

The National Congress of American Indians Statement on Violence Against Native Women

The National Congress of American Indians (NCAI) is the oldest and largest national organization of American Indian and Alaska Native tribal governments. As the leadership of tribal governments in the United States, NCAI is dedicated to ending the epidemic of violence against American Indian and Alaska Native women. In 2003, NCAI created the NCAI Task Force on Violence Against Women to address and coordinate an organized response to national policy issues regarding violence against Indian women. The NCAI Task Force on Violence Against Women represents a national alliance of tribal organizations dedicated to the mission of enhancing the safety of American Indian and Alaska Native women. The NCAI Task Force works collaboratively with the National Task Force to End Sexual and Domestic Violence and other national organizations to stop violence against women in the United States.

The epidemic of violence perpetuated against American Indian and Alaska Native women (Indian women) in the United States is nothing short of a human rights crisis. International human rights bodies, including the Inter-American Commission on Human Rights, have universally condemned violence against women as a human rights violation. The violence against Indian women in the United States violates Indian women's human rights, including their rights to life, liberty and security of the person, and adequate health care. The inadequate response to this violence by the United States further violates Indian women's rights to equality before the law and access to justice.

The United States Department of Justice (USDOJ) estimates that 1 of 3 Indian women will be raped in her lifetime, that 6 of 10 will be physically assaulted, and that Indian women are stalked at more than double the rate of any other population of women in the United States. This violence threatens the lives of Indian women and the future of American Indian Tribes and Alaska Native Villages. Ending this historic pattern of violence requires that the institutional barriers that deny access to justice and related services to Indian women be eliminated. No area of need is more pressing or compelling than the plight of Indian women fleeing physical and sexual violence.

While many issues need to be addressed to confront this human rights crisis, it is clear that limitations placed on tribal government jurisdiction by the United States are a key contributing factor, with non-Indian perpetrators in particular falling through the cracks in law enforcement in Indian country. United States law has: 1) stripped tribal justice systems of their authority over non-Indians who commit crimes on tribal lands; 2) unilaterally assumed jurisdiction over felonies committed by Indians on Indian lands; and 3) limited the sentencing authority of tribal courts to one year in jail or a \$5000 fine or both. The result is that when an Indian woman is the victim of physical or sexual violence, the tribal government does not have the authority to appropriately respond to the crime. Despite these legal restrictions Indian tribes continue to respond to the extent allowed under U.S. law.

Researchers cite these jurisdictional gaps as one cause of the disproportionate rate of violence committed against Indian women. In essence, the hands of the tribe are tied.

Only the United States government has the authority to investigate and prosecute felony level violent crimes committed on Indian lands. But when an Indian woman turns to the United States government to investigate and prosecute her batterer or rapist, help is often severely delayed or non-existent. In November, 2007, *The Denver Post* reported that over the past 10 years, U.S. attorneys have declined to prosecute nearly two-thirds of all felony cases in Indian Country. If the federal government declines prosecution, non-Indian rapists, batterers, and stalkers walk free knowing they can return to commit future crimes in the same or a different Indian community.

Congress, led by the tremendous efforts of Vice President Joseph Biden, set forth essential steps to address the systemic barriers denying access to justice in such cases through the enactment of the Safety for Indian Women Title contained within the Violence Against Women Act of 2005 (VAWA). Dedicated tribal leaders, advocates, and justice personnel are prepared to implement the programs established under this Title. Unfortunately, since passage of this landmark legislation in 2005, implementation of key provisions has been stymied. Under the Bush Administration, federal departments charged with the responsibility of implementation of the Safety for Indian Women Title minimized the need for immediate action. This demonstrated lack of will on the part of the Bush Administration was not only demoralizing, but life threatening to the women the statute was intended to protect. While we are hopeful that the efforts of the United States under the leadership of President Obama and Vice President Biden will result in steps forward to increase the safety of Indian women, the historic complexity of current U.S. law is daunting.

Systemic change is needed to prevent violence against and protect the human rights of Indian women. A complex set of social factors—including federal-tribal jurisdictional issues, inadequate tribal resources and justice personnel, and poverty—have resulted in the current level of danger that exists for American Indian and Alaska Native women as a population. Perpetrators of domestic and sexual violence commit such violence because of the belief that no social consequences exist for their violent behavior. This perception stems from the reality that crimes of domestic and sexual violence are rarely prosecuted, and if prosecution occurs, any sentence is so minimal that it is inconsequential to the life of the perpetrator.

