



**Submission to the United Nations
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**Stakeholder Submission on the
Welfare and Best Interests of
Indigenous Children in the United States**

**Submitted by the National Indian Child Welfare Association, Association on
American Indian Affairs, and the
National Congress of American Indians**

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I. Reporting Organization

1. **The National Indian Child Welfare Association (“NICWA”)**, based in Portland, Oregon, is the national voice for American Indian and Alaska Native (AI/AN) 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 AI/AN child welfare, child maltreatment, children’s mental health and juvenile justice. NICWA also provides leadership in the development of public policy that supports AI/AN children’s well-being and tribal self-determination in these areas, as well as compliance with the Indian Child Welfare Act (“ICWA”). NICWA also engages in research designed to inform both policy and practice in child welfare, children’s mental health and juvenile justice systems serving AI/AN children and families.
2. The information contained in this report reflects NICWA’s experiences after years of work in the field, NICWA’s constant communication with tribal leaders, attorneys, social service agencies, and families, NICWA’s efforts to train state social workers, attorneys and judges in the areas of cultural competence and ICWA compliance, and NICWA’s own research as well as research done by NICWA’s partners and experts in the field.
3. The following organizations are co-signers of this stakeholder report with NICWA:
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.”

II. Continued Removal of Indigenous Children from Their Families and Communities in Violation of International Human Rights Law

4. In his 2012 country report regarding the situation of Indigenous Peoples in the United States, the United Nations Special Rapporteur on the Rights of Indigenous Peoples noted that the removal and separation of Indigenous children from their Indigenous environments is an issue of longstanding and ongoing concern in the United States. According to the report, past practices of removal of Indigenous children from their families and communities were partially “blunted by passage of the Indian Child Welfare Act in 1978, federal legislation that advances a strong presumption of indigenous custody for indigenous children.”¹ However, according to the Special Rapporteur, this law “continues to face barriers to its implementation”² These barriers have allowed for the continued unnecessary removal of Indigenous children across the United States in clear violation of international human rights norms.
5. A recent 2013 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,³ is indicative of the ongoing harm that is arising from the lack of federal oversight and proper application and implementation of ICWA by the United States. The United Nations Special Rapporteur on the Rights of Indigenous peoples issued a statement in that case “call[ing] on the relevant state, federal and tribal authorities in the United States of America to take all necessary measures to ensure the wellbeing and human rights” of the Cherokee child, noting in particular her right to maintain her “cultural identity and to maintain relations with ... [her] indigenous family and people.”⁴
6. In recognition of the larger systemic issues facing indigenous children in the U.S., the Special Rapporteur stressed that “[t]he individual and collective rights of all indigenous children, their families and indigenous peoples must be protected throughout the United States.” In particular, he recommended that “United States 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.”⁵
7. Most recently, the Committee on the Elimination of Racial Discrimination (“CERD”) expressed in its August 2014 Concluding Observations a concern over the “continued and previous removal of indigenous children from their families and communities through the United States child welfare system.” CERD recommended that the United States “(e)ffectively implement and enforce the Indian Child Welfare Act of 1978 to halt the removal of indigenous children from their families and communities....”⁶
8. The information contained in this submission demonstrates the failure of the United States and its relevant agencies to adopt and implement appropriate procedures to ensure the human rights protections afforded to Indigenous children and Indigenous nations under ICWA. These rights include the right to culture, the right to non-discrimination, and the right to self-determination.

9. This specific issue relating to Indigenous children was not part of the first universal periodic review of the United States in 2010. However, there was a general recommendation that the United States endorse the UN Declaration on the Rights of Indigenous Peoples, which it has subsequently done. This submission addresses an important follow-up to that endorsement, which is implementation at the domestic level of the relevant provisions relating to Indigenous children and their communities, including their rights to culture, non-discrimination, and self-determination in familial and cultural matters.

