



Violence Against American Indian and Alaska Native Women in the United States

Briefing Paper for Thematic Hearing held during the
Inter-American Commission on Human Rights, 169th Period of Sessions
October 5, 2018, 9:00 – 10:00 a.m.
University of Colorado Law School
Boulder, Colorado USA

Submitted By:

**Alaska Native Women's Resource Center
Indian Law Resource Center
National Congress of American Indians
National Indigenous Women's Resource Center**

Submitting Organizations

Organized in 2015, the *Alaska Native Women's Resource Center* (AKNWRC) is a tribal nonprofit organization dedicated to ending violence against women with Alaska's 229 tribes and allied organizations. AKNWRC board members are Alaska Native women raised in Alaska Native Villages and have 141 years of combined experience in tribal governments, nonprofit management, domestic violence, and sexual assault advocacy (both individual crisis and systems and grassroots social change advocacy at the local, statewide, regional, national and international levels), and other social service experience. AKNWRC's philosophy is that violence against women is rooted in the colonization of indigenous nations. (<http://www.aknwrc.org>).

Founded in 1978 by American Indians, the *Indian Law Resource Center* (ILRC) is a 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. The ILRC's Safe Women, Strong Nation's project works with indigenous women's organizations and Native nations to end violence against indigenous women. ILRC is in consultative status with the UN Economic and Social Council. (www.indianlaw.org).

The *National Congress of American Indians* (NCAI) is the oldest and largest national organization of American Indian and Alaska Native tribal governments, and works to end 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 American Indian and Alaska Native women. NCAI is in consultative status with the UN Economic and Social Council. (www.ncai.org).

The *National Indigenous Women's Resource Center, Inc.* (NIWRC) is a nonprofit organization whose mission is to ensure the safety of Native women by protecting and preserving the inherent sovereign authority of American Indian and Alaska Native nations to respond to domestic violence and sexual assault. NIWRC's Board consists of Native women leaders from American Indian and Alaska Native nations across the United States. NIWRC is a national resource center for Indian nations providing technical assistance, policy development, training, materials, resource information, and the development of tribal strategies and responses to end the violence. (www.niwrc.org).

Table of Contents

I.	Purpose of Hearing	4
II.	Background Information	4
III.	International Human Rights Framework	5
IV.	Significant Barriers in United States Law	7
	A. Epidemic of Violence Against Alaska Native Women	7
	B. Missing and Murdered American Indian and Alaska Native Women in the United States	9
	C. Impacts of the Extractive Industries on the Safety of American Indian and Alaska Native Women in the United States	10

I. Purpose of Hearing

This briefing paper and the thematic hearing are intended to inform the Commission about the extreme rates of violence and murder against American Indian and Alaska Native women in the United States, particularly focusing on the urgent situation of Alaska Native women, missing and murdered American Indian and Alaska Native women, and the grave impact of extractive industries on the safety of American Indian and Alaska Native women. We seek to update the Commission on the continuing failure of United States law to protect American Indian and Alaska Native women from violence and multiple forms of discrimination or to provide them with meaningful remedies and access to justice because they are women, indigenous, and members of indigenous peoples' communities.

II. Background Information

Violence against American Indian and Alaska Native women and girls has reached extreme and unprecedented levels on tribal lands and in Alaska Native villages. According to the federal government's latest statistics, more than 4 in 5 American Indian and Alaska Native women (84.3%) have experienced violence in their lifetimes, including:

- 56.1% who have experienced sexual violence;
- 55.5% who have experienced physical violence by an intimate partner and 90% of these victims report being victimized by a non-Indian perpetrator, while only 18% report being victimized by an Indian;
- 48.8% who have experienced stalking; and
- 66.4% who have experienced psychological aggression by an intimate partner.¹

