

The Inter-American Human Rights System



Juan Manuel Herrera - OAS/OEA Photo

COMBATING VIOLENCE AGAINST NATIVE WOMEN IN THE UNITED STATES

A resource on advocacy efforts for indigenous women's organizations seeking to bring human rights claims to the international arena

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INDIAN LAW
RESOURCE CENTER



INDIAN LAW RESOURCE CENTER

The Indian Law Resource Center is a non-profit law and advocacy organization established and directed by American Indians. The Center provides legal assistance to Indian and Alaska Native nations who are working to protect their lands, resources, human rights, environment, and cultural heritage. The Center's principal goal is the preservation and well-being of Indian and other Native nations and tribes. For more information, visit www.indianlaw.org.

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Introduction

The Indian Law Resource Center's Safe Women, Strong Nations project works with Native women's organizations and Indian and Alaska Native nations to stop violence against Native women and girls in the United States by restoring tribal authority to prevent and punish such violence when committed on their lands.

Violence against American Indian and Alaska Native women is a human rights crisis of epidemic proportions. One in three American Indian and Alaska Native women will be raped in her lifetime; three in five will be physically assaulted. These are rates twice as high as any other group of women in the United States. Tragically, on some reservations, Native women also face a murder rate that is ten times higher than the national average.

Too often, these crimes go uninvestigated and unprosecuted. Since 1978, United States law has stripped tribes of their power to prosecute crimes by non-Indian perpetrators. Today, non-Indians comprise 76% of the population in American Indian areas and 68% of the population in Alaska Native villages. Non-Indians commit the vast majority – an estimated 88% – of the violent crimes against Native women, and the federal and state officials responsible for investigating and prosecuting these crimes are failing Native women miserably. Between 2005 and 2009, United States attorneys declined to prosecute some 67% of the sexual abuse and related matters referred to them from Indian country. A report released by the Department of Justice in May 2013 notes a near 54% increase in Indian country criminal caseloads between 2009 and 2012. Still, nearly a third of all declinations are for sexual assault cases.

For years, Native women and their advocates have appealed to local law enforcement, Congress, and federal agencies to address the crisis of violence against Native women. In many instances, however, these appeals have gone unheeded. In the face of unresponsive domestic legal and political systems, the Indian Law Resource Center partnered with Native women's organizations and Indian nations on a national strategy – a strategy that reframes the issue of violence against Native women as a human rights issue, not just a domestic or law enforcement issue. By combining domestic



An Honor Dance, Dale Auger

and international advocacy and turning to the international human rights arena to find justice, this strategy has led to encouraging results.

In 2008, Jessica Gonzales Lenahan filed a case against the United States in the Inter-American Commission on Human Rights for the failure of local police to enforce a domestic violence protection order. The Inter-American Commission and the Inter-American Court, the human rights organs of the Organization of American States, together have jurisdiction to examine and investigate claims of rights violations, to recommend remedial measures and, in some cases, to issue binding decisions.

The Indian Law Resource Center, along with Sacred Circle National Resource Center to End Violence Against Native Women and nineteen other entities, including Indian nations and both Native and non-Native groups, submitted

“Using international human rights mechanisms complements grassroots efforts by bringing top-down pressure from the international community.”

an amicus brief in support of Gonzales. As the first victim of domestic violence in the United States to use international human rights law, Gonzales’s case effectively framed domestic violence in the U.S. as an international human rights issue. The case affirmed the United States’ legal duty to respect and protect what is one of the most basic human rights – the right to be free from violence.

In 2011, the Center, along with several Native women’s organizations, successfully petitioned the Inter-American Commission on Human Rights to hold the first ever thematic hearing on violence against Native women in the United States. The hearing focused international attention on the United States’ international human rights obligation to respond to the epidemic of violence against Native women.



One in three Native women in the U.S. will be raped in her lifetime.

Since the 2011 hearing, Native women in the United States have achieved significant victories, including the passage of the Violence Against Women Reauthorization Act of 2013 with new provisions restoring limited concurrent jurisdiction to tribal governments over any perpetrator committing certain crimes of domestic and dating violence against Native women in Indian country. The use of international human rights mechanisms may not be within the common advocacy playbook of many indigenous women and indigenous peoples. It can, however, be a very effective approach to raising awareness beyond the domestic sphere. Moreover, it complements grassroots

efforts by bringing top-down pressure from the international community to bear on a country, spurring dialogue, setting precedents, and guiding policy agendas – all with the aim of increasing protections for indigenous women from violence.

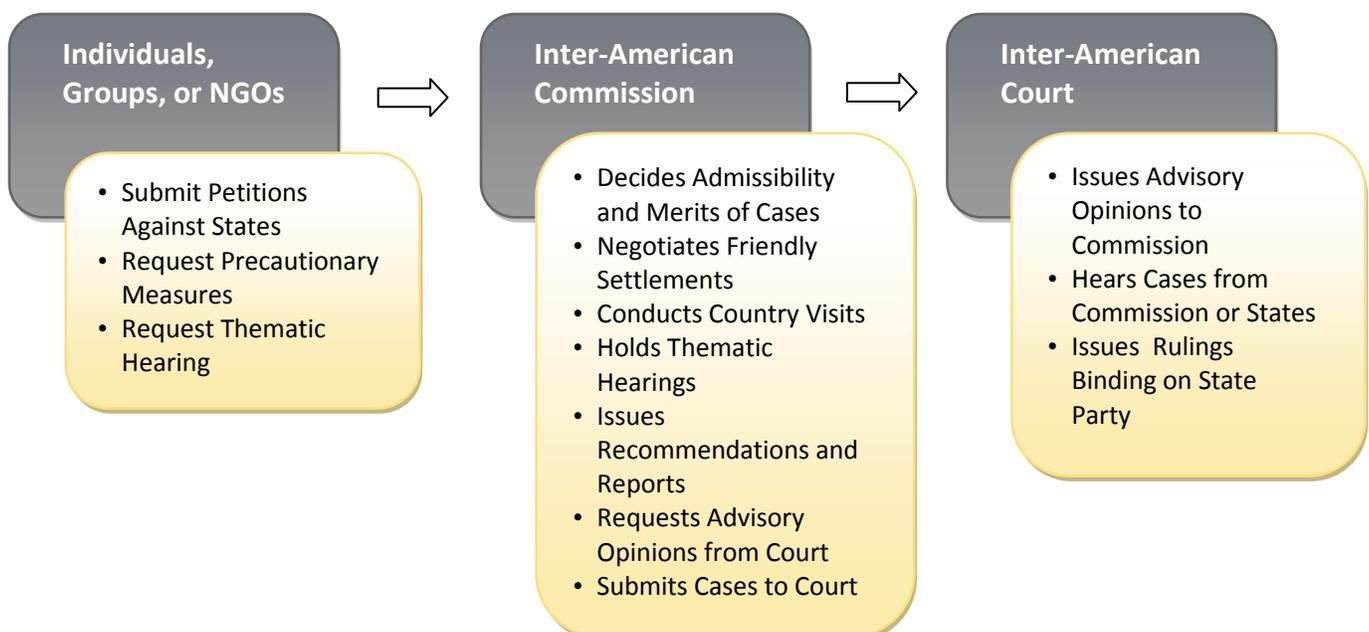
This handbook documents advocacy efforts within the Inter-American Human Rights System as a resource for indigenous women’s organizations that may want to bring their human rights claims to the international arena. We hope that these examples can contribute to the hard work that remains to ensure that all indigenous peoples can fully enjoy their human rights.

Overview of the Inter-American Human Rights System

The Inter-American Human Rights System provides a means for individuals, organizations, and indigenous peoples in the Americas to seek justice for human rights violations. The system was established by the member countries (referred to as states) of the Organization of American States (OAS), which presently includes all 35 independent states in the Americas. Its mandate is to promote the observance and defense of human rights in the Americas, which it does through two main bodies – the Inter-American Commission on Human Rights (Commission), based in Washington, D.C., and the Inter-American Court of Human Rights (Inter-American Court or Court), located in San José, Costa Rica.

