

FEB 2014/14/13



NICWA 5100 SW Macadam Avenue, Suite 300, Portland, OR 97239
T 503.222.4044 F 503.222.4007 E info@nicwa.org W www.nicwa.org



Suite 401 - 309 Cooper Street, Ottawa ON K2P 0G5
T: (613) 230-5885 F: (613) 230-3080 E: info@fncaringsociety.com W: fncaringsociety.com

**Recommendations Regarding Concern about Indigenous Child Removal in the United States
and Canada for the United Nations Permanent Forum on Indigenous Issues**

Submitted:
National Indian Child Welfare Association
And
The First Nations Child and Family Caring Society

May 28, 2013

Wachay. Greetings Chairperson, Members of the Permanent Forum, and representatives of Indigenous Peoples and Organizations. I am Jocelyn Formsma from Moose Cree First Nation in the Mushkegowuk Territory in Canada, and I am here today representing the National Indian Child Welfare Association or NICWA for short.

NICWA is a nonprofit organization that promotes the well-being of Indigenous children in the child welfare, children's mental health, and juvenile justice systems through public policy, research, grassroots community development, and training. NICWA also advocates for compliance with the Indian Child Welfare Act of 1978 (PL 95-608)—a US federal law that provides protections for Indigenous children and families against unnecessary removals, outlines uniform procedures to help return these children to their families and retain their connection to their tribe and culture.

The First Nations Child & Family Caring Society, is the only national organization in Canada serving Indigenous children and families. The Caring Society stands with Indigenous children, youth, and families for equal opportunities to succeed using a reconciliation framework that respectfully engages Indigenous and non-Indigenous peoples.

NICWA and the Caring Society appreciate the opportunity to provide this joint statement about the issue of the removal of Indigenous children into state care and to make recommendations on this issue for consideration for future work of this Forum.

We recommend:

1. That the UN Permanent Forum, in future sessions investigate issues relating to the removal of Indigenous children, specifically by foster care and child welfare systems run by the state, as well as remedies to disproportionate removal to be developed in consultation with Indigenous peoples, governments, and organizations.
2. That the Permanent Forum encourage all member states review their child welfare policies, practices and oversight, to ensure full compliance with the UN DRIP and the Convention on the Rights of the Child.
3. That the United States ensure full compliance with the Indian Child Welfare Act and promote compliance within its states.
4. That Canada immediately stop all efforts to avoid or delay hearings before the Canadian Human Rights Tribunal to determine if its provision of First Nations Child and Family Services is discriminatory.
5. That Canada fully implement the recommendations of the Privacy Commissioner (May 2013) who found that the Government of Canada violated privacy laws when it collected personal information regarding Cindy Blackstock, Executive Director of Caring Society, after the organization filed a human rights complaint in 2007 alleging that the Government of Canada's provision of First Nations child and family services was discriminatory.
6. That previous recommendations regarding Indigenous children in care be reviewed and acted on including: Session 7, paragraph 113 regarding the intention of the North American Indigenous caucus to hold a conference on Indigenous children, which includes children and youth in care. Numerous recommendations from Session 10, including implementation of General Comment 11(2009), paragraphs 47, 61, and 66, with a focus on Indigenous children in care from North America.

In the United States, ICWA was passed due to the alarming number of Indigenous children that were forcibly removed from their homes and communities by public and private agencies for the sake of forced assimilation.

Where ICWA is followed, child welfare practice and outcomes improve and the number of Indigenous children removed and placed into temporary and permanent non-Native placements is reduced. Unfortunately, over time, ICWA compliance has decreased and foster care and adoptive placements have increased.

Indigenous children are disproportionately overrepresented in foster care and child welfare. In the United States, Indigenous children are 0.9% of the population, but are 2.0% of the national foster care population. These numbers increase in areas with high populations of Indigenous children. For example, in South Dakota they are 13.4% of the population but are 52% of the children in foster care, and in Alaska they are 17.7% of the children but over 55% of the children in foster care.

In Canada, despite being only 4% of the total population, nearly half of all children in care, meaning placed in foster homes or residential treatment facilities, are Indigenous. In some regions, like the Northwest Territories, the rates are as high as 95%.

While NICWA and the Caring Society have tried to work domestically with willing government partners, guided by the wisdom of Indigenous communities and organizations, including children, youth, frontline workers and elders, to improve policies relating to child safety and welfare, there remain a number of challenges to ensuring implementation of those policies and compliance with ICWA. Additionally, we express grave concern over the delay tactics utilized by the government of Canada to avoid the hearings in the Canadian Human Rights Tribunal, which have included refusing mediation, numerous efforts to derail the hearing on legal technicalities, and more recently withholding evidence and documents and then asking for an adjournment due to the withheld evidence.

The UN Permanent Forum can play a pivotal role in encouraging member states to be proactive and progressive to reduce the instance of Indigenous children going into care.

The UNDRIP establishes important standards for the treatment of Indigenous children. Specifically, Part 2 of Article 7 makes it clear that forcibly removing children of one group to another is a form of genocide. The legacy of past state child welfare policies that sought to “save the child, kill the Indian,” have continued and manifest in current policies that only forward the objective of assimilation.

We heard from the respected Chair of the Expert Mechanism, Willie Littlechild regarding the impact and outcomes of the Indian residential and boarding schools. If we do not reduce disproportionate removal and placement rates of Indigenous children into non-Native care, our efforts to protect our land and preserve our languages and cultures will be in vain. It is our collective responsibility to ensure that history does not repeat itself.

Meegwetch. Wachay