American Indian and Alaska Native women are 2.5 times more likely to be sexually assaulted or raped² and more than twice as likely to be stalked³ than other women in the United States. The murder rate for American Indian women is ten times the national average on some reservations.⁴ Alaska Native women are subjected to the highest rate of forcible sexual assault in the country.⁵ One in two Alaska Native women will experience sexual or physical violence, and "an Alaska Native woman is sexually assaulted every 18 hours."⁶ At least 75 Alaska Native communities are without any law enforcement presence whatsoever.⁷ The actual incidence of violence against American Indian and Alaska Native women is most likely even higher due to underreporting. These disproportionately high rates of violence against American Indian and Alaska Native

¹ Andre B. Rosay, Ph.D, National Institute of Justice Research Report, *Violence Against Indian and Alaska Native Women and Men, 2010 Findings From the National Intimate Partner and Sexual Violence Survey* (May 2016).

² See, e.g., Steven W. Perry, U.S. Dep't of Justice, *American Indians and Crime, A BJS Statistical Profile 1992-2002*, 5 (2004).

³ See, e.g., U.S. Dep't of Justice, *Stalking and Domestic Violence, The Third Annual Report to Congress Under the Violence Against Women Act*, 8 (1998).

⁴ See U.S. Government Accountability Office, *Indian Country Criminal Justice: Departments of the Interior and Justice Should Strengthen Coordination to Support Tribal Courts*, Report No. GAO-11-252, 5 (Feb. 2011), available at <http://www.gao.gov/new.items/d11252.pdf>.

⁵ S. 1474, the Alaska Safe Families and Villages Act of 2013, § 2(a)(3).

⁶ S. 1474, the Alaska Safe Families and Villages Act of 2013, § 2(a)(3), (4).

⁷ See *Roadmap for Making Native America Safer*, a report to the President and Congress of the United States from the Indian Law and Order Commission (November 2013), Chapter Two – Reforming Justice for Alaska Natives: The Time is Now, at 39, available at <https://www.aisc.ucla.edu/iloc/report/>.

women are directly linked to a discriminatory system of federal laws and court decisions governing Indian country and Alaska Native lands, and to the United States' persistent failure to respond adequately to the violence against indigenous women in Indian country and on Alaska Native lands.

In 2011, the Indian Law Resource Center and partner organizations participated in a thematic hearing before the Commission. That hearing highlighted systemic barriers in U.S. law that create an unworkable, discriminatory criminal jurisdictional scheme and limit the ability of Indian and Alaska Native nations to protect their women from violence and to provide them with meaningful remedies and access to justice.⁸ For more than 35 years, United States law stripped Indian nations of all criminal authority over non-Indians. As a result, Indian nations were unable to prosecute any non-Indians, who, according to the Census Bureau, comprise 76% of the population on tribal lands and 68% of the population in Alaska Native villages and who reportedly commit most of the violent crimes against Native women on tribal lands. Congress explicitly recognized the terrible impact of this on indigenous women:

Without the authority to prosecute crimes of violence against women, a cycle of violence is perpetuated that allows, and even encourages, criminals to act with impunity in Tribal communities and denies Native women equality under the law by treating them differently than other women in the United States.⁹

After the 2011 thematic hearing, the Commission urged the U.S. to address the situation through its laws, policies, and programs. The U.S. took an historic step forward with passage of VAWA 2013, restoring partial criminal jurisdiction to Indian nations over certain non-Indian perpetrators who commit domestic and dating violence against American Indian and Alaska Native women in Indian country or who criminally violate protection orders. Unfortunately, there are serious gaps in the law. Congress drafted the statute in a way that excludes all but one of the more than 200 federally-recognized Indian tribes in Alaska and tribes in several other states, including Maine. These tribes are barred from using the important new protections of VAWA 2013. Further, VAWA 2013 recognizes tribal jurisdiction over only a limited set of crimes and a limited class of offenders. It does nothing to ensure that non-Indians who commit sexual assault, stalking, trafficking, or child abuse crimes are held accountable. While VAWA 2013 stands as a victory for many Indian nations, it is not adequate to stop the epidemic of violence.

