartering, trading and navigating the waters we have used and occupied since time immemorial. Alaska Inter-Tribal Council reserves the right to bring forward other issues of importance to the CERD in future years.

Midwest Alliance of Sovereign Tribes (MAST) mission is to advance, protect, preserve, and enhance the mutual interests, treaty rights, sovereignty, and cultural way of life of the sovereign nations of the Midwest throughout the 21st century.

United South and Eastern Tribes, Inc. (USET) is a non-profit, inter-tribal organization representing 26 federally recognized Indian Tribes from Texas across to Florida and up to Maine. USET works to protect and promote the inherent sovereign authority of its membership and all of Indian Country. Our Native children are our greatest asset and we must work to ensure that we protect and provide for them to ensure for our long term survival and prosperity as a people.

**Committee on the Elimination of Racial Discrimination (CERD)
85th Session 11-29 August 2014
Examination of the United States 7th, 8th and 9th Periodic Reports of June 2013**

**Response to the United States 2013 Periodic Report:
Joint Submission of Two Alternative Reports
regarding the violations of Indigenous Children's Right to Culture and Continuing Legacy of the Boarding
School Policies**

**Submitted by:
National Native American Boarding School Healing Coalition
International Indian Treaty Council
National Indian Child Welfare Association**

**Alternative Report A:
Indigenous Children and the Legacy and Current Impacts of the Boarding School Policies in the United States
and the Lack of Redress, Restitution and Restoration by the United States to Address these Impacts or to
Acknowledge Responsibility for Them**

ATTACHMENTS I & II

ATTACHMENT I

AMERICAN INDIAN BOARDING SCHOOLS IN THE UNITED STATES:

A BRIEF HISTORY AND THEIR CURRENT LEGACY

Denise K. Lajimodiere

Published in: Stamatopoulou, Elsa and Wilton Littlechild *Indigenous Peoples' Access to Justice, Including Truth and Reconciliation Processes* Institute for the Study on Human Rights at Columbia University, 2014 pp. 255-261

Introduction

My interest in American Indian boarding school survivors' stories evolved from recording my father, and other family members, speaking of their experiences. Stories I never knew existed, because they had all maintained silence on their experiences until I began asking questions.

Historical Background

American Indian children were taken from reservation homes into off-reservation boarding schools beginning in 1879. Boarding schools physically separated children in the formative years

of their lives from the influence of family and tribe.¹ The schools were closely tied to the purpose of assimilationist education. On March 3, 1819, the U.S. Congress passed an act to provide education “for the purpose of providing...for the teaching of their [American Indian] children in reading, writing and arithmetic...”² Government officials “believed if they carried out their educational program on a sufficiently large scale it would transmogrify whole tribal cultures and eventually assimilate Indians into the lower strata of American society.”³ The Indian Boarding School policy has been a collaboration of the Christian churches and the federal government since its earliest inception, beginning with the Indian Civilization Act Fund of March 3, 1819. The Act’s purpose was the “civilization” of Native Americans; stripping them of their traditions and customs and teaching them the ways of the majority culture in missionary schools, i.e., transform them into Christian farmers or laborers.⁴

The federal government allowed school facilities, often run by churches and missionary societies to be situated close to the communities served.⁵ Assimilationists of the time viewed this as a disadvantage, as the students remained in their home communities under the influence of parents and tribal elders, and often went ‘back to the blanket,’ maintaining tribal traditions and language⁶.

They Came For the Children

Rations, annuities, and other goods were withheld from parents and guardians who refused to send children to school after a compulsory attendance law for American Indians was

¹ David Adams, *Education for extinction: American Indians and the boarding school Experience 1875-1928*. (Lawrence: University Press of Kansas, 1995). Tsianina Lomawaima, *They called it prairie light: The story of Chilocco Indian School*. (Lincoln: University of Nebraska Press, 1994). Brenda Child, *Boarding school season: American Indian families, 1900-1940*. (Lincoln: University of Nebraska Press, 2000). Brenda Child, Margaret Archeletta & Tsianina Lomawaima, (eds.) *Away from home: American Indian boarding school experiences 1879-2000*. (Phoenix: Heard Museum, 2000) Clifford Trafzer, Jean Keller & Lorene Sisquoc, (Eds.) *Boarding school blues: Revisiting American Indian educational experiences*. (Lincoln: University of Nebraska Press, 2006). Michael Cooper, *Indian school: Teaching the White Man’s Way*. (New York: Clarion Books, 1999). Esther Horne & Sally McBeth, *Essie’s story: The life and legacy of a Shoshone teacher*.