The formal beginning of the Inter-American Human Rights System in 1948 was marked by the approval of the American Declaration of the Rights and Duties of Man and adoption of the OAS Charter, which recognizes the fundamental rights of the individual as a foundational principle. The system was later strengthened and expanded with the 1969 adoption of the American Convention on Human Rights and the establishment of the Inter-American Court.

Advocacy within the Inter-American Human Rights System



The seven-member Commission is elected by the General Assembly of the OAS. Commissioners act independently and do not represent any particular country. One of the Commission's key functions is to examine petitions (or complaints) filed by individuals, groups, or organizations who claim that a state has violated a human right recognized under the American Convention on Human Rights or the American Declaration of the Rights and Duties of Man. The Commission investigates the facts, conducts hearings, reports its findings and, where appropriate, recommends measures for a state to remedy the violation. However, the Commission does not have the power to compel a state to act.

The functions and jurisdiction of the Commission and the Inter-American Court vary. Under the OAS Charter, all member states are subject to the jurisdiction of the Commission and obligated to uphold the provisions of the American Declaration of the Rights and Duties of Man. However, only 25 member states have ratified the American Convention on Human Rights.

If a state fails to implement the Commission's recommendations, the Commission may, in certain situations, submit the case to the Inter-American Court, which can issue binding decisions. Significantly, the Inter-American Court has jurisdiction only over those countries that have expressly accepted its authority and ratified the American Convention on Human Rights. To date, the United States has not done so. Thus, implementation of Commission decisions regarding the United States, as in *Gonzales v. United States*, remains challenging.



Thematic hearings provide an opportunity for the Commission to investigate human rights concerns.

Juan Manuel Herrera - OAS/OEA Photo

Because the Commission is currently processing more than 800 individual cases, delays in litigation may be significant. However, besides hearing cases, the Commission also carries out a number of other important functions including:

- Publishing periodic special reports regarding the general human rights situation in specific states.
- Attempting to resolve human rights problems through “friendly settlement” procedures.
- Conducting on-site visits to countries to engage in more in-depth analysis of general human rights conditions and/or to investigate a specific situation, and publishing reports on its findings.

- Carrying out and publishing studies on specific topics, such as the activities of irregular armed groups or the human rights of indigenous peoples.
- Issuing recommendations to member states on the adoption of measures that would contribute to human rights protection.
- Requesting states to adopt specific "precautionary measures" to avoid serious and irreparable human harm in urgent cases.
- Holding thematic hearings to investigate general human rights concerns.

Thematic hearings before the Commission can offer useful opportunities to address general human rights concerns, particularly where it is difficult or ineffective to litigate individual cases. The Commission grants thematic hearings on defined human rights topics or on situations dealing with a specific state. Thematic hearings take place during one of the two sessions the Commission holds in Washington, D.C. each year. During a hearing, petitioners testify before a panel of commissioners. Relevant state representatives are also invited to appear and testify. Petitioners may report on a human rights situation, provide evidence, and request that the Commission make certain recommendations to the state in question. Petitioners may also submit documentation to the Commission. Hearings are public and viewable around the world through a live video feed. After a hearing, the Commission may take follow-up actions on any recommendations it may have issued.

Gonzales v. United States



Jessica Lenahan testifies before the Inter-American Commission on Human Rights.

Juan Manuel Herrera - OAS/OEA Photo

Native Women and Tribes File an Amicus Brief (2008)

and

Inter-American Commission on Human Rights Issues Landmark Decision with Major Implications for Native Women (2011)

In June 1999, Jessica Gonzales Lenahan's estranged husband, Simon, kidnapped and killed their three children. Her daughters' tragic deaths occurred after police refused to enforce a domestic violence protection order that Jessica had previously obtained against Simon. Ms. Lenahan filed a case against the Castle Rock Police Department in Colorado for violating her civil rights by not enforcing the order. The United States Supreme Court eventually dismissed her case, holding that despite state laws facially requiring police officers to enforce domestic violence protection orders, individuals do not have a constitutional right to have these protection orders enforced.

Ms. Lenahan then looked beyond the domestic sphere and filed a case before the Inter-American Commission on Human Rights, asserting that the United States failed to protect her human rights. Her case is a powerful example of how individuals can use international bodies to assert and protect their human rights.

While the case neither occurred in Indian country nor involved a tribal protection order, it challenged a Supreme Court decision that has an especially pernicious impact on Native women. While tribal protection orders are often the primary recourse that Native women have against domestic violence perpetrators, these protection orders are only good to the

extent they are enforced. Under current laws, Native women must rely on state law enforcement to enforce protection orders whenever they leave tribal land. Unfortunately, state law enforcement officials regularly refuse to enforce tribal protection orders. The Supreme Court’s decision condones this practice, enabling state law enforcement to continue to ignore tribal protection orders. In effect, the decision leaves Native women vulnerable to continuing violence.

Ms. Lenahan’s case was the first individual complaint brought by a victim of domestic violence against the United States for international human rights violations. Because of its special implications for Native women, the Indian Law Resource Center, Sacred Circle National Resource Center to End Violence Against Native Women, and nineteen other entities, including Indian nations and both Native and non-Native groups, filed an amicus brief to inform the Inter-American Commission about the epidemic of domestic violence and sexual assault against Native women in the United States and the particularly devastating effect of the *Gonzales* decision on Native women. The brief argued that the failure of the United States to protect Native women violates their rights under the American Declaration of the Rights and Duties of Man.

On August 17, 2011, the Inter-American Commission on Human Rights issued a landmark decision in *Jessica Lenahan (Gonzales) v. United States*, finding that the United States violated its obligations under international human rights law to use due diligence and reasonable measures to protect a woman and her three children from violence.

“

I have waited 12 years for justice, knowing in my heart that police inaction led to the tragic and untimely deaths of my three young daughters. Today’s decision tells the world that the government violated my human rights by failing to protect me and my children from domestic violence.

– Jessica Lenahan

”

Following is the amicus brief that the Indian Law Resource Center, the Sacred Circle National Resource Center to End Violence Against Native Women, and partners filed with the Inter-American Commission on Human Rights.

Before the
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Jessica Gonzales,
In her individual capacity and on behalf of her deceased daughters,
Katheryn, Rebecca, and Leslie Gonzales

vs.

The United States of America

Case No. 12.626

Written Comments of Amici Curiae

November 13, 2008

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Interest of Amici Curiae

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 - c. The United States' Failure to Protect Indian Women From Violence Violates their Rights under the American Declaration.
 - i. The United States is Responsible for the Epidemic of Violence Against Indian Women Because it has Failed to Prevent such Violence and Act with Due Diligence to Protect Them.
 - ii. The United States Violates Indian Women's Rights to Life and Security of the Person.
 - iii. The United States Does Not Provide Indian Women with an Effective Judicial Remedy as Required by the American Declaration.
- III. Conclusion and Recommendations
- IV. Appendix (List of Amici Curiae)

I. Interest of Amici Curiae

Amici are non-profit organizations and tribal governments actively working to end the epidemic of violence against American Indian and Alaska Native women (“Indian women”)¹ in the United States. Amici support the brief of Jessica Gonzales because all women and children, Indian and non-Indian alike, in the United States have the right to be protected from violence and to have protection orders enforced by law enforcement officials.² Under United States decisional law, women are denied the right to have protection orders enforced by the police.³ Left with great discretionary power, law enforcement officials may, and frequently do, disregard violations of protection orders. This failure to enforce protection orders leaves women unprotected and vulnerable to ongoing violence.

United States law undermining the integrity of domestic violence protection orders has far reaching effects beyond the *Gonzales* case. Even though this case did not arise on Indian lands or involve a tribal protection order, it has vast implications for Indian women and the enforcement of tribal protection orders by state law enforcement officials. Amici write in support of the arguments made by the petitioner to provide additional evidence of the consistent and widespread pattern of police failure to enforce domestic violence protection orders. Amici reiterate that the United States has failed to act with due diligence to fulfill its obligations under the American Declaration on the Rights and Duties of Man and to prevent violence against women. More specifically, Amici write to educate the Commission about the epidemic of domestic violence and sexual assault against Indian women in the United States and the

¹ In this brief, the term “Indian” is used to include members of the 562 federally recognized Indian nations and Alaska Native villages.

