

# INDIAN LAW RESOURCE CENTER

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## **Combating Violence Against Indian and Alaska Native Women—**

### **United States Violations of the International Covenant on Civil and Political Rights through its Discriminatory Legal System**

A Shadow Report  
Submitted to the United Nations Human Rights Committee

September 2013

## I. Reporting Organizations

The Indian Law Resource Center (Center) is the primary author of this report.<sup>1</sup> Endorsing organizations of this shadow report include: the National Congress of American Indians (NCAI) Task Force on Violence Against Women; Clan Star, Inc.; and the National Indigenous Women's Resource Center, Inc. (NIWRC).

## II. Introduction and Issue Summary

The International Covenant on Civil and Political Rights (ICCPR) provides many protections for indigenous peoples. Among these is Article 26, which explicitly recognizes that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” Although the United States ratified the ICCPR, Indian nations, the Center, and others have worked for decades to raise world awareness of the blatant discriminating nature of law in the United States concerning indigenous peoples. Nevertheless, the United States has never addressed its failure to meet its obligations to indigenous peoples under the ICCPR and other international laws,<sup>2</sup> and the UN Human Rights Committee has never demanded that it do so.

Deeply embedded in United States Indian law and policy are discriminatory doctrines that deny Indian and Alaska Native nations, tribes and individuals certain constitutional rights that are accorded to all other groups and individuals in the United States. Federal court decisions have created most of these discriminatory doctrines, which deny Indian and Alaska Native tribes and nations basic security in their homelands, effective control over the use and development of their resources, and even the right to exist as tribes except at the sufferance of Congress.<sup>3</sup>

Violence against Indian and Alaska Native women is at epidemic proportions and 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 ICCPR with respect to protecting Indian and Alaska Native women from violence<sup>4</sup> and ensuring nondiscrimination and equality under federal law. Native

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<sup>1</sup> Founded in 1978 by American Indians, the Center is a 501(c)(3) non-profit legal organization. The Center provides legal assistance to indigenous peoples of the Americas to combat racism and oppression, to protect their lands and environment, to protect their cultures and ways of life, to achieve sustainable economic development and genuine self-government, and to realize their other human rights. The Center seeks to overcome the grave problems that threaten Native peoples by advancing the rule of law, by establishing national and international legal standards that preserve their human rights and dignity, and by challenging the governments of the world to accord justice and equality before the law to all indigenous peoples of the Americas. Learn more at [www.indianlaw.org](http://www.indianlaw.org).

<sup>2</sup> See, e.g., the United Nations Declaration on the Rights of Indigenous Peoples.

<sup>3</sup> See generally Indian Law Resource Center, *Native Land Law, General Principles of Law Relating to Native Lands and Natural Resources, 2012 Lawyers Edition* (West Thomson Reuters).

<sup>4</sup> 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

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.<sup>5</sup> One in three Native women will be raped in their lifetime, and six in ten will be physically assaulted.<sup>6</sup> Worse, the murder rate for Native women is ten times the national average on some reservations.<sup>7</sup> Indian and Alaska Native women are denied meaningful access to justice and experience less protections from violence than other women just because they are Indian and Alaska Native and are assaulted on tribal lands.

United States law places systemic jurisdictional restrictions on Indian and Alaska Native nations and tribes, creating an unworkable and discriminatory, race-based system for administering justice in Native communities—a system highlighting the United States’ blatant and continuing failure to meet its obligations under the ICCPR. For decades, United States law has prohibited tribal governments from prosecuting non-Native offenders who commit an estimated 88% of all violent crimes against Native women.<sup>8</sup> 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.

On March 7, 2013, President Obama signed into law the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), historic legislation restoring the inherent sovereignty of Indian nations to exercise concurrent criminal jurisdiction over certain non-Indian perpetrators of domestic violence and dating violence against Native women on Indian lands or who violate protection orders. Today, however, VAWA 2013 is not adequate to stop the epidemic of violence, and significant legal gaps continue to threaten the safety of Indian and Alaska Native women in the United States. In general, the life threatening status quo continues because, unless approved to participate in a special pilot project, tribes may not prosecute non-Indian abusers until March 7, 2015. Even then, stringent requirements, coupled with lack of funding, may delay or even deter exercise of such jurisdiction by some tribes. Because the special domestic violence criminal jurisdiction of tribes is limited under VAWA 2013 and turns on the status of the Indian lands where the crime is committed, it only applies to one of the 229 federally

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failing to use due diligence and reasonable measures to protect this woman and her children from domestic violence.