² US Statues At Large, (4) 16 Stat. 40 (April 10, 1869).

³ J Hamley, *Cultural genocide in the classroom: A history of the federal boarding school movement in American Indian education. 1875-1920*, (Harvard: Harvard University Press, 1994) [unpublished dissertation].

⁴ An Act Making Provision for the Civilization of the Indian Tribes Adjoining the Frontier Settlements, 3 Stat, 516 (March 3, 1819)]

⁵ Andrea Smith, *Conquest: Sexual violence and American Indian genocide*. (Cambridge: South End Press, 2005).

⁶ Adams 1995

passed by Congress in 1891.⁷ The 1890s through the 1930s were the heyday of the off-reservation boarding schools. In 1931, 29% of Indian children in school were in boarding schools. Off reservation boarding schools housed 15 % of all Indian children in school.⁸ By the late 1920s, nearly half of boarding school enrollments were in off-reservation schools.⁹ The total number of off-reservation boarding schools by 1909 was 25, along with 157 on-reservation boarding schools and 307 Day Schools were in operation.¹⁰ An estimated 100,000 children passed through these schools between 1879 and the 1960s.

Indian Boarding schools or industrial schools prepared boys for manual labor or farming, and girls for domestic work. Schools also extensively utilized an Outing program where Smith (2005) states, “Children were involuntarily leased out to white homes as menial labor during the summers rather than sent back to their homes.”¹¹ Additionally, government expenditures for boarding schools were always small, and the schools exploited the free labor of Indian children in order to function.¹² Due to overcrowding in these schools, tuberculosis, trachoma and other contagious diseases flourished.¹³ Adams states “...epidemics of tuberculosis, trachoma, measles, pneumonia, mumps and influenza regularly swept through overcrowded dormitories, taking a terrible toll on the bodies and spirits of the stricken...Thus, disease and death were also aspects of the boarding school experience.”¹⁴

The boarding school, whether on or off the reservation, became the institutional manifestation of the government’s determination to completely restructure the Indians’ minds and personalities. Boarding schools were established for the sole purpose of severing the Indian child’s physical, cultural and spiritual connection to his or her tribe.¹⁵

My qualitative interview research study of twenty American Indian boarding school survivors “Stringing Rosaries: A Qualitative Study of Sixteen Northern Plains American Indian Boarding School Survivors,” revealed four major themes, including: a) The participants attending

⁷ Adams, 1995; Tsianina Lomawaima, 1994.

⁸ Indian Schools and Education. U. S. Bureau of Indian Affairs

⁹ Laurence F. Schmeckebier, The Office of Indian Affairs. (Baltimore: Johns Hopkins University Press, 1927)216.

¹⁰ Adams 1995

¹¹ *Supra* 5, p. 37

¹² Child, 2000

¹³ Adams, 1995; Child, 2000; Smith, 2005).

¹⁴ *Ibid*, pp. 124-125

¹⁵ Adams, 1995; Lomawaima, 1994; Cooper, 1999; Hamley, 1994; Smith, 2005

boarding school experienced loss in the form of: loss of identity, language, culture, ceremonies and traditions; loss of self-esteem; loneliness due to loss of parents and extended family; feeling of abandonment by parents; feeling lost and out of place when they returned home. b) The participants attending boarding school experienced abuse in the form of: corporal punishment; forced child labor; the Outing program; hunger/malnourished; and sexual and mental abuse. c) The participants experienced unresolved grief: maintaining silence; mental health issues, relationship issues and alcohol abuse. d) The participants expressed ways for healing in the form of: a return to Native spirituality and forgiveness.¹⁶

The boarding school survivors in the study experienced human rights abuses. Fundamental human rights of American Indian children were violated in boarding schools as documented by this study and oral stories. They were treated as less than human and undeserving of respect and dignity as children, as human beings and as members of an ethnic group. Their most basic rights and fundamental moral entitlements were violated.

These boarding school survivors in the study experienced severe beatings or they witnessed the beatings of fellow students by staff; were caused mental harm; were sexually abused or witnessed sexual abuse; were often located hundreds of miles from their homes; were forced to do manual labor; were hungry; and experienced the forced loss of language, culture, tribal traditions and spirituality. These boarding school survivors are experiencing continued emotional trauma from beatings, hunger, physical and sexual abuse. The survivors have expressed a way for healing these soul wounds both personally and as tribes: a return to American Indian spirituality, including languages and ceremonies.