² Jessica Gonzales identifies as Native American, but even if she did not, the rule established by the U.S. Supreme Court in *Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748 (2005), extends to all women in the United States, including Indian women.

³ See *Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748 (2005).

particularly devastating effect of United States laws on Indian women. The Commission must be aware of this particular impact of the *Gonzales* decision in the United States because it endangers the lives of Indian women and leaves them without effective judicial recourse against their abusers.

II. Summary of Argument

Indian women face greater rates of domestic violence and sexual assault than any other group in the United States.⁴ Despite this horrific fact, United States law has diminished the authority of Indian nations to safeguard the lives of Indian women. The jurisdictional limitations placed by the United States on Indian nations have created a systemic barrier that denies Indian women access to justice and prevents them from living free of violence or the threat of violence. As a result, civil protection orders are of increased importance to Indian women because often the only recourse an Indian woman has against her abuser is a civil protection order. United States laws undermining the enforcement of civil protection orders leave Indian women vulnerable to violence and violate their rights to life, security, and effective judicial remedies under international law.

Protection orders are a critical component of the civil legal remedies available to protect Indian women from future violence. Protection orders are of heightened importance to Indian women seeking protection from violence because the United States has left Indian women without adequate criminal remedies to the violence committed against them. While the United States has diminished tribal criminal authority, Indian nations can issue civil protection orders to prevent future violence, award temporary custody of children, and resolve other urgent issues. Tribal protection orders have the potential to save the lives of Indian women, and often do so, when they are enforced by local law enforcement. Because Indian women enter and leave tribal

⁴ See, e.g., P.L. No. 109-162 § 901 (2006).

jurisdiction continuously to work, bank, go to school, and for many other reasons, a woman's life may depend on her tribal court order of protection being enforced by state courts.

The *Gonzales* decision undermining the integrity of civil protection orders is especially pernicious to Indian women because of the limitations placed by the United States upon tribal criminal authority to protect women from perpetrators of domestic and sexual violence. The *Gonzales* decision allows law enforcement the discretion to choose not to enforce domestic violence protection orders. This decision limiting the enforceability of protection orders strengthens the systemic barriers preventing Indian women from accessing legal remedies essential to preventing abuse and living free of violence. The decision furthers the legal barriers that violate the rights of Indian women to life, security, and effective judicial remedies under international law and thus, leaves them vulnerable to violence.

III. Argument

a. Domestic and Sexual Violence Committed Against Indian Women Is a National Crisis in the United States.

Violence against Indian women in the United States has reached epidemic proportions. Violence against Indian women greatly exceeds that of any other population in the United States.⁵ Every hour of every day an Indian woman is the victim of sexual and physical abuse.⁶ Indian women are 2 ½ times more likely to experience violence than other women in the United States.⁷ The statistics of the United States Department of Justice report that 1 in 3 Indian women

⁵ *Id.*

⁶ Brief of Amici Curiae The National Network to End Domestic Violence, Sacred Circle, National Resource Center to End Violence Against Native Women, et al. in Support of Respondents at 4, *Plains Commerce Bank v. Long Family Land & Cattle Co., Inc., et al.*, No. 07-411 (2008) [hereinafter "Long Brief"].

⁷ See Steven W. Perry, U.S. Dep't of Justice, *American Indians and Crime* 8 (2004).

will be raped⁸ and that 3 in 5 will be physically assaulted.⁹ Indian women are also stalked at a rate more than double that of any other population.¹⁰

Indicative of the severity of the violence committed on a daily basis against Indian women is that in 2004 homicide was one of the leading causes of death for Indian women, outranking heart disease, cancer, diabetes and other such illnesses.¹¹ Intentional homicide is the third leading cause of death for Indian girls and women between the ages of ten and 24. Suicide is the second leading cause of death for Indian women and girls between the ages of ten and 34. Many such suicides may be in reality cases of unresolved homicides. Some counties within the United States have rates of murder against Indian women that are over ten times the national average.¹²

Indian women were not traditionally the victims of such violence. As a coalition of women's organizations recently explained to the United States Supreme Court,

This extraordinarily high rate of violence against Native women has no roots in the traditional cultures of Indian nations. To the contrary, written historical records documenting Europeans' first impressions of relationships between Indian women and men indicate that women enjoyed great authority and respect in Indian societies. Traditional teachings handed down by oral historians of Indian nations confirm these reports—unlike their European counterparts, Indian women frequently had greater authority than men over the home, activities associated with trade, and property. Many Indian nations held the mother's role to be culturally and structurally central to their societies. Reflecting these social norms

⁸ See Patricia Tjaden & Nancy Thoennes, 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).

⁹ See *id.*

¹⁰ See 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).

¹¹ See Melonie Heron, Center for Disease Control, Deaths: Leading Causes for 2004, National Vital Statistics Reports, Vol. 56, Number 5 (2004). In 2007, a total of 10,007 Indian people were listed as missing by the National Crime Information Center. See NCIC Missing Person and Unidentified Person Statistics for 2007, U.S. Dep't of Justice (2008).

¹² Ronet Bachman, *et al*, *Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What is Known* (National Institute of Justice 2007).

and the spiritual beliefs underlying them, Native women traditionally experienced a high degree of safety.¹³

The national crisis of violence against Indian women is widely recognized and since 2003 the National Congress of American Indians has prioritized addressing this issue.¹⁴ The violence is understood as an outcome of the lived experience of Indigenous women where colonization continues in a contemporary context.¹⁵ The United States Congress also recognized the epidemic of violence against Indian women by including a specific title within the Violence Against Women Act of 2005 (“VAWA”) named Safety for Indian Women.¹⁶ The crisis is systemic in nature and is the product of United States law and policies preventing access to justice and safety for Indian women.

b. United States Law Systematically Denies Indian Women Sexually or Physically Assaulted on Indian Lands the Full Protection of Legal Remedies from Domestic and Sexual Violence.

There are 562 federally recognized Indian nations in the United States, including more than 200 Alaska Native villages, that retain sovereign authority over their lands and peoples.¹⁷

“Indian tribes have long been recognized as sovereign entities, ‘possessing attributes of

¹³ Long Brief, *supra* note 6, at 4-5 (citing Jacqueline Agtuca, *Beloved Women: Life Givers, Caretakers, Teachers of Future Generations* 5-6 in *Sharing Our Stories of Survival, Native Women Surviving Violence* (2007)). *See also* Office on Violence Against Native Women and the National Center on Full Faith and Credit, *Violence Against Native Women: A Guide for Practitioner Action 1* (2006) [hereinafter “Guide for Practitioners”].

¹⁴ The National Congress of American Indians is the oldest and largest member organization of Indian Nations in the United States. During the national conventions of 2003 and again 2008, it recognized the frequency and severity of violence committed against Indian women by the adoption of resolutions supporting reauthorization of the Violence Against Women Act (PHX-03-034 and PHX-08-15). It further adopted a resolution requesting a full United States Congressional hearing on the incidence of sex offenses and the medical response to these crimes committed against Native women (DEN-07-039).

¹⁵ Roe Bubar, *Native Women Left Behind, Sexual Assault in Tribal Communities: Results from a National Pilot Study of Sexual Assault* (2006).

¹⁶ P.L. No. 109-162 § 901 (2006).

¹⁷ Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 73 Fed. Reg. 18,553 (Apr. 4, 2008).

sovereignty over both their members and their territory.”¹⁸ Indian nations possess inherent power “necessary to protect tribal self-government [and] to control internal relations.”¹⁹ Indian nations also possess such additional authority as Congress may expressly delegate.²⁰ The basis for tribal authority is their inherent need to determine tribal citizenship, to regulate relations among their citizens, and to legislate and tax activities on Indian lands, including certain activities by non-citizens.²¹

The limitations placed by United States law on the inherent jurisdictional authority Indian nations have over their own territory are a key factor creating and perpetuating the disproportionate violence against Indian women.²² The United States has imposed a jurisdictional maze on Indian nations that leaves Indian women without recourse for the violence committed against them.²³ Unlike other women in the United States, Indian women often do not have the choice to pursue criminal relief against their perpetrators. United States law has made criminal relief either unavailable or inadequate.

i. United States Law Denies Indian Women Criminal Legal Recourse.