III. International Human Rights Framework

The rights to personal security and freedom from violence are internationally recognized human rights. Articles I and II of the American Declaration of the Rights and Duties of Man (1948) (American Declaration) recognize that every human being has the right to life, liberty, and the security of his or her person and is equal before the law without discrimination. Though

⁸ See Indian Law Resource Center, *The Inter-American Human Rights System: Combating Violence Against Native Women in the United States*, 75-122 (November 2013), at http://www.indianlaw.org/sites/default/files/IACHR%20Handbook%20%28Final_April%29.pdf.

⁹ S. Rep. No. 112-265, at 7 (2012).

not ratified by the United States, Articles 4 and 24 of the American Convention on Human Rights (1969) (American Convention) similarly recognize these rights.

The UN Declaration on the Rights of Indigenous Peoples also explicitly speaks to these rights, recognizing in Article 7 that "[i]ndigenous individuals have rights to life . . . and security of person," and calling on states in Article 22(2) to "take measures, 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." Article VII of the American Declaration on the Rights of Indigenous Peoples addresses Gender Equality, and includes a commitment that "States shall adopt the necessary measures, in conjunction with indigenous peoples, to prevent and eradicate all forms of violence and discrimination, particularly indigenous women and children." Article XXX of the American Declaration on the Rights of Indigenous Peoples calls on states in ¶ 4(c) "to take special and effective measures in collaboration with indigenous peoples to guarantee that indigenous women and children live free from all forms of violence, especially sexual violence, and shall guarantee the right of access to justice, protection, and effective reparation for harm caused to the victims." Though not ratified by the United States, the Inter-American Convention on the Prevention, Eradication and Punishment of Violence against Women, otherwise known as the Convention of Belém do Pará, requires that States adopt specific and prompt measures to prevent and respond to violence against women.¹⁰

Article XVIII of the American Declaration, Article 25 of the American Convention, Article 40 of the UN Declaration on the Rights of Indigenous Peoples, and Article XXX of the American Declaration on the Rights of Indigenous Peoples all recognize the right of American Indian and Alaska Native women to effective judicial remedies. If the United States ignores the ongoing systemic problems relating to these crimes, it does so in violation of these international principles and of the human rights of American Indian and Alaska Native women under international law.

In 2007, the Inter-American Commission on Human Rights Rapporteurship on the Rights of Women released a report on Access to Justice for Women Victims of Violence in the Americas.¹¹ The report concluded that women in the Americas seeking justice for gender violence faced multiple barriers, including: (1) impunity in cases involving violence against women; (2) problems with the design, interpretation, and implementation of laws criminalizing violence against women; and (3) the presence of institutionalized racial and gender-based discrimination against indigenous women.¹²

Ten years later, in 2017, the Commission issued a new report, *Indigenous Women and Their Human Rights in the Americas*, which finds that violence affects indigenous women in a "systematic and rampant fashion."¹³ Among other important insights, this most recent report

¹⁰ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará," June 9, 1994, <http://www.oas.org/juridico/english/sigs/a-61.html>.

¹¹ Inter-Am. Comm'n H.R., *Access to Justice for Women Victims of Violence in the Americas, Indigenous Women and Their Human Rights in The Americas*, Doc. 68, OEA/Ser. L/V/II (2007).

¹² *Id.*, see generally ¶294-8.

