



**An NGO Alternative Report Evaluating Measures Taken
by the United States of America to Implement the Concluding Observations
Selected by the Committee on the Elimination of Racial Discrimination
for a One-Year Follow-Up Report on:**

**Paragraph 50(e) (indigenous peoples)
(recommending the State party: (e) Take additional measures and provide adequate
funding to implement statutes and policies that address the crisis concerning missing and
murdered indigenous peoples)**

CERD/C/USA/CO/10-12

Adopted by the Committee at its 107th Session (24 August 2022)

Deadline for the State follow-up report (24 August 2023)

Current Status: State follow-up report was not submitted within one year

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Committee on the Elimination of Racial Discrimination
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The Indian Law Resource Center,
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(with its project STARS Indigenous Safe Housing Center), and
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I. Reporting Organizations

This NGO alternative report (Alternative Report) is submitted jointly to the Committee on the Elimination of Racial Discrimination (Committee) by the following nongovernmental organizations: the Alaska Native Women’s Resource Center;¹ the Indian Law Resource Center,² an NGO in special consultative status with ECOSOC; the National Indigenous Women’s Resource Center³ with its project STTARS Indigenous Safe Housing Center; and the Pouhana O Nā Wāhine.⁴

¹ 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. (www.aknwrc.org)

² Founded in 1978 by American Indians, the *Indian Law Resource Center (ILRC)* is a nonprofit 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. Its 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)

³ The *National Indigenous Women’s Resource Center, Inc. (NIWRC)* is a Native-led nonprofit organization dedicated to ending violence against Native women and children. The NIWRC provides national leadership in ending gender-based violence in tribal communities by lifting up the collective voices of grassroots advocates and offering culturally grounded resources, technical assistance and training, and policy development to strengthen tribal sovereignty. Staff of the NIWRC bring decades of expertise in building the grassroots movement to increase tribal responses to domestic violence and increase safety for Native women. In 2015, the NIWRC launched the Violence Against Women Act (VAWA) Sovereignty Initiative to defend the constitutionality and functionality of all VAWA tribal provisions. In 2022, the NIWRC announced its latest project STTARS Indigenous Safe Housing Center, which works to ensure safety and belonging through indigenous lifeways and to dismantle systemic and endemic barriers that impact housing access for survivors of gender-based violence. (www.niwrc.org) (www.niwrc.org/housing)

⁴ The *Pouhana O Nā Wāhine (Pillars of Women - PONW)* is a 501(c)(3) nonprofit agency established in 2015 to focus on opening a Native Hawaiian Resource Center on Domestic Violence to reduce disparities faced by Native Hawaiians. These disparities date back to the days of contact with foreigners resulting in the overthrow of our monarch to present day violence and injustice. In September 2022, PONW was notified that it would serve as the first federally funded non-profit Native Hawaiian Resource Center on Domestic Violence. PONW’s vision is to restore balance of mind, body, and spirit, bringing our people to the state of well-being; and to preserve and promote Hawaiian culture to help families and communities heal from domestic and sexual violence and colonization. Its mission is to advocate for Native Hawaiian families who face challenges related to domestic and gender-based violence by exercising our inherent sovereign rights as Indigenous people of Hawaii to care for and protect our people. Collectively, the individuals of PONW have over 50 years of experience in the advocacy and social service field and are all Kanaka Oiwi who have a passion for helping to heal generations past and present to ensure the healthiest future. (www.pouhanaonw.org/)

II. Summary

This Alternative Report evaluates measures taken by the United States of America to implement ¶ 50(e) (concerning indigenous peoples and missing and murdered indigenous peoples) of the Concluding Observations, which was selected by the Committee on the Elimination of Racial Discrimination (Committee) for a one-year follow-up report by the United States. The Committee adopted its Concluding Observations on the combined tenth to twelfth reports of the United States of America on August 24, 2022. [CERD/CUSA/CO/10-12].

Last year our alternative report⁵ spotlighted 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 perpetuates violence, discrimination, and injustices against American Indian, Alaska Native, and Native Hawaiian women, including the crisis of missing or murdered indigenous women, and the lack of safe, sanitary, and adequate housing (across the housing spectrum), a human right, for indigenous women survivors of gender-based violence.

Currently the United States continues to fail to uphold its obligations to protect indigenous women under ICERD Articles 2 (obligation to eliminate racial discrimination in all its forms); 5 (right to security of the person and protection against violence, and right to housing); and 6 (effective protection and remedies against racial discrimination). Despite some slow and limited affirmative steps by the U.S. aimed at addressing the crisis of violence, we remain very concerned as indigenous women and people continue to go missing and continue to be murdered.