Federal Indian law, including treaties, Supreme Court cases, and the U.S. Code, places a unique legal responsibility upon the United States to assist Indian tribes in creating safe and stable communities and to protect the safety of Indian women. International human rights law also obligates the United States government to prevent human rights abuses against Indian women and protect them from violence. NCAI has identified issues critical to the prevention and prosecution of violence against Indian women, and we have organized our concerns into three areas:

- I. Failed or inadequate implementation of the Violence Against Women Act of 2005;
- II. Systemic barriers to the safety of Indian women that require immediate action by the federal government; and,

III. The epidemic levels of sexual violence committed against Indian women.

I. Implementation of the Safety for Indian Women Title contained in VAWA 2005

The United States federal government has failed to implement several key provisions of the Safety for Indian Women title (Title IX) of the Violence Against Women Act (VAWA), which requires action by the Departments of Health and Human Services, Justice, and Interior. The following is a section-by-section analysis of the most urgent implementation issues – all of which need immediate action.

Access to Federal Databases:

Section 905(a) amends the federal code to require the Attorney General to permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from, federal criminal information databases. For decades Indian tribes have been denied access to life-saving information contained in the national sex offender and order of protection registries. Indian women enter and leave tribal jurisdictions continuously and a woman's life may depend on her order of protection being given full faith and credit by another jurisdiction. Currently, many tribal orders of protection and information regarding convicted sex offenders are not listed on the national registries.

While the majority of Indian tribes lack access to these databases, those having concurrent criminal jurisdiction with states (under Public Law 53-280 or similar federal law) face additional barriers because some states do not recognize tribal law enforcement authority. Submission of life-saving information from these tribal jurisdictions is blocked and endangers the lives of Indian women, law enforcement officers, and members of tribal communities.

The federal amendment to permit Indian law enforcement agencies access to enter and obtain information from the federal crime data systems was a tremendous step forward in creating safety for Indian women. Unfortunately, this amendment has not changed reality. Tribal law enforcement still cannot access the national system without permission of the state in which the tribe is located. Many state governments refuse Indian tribes access to their state system. As a result, tribal law enforcement officers cannot access criminal information on suspects which places the lives of officers and targeted victims at risk. In addition, some state governments, in conflict with federal law, do not allow tribal court orders of protection to be entered into their state registry. The amendment to the federal code was intended to remedy the barrier of Indian tribes accessing critical criminal justice information required to manage crime and protect women. Access to national databases would enable tribes to protect their communities from transient habitual perpetrators that prey on Indian women. This problem could be easily remedied and the lives of Indian women protected if the United States Attorney General would direct the National Criminal Information Center to coordinate with Indian tribes to implement Section 905(a) and Congress would appropriate adequate resources to enable this to happen.

Domestic Assault by Habitual Offenders:

Section 909 of VAWA 2005 amends the federal criminal code to impose enhanced criminal penalties upon repeat offenders who: (1) commit a domestic assault within the special maritime and territorial jurisdiction of the United States or Indian Country; and (2) has a final conviction on at least two separate prior occasions in federal, state, or tribal court for offenses that would be, if subject to federal jurisdiction, an assault, sexual abuse, or a serious violent felony against a spouse or intimate partner, or a domestic violence offense.

Domestic violence is a pattern of violence that escalates over time in severity and frequency. To prevent future violence and end the pattern, perpetrators must be held accountable immediately. Due to the combined factors of the sentencing limitation placed on Indian tribes, this section was enacted to permit federal prosecution of misdemeanor domestic violence crimes. Unfortunately, since passage of the statute in 2005, this section has not been enforced. To our knowledge, to date only two perpetrators have been tried, convicted, and sentenced under Section 909 as habitual offenders of domestic violence against Indian women.

The failure of the United States to implement this provision undermines Indian women's rights to life and access to justice. The Attorney General could remedy this by mandating training on this statute for appropriate personnel handling cases of domestic and sexual violence and providing reports to tribes during the annual tribal consultations of the number of cases prosecuted under Section 909.

II. Systematic Barriers to the Safety of Indian Women

While the Violence Against Women Act is a major step towards ending violence against Indian women, it does not address many of the systematic barriers that endanger the lives of Indian women and leave them without access to justice. The following issues highlight on-going gaps in the response of the criminal justice system to domestic and sexual violence committed against American Indian and Alaska Native women. The issues outlined below are not new and they were raised during the 2006, 2007, 2008 and 2009 consultations between the USDOJ and tribal leadership. Some of these issues are addressed in the proposed Tribal Law and Order Act of 2009 (S. 797) authored by Senator Byron Dorgan, Chairman of the Senate Committee on Indian Affairs.