III. History of Removal in the United States

10. Indigenous children often suffer psychological, spiritual, economic and cultural harms when they are forcibly separated from their Indigenous families and nations.⁷ So too are their families and communities severely impacted by this removal. Indigenous children who grow 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. Thus, removal and placement of Indigenous children outside their communities without adequate safeguards and protections violates their right to culture, threatens their well-being and also endangers the continued existence of Indigenous peoples in the United States.
11. The historical 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. 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 Adoption Project, which was designed to facilitate adoptions of American Indian children by Caucasian parents.⁸
12. Throughout the middle of the century the attitudes and biases that drove the Indian Adoption Project lead to widespread problems in public child welfare processes and private adoptions. 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 in a series of hearings before the U.S. Senate and House of Representatives, leading to the drafting and adoption of Indian Child Welfare Act in 1978.⁹ Today, many adults continue to feel the effects of these policies.¹⁰

13. In 1978, the United States enacted ICWA¹¹ to address the long-standing practice of forcibly removing Indigenous children from their families and Tribes. By advancing a strong presumption of indigenous custody for Indigenous children, ICWA marked a significant policy change and recognized Indigenous peoples' right to self-determination. However, the following information demonstrates that 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.

IV. Current Situation Involving Indigenous Children in the United State

14. Although ICWA was designed to counterbalance 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 time more likely to be placed in foster care than their Caucasian counterparts.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.¹³ This means that although AI/NA children are just under 1.0% of all children in the United States, they are 2.0% of all children who are places outside their homes in foster care. This number is indicative of the biases present in the current system as well as the disparate treatment AI/AN families face when it comes to accessing basic needs, mental health services, and culturally relevant services.

15. AI/AN children are not only removed at staggering rates, but once removed they are more likely to be placed in non-Native homes. Data shows that nationwide more than half (56%) of all AI/AN children who currently live in adopted homes are in non-Native homes separated from their families, communities, and culture.¹⁴ This number reflects a recent pattern in adoption practices where ICWA is purposefully avoided or conveniently forgotten. This includes the 2013 U.S. Supreme Court case involving a Cherokee child, in which the broad requirements of ICWA to protect a child's right to culture were ignored in the Court's analysis. As noted above, the U.N. Special Rapporteur on the Rights of Indigenous Peoples issued a general statement on this situation.

16. The impact of the trend reflected in these numbers 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 as recently recognized by CERD.

V. Factors Contributing to Disproportionate Treatment: Lack of Proper Oversight and Implementation in the United States

17. Provisions of the federal ICWA are meant to correct implicit and structural biases which may exist in child welfare systems. ICWA specifically does this 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, by encouraging states to provide services designed to keep families safely together, and by providing basic funding for

tribally-run child welfare services. Because of non-compliance by individual states within the United States, however, Indigenous children continue to be removed from their homes and communities at a disproportionate rate. Major contributing factors to this situation include:

- a) **Lack of proper oversight by the United States Government** (ICWA is the only federal child welfare law in the United States without a regular and comprehensive federal review.)
- b) **Lack of education and understanding of ICWA and the human rights of indigenous children and their communities** (Both studies and experience show that child welfare practitioners including social workers, attorneys, and judges receive little training on ICWA and have only a cursory knowledge of its requirements¹⁵)
- c) **Lack of federally binding regulations** (Individual courts within the United States are free to interpret the law as they see fit, which has led to application of the very law designed to protect the rights of Indigenous children in ways that diminish the rights of tribes, parents and children).
- d) **Inadequate funding for Indigenous nations** (Existing funding is insufficient to ensure tribes' ability to care for their own children and families as sovereign entities and monitor member children in state systems).

18. When followed, ICWA ensures that the rights articulated in the UN Declaration on the Rights of Indigenous Peoples and relevant human rights treaties are respected. When ICWA is not followed, Indigenous children's connection to their families, their communities, and their culture is severed, and tribes lose citizens; and with them the ability to keep their traditions, practices, and culture alive.