¹³ Inter-Am. Comm'n H.R., *Indigenous Women and Their Human Rights in The Americas*, Report No. 44/17, OEA/Ser. L/V/II, ¶66 (2017).

recognizes four principles related to the application of the due diligence standard to violence against indigenous women. First, the Commission notes that States failing to use due diligence to prevent, investigate, punish, and offer reparations for acts of violence against women may incur international responsibility, even if the act was perpetrated by private actors.¹⁴ Second, international standards obligate States to take measures to address and respond to violence, and the discrimination that perpetuates it.¹⁵ Third, to comply with the due diligence requirement, States must guarantee access to adequate and effective judicial remedies for victims and their families.¹⁶ Fourth, States must acknowledge the groups of women particularly at risk violence in the context of the intersecting forms of discrimination that affect them, and consider these factors when enacting legislation preventing all forms of violence.¹⁷

American Indian and Alaska Native women who are victims of violence and seeking justice in the United States face the same or similar barriers encountered by indigenous women throughout the hemisphere, an unworkable, discriminatory justice system exists that leaves perpetrators either unpunished or inadequately punished. In the United States this is because laws continue to limit the criminal jurisdiction and sentencing power of Indian nations, especially Alaska Native nations, and because federal and state governments are not fairly and effectively prosecuting violent crimes against American Indian and Alaska Native women.

IV. Significant Barriers in United States Law

A. Epidemic of Violence Against Alaska Native Women.

Alaska Native women and girls experience epidemic levels of violence that are among the highest in the United States. Alaska Natives comprise only 15.2% of the population in Alaska; yet they represent nearly 50% of the domestic violence victims and 61% of the sexual assault victims.¹⁸

Perhaps the most glaring and dangerous barriers in U.S. law today are the limitations in VAWA 2013 mentioned above.¹⁹ The United States recognizes 573 distinct Native nations, 229 of which are located in the State of Alaska. Each of these nations possesses broad sovereign powers of self-government over their citizens and their territories and each has a unique government-to-government relationship with the United States. Because various provisions in VAWA 2013 limit the exercise of restored criminal jurisdiction to lands defined as Indian country, all but one of the 229 Alaska Native villages and tribes are currently precluded from exercising the expanded criminal jurisdiction available to other Indian tribes.

¹⁴ *Id.* at ¶71(1).

¹⁵ *Id.* at ¶71(2).

¹⁶ *Id.* at ¶71(3).

¹⁷ *Id.* at ¶71(4).

¹⁸ National Indigenous Women's Resource Center, *Safety for Native Women: VAWA and American Indian Tribes*, at 115 (2014), *citing*, UAA Justice Center Report to the Council on Domestic Violence and Sexual Assault (May 13, 2010). According to the Alaska Native Tribal Health Consortium's Epidemiology Center, 1 of 2 Alaska Native women has experienced physical and/or sexual violence.

¹⁹ Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 126 § 904.

By restricting the restored special domestic violence jurisdiction to Indian country, VAWA 2013 denies Alaska Natives the full benefit of the law and treats them differently than other women, including other non-Alaskan Native women. In 2013, a statutorily authorized commission, the Indian Law and Order Commission, completed its comprehensive report to the United States President and Congress—*A Roadmap for Making Native America Safer* (Nov. 2013). The Commission found that the exclusion of Alaska Native villages from the definition of Indian country in VAWA 2013 separates the villages from other federally recognized tribes and places them at a severe disadvantage regarding public safety. The Commission recommended that local control and criminal authority be restored to Alaska Native villages.

The United States and the State of Alaska have long supported laws, policies, and practices limiting Alaska tribal governments' authority to protect and ensure the health and well-being of Alaska Native citizens. State law enforcement officers who *do* have authority to protect Alaska Native women serve less than 100 of Alaska's more than 200 rural villages. Many Alaska Native villages are without any law enforcement at all. Consequently, the life of a woman depends largely on the ability of the local Alaska Native village to provide timely help and protection. The lack of tribal authority to address violent crimes locally and immediately, coupled with the ineffective response by state law enforcement, creates an extremely dangerous environment for Alaska Native women who are targeted for all types of violence — domestic violence, sexual assault, stalking, dating violence and sex trafficking. Services for Native survivors of violence are sorely lacking. For example, the Emmonak Women's Shelter, a Native village-based women's shelter is severely under-funded and -resourced.

