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HIGH COMMISSIONER FOR HUMAN RIGHTS

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HUMAN RIGHTS COUNCIL

Mandate of the Special Rapporteur on the rights of indigenous peoples.

REFERENCE: UA Indigenous (2001-8)
USA 16/2013

9 September 2013

Excellency,

I am writing in my capacity as Special Rapporteur on the rights of indigenous peoples, in accordance with Human Rights Council resolution 15/14, in regards to **the situation of “Veronica”, an indigenous child who is the subject of a custody dispute**, and to transmit to your Excellency’s Government the attached public statement which I intend to release tomorrow, 10 September 2013, in light of the urgency of this situation.

It has come to my attention that Veronica, an almost four year old Cherokee child who is the daughter of Dusten Brown, a citizen of the Cherokee Nation, is currently facing judicially ordered removal from her indigenous family and community to the custody of Matt and Melanie Capobianco, a non-indigenous couple. I am aware that in June of this year the United States Supreme Court ruled that certain protections of the Indian Child Welfare Act did not apply to proceedings in which Capobiancos sought to adopt Veronica, given the particular circumstances of the case. The Court, however, did not make an ultimate determination of the disposition of the adoption proceedings; instead it remanded the case to the competent South Carolina state court. Following the Supreme Court decision, the South Carolina court awarded custody of Veronica to the Capobiancos and ordered the transfer of the child to the couple.

I am concerned that, according to the record of proceedings, the South Carolina court awarded custody to the Capobiancos without allowing for a hearing or full determination about the best interests of Veronica, as ordinarily is done when custody or adoption is contested by a biological parent. Veronica’s biological father, Mr. Brown, petitioned for the case to be remanded to a family court for a determination of Veronica’s best interests, but that effort and subsequent efforts to stop the adoption by the Capobiancos in South Carolina failed.

According to information received and verified, although Veronica lived with the Capobiancos in South Carolina for the first two years of her life, she has now resided with her biological father and extended indigenous family in Cherokee territory in the state of Oklahoma for nearly two years. Having refused to release his child to custody of

the Capobiancos, Mr. Brown now faces charges for custodial interference and extradition to South Carolina. On 3 September 2013, the Oklahoma Supreme Court took up the case, granting a temporary stay of an enforcement order and allowing Mr. Brown to keep Veronica pending further proceedings.

Excellency, it is my considered view that Veronica should not be removed from her Cherokee family to the custody of the Capobiancos without an adequate hearing about her best interests which takes her current situation and Cherokee heritage and in which family members are allowed to participate. In determining Veronica's best interests, relevant authorities should fully take into account her rights to maintain her cultural identity and to maintain relations with her indigenous family and people. These rights are guaranteed by various international sources of authority subscribed to or endorsed by the United States, including the International Covenant on Civil and Political Rights, which affirms minority rights to culture (article 27), rights to security and integrity of the family (articles 17 and 23) and children's rights (article 24). Additionally, the United Nations Declaration on the Rights of Indigenous Peoples specifically guards against removal of indigenous children from the families and communities (article 7); protects indigenous peoples and individuals from forced assimilation or undermining of their culture (article 8); affirms the right of indigenous individuals to belong to an indigenous community or nations (article 9); and recognizes the right of indigenous children to be educated in their own language and culture (article 14).

In connection with the Veronica case, I would like to again call attention the historical of removal and separation of Indian children from indigenous environments, an issue of longstanding and ongoing concern identified in my 2102 report on the situation of indigenous peoples in the United States (A/HRC/ 21/47/Add.1). As I stated in that report, while past practices of removal of Indian children from their families and communities have been partially blunted by passage of the Indian Child Welfare Act in 1978, this law continues to face barriers to its implementation. Since completing my 2012 report, I have continued to receive allegations that the unique interests of indigenous children associated with their being members of indigenous communities are frequently not adequately taken account in state custody proceedings, resulting in exacerbated trauma and emotional distress for the children, as well as in loss to the communities of which they form part.

In light of this situation, I encourage the United States of America 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.

Excellency, given the urgency of custody situation faced by Veronica, I respectfully request a response to the present communication within thirty days. I am especially interested to learn about the specific measures that are being taken to ensure her rights as an indigenous child.

Please accept, Excellency, the assurances of our highest consideration.

James Anaya
Special Rapporteur on the rights of indigenous peoples