VI. US Compliance with its International Human Rights Obligations

A. Indigenous Children's Rights to Culture, Community and Education

19. Under the **United Nations Declaration on the Rights of Indigenous Peoples** (“**UNDRIP**”), which has been recognized by the Human Rights Council and the UN Special Rapporteur on the Rights of Indigenous Peoples as a “normative” and authoritative instrument in the advancement of the rights of indigenous peoples,¹⁶ Indigenous children have collective and individual rights to culture, community and education.

20. Article 7 of the U.N. Declaration on the Rights of Indigenous Peoples protects against acts of 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.

21. Article 8 of the Declaration provides further recognition and protection of the rights of “indigenous peoples and individuals . . . not to be subjected to forced assimilation or destruction of their culture.” Similarly, Article 9 of the Declaration recognizes the right of “Indigenous peoples and individuals . . . to belong to an indigenous community or nation, in

accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.” As one International Law Association study on the rights of Indigenous Peoples notes, this right of “an individual to belong to an indigenous group” and the right of the group to maintain ties with its members are “some of the least controversial rights recognized under the Declaration,” and firmly established in international law.

22. Related to this right to belong to an Indigenous community, to maintain ties with that community, and to have these rights considered in the context of any placement of an Indigenous child, is the right to an Indigenous education. Article 14 provides specifically for the right of Indigenous children to be educated in their own culture and in their own language, and for the Indigenous group to direct this education. If an indigenous child is being arbitrarily separated from his or her family and community, where cultural and linguistic education often occurs, then these basic rights to education are not being met.
23. Each of these rights is being negatively impacted by the failure of the United States to address the forcible removal of indigenous children from their homes and communities. Indian children in the U.S. are being cut off from their culture and their Indigenous nation in an arbitrary fashion that clearly undermines the individual rights of the child and the collective rights of their family and indigenous nation.
24. These rights to culture and community are firmly established in the **International Covenant on Civil and Political Rights (ICCPR)**, to which the United States is a party. Article 27 of the ICCPR ensures an Indigenous individual’s “right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.” According to the Human Rights Committee, States are obligated “through its legislative, judicial or administrative authorities” to ensure that these rights are adequately protected.¹⁷ Although the United States has legislatively acted through ICWA to protect these rights, inaction on the part of U.S. administrative authorities to properly implement and enforce this law had lead to the widespread denial of these rights on behalf of indigenous children.
25. Furthermore, article 1.1 and 5(e) of the **International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”)**, which the United States has ratified, recognizes that any distinction, exclusion, or restriction based on race that has the purpose or effect of nullifying the enjoyment of human rights in the cultural life is prohibited. Additionally, the United States is obligated 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.”
26. Although ICWA was meant to counterbalance bias and address disparate treatment of Indigenous peoples in the child welfare system, the non-compliant implementation by U.S. 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. As noted above, CERD recognized this necessity when it recommended that the United

States “(e)ffectively implement and enforce the Indian Child Welfare Act of 1978 to halt the removal of indigenous children from their families and communities...”¹⁸

27. Finally, these rights to culture, family and community are also reflected in the spirit of the **Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption**, which the United States ratified in 2008. One of the main objectives of that Convention is “to establish safeguards to ensure that inter-country adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law.”¹⁹ The State parties to that Convention recognize that “each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin” and that measures should be taken to ensure that “inter-country adoptions are made in the best interests of the child and with respect for his or her fundamental rights.”²⁰ The current situation in which indigenous children are being denied “appropriate measures” that take into consideration their rights as Indigenous children (including their rights to be in community with others who share their culture and to an Indigenous education), is contrary to these basic international norms.