Under United States law, criminal jurisdiction on Indian lands is divided among federal, tribal, and state governments. Which government has jurisdiction depends on the location of the crime, the type of crime, the race of the perpetrator, and the race of the victim. These legally created jurisdictional determinants restrict the ability of Indian nations to provide a meaningful

¹⁸ *Babbitt Ford, Inc. v. Navajo Indian Tribe*, 710 F.2d 587, 591 (9th Cir. 1983) (quoting *United States v. Wheeler*, 435 U.S. 313, 323 (1978)). *See also* *Worcester v. Georgia*, 31 U.S. 515 (1832); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831).

¹⁹ *Montana v. United States*, 450 U.S. 544, 564 (1981).

²⁰ *Strate v. A-1 Contractors*, 520 U.S. 438 (1997).

²¹ *Plains Commerce Bank v. Long Family Land & Cattle Co., Inc.* 554 U.S. ____ (2008), *available at* [<http://supreme.justia.com/us/554/07-411/>].

²² Indian tribal governments are pre-existing sovereigns with their own inherent authority, including jurisdictional authority over their territory. Cohen’s *Handbook on Federal Indian Law* §4.01[1][a] (Nell Newton ed. 2005). They exist independent of the United States Constitution, and the Constitution does not apply to them. *See, e.g.,* Vine Deloria, Jr. & David E. Wilkins, *Tribes, Treaties, and Constitutional Tribulations* 26 (1999).

²³ For jurisdictional purposes, United States law defines an “Indian” as any individual who is a member of an Indian tribe, or is an Alaska Native and a member of an Alaska Native Regional Corporation. *See, e.g.,* 25 U.S.C. § 1903.

remedy for women seeking safety within the jurisdiction of an Indian nation. Further, these limitations prevent Indian women from accessing protection and remedies under Indigenous justice from their respective tribal governments.

1. United States Law Denies Indian Women the Protection of Tribal Criminal Prosecution of Non-Indian Perpetrators of Violence.

United States laws greatly restrict the ability of Indian nations to provide a meaningful remedy when women are physically and sexual assaulted within tribal lands. Indian nations have no criminal jurisdiction over non-Indians, and may not prosecute or punish non-Indians committing crimes on their lands.²⁴ These United States imposed restrictions on tribal criminal jurisdiction have grave consequences for the safety of Indian women, and leave them without criminal recourse when abused by non-Indians.

United States Department of Justice reports reflect a high number of inter-racial crimes, with white or black offenders committing 88% of all violent victimizations of Indian women from 1992 to 2001.²⁵ Nearly 4 of 5 Indian victims of sexual assault described the offender as white.²⁶ Three out of 4 Indian victims of intimate violence identified the offender as a person of a different race.²⁷

Non-Indians marry and enter into consensual relationships with Indian women. As a result of these intimate consensual relationships, non-Indians live, work, father children, and use medical and other services within the jurisdiction of Indian nations. These non-Indian perpetrators knowingly enter and leave tribal jurisdiction often with the intent of committing acts

²⁴ *Oliphant v. Suquamish*, 435 U.S. 191 (1978); *United States v. McBratney*, 104 U.S. 621 (1881) (implying courts should acknowledge the decline of tribal nations and the doctrine of tribal sovereignty).

²⁵ Patricia Tjaden & Nancy Thoene, U.S. Dep't of Justice, *Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey* 22 (2000).

²⁶ *See id.* at 9.

²⁷ Lawrence A. Greenfield & Steven K. Smith, U.S. Dep't of Justice, *American Indians and Crime* 8 (1999) (noting that among American Indian victims, "75% of the intimate victimizations and 25% of the family victimizations involved an offender of a different race," a much higher percentage than among victims of all races as a whole.).

of violence against Indian women.²⁸ Indian nations, however, do not have criminal jurisdiction over non-Indians.

Indian women are raped, beaten, stalked, kidnapped, murdered, and victims of other crimes by non-Indian offenders. Many of these crimes are the result of a pattern of violent victimization due to domestic violence. Non-Indians that are strangers also prey upon and commit violent crimes against Indian women. These offenders are aware of the lack of tribal jurisdiction and the vulnerability of Indian women.²⁹ As citizens of tribal nations victimized by non-Indians, these Indian women have no criminal recourse under tribal law from their tribal government.

Tribal criminal jurisdiction over such crimes is denied due to a limitation imposed by the United States Supreme Court on tribal courts in 1978.³⁰ The Court ruled that Indian nations lack the authority to impose criminal sanctions on non-Indian citizens of the United States that commit crimes on Indian lands.³¹ For the last thirty years Indian nations have been denied criminal jurisdiction over non-Indians and the authority to prosecute non-Indians committing crimes on Indian lands. When a non-Indian commits physical or sexual violence against an Indian woman on Indian lands, the Indian nation does not have the authority to prosecute the offender.

²⁸ Steven W. Perry, U.S. Dep't of Justice, *Census of Tribal Justice Agencies in Indian Country, 2002 (2005)* (stating that the Saginaw Chippewa Indian Tribe of Michigan reported 500 criminal cases filed against non-Indians in 2001).

²⁹ United States Civil Rights Commission, *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country* 67 (July 2003) (“According to one legal expert, the federal government has not always honored this responsibility seriously, and Native Americans have become easy crime targets. Many offenders know that they can get away with committing minor offenses against Native Americans because the federal government is not likely to spend resources pursuing these crimes.”) (citing Victor H. Holcomb, *Prosecution of Non-Indians for Non-Serious Offenses Committed Against Indians in Indian Country*, 75 N.D. L. Rev. 766 (1999)), available at [<http://www.usecr.gov/pubs/na0703/na0204.pdf>] [hereinafter “A Quiet Crisis”].

³⁰ *Olyphant v. Suquamish Tribe*, 435 U.S. 191 (1978).

³¹ *Id.*

Either the United States, or in cases where the United States has delegated this authority to the state, the state government has the authority to prosecute non-Indian offenders committing crimes on Indian lands. As the United States Civil Rights Commission pointed out, the problem is that the *Oliphant* decision did not place any responsibility on the United States government or its delegates to prosecute non-Indian offenders on Indian lands. In the words of the Commission, “[T]he decision only dealt with limitations to tribal power, not the federal responsibility to compensate for those limitations based on the trust relationship. The Court did not *require* the federal government to protect tribes or prosecute non-Indian offenders who commit crimes on tribal lands.”³² Even though the United States has a trust responsibility to prosecute offenders on Indian lands, it does not have a legal obligation to do so and cannot be held legally accountable for not doing so. If the United States or the state government does not prosecute the non-Indian offender, then the offender goes free without facing any legal consequences for his actions, and the Indian woman is denied any criminal recourse against her abuser.

2. United States Law Denies Indian Women Appropriate Criminal Recourse by Limiting the Sentencing Authority of Indian Nations.

United States laws also limit tribal authority over Indian perpetrators on their own lands.³³ Indian nations may prosecute crimes committed by Indians,³⁴ but United States law restricts tribal criminal penalties to one year in prison and a fine of no more than \$5000.³⁵ When an Indian commits violence against an Indian woman, the Indian nation can prosecute the

³² A Quiet Crisis, *supra* note 29, at 67 (italics in original).

³³ 18 U.S.C. §§ 1152, 1162 (providing for federal jurisdiction over crimes in Indian country).

³⁴ 18 U.S.C.A. §§ 1152, 1153; *see also* United States v. Kagama, 118 U.S. 375 (1886) (upholding the constitutionality of the Major Crimes Act).

³⁵ Indian Civil Rights Act of 1968, 25 U.S.C. § 1301 *et seq.*

offender, but the woman is still denied an effective remedy because the tribal court can only sentence the offender to a maximum of one year in prison.