<sup>5</sup> 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).

<sup>6</sup> See Patricia Tjaden & Nancy Thoenne, 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).

<sup>7</sup> 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).

<sup>8</sup> Native women experience a per capita rate of interracial violence far exceeding that of the general population with about 88% of the offenders identified by Native women survivors as being non-Indian. See Patricia Tjaden & 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).

recognized tribes located in Alaska. Yet, “Alaska Native women suffer the highest rate of forcible sexual assault in the United States and an Alaska Native woman is sexually assaulted every 18 hours.”<sup>9</sup> Further, under VAWA 2013, tribes may not exercise criminal jurisdiction over non-Indians that commit domestic and sexual assaults against Native women on tribal lands unless the non-Indian has significant ties to the tribe.

While VAWA 2013 is an affirmative step forward in remedying some outdated and discriminatory laws, indigenous peoples within the United States, especially Indian and Alaska Native women, continue to be denied justice. Laws in the United States continue to deny basic rights to Indian and Alaska Native nations and tribes and individuals that others in the country freely enjoy, especially rights to be free from discriminatory government action and equal protection under law. The discriminatory nature of United States law demonstrates its continuing disregard for its obligations under the ICCPR and other international laws protecting indigenous peoples.

### **III. Relevant Question in List of Issues**

Combating violence against Indian and Alaska Native women is included in the UN Human Rights Committee’s March 2013 “List of Issues” as part of Issue 20, which asks: “[p]lease provide information on steps taken to prevent and combat domestic violence, and the impact measured, as well as to ensure that acts of domestic violence are effectively investigated and that perpetrators are prosecuted and sanctioned.”<sup>10</sup>

### **IV. U.S. Response**

“The U.S. government’s long-standing commitment to addressing violence against women is guided by two key principles: ensuring safety for victims, and holding offenders accountable. The 1994 Violence Against Women Act (VAWA) has been reauthorized in 2000, 2005, and 2013. VAWA is designed to end violence against women by (1) increasing the availability of services for victims of violence; and (2) improving the criminal justice response to crimes of violence against women.”<sup>11</sup>

“VAWA has led to significant improvements in the criminal and civil justice systems at the local level where the majority of these crimes are prosecuted. By forging state, local, and tribal partnerships among police, prosecutors, judges, victim advocates, health care providers, faith leaders, and others, federal grant programs help provide victims with the protection and services they need to pursue safe and healthy lives, while simultaneously enabling communities to hold offenders accountable for their violence.”<sup>12</sup>

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<sup>9</sup> S. 1474, Alaska Safe Families and Villages Act of 2013 at § 2(a)(3).

<sup>10</sup> UN Human Rights Committee, *List of issues in relation to the fourth period report of the United States of America (CCPR/C/USA/4 and Corr. 1)*, 29 April 2013, adopted by the Committee at its 107<sup>th</sup> session (11-28 March 2013) (List of Issues).

<sup>11</sup> U.S. Responses to Questions from the UN HRC Concerning the Fourth Periodic Report of the U.S. on the ICCPR List of Issues, Paragraph 105.

<sup>12</sup> U.S. Responses to Questions from the UN HRC Concerning the Fourth Periodic Report of the U.S. on the ICCPR List of Issues, Paragraph 106.

## **V. Recommended Questions to the United States**

We respectfully request that the UN Human Rights Committee ask these questions during the United States' periodic review session:

1. Please address how the legal system in the United States is discriminatory, protects Indian and Alaska Native women less, and perpetuates violence against Indian and Alaska Native women in Native communities?
2. What is the United States doing today to stop the epidemic levels of violence against Indian and 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 Native Alaska villages, to empower Alaska Native tribes and nations to address domestic and sexual violence against Alaska Native women, and to ensure the delivery of justice in Native communities?

## **VI. Suggested Recommendations**

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

1. Reform United States law and policy to remove systemic discriminatory legal barriers that fail to protect Indian and Alaska Native women against violence and to empower Indian and Alaska Native nations and tribes in ensuring safety and justice in their communities.
2. Detail steps being taken today by the United States to stop the extreme levels of violence being inflicted on Alaska Native women and to ensure the delivery of safety and justice in Alaska Native villages.
3. Provide funding and training programs for Indian and Alaska Native tribal law enforcement and judicial systems sufficient to ensure equal protection and justice for victims of domestic and sexual violence and for Native communities.