Federal Accountability:

The United States has exclusive felony jurisdiction over crimes by or against Indians, including homicide, rape and aggravated assault; however, perpetrators of such violent crimes against Indian women are rarely, if ever, prosecuted. Recent studies indicate that from 2005 to 2007 United States prosecutors failed to prosecute 50% of all murder and manslaughter cases, 58% of serious assaults, and 75% of rape and sexual assault cases occurring on Indian lands. USDOJ personnel, law enforcement, and US Attorneys are not required to explain why they declined to prosecute these cases or to coordinate with tribal law enforcement officials so that tribes may effectively prosecute crimes that occur on tribal lands. When federal prosecutors decline cases involving non-Indian perpetrators, Indian women often have no recourse.

The USDOJ should be required to maintain records of the cases they decline and make declination reports available to Congress and tribes on an annual basis. Often times when a woman reports a sexual assault, months or years may pass without her being informed of the status of the case. Women often fear retaliation by the perpetrator when they report sexual assault or domestic violence. The failure to notify the victim that the US Attorney has declined to prosecute the case creates barriers to the safety of women. The woman, unaware that the US Attorney declined the case, may not take the appropriate steps to protect herself from future violence. In addition, tribal justice personnel, also uninformed of the status of the case, may not take appropriate steps to charge Indian perpetrators in tribal court. Given the public myth that sexual assault and domestic violence cases are not serious crimes, transparency in the statistical reporting of prosecutorial and declination rates for such crimes should be mandated. Access to justice for Indian women would increase greatly if the Attorney General required the issuance of timely declination reports to a) tribal justice officials, and b) victims of domestic and sexual violence.

State Accountability:

In 1953, during the Termination Era, Congress enacted laws that transferred federal criminal justice authority over Indian lands to particular state governments. The Department of Interior, as a policy interpretation, denied federal funding access to Indian tribes located within those states that would have fostered development of tribal justice systems. Unfortunately, state governments, for lack of resources or other reasons, generally do not adequately respond to crimes of sexual assault and domestic violence within tribal communities. Some states, like Alaska, not only fail to respond to these crimes, they also actively oppose any law, policy, or other action that would increase tribal criminal authority.

As a result, when a native woman is raped, battered or murdered on Indian lands in a state that shares concurrent criminal jurisdiction with tribes, the state may not respond and no tribal criminal justice agency may be available to assist her or hold the rapist accountable. Further, tribes within these jurisdictions are not currently able to call on the United States to maintain federal concurrent jurisdiction and assist tribal governments in the prosecution of major crimes where the states have this authority. This gaping hole in jurisdiction is an injustice to Indian women and permits perpetrators to commit repeated acts of violence against the same or a different woman. It is a fundamental denial of Indian women's access to justice and equality under the law.

Sentencing Authority of Tribal Courts:

One the greatest barriers to the safety of Indian women is that in cases declined to be prosecuted by the United States, a perpetrator, if prosecuted by the Indian tribe, can only receive a maximum sentence of one year per offense. In every other jurisdiction in the United States rape is considered a felony offense with an average sentence of at least four years. The sentencing authority of tribal courts must be increased beyond the current limit of one year to ensure justice for Indian women. It is also essential that federal law be enacted permitting Indian tribes to request the transfer of prisoners to the nearest appropriate federal facility at the expense

of the United States. This would allow tribal courts to appropriately sentence perpetrators without the restraint of not having a facility or the budget to contract for bed space for prisoners convicted of domestic and sexual violence.

Prisoner Release and Reentry:

Currently, the USDOJ does not have to notify tribal justice officials when a sex offender is released from federal custody into Indian country. Every state and territory is required to provide notification when a sex offender is released and enters a community. Currently, many Indian women receive no notification of the release of their convicted rapist from federal prison. Rather, they live in fear, knowing that they will be notified only at the moment they see their perpetrator in the local grocery store, on their front porches, or at the school gate. This horrific and frightening realization undermines the security of Indian women. The USDOJ should be required to notify tribal justice officials when a sex offender is released from federal custody into Indian country and to register sex offenders with the appropriate law enforcement agency including tribal registries. The Attorney General should adopt such a policy as protocol of the USDOJ to enhance the ability of Indian tribes to protect Indian women and strengthen the ability to hold offenders accountable.

Mandate of Specialized Training in Domestic and Sexual Violence for Federal Prosecutors and Law Enforcement Personnel:

Access to justice for Indian women is often undermined by inadequate and inappropriate behavior by law enforcement personnel and federal prosecutors. Many survivors have complained that they were treated discriminatorily by law enforcement personnel who accused or suspected them of being intoxicated at the time of their attack. These reports are especially disconcerting due to the prevalence of stereotypes about drunken Indians in the United States. Indian women survivors also report that law enforcement officials and federal prosecutors routinely fail to communicate with them about their cases. These reports indicate that federal prosecutors and law enforcement personnel are poorly trained in how to respond to violent crimes against Indian women, and this, in turn, prevents Indian women from being treated equally under the law.