This sentencing limitation is unjust given the serious nature of violent crimes against Indian women. The sentencing limitation on tribal courts for serious violent offenses stands in stark contrast to that of such crimes occurring in non-tribal jurisdictions. A congressional Sentencing Commission comparing federal and state penalties for sexual assault found the following:

Of the 50 states, two territories, and the District of Columbia surveyed, 20 (37.0%) provide for a maximum term of life imprisonment for rape. Twenty-four (45.3%) have a maximum penalty of 20 years or more. The federal system provides for a maximum punishment of life imprisonment without possibility of parole for offenders convicted of aggravated sexual assault.

Several states enhance rape sentences for defendants with prior convictions. States that do not have habitual or repeat sex offender provisions often have a general habitual offender statute that enhances the available term of imprisonment depending on the number of prior felony or violent felony convictions.³⁶

The disparate contrast in the sentencing authority of tribal courts for sexual assault of one year per offense from that of state or federal courts is a contributing factor to the public myth that rape of Indian women is not a serious offense. The societal impact of this inequality contributes to the increased risk level Indian women must live with everyday. The one year per offense sentencing limitation denies Indian women appropriate remedies under criminal law.

3. United States Federal Prosecutors Deny Indian Women Criminal Recourse By Declining to Prosecute Cases Arising on Indian Lands.

In the United States, government research indicates that the violent victimization of Indian women occurs at more than double the rate of any other population of women; the federal

³⁶ United States Sentencing Commission, Report to Congress: Analysis of Penalties for Federal Rape Cases 7-8 (March 1995), *available at* [http://www.usc.gov/r_congress/FEDRAPE.PDF].

rate for prosecution of such crimes, however, is far lower.³⁷ United States federal prosecutors share concurrent criminal jurisdiction with approximately one-half of all Indian nations.³⁸ In these jurisdictions, only United States prosecutors have felony jurisdiction to impose a sentence of more than one year per offense.³⁹ Unfortunately, the limited data available shows that more often than not United States federal prosecutors fail to prosecute violent crimes committed against Indian women on Indian lands.⁴⁰ This failure to prosecute denies Indian women appropriate criminal recourse against their abusers.⁴¹

United States federal prosecutors do not release official reports detailing the crimes they choose not to prosecute.⁴² The only public data on the federal prosecution of sexual assaults

³⁷ See, e.g., Amnesty International, *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA* (April 2007), available at [www.amnesty.org.ru/library/pdf/AMR510352007ENGLISH/\$File/AMR5103507.pdf] (finding that there is a clear pattern of discriminatory and inadequate law enforcement in cases of violence against Indian women) [hereinafter “Maze of Injustice”]; *The Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force: The Quality of Justice*, 67 S. Cal. L. Rev. 745, 906-911 (1994) (concluding that crimes against women are under-prosecuted in Indian country as the difficulties of prosecution in general, coupled with traditions of non-involvement by law enforcement in spousal abuse, make federal and state enforcement more difficult); Gavin Clarkson, *Reservations Beyond the Law*, Los Angeles Times (August 3, 2007), at [http://www.latimes.com/news/opinion/la-oe-clarkson3aug03,0,1867347.story] (explaining that United States Attorneys decline to prosecute crimes in Indian country nearly twice as often as those committed outside Indian country).

Federal and state governments also “provide significantly fewer resources for policing in Indian Country and Alaska Native villages than are provided to comparable non-Native communities.” *Maze of Injustice*, *supra*, at 36.

³⁸ Carol Goldberg & Duane Champagne, *Is Public Law 280 Fit for the Twenty-First Century? Some Data at Last*, 38 Conn. L. Rev. 697, 697 (2006).

³⁹ 18 U.S.C. § 1152.

⁴⁰ During 1998, violent offenses constituted less than 7% of all investigations and 6% of all cases charged by United States prosecutors. Domestic and sexual violence cases committed against Indian women were just a portion of these percentages. See Compendium of Federal Justice Statistics, 1998, U.S. Dep’t of Justice, Bureau of Justice Statistics 25 (May 2000) available at [http://www.ojp.usdoj.gov/bjs/pub/pdf/cfjs98.pdf].

⁴¹ The U.S. Attorney General has the authority to increase the priority given to address violence against women in the U.S. Department of Justice. The application of this authority is inconsistent from Presidential administration to Presidential administration. For instance, a plan to address sexual assault, developed in consultation with Indian tribes was shelved by the Bush Administration.

⁴² The United States Senate Committee on Indian Affairs conducted an “Oversight Hearing to Examine Federal Declinations to Prosecute Crimes in Indian Country” on September 18, 2008. Federal United States Attorney for North Dakota Drew Wrigley refused to provide data about the crimes his office fails to prosecute. He stated that providing the information would mislead the public and jeopardize criminal investigations. United States Attorney General Michael Mukasey affirmed Wrigley’s reasons for not providing the information. Mary Claire Jalonick, *DOJ Will Not Provide Indian Crime Data*, News From Indian Country (Sept. 2008), available at [http://indiancountrynews.net/index.php?option=com_content&task=view&id=4641&Itemid=33].

occurring within Indian reservations is found in a 1993 report mandated by Congress on federal sentencing guidelines. That report found that only 69 of the 42,013 federal cases sentenced under the guidelines that year involved rape conduct.⁴³ These statistics reflect that the vast majority of sexual assault cases occurring on Indian lands were not federally prosecuted in 1993. No information is available that the rate of prosecution of such crimes increased in other years.⁴⁴

A recent university study indicates that United States prosecutors fail to prosecute 62% of criminal cases and 75% of rape and sexual assault cases occurring on Indian lands.⁴⁵ The study reports that from 2005 to 2007 United States Attorneys failed to prosecute 50% of murder and manslaughter cases, 58% percent of serious assaults, and 76% percent of sex crimes involving adults committed on Indian lands.⁴⁶ These statistics reflect the reality that even when Indian women report domestic or sexual violence to law enforcement agencies, it is highly unlikely that these crimes will be prosecuted.

This failure to prosecute has devastating consequences for women seeking safety from violent perpetrators. Reporting such a crime increases the risk of retaliation by the offender. Many Indian women know that federal prosecutors decline the majority of cases from Indian lands and thus, decide not to report physical and sexual violence. Because Indian women cannot rely on the criminal justice system to prosecute and punish their abusers, many carry the tremendous burden of securing safety for themselves and their children. These women often are forced to flee their tribal lands for urban areas that are unfamiliar and lack any tribal support mechanisms.⁴⁷

⁴³ Report to Congress: Analysis of Penalties for Federal Rape Cases, *supra* note 36, at 3.

⁴⁴ In 1998, a total of 746 rape cases were investigated, 307 were prosecuted and 430 declined by the U.S. attorneys. It is unknown how many of these cases were committed against Indian women on Indian lands. *Id.* at 26.

⁴⁵ Tribal Law and Order Act of 2008, S. 3320, 110th Cong. (2008); Jalonick, *supra* note 42.

⁴⁶ Jalonick, *supra* note 42.

⁴⁷ Many of these urban centers are dangerous and have high rates of violence against Indian women.

In cases of domestic violence, the criminal justice system’s failure to provide Indian women with appropriate recourse against their abusers is particularly atrocious in that violence is known to increase in both frequency and severity over time. Indian and non-Indian abusers quickly learn that this systemic failure means that they will face no criminal consequences for their violent behavior. Abusers are thus free to terrorize and Indian women are forced to live in on-going fear of continued violence. While every state and territory within the United States has enacted laws making domestic violence a crime, the federal government has not.

The United States’ failure to prosecute perpetrators of violent crimes has grave consequences for Indian women. This failure to prosecute cases functionally locks Indian women out of the judicial system and the appropriate felony level sentencing for such crimes. According to Dr. Lisak, a leading researcher on sexual assault predators in the United States, “Predators attack the unprotected. The failure to prosecute sex crimes against American Indian women is an invitation to prey with impunity.”⁴⁸

4. United States State Prosecutors Deny Indian Women Criminal Recourse By Declining to Prosecute Cases Arising on Indian Lands.

Under the United States Constitution, governmental relations with Indian nations are the function of the federal government.⁴⁹ In violation of this responsibility and without consultation with Indian nations, the United States Congress has delegated criminal jurisdiction over Indians on Indian lands to some states.⁵⁰ While this delegation of authority did not alter the authority of

⁴⁸ David Lisak & P.M. Miller, *Repeat Rape and Multiple Offending Among Undetected Rapists*, 17 *Violence and Victims* 1 (2002).