III. Committee Recommendations and Requested State Follow-Up on ¶ 50(e) (indigenous peoples)(crisis of missing and murdered indigenous peoples)

Although recognizing some positive steps taken by the U.S. regarding the rights of indigenous peoples, in ¶ 49 of its Concluding Observations the Committee expressed very serious concerns including “[t]he lack of adequate measures and funding to address [the] crisis concerning missing and murdered indigenous peoples (arts. 5 and 6).” (emphasis added)

The Committee requested that the United States provide, within one year of the adoption of the Concluding Observations, “information on its implementation of the recommendations contained in paragraphs . . . 50(e) (indigenous peoples). . . .” Paragraph 50(e) of the Concluding Observations includes the Committee’s critical recommendation regarding the crisis of missing and murdered indigenous people persisting in the United States:

⁵ See Alternative Report, “Violence Against Indigenous Women in the United States, including the Crisis of Missing or Murdered Indigenous Women, and Lack of Safe and Adequate Housing for Indigenous Survivors, submitted to CERD, 107th Session (08-30 August 2022), available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FNGO%2FUSA%2F49274&Lang=en.

50. Drawing the attention of the State party to the United Nations Declaration on the Rights of Indigenous Peoples, and to the recognition by the Human Rights Council [footnote omitted] that the legacies of colonialism have a negative impact on the effective enjoyment of all human rights and that indigenous peoples were victims of colonialism and continue to be victims of its consequences, the Committee recommends that the State party:

....

(e) Take additional measures and provide adequate funding to implement statutes and policies that address the crisis concerning missing and murdered indigenous peoples. (emphasis added)

IV. United States' Actions During the Last Year to Implement ¶ 50(e)

As of August 24, 2023, the deadline for the U.S. to submit its follow-up report to CERD, *it appears that United States' follow-up report has not been submitted and posted on CERD's webpage for its 110th Session*. Regardless, we offer the following Alternative Report to inform the Committee related to additional measures and funding by the United States in the last year to implement statutes and policies addressing the crisis of missing and murdered indigenous peoples. In doing so, we emphasize the connection between missing and murdered indigenous women and peoples and the high incidence of violence against them, including but not limited to trafficking.

A. Recent funding announced for American Indian and Alaska Native victims of crime. On August 23, 2023, Attorney Merrick B. Garland personally delivered remarks to Alaska Native organizations in Anchorage, Alaska. The news was good. In Fall 2023, the Justice Department's Office of Victims of Crime will award nearly \$70 million in grants to support American Indian and Alaska Naive victims of crime. Some \$22 million will go to 67 Alaska tribal communities where the situation of violence against indigenous women is dire.⁶

B. Implementation of laws on missing and murdered indigenous women and peoples, including Savanna's Act and the Not Invisible Act. Since August 2022, the United States has not enacted any new specific laws that directly address the crisis of missing and murdered indigenous women and peoples. It is still the case that no one can tell you how many indigenous women or people in the United States are missing or may have been murdered, a fact acknowledged since November 2021 when the U.S. Government Accountability Office (GAO) published a report on missing or murdered indigenous women stating that "the total number of missing or murdered indigenous women is unknown," citing the lack of more comprehensive case data in the federal databases.⁷ The GAO pointed out two 2020 laws—the Not Invisible Act and Savanna's Act—that might be helpful to address some of the crisis if the Departments of Justice and Interior were to implement them adequately. Disappointingly, the GAO went on to

⁶ Attorney General Merrick B. Garland Delivers Remarks at Roundtable with Representatives of Alaska Native Organizations in Anchorage, August 22, 2023, available at <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-roundtable-representatives-alaska>.

⁷ Missing or Murdered Indigenous Women: New Efforts are Underway but Opportunities Exist to Improve the Federal Response, GAO-22-104045 (published Nov. 1, 2021), available at [Missing or Murdered Indigenous Women: New Efforts Are Underway but Opportunities Exist to Improve the Federal Response | U.S. GAO](#).

