



National
Congress of
American
Indians



National Indigenous Women's Resource Center



INDIAN LAW
RESOURCE CENTER
JUSTICE FOR INDIGENOUS PEOPLES



Clan Star
Increasing Safety for Native Women

**Violence Against American Indian and
Alaska Native Women—
United States' Violations
of the
International Convention on the
Elimination of All Forms of Racial Discrimination**

A Shadow Report

Submitted to the United Nations Committee on the Elimination of Racial Discrimination,
Office of the United Nations High Commissioner for Human Rights

By

The National Congress of American Indians and Indian Law Resource Center, with
Endorsements from the National Indigenous Women's Resource Center, Inc. and
Clan Star, Inc.

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I. Reporting Organizations

This shadow report is submitted jointly by the following nongovernmental organizations in consultative status with the Economic and Social Council (ECOSOC) to flag how the United States' continuing violations of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) through its discriminatory legal system is perpetuating violence against American Indian and Alaska Native women: the National Congress of American Indians (NCAI)¹ and the Indian Law Resource Center,² which is the primary author. Endorsing organizations of this shadow report are the National Indigenous Women's Resource Center, Inc. (NIWRC)³ and Clan Star, Inc.⁴

II. Issue Summary

Violence against Indian and Alaska Native women is at epidemic proportions and is one of the most horrific manifestations of the discriminatory legal system in the United States. Significant areas of federal law and policy fail to meet the United States' obligations under the ICERD and other human rights instruments with respect to protecting Indian and Alaska Native women from violence and ensuring nondiscrimination and equality under federal law.⁵ Given this situation, Native women are two and a half times more likely to be assaulted in their lifetime and more than twice as likely to be stalked than other women in the United States.⁶ One in three Native women will be raped in her lifetime, and six in ten will be physically assaulted.⁷ Worse, the murder rate for Native women is ten times the national average on some Indian

¹ NCAI is the oldest and largest national organization of American Indian and Alaska Native tribal governments, and is dedicated to ending the epidemic of violence against American Indian and Alaska Native women. (www.ncai.org). 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

² Founded in 1978 by American Indians, the Center is a 501(c)(3) non-profit organization that provides legal assistance to indigenous peoples of the Americas to combat racism and oppression, to protect their lands and environment, to protect their cultures, to achieve sustainable economic development and genuine self-government, and to realize their other human rights. (www.indianlaw.org).

³ NIWRC is a non-profit organization that provides technical assistance, policy development, training, materials, and resource information on violence against Native women and the development of tribal strategies and responses to end the violence. (www.niwrc.org).

⁴ Clan Star, Inc. is a nonprofit organization incorporated under the Eastern Band of Cherokee Indians, and devoted to improving justice to strengthen the sovereignty of indigenous women through legal, legislative, and policy initiatives, and education and awareness. (www.clanstar.org).

⁵ The right to be free of violence is a basic human right under international law. *See, e.g., Jessica Lenahan (Gonzales) v. United States (August 17, 2011)*. In the *Gonzales* case, the Inter-American Commission on Human Rights heard the first complaint brought by a domestic violence survivor against the United States and determined that the United States violated its obligations under international human rights law by failing to use due diligence and reasonable measures to protect this woman and her children from domestic violence.

⁶ *See, e.g.,* P.L. No. 109-162 § 901 (2006); *see also* U.S. Dep't of Justice, Domestic Violence and Stalking, The Second Annual Report to Congress Under the Violence Against Women Act (1997); U.S. Dep't of Justice, Stalking and Domestic Violence, The Third Annual Report to Congress Under the Violence Against Women Act (1998).

⁷ *See* Patricia Tjaden & Nancy Thoene, U.S. Dep't of Justice, Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey 22 ex. 7 (2000).

reservations.⁸ Indian and Alaska Native women are denied meaningful access to justice and are less protected from violence than other women just because they are indigenous and are assaulted on tribal lands.

The systemic root of this problem is the discriminatory legal framework that exists in the United States. For decades, United States law has prohibited tribal governments from prosecuting non-Native offenders who commit many of the violent crimes against Native women.⁹ This leaves Indian and Alaska Native nations and tribes as the only governments in the United States without legal authority to protect their own citizens from violence perpetrated by any person. These restrictions, coupled with a lack of serious enforcement by federal and state officials having jurisdiction to do so, perpetuate a cycle of extreme rates of violence against Indian and Alaska Native women.