⁴⁹ U.S. Const. Art. 1, § 8.

⁵⁰ P.L. 280, § 7, 67 Stat. 588, 590 (1953). For information on jurisdiction under P.L. 280, see Carole E. Goldberg-Ambrose, *Public Law 280: State Jurisdiction Over Reservation Indians*, 22 *U.C.L.A. Law Review* 535-94 (1975).

Indian nations in those states, it has had a devastating impact on the development of tribal justice systems and the safety of Indian women.⁵¹

In these states, the state government has the criminal jurisdiction normally exercised by the federal government over crimes on Indian lands. The state government has exclusive jurisdiction over non-Indians and felony jurisdiction over Indians. Accordingly, when a non-Indian commits physical or sexual violence against an Indian woman on Indian lands, the state has exclusive jurisdiction over the offender. When an Indian commits physical or sexual violence against an Indian woman on Indian lands, only the state government has the criminal authority to impose a sentence of more than one year.

Like the United States federal government, states often fail to prosecute criminal cases occurring within Indian lands.⁵² The criticisms of United States prosecutors and their failure to prosecute violent crimes, thus, also apply to state prosecutors. The failure to prosecute crimes occurring on Indian lands, however, is often more acute in these states because they do not receive any additional funding from the United States to handle these cases.⁵³ This often results in the understaffing of police on Indian lands and reluctance on the part of state prosecutors to take cases.

The Alaska state government is a glaring example of state failure to protect Native women.⁵⁴ The rate of violence against Alaska Native women is much higher than the rate of violence in the United States as a whole. Despite this level of violence, over one-third of the 229 Native villages in Alaska have no form of local law enforcement present in their community.

⁵¹ Goldberg & Champagne, *supra* note 38, at 697.

⁵² *Id.*

⁵³ Goldberg & Champagne, *supra* note 38.

⁵⁴ *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998). The United States Supreme Court further complicated felony and territorial jurisdiction in Alaska by finding that, with limited exceptions, Indian Country has largely been extinguished in Alaska. Public Law 280 delegated federal criminal jurisdiction over Indians in Indian Country to certain states governments. To the extent Indian Country does not exist in Alaska, concurrent jurisdiction of the State also does not exist.

According to the United States Human Rights Commission, this lack of local law enforcement renders these Alaska villages “virtually defenseless to lawbreakers.”⁵⁵ Despite the full faith and credit provision under VAWA,⁵⁶ the State and state troopers have resisted recognizing and enforcing village orders of protection. In this hostile environment villages have turned to traditional tribal justice remedies such as banishment.⁵⁷ The Alaska State Supreme Court affirmed the right of the villages to banish one of their members for violent behavior and to have state courts and state troopers assist in enforcing these orders.⁵⁸ The State has not and will not ensure the safety of women in the villages.

Further complicating the lack of response by state governments is the denial of access to resources by the United States to Indian nations within these states. As a result, the majority of Indian nations within these states lack the resources to develop tribal criminal justice departments. The combined result of the transfer of federal jurisdiction and the denial of resources has created a vacuum of available law enforcement services.⁵⁹ Thus, many women in need of emergency assistance live in tribal jurisdictions where law enforcement services do not exist.⁶⁰ When a woman is raped or beaten she must defend herself or rely on her family and community for safety.

⁵⁵ A Quiet Crisis, *supra* note 29, at 76.

⁵⁶ 18 U.S.C. § 2265(a).

⁵⁷ Alaska Native villages traditionally dealt with violent offenders by banishing them.

⁵⁸ Native Village of Perryville Case, No. 3AN-00-12245 (Alaska Super. Ct. Nov. 19, 2003).

⁵⁹ Goldberg & Champagne, *supra* note 38, at 704.

⁶⁰ A Quiet Crisis, *supra* note 29, at 76 (noting that “80 percent of the population that received limited or no local police protection are Native.”).

The United States Civil Rights Commission detailed the problem of inadequate law enforcement on Indian lands in the United States. It explained,

Lack of adequate law enforcement has other serious outcomes; Native individuals and communities do not derive the deterrence benefit of an adequate police presence, and the result has been increased criminal behavior and victimization of residents in areas known for inadequate policing. The failure of the federal government to fully acknowledge and remedy policies that have a disproportionately negative effect on a group of people, and to continue following such policies, jeopardizes the safety of the group compared with other Americans and constitutes discrimination.

Id.

ii. United States Law Denies Indian Women Civil Legal Recourse by Failing to Require the Enforcement of Protection Orders.

The criminal jurisdictional scheme imposed by the United States on Indian nations leaves Indian women with civil protection orders from tribal courts as their primary recourse against their abusers. United States laws also restrict tribal civil jurisdiction,⁶¹ but Indian nations exercise limited civil jurisdiction, including the authority to issue civil protection orders. Indian nations have the inherent authority to issue civil protection orders to protect both Indian and non-Indian women from domestic abusers on Indian lands.⁶²

Protection orders are critical legal mechanisms that have the ability to save the lives of Indian women. Tribal civil protection orders are of increased importance because the United States has greatly diminished tribal criminal jurisdiction and the primary way that Indian nations can protect Indian and non-Indian women is by issuing civil protection orders against perpetrators of violence in tribal courts. These protection orders, however, are largely useless if they are not enforced by local law enforcement officials.

The United States Congress recognized the importance of tribal court protection orders by requiring that all other courts give these orders full faith and credit in the Violence Against Women Act.⁶³ Congress has also recognized the civil authority of tribal courts to enforce domestic violence protection orders, and impose civil contempt penalties and exclusionary orders

⁶¹ See, e.g., *Montana v. United States*, 450 U.S. 544 (1980). In general, “the inherent sovereign powers of an Indian Tribe do not extend to the activities of non-members of the tribe.” *Id.* at 565. This principle is “subject to two exceptions: The first exception relates to non-members who enter consensual relationships with the tribe or its members; the second concerns activity that directly affects the tribe’s political integrity, economic security, health, or welfare.” *Strate v. A-1 Contractors*, 520 U.S. 438, 446 (1997). Domestic relationships are one of the most common “consensual relations” between Indians and non-Indians.

⁶² Tribal courts can issue domestic violence protection orders for non-Indian women, and several reasons exist for why a non-Indian woman may seek a tribal protection order. For example, the Hopi Indian Tribe is located in two large counties in northeastern Arizona. Non-Indian women living there may seek a protective order from the Hopi Tribal Court because the nearest state court is over one hundred miles away.

⁶³ 18 U.S.C. § 2265(a).

over all persons (Indians and non-Indians) who violate civil domestic violence protection orders within their jurisdiction.⁶⁴

To the limited extent that Indian nations have jurisdiction over perpetrators, they are trying to protect their women from violence.⁶⁵ In the past decade, Indian nations have developed the infrastructure for tribal justice system components to provide safety to women within their jurisdiction. Many Indian nations have developed domestic violence codes.⁶⁶ They have supported personnel and training of tribal law enforcement, tribal courts, prosecutors, and probation officers. Tribal courts have also ordered that offenders enroll in re-education programs, and tribes have supported programs to encourage boys and young men to respect women.⁶⁷ According to Indian women’s organizations working to end domestic violence against Indian women, “At the tribal level, efforts are coordinated to create a system of safety for women seeking safety and protection within the tribal jurisdiction.”⁶⁸ Tribal courts regularly enter civil protection orders against domestic violence perpetrators.⁶⁹ Tribal law enforcement enforces tribal protection orders on Indian lands.

⁶⁴ *Id.*

⁶⁵ Historically, Indian Nations honored and respected their women. Physical or sexual abuse against women was not acceptable. When such violence occurred, legal, social and cultural institutions dealt with it immediately and usually through harsh actions such as the banishment of the offender from the community. Some Indian Nations have returned to the practice of banishment as a way to deal with abusers and other violent offenders. *See, e.g.*, Mille Lacs Band Banishes Four Over Violence, at [<http://www.indianz.com/News/2008/011208.asp>].