As the Commission is well aware, decisions by the United States courts regarding protection orders have jeopardized the safety of Native women. In *Town of Castle Rock, Colo. v. Gonzales*, the United States Supreme Court held that the U.S. Constitution does not require state law enforcement to investigate or enforce alleged violations of domestic violence protection orders. In 2011, however, the Commission reviewed the situation in *Gonzales* and affirmed the United States' legal duty to respect one of the most basic human rights — the right to be free from violence.

Although the *Gonzales* case involved protection orders issued by a state court, tribal courts also may issue civil protections orders against abusers, whether they are American Indian and Alaska Native or non-Native. Often such orders are a Native woman's only remedy and form of protection from her abuser. This is especially so for Alaska Native women. The State of Alaska has long disregarded the safety of Alaska Native women by refusing to enforce tribal court protection orders unless they comply with Alaska state requirements and are registered or filed in an Alaska state court.²⁰ More recently, in 2017, the Alaska Deputy Attorney General, Criminal Division, issued a memorandum directing all Alaska Law Enforcement to enforce all

²⁰ In 2014, former Associate U.S. Attorney General Tony West wrote the State Attorney General of Alaska that Alaska's position does not comply with federal law, which requires enforcement of a tribal court protection order regardless of whether such orders were filed or registered in a state court. See 18 U.S.C. § 2265(d)(2). A copy of the letter from Associate U.S. Attorney General Tony West to the State Attorney General of Alaska regarding tribal court protection orders is available at: <https://turtletalk.files.wordpress.com/2014/07/letter-from-asg-west-to-ag-geraghty-july-28-2014.pdf>.

tribal court protective orders as if issued by an Alaska court.²¹ That said, because one-third of Alaska Native communities lack regular law enforcement, or in some 75 Alaska Native communities lack any law enforcement presence at all, the critical question is who will actually enforce violations of tribal court protection orders.²²

Article XVIII of the American Declaration, Article 25 of the American Convention, Article 40 of the UN Declaration on the Rights of Indigenous Peoples, and Article XXX(4)(c) of the American Declaration on the Rights of Indigenous Peoples recognize the right of American Indian and Alaska Native women to effective judicial remedies. The United States has a legal obligation to provide American Indian and Alaska Native women with an effective judicial remedy when their rights are violated.

B. Missing and Murdered American Indian and Alaska Native Women in the United States.

All American Indian and Alaska Native women deserve a life free from violence, yet many indigenous women disappear and are killed by an intimate partner as a result of sexual assault or sex trafficking. Their murder rates are ten times the national average on some reservations.²³ From 1979 to 1992, homicide was the third leading cause of death of Native women aged 15 to 34.²⁴

Federal officials have acknowledged that human trafficking is increasing in Native communities and among Native populations. American Indian and Alaska Native women face heightened risks of trafficking. While many are trafficked within the United States, because a large number of Indian reservations are located on the United States' borders with Canada and Mexico, indigenous women and girls can easily be taken off of these reservations and trafficked over either border. Over 60 miles of the United States' northern border is classified as "Indian country" and under tribal jurisdiction. There are 6 tribes with lands on the U.S.-Canada border and 24 other tribes within close proximity of the northern border or on the shores of one of the Great Lakes. Another 26 tribes are located along the U.S.-Mexico border, some of which have extensive cultural and family ties in Mexico. Alaska Native women are close to Canada, Russia, and to expanding international shipping routes as well.

A growing number of disturbing cases of missing Native women from throughout Indian country and Alaska Native villages reflect federal unresponsiveness, lack of an effective national protocol for responding to and handling these cases, scant data, failure to collect data on Native

²¹ A copy of the memorandum, dated July 31, 2017, to all Alaska Law Enforcement from Robert E. Henderson, Deputy Attorney General, Criminal Division, State of Alaska, is available at: <http://law.alaska.gov/pdf/criminal/170731-TribalProtectiveOrders.pdf>.