B. Right to Non-Discrimination

28. Numerous provisions of the UNDRIP deal with the fundamental right of non-discrimination. In general Article 9 grants “indigenous peoples and individuals . . . the right to belong to an indigenous community” while maintaining that, “no discrimination of any kind may arise from the exercise of such a right. “ Additionally, Article 22 of the UNDRIP places special emphasis on the rights of indigenous children, requiring States to “take measures, in conjunction with indigenous peoples, to ensure that indigenous . . . children enjoy the full protection and guarantees against all forms of . . . discrimination.” According to Article 2 of the Convention on the Elimination of All Forms of Racial Discrimination this includes “when the circumstances so warrant, tak[ing], in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.”
29. In the United States, these “special and concrete” measures called for in UNDRIP and ICERD came in the form of U.S. legislative action to protect against the unwarranted separation of Indigenous children from their extended families and tribal nations. However, as evidenced by the statistics articulated in paragraphs 12-16 it is clear that these protections are not being applied equally and fairly in the case of Indian child welfare proceedings. Indigenous children in the United States are removed from their families and communities at disproportionate rates as compared to other children in the United States and once removed, are more likely to be placed outside of their communities and cultures despite protections articulated under international and domestic law.

C. Right to Self-Determination

30. Tied to the right of Indigenous children to maintain familial and community connections, is the right and duty that an Indigenous tribal nation has to provide and protect those children.

The preamble to the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) recognizes in particular “the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child.” This right is reflected in Article 3 of UNDRIP, that Indigenous peoples have a “right to self-determination,” which includes freely pursuing their “economic, social and cultural development.” Such a right is undermined when Indigenous peoples are arbitrarily denied connections to their children.

31. Furthermore, Article 8 provides Indigenous peoples with “the right not to be subjected to forced assimilation or destruction of their culture.” The linkages between this right to self-determination and protection of Indigenous children can also be found in Article 21 of the Declaration, which specifically provides for the rights of “indigenous peoples” to “the improvement of their economic and social condition,” with “particular attention” being paid to the “rights and special needs” of Indigenous youth and children. As previously discussed many provision of ICWA specifically speak to these internationally recognized rights and duties, including those that protect an Indian nation’s right to jurisdiction, right to intervention, and right to funding for tribal child welfare programs. However, without proper implementation of that law, none of these rights can be realized.
32. This right to self-determination is a well-established principle under international law, including in the U.N. Charter and Article 1 of the ICCPR. Similarly the Committee on the Elimination of Racial Discrimination has noted that State parties have an obligation to “recognize and respect” the “distinct culture, history, language and way of life” of Indigenous peoples, and “to promote its preservation” and “ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs.”²¹
33. These rights are being violated here by the fact that indigenous children are being removed from their tribal nation without the human rights protections articulated in ICWA and under international law. The failure of entities to comply with these legal obligations often has the effect of excluding tribes from child welfare decision-making processes, which in turn violates indigenous nations’ basic rights to self-determination. As noted by Indigenous leader in the U.S.: “Culturally, the chances of Indian survival are significantly reduced if our children, the only real means for the transmission of the tribal heritage, are to be raised in non-Indian homes and denied exposure to the ways of their People.”²²

VII. Suggested Questions for the United States

34. The federal 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 being unnecessarily removed from their families and placed in foster care outside their communities. How does the United States plan to address this problem? How will the United States investigate, verify, and correct these systemic rights violations?

35. 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?
36. An important aspect of an Indigenous People's right to self-determination includes the ability of Indigenous Nations in the U.S. to participate in child welfare decision-making processes, as guaranteed under the federal Indian Child Welfare Act. Yet due to insufficient compliance with this law, many Indigenous Nations remain unable to fully participate in or protect their children during child welfare proceedings. How does the United States plan to address this problem?

VIII. RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

NICWA and the other stakeholders calls upon the government to take the following actions:

37. Recommends that the United States, in consultation with Indigenous nations in the U.S., establish a robust federal review system to ensure that Indigenous children are not being arbitrarily removed from their homes and communities. This would include fully implementing and enforcing the terms of the federal Indian Child Welfare Act.
38. Recommends that the United States, in conjunction with Indigenous nations, conduct an investigation into the potentially biased treatment of Indigenous children and families in individual states' child protection and child welfare systems.
39. Recommends that the United States work with Indigenous nations to ensure that adequate resources are available to support indigenous children, their families, and communities.