⁶⁶ *See, e.g.*, Guide for Practitioners, *supra* note 13, at 15; Melissa Tatum, *Law Enforcement Authority in Indian Country*, 4 Tribal L.J. 2 (2003/2004). For an example of a tribal domestic violence code, see the Navajo Nation Domestic Abuse Protection Act, IX Navajo Trib. Code § 1601 *et seq.* (1993).

⁶⁷ *See, e.g.*, Cangleska Inc. Men’s Re-Education Program, at [<http://www.cangleska.org/Mens%20program.htm>].

⁶⁸ Long Brief, *supra* note 6, at 5a.

⁶⁹ The Crow Tribe helped to pilot the Hope Card Project, which is an “attempt to couple law enforcement’s need for information about protection orders during incidents involving violations of the orders and the victim’s need for police intervention and streamlined services during times of crisis.” Guide for Practitioners, *supra* note 13, at 16. The Hope Card is a small, durable card containing the vital information of the protection order that women can easily carry in a purse or pocket. *Id.*

Efforts by Indian nations, however, are diluted by a lack of essential resources.⁷⁰ States spends an average of one hundred thirty one dollars per year on each person in providing law enforcement services.⁷¹ The United States spends considerably less per year per individual on law enforcement within tribal jurisdictions.⁷² Many Indian nations have only a few police officers to cover their vast territories.⁷³ For example, within the state of Alaska, eighty Alaska Native Villages lack any form of law enforcement services. An acute lack of resources often limits tribal enforcement of protection orders.⁷⁴ This public safety crisis confronting Indian nations is well documented,⁷⁵ and often attributed to the United States government's failure to provide adequate resources for essential criminal justice services.⁷⁶

Once Indian women leave tribal lands, they must rely on other jurisdictions for the enforcement of their tribal protection orders. If these jurisdictions do not enforce tribal protection orders, then Indian women are left unprotected because no other law enforcement has the authority to enforce the orders. States are primarily responsible for the enforcement of protection orders outside of tribal jurisdictions. Many states, however, do not recognize and

⁷⁰ Indian women are also greatly disadvantaged by the lack of basic services for victims of sexual and physical violence within tribal jurisdictions. There is an acute need for basic education on domestic violence and sexual assault among law enforcement personnel. *See, e.g.*, Guide for Practitioners, *supra* note 13, at 23-24. Further many health clinics and hospitals on Indian lands do not have rape kits or Sexual Assault Nurse Examiners. Maze of Injustice, *supra* note 37, at 53-58.

⁷¹ A Quiet Crisis, *supra* note 29, at 75.

⁷² *Id.* (“It is estimated that tribes have been 55 and 75 percent of the resources available to non-Indian communities, a figure that is even more exaggerated considering the higher crime rates.”).

⁷³ *Id.* at 75-76; Law and Order in Indian Country: Hearing Before the Senate Committee on Indian Affairs, 110th Cong. 8 (June 21, 2007) (statement of Chairman Marcus Wells, Jr., Three Affiliated Tribes of the Fort Berthold Reservation) (noting the “catastrophic shortage of law enforcement personnel” on the Reservation due to unfilled Bureau of Indian Affairs police positions).

⁷⁴ Stewart Wakeling, Miriam Jorgensen, Susan Michaelson, Manley Begay, Policing on American Indian Reservations: A Report to the National Institute of Justice, U.S. Dep’t of Justice, National Institute of Justice, at vii, July 2001, available at: [<http://www.ncjrs.gov/pdffiles1/nij/188095.pdf>].

⁷⁵ *See, e.g.*, Maze of Injustice, *supra* note 37, at 42; Examining the Prevalence of and Solutions to Stopping Violence Against Indian Women: Hearing Before the Senate Committee on Indian Affairs, 110th Cong. (Sept. 27, 2007); Law and Order in Indian Country: Field Hearing Before the Senate Committee on Indian Affairs, 110th Cong. (March 17, 2008); Law and Order in Indian Country: Hearing Before the Senate Committee on Indian Affairs, 110th Cong. (May 17, 2007); Law and Order in Indian Country: Hearing Before the Senate Committee on Indian Affairs, 110th Cong. (June 21, 2007).

⁷⁶ *See generally* A Quiet Crisis, *supra* note 29.

enforce tribal protection orders. For example, in 2003, the State of Alaska instructed state troopers to disobey a state court order recognizing a tribal court protection order and claimed that both orders were illegal.⁷⁷ The Office on Violence Against Women's *Violence Against Native Women: A Guide for Practitioner Action* explains the many barriers that states have erected to the enforcement of tribal protection orders. It states,

Courts may impose requirements for certification or special seals before a foreign order may be given full faith and credit. Such requirements create additional steps that a battered woman must take for full enforcement of her protection order, erecting additional barriers to her safety. Said requirements for certification or registration are not required by [the Violence Against Women Act]. In fact, to the contrary, VAWA specifically prohibits requirements that create impediments to enforcement outside of the issuing jurisdiction.

Another challenge to the full enforcement of tribal protection orders is the requirement of some states that protection orders be registered with the court in the new jurisdiction before the state will enforce the order. Registration of orders creates barriers for victims. For example, on one reservation in the northern part of the country, it is not uncommon for a survivor to obtain a temporary protection order from her tribal court, and then have to drive to the county courthouse, which is a half-hour away, to have the order registered.⁷⁸

Hostility from state or county law enforcement may also impede the enforcement of tribal protection orders.⁷⁹ Some state agents refuse to enforce protection orders issued by Indian nations because they stereotype Indian women as uncredible and unreliable.

Indian women, unlike other women in the United States, cannot rely on the judicial system to punish their abusers. Effectively left without criminal relief, Indian women frequently must rely on tribal civil protection orders to protect them from continuing violence. Tribal civil protection orders, however, are only good as long as they can be enforced. If an Indian woman cannot get a state to enforce a tribal protection order when her attacker has violated it, she is left

⁷⁷ Sheila Tomey, *Trouble in Perryville*, Anchorage Daily News (Nov. 3, 2003), available at [<http://dwb.adn.com/front/story/4325477p-4335352c.html>].

⁷⁸ Guide for Practitioners, *supra* note 13, at 21.

⁷⁹ *Id.*

without judicial recourse because no other entity can enforce the order in that jurisdiction. In effect, she is unprotected and vulnerable to further attack.

The *Gonzales* decision undermines the limited legal protection that Indian women have under United States law by placing the enforcement of protection orders within the discretion of law enforcement officers. Under the *Gonzales* decision, United States law does not require state law enforcement to investigate or enforce alleged violations of domestic violence protection orders. Thus, state law enforcement choose whether to enforce these orders, and may always choose not to.⁸⁰ They often choose not to enforce these orders because they face no consequences for not enforcing them. Decisions by local law enforcement leave Indian women vulnerable to ongoing violence by domestic abusers.

1. The United States' Failure to Fully Implement the Violence Against Women Act Leaves Indian Women Without Judicial Recourse.

Congress is acutely aware of the epidemic of violence against Indian women,⁸¹ and enacted Title IX of the Violence Against Women Act, which specifically addresses Safety for Indian Women, in response to this national crisis in 2005.⁸² In Title IX, Congress made a specific finding that “Indian tribes require additional criminal justice and victim services resources to respond to violent assaults against women; and the unique legal relationship of the United States to Indian tribes creates a federal trust responsibility to assist tribal governments in

⁸⁰ *Gonzales*, 545 U.S. at 748.

⁸¹ The 110th Congress has held multiple hearings on the crisis in law enforcement in Indian Country, Law and Order in Indian Country: Field Hearing Before the Senate Committee on Indian Affairs, 110th Cong. (March 17, 2008); Law and Order in Indian Country: Hearing Before the Senate Committee on Indian Affairs, 110th Cong. (May 17, 2007); Law and Order in Indian Country: Hearing Before the Senate Committee on Indian Affairs, 110th Cong. (June 21, 2007), and one specifically on violence against Indian women. Examining the Prevalence of and Solutions to Stopping Violence Against Indian Women: Hearing Before the Senate Committee on Indian Affairs, 110th Cong. (Sept. 27, 2007).