note that the federal agencies had missed critical requirements' deadlines in these two laws, including but not limited to failing to set up a joint commission (Commission) under the Not Invisible Act to explore the issue by February 7, 2021. In 2022 and 2023, the United States has finally taken some steps to implement the Not Invisible Act. The Secretary of the Interior, in coordination with the Attorney General, eventually appointed the Commission on May 5, 2022, more than a year beyond the statutory deadline. The Not Invisible Act requires that the Commission submit a final report to Congress, the Attorney General, and the Secretary of Interior by October 2023 with recommendations on how to improve intergovernmental coordination, establish best practices for state/tribal/and federal law enforcement to combat the epidemic of violence, and bolster resources. Towards that end, we note that the Commission has been holding public hearings and soliciting testimony during the last 12 months to shape the final report. The stated goal is to improve cross-jurisdictional communications, increase access to resources, and focus on other issues related to murdered and missing indigenous persons and human trafficking. The GAO also recommended that the Department of Justice develop a plan for accomplishing ongoing analyses of missing or murdered American Indian and Alaska Native women data to identify trends and areas of concern. Just recently, the Department of the Interior established a Missing or Murdered Indigenous Persons Regional Outreach Program placing additional attorneys and coordinators at U.S. Attorney's Office throughout the country to help prevent and respond to missing and murdered indigenous people.⁸ Further follow-up by the Committee may be useful to determine whether this program is effectively increasing investigations and prosecutions and bringing added protection and meaningful justice to indigenous women survivors of violence and to the families of the missing or murdered.

C. National Day of Awareness for Missing and Murdered Indigenous Women and Girls. President Biden issued a Presidential Proclamation calling May 5, 2023 Missing or Murdered Indigenous Persons Awareness Day to highlight the need for coordination between agencies, jurisdictions, and borders to address the crisis of violence against indigenous peoples.

D. Updated disaggregated data and statistics on violence against indigenous women and girls needed. In its 2022 report to CERD, the United States noted that the National Institute of Justice (NIJ) has launched a statutorily-mandated National Baseline Study (NBS) of crime and victimization in Indian country and Alaska Native villages. However, up-to-date disaggregated data and statistics concerning the gender-based violence experienced by indigenous women and girls in the United States are still lacking, and NIJ has yet to release NBS results or an update.

E. Alaska Pilot Project Criteria – deadline for releasing process and criteria for Alaska Pilot Project Tribes missed; VAWA 2022 funding not yet awarded for Tribes to prepare to exercise jurisdiction. The Violence Against Women 2022 Reauthorization Act (VAWA 2022), enacted by the United States on March 15, 2022,⁹ offers a disturbing picture of violence against

⁸ Attorney General Merrick B. Garland Delivers Remarks at Roundtable with Representatives of Alaska Native Organizations in Anchorage, August 22, 2023, available at <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-roundtable-representatives-alaska>.

⁹ Consolidated Appropriations Act, 2022, Pub. Law No. 117-103 (3/15/2022), containing the Violence Against Women Act 2022 Reauthorization at Title VIII, Subtitles A and B, "*Findings*." Many of these statistics arise from a May 2016 report on violence against American Indian and Alaska Native women and men produced by the

indigenous women in the United States explicitly finding that, in Alaska, where at least 75 indigenous communities lack any law enforcement presence at all, Alaska Native women suffer the highest rates of domestic and sexual violence as compared to populations of other Indian tribes; are “overrepresented in the domestic victim population by 250 percent;” and although comprising just 19% of the population in Alaska, comprise 47% of reported rape victims in Alaska. Moreover, all but one of the 228 tribal governments in Alaska have been unable to take advantage of the restored limited criminal jurisdiction in VAWA 2013 based solely on the way their lands were classified. In response, VAWA 2022 created an Alaska Pilot Program in Subtitle B, which is intended to restore safety for Alaska Native women by reaffirming the inherent authority of Alaska tribes over all Indian persons in a village and allowing up to 30 Alaska tribes to exercise Special Tribal Criminal Jurisdiction over covered crimes committed by non-Indians (unless both the alleged victim and alleged defendant are non-Indians) within a village. VAWA 2022 required U.S. Attorney General Merrick Garland to release a process and criteria by March 15, 2023 for the Alaska Pilot Project Tribes and those aspiring to be Pilot Project Tribes under Subtitle B of VAWA 2022. The deadline is long past, but we understand that the Justice Department is now working closely with Alaska Native communities on a framework for the Alaska Pilot Program. Inequities also exist in the overall planning and implementation of VAWA 2022 compared to implementation of VAWA 2013, which first reaffirmed expanded criminal jurisdiction in Indian country for Indian Tribes in the lower-48 states and one Indian Tribe in Alaska. For example, the federal government funded an intertribal working group training and technical assistance provider within 9 months of the passage of VAWA 2013. Some 15 months after VAWA 2022 was signed into law, we were pleased when the Justice Department recently announced that it will award the Alaska Special Tribal Criminal Jurisdiction Technical Assistance grant to the Alaska Native Justice Center, which will partner with RurAL CAP, the University of Alaska, the Alaska Native Women’s Resource Center, and the Tanana Chiefs Conference.¹⁰ In February 2023, the Office on Violence Against Women invited Alaska Tribes to apply for funding to prepare to exercise jurisdiction through the Alaska Pilot program. The deadline for applications was August 17, 2023 with awards not expected until sometime in Fall 2023.