The United States has taken affirmative steps forward by enacting legislation including the Tribal Law and Order Act in 2010 to enhance tribal sentencing authority and, most recently, the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) to restore limited criminal authority to tribes over non-Indian domestic violence offenders. Yet, significant systemic legal gaps continue to threaten the safety and lives of Native women in the United States. Many Native women must still wait for justice as the new tribal jurisdiction provisions in VAWA 2013 are not effective until March 2015. Stringent requirements, coupled with a severe lack of funding, may delay or even deter tribes from exercising restored jurisdictional authority. And, even where tribes do exercise this jurisdiction, tribal jurisdiction will only extend to certain crimes of domestic violence. Tribes will still be unable to prosecute non-Indians who rape, stalk, or traffic Indian women.

Especially dire is the situation for Alaska Native nations and women. A "special rule" in VAWA 2013 totally excludes all but one of Alaska's 229 tribes from the new increased protections, tribes which comprise over 40% of all federally-recognized tribes in the United States. The so-called special rule for Alaska exacerbates the existing crisis within Alaska Native villages where Alaska Native women are disproportionately affected by domestic violence and sexual assault; in fact, Alaska Native women are over-represented in the domestic violence victim population in the State of Alaska by 250%.¹⁰ In tribal villages and Alaska Native communities, Alaska Native women report rates of domestic violence up to ten times higher than the rest of the country and physical assault victimization rates twelve times higher.¹¹ The Alaska situation demonstrates how United States law continues to deny basic rights to Indian and Alaska Native nations and tribes

⁸ See GAO, *Indian Country Criminal Justice: Departments of the Interior and Justice Should Strengthen Coordination to Support Tribal Courts*, GAO-11-252, at 5 (October 2011).

⁹ Native women experience a per capita rate of interracial violence far exceeding that of the general population with one study finding about 88% of the offenders identified by Native women survivors as being non-Indian. See Patricia Tjaden and Nancy Thoenne, U.S. Dep't of Justice, *Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey 9 and 22* (2000).

¹⁰ See *Restoration of Native Sovereignty and Safety for Native Women*, at 11 (March 2014), available at <http://www.niwrc.org/resources/restoration-magazine/current-issue>.

¹¹ *Id.*

and individuals that others in the country freely enjoy, particularly the right to be free from discriminatory government action and violence, and to enjoy equal protection under law.

III. Legal Framework - Concluding Observations

In 2008, the UN Committee on the Elimination of Racial Discrimination (CERD or Committee) criticized the United States for its failure to meet its obligations under the ICERD to prevent and punish violence against American Indian and Alaska Native women. The Committee's Concluding Observations and Report stated:

The Committee also notes with concern that the alleged insufficient will of federal and state authorities to take action with regard to such violence and abuse often deprives victims belonging to racial, ethnic and national minorities, and in particular Native American women, of their right to access to justice and the right to obtain adequate reparation or satisfaction for damages suffered. (Articles 5(b) and 6).¹²

The Committee recommended the United States increase efforts to prevent and prosecute perpetrators of violence against Indian women, including promptly, independently, and thoroughly investigating reports of rape and other sexual violence against Indian women.¹³ The Committee requested the United States to include its results in its next periodic report.

The Committee further recommended that the United States use the UN Declaration on the Rights of Indigenous Peoples as guidance for interpreting its obligations relating to indigenous peoples.¹⁴ The Declaration is a significant affirmation of the rights of indigenous peoples and women, and reinforces the right of nondiscrimination that is key in ICERD. Further, Article 22(2) of the Declaration calls on states, in conjunction with indigenous peoples, "to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination."

IV. U.S. Response

The United States Periodic Report (June 2013) responds to the issue of violence against indigenous women in ¶¶ 188, 189 and 190, with more general information found in ¶¶ 191-195.¹⁵ At ¶ 188, the United States acknowledges that the problem of violence

¹² Committee on the Elimination of Racial Discrimination, Concluding Observations United States of America, CERD/C/USA/CO/6 (Feb. 2008) at ¶ 26.

¹³ *Id.*

¹⁴ *Id.* at ¶ 29. Subsequently, on December 16, 2010, President Obama announced the United States' endorsement of the UN Declaration on the Rights of Indigenous Peoples.