²² See *Roadmap for Making Native America Safer*, a report to the President and Congress of the United States from the Indian Law and Order Commission (November 2013), Chapter Two – Reforming Justice for Alaska Natives: The Time is Now, at 39, available at <https://www.aisc.ucla.edu/iloc/report/>.

²³ See U.S. Government Accountability Office, *Indian Country Criminal Justice: Departments of the Interior and Justice Should Strengthen Coordination to Support Tribal Courts*, Report No. GAO-11-252, 5 (Feb. 2011), available at <http://www.gao.gov/new.items/d11252.pdf>.

²⁴ See Congressional findings codified in the Violence Against Women and Department of Justice Reauthorization Act of 2005, P.L. 109-162 (Jan. 5, 2006), Title IX, § 901.

victims about their tribal enrollment or affiliation as part of an investigation, and institutionalized disregard for reports of missing Native women. Most of these cases remain unsolved. When the United States fails to respond to these reports, the tribal community has no choice but to conduct its own search for the missing women and girls. Grandparents, parents, children, and friends are forced to search, taking over the job of the federal agencies charged to do so, but without advanced law enforcement technology and other resources. Sadly, these family members are often the ones that find the remains of their loved ones—their grandmothers, mothers, and daughters.

The right to life and personal security are internationally recognized human rights, and the United States must not ignore its human rights obligations to respond to, investigate, and address these increasing cases of missing and murdered and sex trafficked American Indian and Alaska Native women and girls with due diligence.

C. Impacts of the Extractive Industries on the Safety of American Indian and Alaska Native Women in the United States.

Oil and gas development on and near tribal lands raise the already high risk that American Indian and Alaska Native women and girls will become victims of violence, murder, and sex trafficking. While federal officials have acknowledged that human trafficking is increasing in Native communities and among Native populations, there is little hard data on sex trafficking and forms of sexual exploitation within the energy development context. There have been some arrests and at least one federal conviction involving victims from Indian reservations at the heart of the North Dakota oil boom. Most of the defendants are believed to be Bakken oil patch workers from out-of-state. Much of the risk of sex trafficking and other forms of sexual exploitation stems from a major influx of out-of-area workers, many of whom are housed in extremely large temporary housing complexes known as “man camps.” Wherever the boomtown pattern draws large numbers of outside workers into close proximity with Native communities, similar risks of sexual violence and sex trafficking may arise. Given the lack of tribal criminal jurisdiction over these crimes committed by non-Indians, American Indian and Alaska Native women are denied legal protections by their respective tribal governments.²⁵ The VAWA 2013 amendment restored criminal jurisdiction to certain Indian tribes only in cases of domestic violence, dating violence, and violation of an order of protection within Indian country.

International attention has recently focused on the problem of sex trafficking and other forms of gender-based violence in the context of extractive industry activities in indigenous territories. In 2012, the United Nations Permanent Forum on Indigenous Issues convened an expert group meeting, which found that extractive industries operating in indigenous territories with insufficient oversight often detrimentally impact indigenous women and girls with respect to sexual assault and sex trafficking.²⁶ In 2015, the Commission issued a major report on the overall

²⁵ Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 120, § 904(c).

²⁶ Permanent Forum on Indigenous Issues, Rep. of the international expert group meeting, *Combating violence against indigenous women and girls: article 22 of the United Nations Declaration on the Rights of Indigenous Peoples*, U.N. Doc. E/C.19/2012/6 ¶21 (Feb. 28, 2012).

impact of extractive industries on indigenous peoples and Afro-descendent communities.²⁷ We hope that this thematic hearing will build on this report, help inform the Commission about this emerging issue in the United States, and result in the further investigation of such impacts.

²⁷ Inter-Am. Comm'n H.R., *Indigenous Peoples, Afro-Descendent Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, Doc. No. 47/15, OEA/Ser. L/V/II, (2015).