

INDIAN LAW RESOURCE CENTER

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Violence Against American Indian and Alaska Native Women in the U.S.

For the Thematic Hearing before the
Inter-American Commission on Human Rights, 169th Period of Sessions
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The rights to personal security and freedom from violence are internationally recognized human rights. Both the American and UN Declarations on the Rights of Indigenous Peoples explicitly affirm these rights for indigenous women and children and call on states to take and adopt measure, in collaboration with indigenous peoples, to guarantee that indigenous women and children live free of violence.

The rights of American Indian and Alaska Native women in the United States, especially their rights to safety, are inextricably linked to the ability of their tribes and nations to exercise self-determination and self-governance. Strong indigenous nations with capable governments and effective criminal justice systems, are essential to securing safety for indigenous women. Safe women – women who can exercise their fundamental rights to life, security, and freedom from violence and discrimination – are essential to the well-being of our families, communities, our nations. Safe women can achieve equality, development, and peace.

The rates of violence against indigenous women and girls in the United States are devastating. More than 4 in 5, or some 84% of American Indian and Alaska Native women have experienced violence in their lifetimes. 56% of

American Indian and Alaska Native women have experienced sexual violence. Alaska Native women are subjected to the highest rate of forcible sexual assault in the United States.

These devastatingly high rates of violence are largely due to an unworkable, discriminatory legal system that severely limits the ability of indigenous nations to protect indigenous women and girls and fails to provide them with meaningful remedies or access to justice. United States law denies Alaska Native women equal protection and treats them differently than other women, including other indigenous women, by denying Alaska Native villages the same sort of criminal jurisdiction within their lands that nearly all other tribes enjoy.

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. The United States Congress has explicitly recognized this terrible problem, noting that:

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.¹

The United States has taken some steps forward with recent reforms that enhance tribal court sentencing authority and restore limited tribal criminal jurisdiction over certain non-Indians who commit domestic violence. Still, significant legal barriers remain. Tribes must meet stringent requirements to use the new laws, there is insufficient funding for implementation, and the new jurisdiction is still limited. Tribes cannot prosecute non-Indians who rape, murder, stalk, or traffic women, and can only prosecute domestic violence if the non-Indian defendant has significant ties to the tribal community. Further, the United States Congress included language limiting restored criminal jurisdiction to “Indian country,” a legal term that has been taken to exclude nearly all lands held by Alaska Native villages, as well as land held by other tribes including those in Maine.

¹ S. Rep. No. 112-265, at 7 (2012).

While the federal law in this field, the Violence Against Women Act of 2013, or VAWA, stands as a victory for many Indian nations, it is not enough. The Violence Against Women Act must be periodically renewed by the U.S. Congress, and work is now underway to draft a new version of this essential law. We strongly recommend that the new version of this law include adequate funding for implementation, as well as strong provisions recognizing the inherent authority of tribes and Alaska Native villages over the full range of crimes of violence against women, including stalking, sexual assault by a stranger or acquaintance, and sex trafficking, as well as authority over the crimes that co-occur with domestic violence, such as child abuse.

Indigenous women also are being denied access to justice with respect to victim services and compensation. It is unconscionable that indigenous women are largely left out of the Victim of Crimes Act, which is the primary source of federal funding for crimes victims in the United States. It is critical that Indian nations, like other governments in the United States, have permanent, reliable access to these life-saving funds to ensure that indigenous women have access to victim services and compensation.