¹⁵ The Committee specifically raised this issue during the 2008 Periodic Review, both through the Rapporteur's question 19, and again in ¶ 26 of the Concluding Observations. The U.S. filed a written response to the Rapporteurs question; the relevant portion begins at page 63 of the United States submission.

against American Indian and Alaska Native women “stems at least in part from the fact that under U.S. law, tribal authorities have been prevented from exercising criminal jurisdiction over non-Indians on Indian lands, and are also limited in their criminal sentencing authority.” Additionally, ¶ 169 “supports tribal authority over a broad range of internal and territorial affairs, including . . . community and public safety.”

V. Other UN Body Recommendations

On March 27, 2014 the UN Human Rights Committee released its Concluding Observations from the United States review on its compliance with the International Covenant on Civil and Political Rights. The Committee expressed concern that American Indian and Alaska Native women are at high risk of domestic violence and face obstacles to justice. In ¶ 16 of the Concluding Observations, the Committee recommended the United States fully and effectively implement VAWA 2013 and the Family Violence Prevention and Services Act (FVPSA) to: (1) "strengthen measures to prevent and combat domestic violence" and "to ensure that law enforcement personnel appropriately respond to domestic violence;" (2) "ensure that cases of domestic violence are effectively investigated and that perpetrators are prosecuted and sanctioned;" (3) "ensure remedies for all victims of domestic violence, and take steps to improve the provision of emergency shelter, housing, child care, rehabilitative services and legal representation for women victims of domestic violence;" and (4) "take measures to assist tribal authorities in their efforts to address domestic violence against Native American women."

VI. Recommended Questions to the United States

We respectfully request that the Committee ask these questions during the United States’ periodic review session:

1. Given the United States' statements in ¶¶ 188 and 169 of its Periodic Report (June 2013), please explain the severe limitations remaining on tribal criminal jurisdiction over non-Indians who commit crimes of violence against women on Indian lands, tribal sentencing authority for such crimes, and the near complete exclusion of Alaska Native villages from the valuable, though limited, jurisdictional reforms in VAWA 2013.
2. What is the United States doing today to stop the epidemic levels of violence against Indian and particularly Alaska Native women and to remove systemic jurisdictional and institutional barriers to the safety of these women?
3. What is the United States doing today to increase law enforcement in Indian country and in Alaska Native villages, to empower Alaska Native tribes and nations to address domestic and sexual violence against Alaska Native women and girls, and to ensure safety and the delivery of justice in all Native communities?

VII. Suggested Recommendations

We respectfully request that the Committee consider these recommendations in drafting its Concluding Observations following the United States' periodic review session:

1. Reform United States law and policy to: (a) remove systemic discriminatory legal barriers that fail to protect Indian and Alaska Native women and children against violence; (b) repeal Section 910 of Title IX of VAWA 2013, which specifically excludes all but one of Alaska's 229 tribes from the increased protections that apply to other federally recognized tribes; and (c) empower Indian and Alaska Native nations and tribes to ensure safety and justice in their communities through the exercise of their inherent sovereign power to exercise full criminal jurisdiction within their lands.
2. As recommended by the UN Human Rights Committee, fully, fairly, and effectively implement VAWA 2013 and FVPSA to: (1) "strengthen measures to prevent and combat domestic violence" and "to ensure that law enforcement personnel appropriately respond to domestic violence;" (2) "ensure that cases of domestic violence are effectively investigated and that perpetrators are prosecuted and sanctioned;" (3) "ensure remedies for all victims of domestic violence, and take steps to improve the provision of emergency shelter, housing, child care, rehabilitative services and legal representation for women victims of domestic violence;" and (4) "take measures to assist tribal authorities in their efforts to address domestic violence against Native American women."
3. Provide funding, technical assistance, and training programs to Indian and Alaska Native nations, including their law enforcement, judicial, and criminal justice systems, in sufficient amounts and by appropriate means to ensure equal protection and meaningful justice for all American Indian and Alaska Native victims of domestic and sexual violence.
4. Fully and effectively implement the Tribal Law and Order Act of 2010, including recommendations of the Indian Law and Order Commission set forth in its required report to the President and Congress of the United States, submitted in November 2013.¹⁶

¹⁶*A Roadmap for Making Native America Safer*, at <http://www.aisc.ucla.edu/iloc/report/>.