Even though asked about positive experiences, favorite teachers or mentors and friendships, these interviewees had a majority of negative experiences. What is most poignant to me is the resounding silence the interviewees have maintained throughout their lives regarding their experiences at boarding schools, whether positive or abusive, refusing to, or unable to, talk to siblings or their children. The stories told here are filled with sorrow, pain and lasting trauma. Yet they are stories told with a look to the future, a future filled with American Indian traditions,

¹⁶ Denise Lajimodiere, *Stringing Rosaries: A Qualitative Study of Sixteen Northern Plains American Indian Boarding School Survivors* (2012) 8 Journal of Multiculturalism in Education.

languages, cultures, and most importantly, forgiveness. Important to me is that this study provided a vehicle to fifteen boarding school survivors to tell their story.

Historical Trauma

In researching boarding schools I came across terms I had not heard of before, terms such as historical trauma, generational trauma, collective trauma, multigenerational trauma and unresolved grieving. Historical trauma, the term used most often by scholars of American Indian trauma, is conceptualized as a collective complex trauma inflicted on a group of people who have a specific group identity or affiliation – ethnicity, nationality, and religious affiliation. It is the legacy of numerous traumatic events, a community's experiences over generations and encompasses the psychological and social responses to such events. Scholars have suggested that the effects of these historically traumatic events are transmitted intergenerationally as descendants continue to identify emotionally with ancestral suffering. This collective trauma has been characterized by scholars as the soul wound, knowledge of which has been present in Indian country for many generations.¹⁷

Increasingly, the damage from boarding school abuse - loneliness, lack of love and lack of parenting - is being seen as a major factor in ills that plague tribes today, passing from one generation to the next and manifesting in high rates of poverty, substance abuse, domestic violence, depression and suicide. There have been a variety of terms used to describe the multigenerational nature of distress in communities, including collective trauma, intergenerational trauma, multigenerational trauma, and historical trauma.

Responses to such trauma have an impact at the individual, familial and community level. Research suggests that responses at the individual level fall within the context of individual mental and physical health and may include symptoms of post traumatic syndrome disorder (PTSD), guilt, anxiety, grief and depressive symptomology. Responses at the familial level have received much less research attention: however, emerging work suggests that impacts may

¹⁷ E Duran et al, *Healing the American soul wound*, *International Handbook of Multigenerational Legacies of Trauma*. Ed. by Yael Danieli. (New York: Plenum Press, 1998). Smith 2005. Andrea Smith, *Soul Wound: the legacy of Native American schools*. (Amnesty Now, 2003) pp. 14-17.

include impaired family communication and stress around parenting.¹⁸ High numbers of parents growing up in boarding schools were deprived of traditional parental role models, suggesting that boarding school experiences may have not only interrupted the intergenerational transmission of healthy child-rearing practices but also instilled new, negative behaviors instead.

At the community level, responses may include the breakdown of traditional culture and values, the loss of traditional rites of passage, high rates of alcoholism, high rates of physical illness (e.g., obesity), and internalized racism.¹⁹ Unresolved trauma has been found to be intergenerationally cumulative, compounding the subsequent health problems of the community. Further, mourning that has not been completed and the ensuing depression are absorbed by children from birth on.

The Legacy of the Boarding Schools

The children victimized in the schools, their children, grandchildren and great-grandchildren, have become the legacy of the boarding schools and the federal policy that established and sustained them. Many of those that returned to their communities returned as wounded human beings. Denied the security and safety necessary for healthy growth and development, they retained only fractured cultural skills to connect them with their families and communities. For many of the girls and boys, the only touch they received from the small population of adults stationed at the schools, were the beatings or, perhaps worse, forced sexual contact with adults, or older students who themselves had been victims. Kept at the boarding school year round, many grew up solely in the company of other children, under the control of a few adults, who shared the perception that their wards were savages and heathens to be managed, tamed and “civilized.” The survivors of boarding schools were left with varying degrees of scars and skills, but most profoundly, psychological subordination. Many report feeling self-hatred for being Indian. Others report feeling bereft of spirit, knowledge, language and social tools to reenter their own societies, or have suffered negative attitudes from non-Natives. With only limited labor skills, exacerbated by the subordinated spirit trained into them, too many carried

¹⁸ Brave Heart & Debryun, *The American Indian Holocaust: Healing Historical Unresolved Grief*. (1998) 8 American Indian and Alaska Native Mental Health Research. pp. 56-78.