F. Inadequate resources for local tribal responses to missing and murdered indigenous women and persons. Of critical importance is the need for an adequately resourced local tribal response to prevent abductions and murders of indigenous women and persons. Federal funding for Native American programs has been inadequate to meet most basic needs the United States is obligated to provide.¹¹ The Bureau of Indian Affairs (BIA) is generally funding tribal law enforcement at about 20 percent of estimated need, tribal detention at about 40 percent

Department of Justice’s National Institute on Justice, using data from the 2010 National Intimate Partner and Sexual Violence Survey. See <https://nij.ojp.gov/library/publications/violence-against-american-indian-and-alaska-native-women-and-men-2010-findings>.

¹⁰ Attorney General Merrick B. Garland Delivers Remarks at Roundtable with Representatives of Alaska Native Organizations in Anchorage, August 22, 2023, available at <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-roundtable-representatives-alaska>.

¹¹ See generally U.S. Commission on Civil Rights 2018 report, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*, p. 4, which updates its 2003 report, *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country*, available at <https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf>.

of need, and tribal courts at a dismal 3 percent of estimated need.¹² A recent report by the BIA to Congress estimated that to provide reasonable base level funding to all 574 federally recognized tribes for public safety and justice programs the total costs would be: \$1 billion for tribal law enforcement; \$1 billion for tribal courts; and \$222.8 million for detention.¹³

G. Funding award to first Native Hawaiian Resource Center on Domestic Violence. Of all women in Hawaii, Native Hawaiian women face the highest percentage rates of domestic violence and sex trafficking. In order to address this violence, the Pouhana O Nā Wāhine (PONW), a Native Hawaiian 501(c)3 nonprofit organization, was founded. We are pleased to report that in the Fall of 2022, the United States awarded funding to PONW to serve as the first statutorily created Native Hawaiian Resource Center on Domestic Violence (NHRCDV) under the Family Violence Prevention and Services Act (FVPSA). The designation and funding of PONW as a resource center to address violence against Native Hawaiian women is fundamental to protecting Native Hawaiian women.

H. Addressing the housing and shelter crisis for indigenous survivors of gender-based violence as a prevention response to missing and murdered indigenous women and girls (MMIWG). Unhoused and unsheltered indigenous survivors are experiencing ongoing state violence and displacement. Being an unsheltered relative represents an incredible risk for victimization, and there is a strong correlation between domestic violence, sexual assault, human trafficking, stalking, and MMIWG. Survivors of domestic violence rely on safe housing and shelter access when experiencing abuse and responses to violence against Native women must include a prevention framework that addresses safe shelter and safe housing as an obligation of the United States.

The need for safe, affordable, accessible, and stable housing is one of the most pressing concerns for American Indian and Alaska Native survivors of gender-based violence. Domestic and sexual violence are leading causes of homelessness for women and children generally. Housing is a basic human right, yet Native women survivors of gender-based violence frequently report access, habitability, or sustainability issues, leading to layers of vulnerability and increased risk of new or continued victimization. These issues are felt almost universally by the Native women population across the housing spectrum. Just as there are urgent issues for Native women survivors of gender-based violence who attempt to access shelters or emergency and

¹² See Restoration of Native Sovereignty and Safety for Native Women, October 2022, “Issues Regarding Bureau of Indian Affairs (BIA), DOI Disparities in Funding, available at <https://www.niwrc.org/restoration-magazine/october-2022/17th-annual-tribal-consultation-violence-against-women#:~:text=Recently%2C%20the%20BIA%20and%20DOI,million%20is%20needed%20for%20detention>; see also OVW Annual Consultation Resource Guide – Alaska Priorities at pg. 8. See generally U.S. Commission on Civil Rights 2018 report, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*, which updates its 2003 report, *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country*, available at <https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf>.