The Office on Violence Against Women has for the last thirteen years asserted the importance of specialized training for criminal justice personnel; yet, it has not applied this same standard to federal prosecutors and law enforcement personnel. Law enforcement personnel within departments such as the Federal Bureau of Investigation and the Bureau of Indian Affairs should be mandated to attend a minimum number of hours of training to improve their skills in the handling of such investigations. Federal prosecutors should also be mandated to receive specialized training to enhance the prosecution of crimes of domestic and sexual violence. Lastly, resources and training should be provided to Indian law enforcement agencies to properly interview victims of domestic and sexual violence and to collect, preserve, and present evidence to federal and tribal prosecutors to increase the conviction rate for domestic and sexual violence offenses.

Jurisdictional Barriers:

The current rates of sexual and domestic violence against Indian women have been linked to jurisdictional gaps that allow perpetrators to face little or no criminal consequences for their crimes. Federal law, United States Supreme Court cases, executive orders, and treaties with Indian nations have created what has been referred to as a “jurisdictional maze” that often prevents Indian women from accessing justice and endanger their safety. Law enforcement authorities have to answer four questions before they can even determine if they have the requisite authority to respond to the crime: 1) did the crime occur on Indian lands; 2) is the perpetrator Indian; 3) is the victim Indian; and 4) was it a major crime. Answering these questions is a complicated process that often significantly—and unjustly—delays the investigation and prosecution of violent crimes.

Consider, for example, the first question about whether the crime occurred on Indian lands. This question alone can prove especially problematic for law enforcement in areas where tribal lands were allotted by the federal government in the early twentieth century. Today these tribes have been left with reservations or tribal homelands that consist of patterns of Indian lands commingled with non-Indian lands. The question of the status of the land is key because it determines who has jurisdiction. Tribal courts have no jurisdiction over non-Indians and limited jurisdiction over Indians in Indian country; the states do not have jurisdiction to prosecute non-Indians for crimes committed against Indians in Indian country; and the federal government has jurisdiction to prosecute perpetrators who commit crimes of violence against Indian women in Indian country. In states like Oklahoma, where tribal lands are often non-contiguous and intersected by state land, it can take weeks or months for law enforcement to determine who owns the land, and thus, which law enforcement authority can investigate and prosecute the crime. This greatly delays and undermines access to justice for Indian women belonging to the 38 federally recognized tribes in the state of Oklahoma. The investigation is further prolonged as law enforcement officials struggle to answer the remaining three questions. The situation is so complicated that some law enforcement officials refuse to even respond to crimes if they know they cannot easily answer one or more of the questions.

III. Epidemic Level of Sexual Assault

Sexual violence committed against Native women is more than double that of any other population of women. On the Pine Ridge Reservation of the Oglala Sioux Tribe, the number of rapes for just one weekend can average 44 cases. In Alaska, sexual assault is rampant and the current criminal justice system is unresponsive, leaving Native women without recourse. Anchorage is ranked No. 1 in the nation per capita on the sexual assault of native women. In rural Alaska Native Villages, advocates for women report that 100% of the women at some point in time have been a victim of sexual violence. Similarly, Amnesty International found in its interviews with women on the Standing Rock Reservation that the majority of women interviewed could not think of any Indian women in their community that had not experienced sexual violence. Many of the survivors Amnesty talked to reported that they had experienced sexual violence several times in their lives and by different perpetrators.

While the rates of sexual violence against Indian women far exceed those of any other group, the resources to respond to such violence are far less. The human rights of Indian women are continually violated by the inadequate response of the federal government to sexual violence against them. The tribal-federal and tribal-state response must be enhanced from the immediate response to the crime by first responders, including law enforcement and healthcare personnel, to post sentencing probation and reintegration of sexual offenders into tribal communities. No other crime better illuminates the disparate treatment between Indian and non-Indian women victimized by violence. In particular, the responses and availability of the Indian Healthcare Service providers to victims of sexual assault must be improved. The provision of the forensic sexual assault medical exams is insufficient and the refusal of personnel to testify in such cases due to understaffing is unacceptable. Further, the lack of rape crisis and post-crisis services only increase the risk to Indian women. Current services for Indian women victimized by rape are minimal or non-existent. The starting point for such reforms is the enhancement of community-based services available within tribal communities to assist Indian women and the authority of Indian tribes to hold perpetrators accountable.

In short, the epidemic of violence and sexual assault against Indian women in the United States violates the human rights of Indian women to life, security, and effective judicial remedies under international law. NCAI respectfully urges you to approach these issues seriously and with the appropriate attention and care. The complex set of legal and social issues that mire efforts to address violence against Indian women are of the utmost importance. Together we can reverse the current pattern of violence and the institutional barriers discussed that violate the human rights of Indian women.