¹⁹ *Supra* 17.

undefined and unremitting anxieties that drove them to alcoholism, drug abuse, violence against their own families and communities, and suicide.

The United States has yet to issue a formal apology regarding the boarding school era. A Congressional inquiry into boarding school abuses will be requested by the National Native American Boarding School Coalition (N-NABS-HC) members. A goal is to obtain monies for community-based healing. The Coalition is working closely with members of the Canadian Truth and Reconciliation Commission in determining what ‘healing’ would look like and how to proceed as we move toward approaching the US Congress about this important issue.

ATTACHMENT II



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #PHX-08-001

TITLE: Presidential Apology for Abuses at Indian Schools

EXECUTIVE COMMITTEE

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Ohkay Owingeh
(Pueblo of San Juan)

FIRST VICE-PRESIDENT

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Chickasaw Nation

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Jamestown S'Klallam Tribe

TREASURER

gaiashkibos
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REGIONAL VICE-

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Yup'iaq

EASTERN OKLAHOMA

Joe Grayson, Jr.
Cherokee Nation

GREAT PLAINS

Ron His Horse Is Thunder
Standing Rock Sioux Tribe

MIDWEST

Robert Chicks
Stockbridge-Munsee

NORTHEAST

Randy Noka
Narragansett

NORTHWEST

Ernie Stensgar
Coeur d'Alene Tribe

PACIFIC

Juana Majel
Pauma-Yulma Band of Mission Indians

ROCKY MOUNTAIN

Willie Sharp, Jr.
Blackfeet Tribe

SOUTHEAST

Archie Lynch
Haliwa-Saponi

SOUTHERN PLAINS

Darrell Flyingman
Cheyenne-Arapaho Tribes

SOUTHWEST

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, between 1879 to 1934, thousands of American Indian and Alaska Native children were forcibly removed from their homes to attend one of the nearly 500 schools run by the government and churches to assimilate Native people; and

WHEREAS, American Indian and Alaska Native children attending these schools were severely punished for speaking their native language and practicing their traditions and cultural ways; and

WHEREAS, widespread physical and sexual abuse against children occurred at the schools and has been documented; and

WHEREAS, most of these schools had shut down by 1940, but others stayed open and loopholes in the law allowed abuses to continue there into the 1980s; and

WHEREAS, there is a growing body of evidence that the trauma and unresolved grief that American Indian and Alaska Native children carried home with them from the schools are underlying causes of the suicides and substance abuse-related deaths that are killing young Native people today in alarming numbers; and

WHEREAS, the Canadian and Australian governments took the US Indian school model and employed it against their aboriginal people; and

WHEREAS, the prime ministers of both Australia and Canada apologized to aboriginal people earlier this year for the devastating impact the schools have had on the social fabric of aboriginal communities; and

WHEREAS, there is a dire need for American Indian and Alaska Native peoples in the United States to heal from the collective historical trauma of the schools and to prevent it from getting passed on to yet another generation; and

WHEREAS, the American Indian non-profit White Bison, Inc., and Ancient Ways of Knowing Foundation are co-sponsoring The Way Home Tour, a 5,300-mile, cross country bicycle relay in May and June 2009 to promote awareness, dialogue and forgiveness for what happened at the schools so that American Indians and Alaska Natives can collectively heal from this tragic chapter in United States history; and

WHEREAS, The Way Home Tour will also call on the new President of the United States to join the leaders of Canada and Australia in apologizing to aboriginal people for the abuse that was allowed to happen at the schools, and for the scars of hurt and pain that it left on generations of American Indian people.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby support the intent and purposes of The 2009 Way Home Tour to promote a collective healing from the historical trauma of the US Indian schools. As part of this collective healing, NCAI joins with The Way Home Tour in calling upon the President of the United States to issue a formal apology in 2009 for the widespread abuse of American Indian and Alaska Native children at the schools; and

BE IT FURTHER RESOLVED, that the NCAI does hereby support that due to the loss of language resulting from the boarding school era the restoration of Native languages and language instruction in school should be made a priority; and

BE IT FURTHER RESOLVED, that the NCAI does hereby support that due to the loss of cultural and religious practices resulting from the boarding school era the preservation of American Indian and Alaska Native sacred sites should be made a priority; and

BE IT FURTHER RESOLVED, that the NCAI does hereby support that due to the high incidence of substance abuse and mental health issues resulting from the historical trauma of having attended boarding schools that increased funding for counselors in Indian Health Service and SAMHSA should be a priority; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.