¹³ See Restoration of Native Sovereignty and Safety for Native Women, October 2022, “Issues Regarding Bureau of Indian Affairs (BIA), DOI Disparities in Funding, available at <https://www.niwrc.org/restoration-magazine/october-2022/17th-annual-tribal-consultation-violence-against-women#:~:text=Recently%2C%20the%20BIA%20and%20DOI,million%20is%20needed%20for%20detention>; see also OVW Annual Consultation Resource Guide – Alaska Priorities at pg. 8.

transitional housing, the same issues are present with regards to the availability of housing assistance and affordable, habitable, sustainable, and stable housing.

The Native American Housing Assistance and Self-Determination Act of 1996, Public Law No. 104-330 (NAHASDA), authorized the Indian Housing Block Grant (IHBG) program, a formula grant and the largest source of federal funding for housing development and housing assistance in Indian country. Additionally, the Act authorized the Indian Housing Loan Guarantee Fund which allows tribes to leverage their Block Grant funds to obtain federally guaranteed loans from private banking institutions. In general, Tribes benefit from these grant programs, but the Act's funding has not increased since the program's inception in FY 1998, creating a significant barrier to meaningful housing access in Indian country for many Tribes. The 2016 Broken Promises Report¹⁴ highlighted that NAHASDA operated at a year-over-year deficit due to both inflation and the rising demand for housing in tribal communities. NAHASDA remains woefully underfunded; and this issue has simply compounded since the pandemic and in consideration of increasing climate crisis impacts. In 2022, NAHASDA received a 20% increase in funding, but the increase does not reconcile underfunding for the past 24 years, nor does it adequately account for the rise in construction costs, the pandemic, the impacts of climate crisis on both construction and land/shelter availability, nor does it account for the incredible rates of inflation over the past year.

Furthermore, the Family Violence and Prevention Services Act which provides formula funding that Tribes may apply for, often results in grants that are not adequate to fund tribal domestic violence shelters. This disparity in funding is reflected in the number of tribal domestic violence shelters that currently operate in Indian country (less than 50). Survivors in both on and off reservation communities must have access to a broad spectrum of housing and shelter options, which reduces their risk of revictimization. Additionally, rapid rehousing funds available through the Department of Housing and Urban Development only recently became available in FY2021 for Tribal governments, and there are currently no COC (Continuum of Care) programs operating in Indian country. Survivors and programs need access to flexible funding, funding for application fees, deposits for first and last month's rent, transportation vouchers, funding to keep survivors in their current homes, funding opportunities that address intersectional issues (childcare, health, mental and behavioral health, food sanitation, clean water, internet access, etc.), rent cancellation, funding for legal advocacy, funding for financial assistance programs, and increased funding for project based vouchers. Additionally, with different jurisdictions enacting local legislation criminalizing homelessness, there needs to be a robust centralized national response to counteract and address the harm caused by carceral systems (which only serves to create additional barriers to safe housing). Furthermore, housing and shelter in Indian country is not exempted from the detrimental and urgent impacts of the climate crisis, and there needs to be a state response to this crisis immediately as a state duty (especially to Indian country under the United States' trust responsibility).

¹⁴ U.S. Commission on Civil Rights 2018 report, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*, Chapter 4, p. 135-152, which updates its 2003 report, *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country*, available at <https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf>.

V. Conclusion

We are disappointed that the United States did not submit a timely follow-up report to the Committee, particularly since the report would have related to the crisis of missing and murdered indigenous women and peoples. While indigenous lives are being lost daily and indigenous peoples continue to go missing, maintaining the status quo is not an option and the United States must take firm actions with a sense of urgency and the necessary resources aimed at stopping this crisis. The historical federal underfunding of tribal justice systems is not only a violation of the ICERD, but also of the United States' domestic trust responsibility to American Indian and Alaska Native Tribes. However, in the last year and particularly the last month, the United States has been moving slowly forward in its limited efforts to address this terrible crisis.

Should the Committee need additional information from us, please contact: Tami Jerue (tami.jerue@aknwrc.org), Executive Director, Alaska Native Women's Resource Center; Jana L. Walker (jwalker@indianlaw.org) or Christopher Foley (cfoley@indianlaw.org), Senior Attorneys at the Indian Law Resource Center; Paula Julian (pjulian@niwrc.org), Senior Policy Specialist or Lucy Simpson (lsimpson@niwrc.org), Executive Director, at the National Indigenous Women's Resource Center; Caroline LaPorte (claporte@niwrc.org), Director of the STTARS Indigenous Safe Housing Center; and Dr. Dayna Schultz (daynas@pouhanaonw.org), Executive Director, or Dolly Tatofi (dollyt@pouhanaonw.org), at Pouhana 'O Nā Wāhine.