NOTES

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, para. 46-47, U.N. Doc. A/HRC/21/47/Add.1 (August 31, 2012) at

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session21/Pages/ListReports.aspx>.

² *Id.*

³ [UN expert urges respect for the rights of Cherokee child in custody dispute](http://unsr.jamesanaya.org/statements/un-expert-urges-respect-for-the-rights-of-chokeee-child-in-custody-dispute) (Sept. 10, 2013) available at <http://unsr.jamesanaya.org/statements/un-expert-urges-respect-for-the-rights-of-chokeee-child-in-custody-dispute>

⁴ See <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13695>.

⁵ *Id.* In an earlier 2012 report on the situation of Indigenous Peoples in the United States, the Special Rapporteur had also noted the need for further action on the part of the U.S. as it relates to the protection of indigenous children. See

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session21/Pages/ListReports.aspx>.

⁶ Comm. on the Elimination of Racial Discrimination: Concluding Observations on the combined seventh to ninth periodic reports of the United States of America, para. 24, UN Doc. CERD/C/USA/CO/7-9 (August 29, 2014).

⁷ See B.J. Jones, Mark Tilden, and Kelly Gaines-Stoner, *THE INDIAN CHILD WELFARE HANDBOOK: A LEGAL GUIDE TO THE CUSTODY AND ADOPTION OF NATIVE AMERICAN CHILDREN 1-12* (2d ed. 2008).

⁸ To learn more about this history see: <http://www.srwoodbridge.com/wordpress/wp-content/uploads/Factors.pdf>

⁹ 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>.

¹⁰ 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).

¹¹ For the text of the Act see <http://www.gpo.gov/fdsys/pkg/USCODE-2012-title25/pdf/USCODE-2012-title25-chap21.pdf>. 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. For purposes of this report, the core components of the law include: (1) recognizing a tribe's inherent jurisdiction in proceedings involving the welfare of its children, (2) setting minimum standards for state court proceedings involving the custody of an Indian child, (3) acknowledging the federal government's trust responsibility to ensure that Indian children are protected by extending funding to tribes to provide culturally relevant services to Indian children and their families on and off the reservation. However, funding is insufficient. For more information on tribal child welfare funding see http://www.nicwa.org/government/documents/Input%20on%20the%20FY%202015%20NCAI%20Tribal%20Budget%20Recommendations_Dec2013.pdf

¹² 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.

¹³ Woods, S. & Summers, A. (2014). Technical assistance bulletin: Disproportionality rates for children of color in foster care (Fiscal Year 2012). National Council of Juvenile and Family Court Judges: Reno, NV.

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>

¹⁵ 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.

¹⁶ S. James Anaya, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, A/HRC/9/9, 11 August 2008, para. 15.

¹⁷ U.N. Office of the High Commissioner for Human Rights, General Comment No. 23 on The Rights of Minorities (Art. 27), P 6.2, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (April 8, 1994); see also *Lovelace v. Canada*, Communication No. R 6/24, U.N. Human Rights Comm'n, Supp. No. 40, 166 (1981) at 166.

¹⁸ Comm. on the Elimination of Racial Discrimination: Concluding Observations on the combined seventh to ninth periodic reports of the United States of America, para. 24, UN Doc. CERD/C/USA/CO/7-9 (August 29, 2014).

¹⁹ Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, Art. 1(a).

²⁰ *Id.* at Preamble.

²¹ Comm. on the Elimination of Racial Discrimination, General Recommendation 23: Rights of Indigenous Peoples, annex V, para. 4, U.N. Doc. A/52/18 (Aug. 18, 1997), available at <http://www.unhcr.ch/tbs/doc.nsf/0/73984290dfea022b802565160056fe1c?Opendocument>.

²² *Holyfield*, 490 U.S. at 34-35.