⁸² P.L. No. 109-162 § 901 (2006).

safeguarding the lives of Indian women.”⁸³ These are laudable efforts, but the United States’ failure to fully implement VAWA undermines its ability to address adequately the epidemic of sexual and physical violence against Indian women.

Congress has explicitly recognized the authority and responsibility of both Indian nations and states to hold offenders accountable in addressing the high rates of violence against Indian women in VAWA.⁸⁴ Congress explicitly addressed the enforcement of protection orders in VAWA. First, it mandated the enforcement of tribal protection orders. VAWA unambiguously recognizes Indian nations’ civil jurisdiction to issue protection orders in cases of domestic violence, dating violence, sexual assault, and stalking.⁸⁵ It mandates that state authorities enforce these orders as if they were their own.⁸⁶ VAWA also seeks to enhance state enforcement of tribal protection orders by permitting Indian law enforcement agencies access to enter and obtain information, including information on protection orders, from the federal crime data systems and by creating a National Tribal Registry for protection orders.⁸⁷

Second, under VAWA, the issuance and enforcement of tribal protection orders gives rise to legal remedies not otherwise available to Indian women. Once a tribal protection order is issued, three federal firearm offenses govern the behavior of the restrained party.⁸⁸ It is a federal

⁸³ *Id.*

⁸⁴ Congress further acknowledged the acute problem of violence against Indian women when it held hearings on the matter in September 2007. Examining the Prevalence of and Solutions to Stopping Violence Against Indian Women: Hearing Before the Senate Committee on Indian Affairs, 110th Cong. (Sept. 27, 2007).

⁸⁵ 18 U.S.C.A. § 2265(e).

⁸⁶ 18 U.S.C. § 2265(a) (2000) (“Any protection order issued that is consistent with subsection (b) of this section by the court of one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the court of another State or Indian tribe (the enforcing State or Indian tribe) and enforced as if it were the order of the enforcing State or tribe.”).

Because Congress referred to the enforcement of tribal protection orders by state law enforcement as a matter of full faith and credit, this brief will use that language. This does not mean, however, that Amici concede that full faith and credit rather than principles of comity mandate that states enforce tribal court judgments and orders. Further, Amici note that the United States has never recognized a constitutional or statutory obligation to recognize tribal court orders. *See Wilson v. Marchington*, 127 F.3d 805 (9th Cir. 1997).

⁸⁷ P.L. No. 109-162 § 905(a).

⁸⁸ Gun Control Act, 18 U.S.C. 922(g)(8)(9).

crime to possess a firearm and/or ammunition while subject to a qualifying protection order⁸⁹ or after conviction of a domestic violence misdemeanor offense in a state, federal, or tribal court.⁹⁰

The penalties for violation of this provision of the federal criminal code are substantial and provide for a maximum sentence of ten years.⁹¹ In 2005, VAWA was amended and now “provides misdemeanor arrest authority for federal officers and tribal specialized officers with reasonable grounds to believe that the person to be arrested has committed or is committing domestic violence, dating violence, stalking, or violation of a protection order and has as an element of the use or attempted use of physical force, or the threatened use of a deadly weapon.”⁹² This increased authority is significant to the everyday safety of Indian women.

In addition, VAWA’s habitual offender provision amends the federal criminal code to impose enhanced criminal penalties on a repeat offender who commits a domestic assault within Indian lands and has a final conviction on at least two separate prior occasions in federal, state, or tribal court for offenses that would be, if subject to federal jurisdiction, an assault, sexual abuse, or serious violent felony against a spouse or intimate partner, or a domestic violence offense.⁹³ Thus, when the violation of a tribal protection order involves an assault, the perpetrator faces enhanced penalties under VAWA.

The United States has failed to fully implement VAWA to the detriment of Indian women. Despite VAWA’s mandate that tribal protection orders be enforced, Indian women still face tremendous obstacles in having their protection orders enforced.⁹⁴ VAWA’s full faith and

⁸⁹ 18 U.S.C. 922(g)(8).

⁹⁰ 18 U.S.C. 922(g)(9).

⁹¹ 18 U.S.C. 922(g).

⁹² Sacred Circle, *Restoration of Native Sovereignty*, Vol. V at 19 (Sept. 2006); *see also* P.L. No. 109-162 § 908.

⁹³ *Id.* at § 909.

⁹⁴ Melissa Tatum, *A Jurisdictional Quandary: Challenges Facing Tribal Governments in Implementing the Full Faith and Credit Provisions of the Violence Against Women Acts*, 90 Ky. L.J. 123 (2002); Kevin K. Washburn, *A Different Kind of Symmetry*, 24 N.M. L. Rev. 263 (Spring 2004) (discussing different state approaches to the enforcement of tribal court judgments). For a general discussion of the difficulty of getting domestic violence

credit provisions rely on voluntary compliance. States face no consequences for not following VAWA’s mandates regarding tribal court protection orders, and the United States provides little, if any, oversight of VAWA compliance by states regarding full faith and credit. While VAWA’s mandates appear straightforward, they “conceal a wealth of complexity” and different states have interpreted them in different ways.⁹⁵ As a result, many state laws do not incorporate the federal mandate in VAWA requiring state law enforcement to enforce tribal protection orders.⁹⁶ Additionally, the United States Department of Justice has yet to issue any training, guidelines, or information on the number of cases being prosecuted under the habitual offender⁹⁷ and firearms provisions.⁹⁸

Nor have Indian nations been provided access to the national registries for protection orders and sex offenders.⁹⁹ The NCAI Taskforce on Violence Against Indian Women and Sacred Circle report

Tribal law enforcement still cannot access the national federal system without the permission of the state in which the tribe is located. Many state governments refuse tribes access through their state systems. . . . some state governments in conflict with federal law do not allow tribal court orders of protection to be entered into their state registry.¹⁰⁰

protection orders enforced in the United States, see Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 *Cardozo L. Rev.* 1487, 1516 (2008).

⁹⁵ Tatum, *supra* note 94, at 136.

⁹⁶ Stacy Leeds, *Cross-Jurisdictional Recognition and Enforcement of Judgments: A Tribal Court Perspective*, 76 *N.D. L. Rev.* 311, 354 (2000).

⁹⁷ Since passage of the habitual offender provision, 18 U.S.C. § 117, in 2006, only two cases are known to have been prosecuted under this provision. One case in 2007 in Michigan (the defendant had five prior domestic violence convictions in tribal court) and a second case in 2008 in Oregon.

⁹⁸ *Id.*

⁹⁹ Sacred Circle, *Restoration of Native Sovereignty*, Vol. IX (Sept. 2008).

¹⁰⁰ *Id.*

The United States' failure to implement this section of VAWA is devastating for Indian women. Many state law enforcement officials continue to refuse to enforce tribal protection orders because they view them as suspect and cannot verify them through the National registry.¹⁰¹

The only study conducted to date on state enforcement of tribal protection orders found that 27% of the tribal courts that reported instances of non-recognition involved domestic violence orders after the enactment of VAWA.¹⁰² These numbers indicate that the full faith and credit provisions of VAWA are not being implemented, and that state law enforcement officials are not enforcing tribal protection orders. This lack of enforcement undermines the habitual offender and firearms provisions of VAWA because these remedies do not apply unless tribal protection orders are enforced. Despite its intent, VAWA does not appear to be protecting Indian women from ongoing domestic abuse. Rather as the study on state enforcement of tribal orders concluded, “Although Indian women are more likely to experience domestic violence than any other category of citizen, they are not receiving the protection envisioned in Violence Against Women Act.”¹⁰³

2. The United States Supreme Court’s Decision in *Gonzales* Denies Indian Women Legal Recourse.

The United States Supreme Court decision in *Town of Castle Rock, Col. v. Gonzales*¹⁰⁴ exacerbates the under-enforcement of domestic violence protection orders in the United States and impedes the ability of Indian women to obtain enforcement of protection orders across jurisdictional boundaries. In *Gonzales*, the Court held that an individual who has obtained a state-law restraining order does not have a constitutionally protected property interest in having

¹⁰¹ Guide for Practitioners, *supra* note 13, at 21.

¹⁰² Leeds, *supra* note 96, at 349-350.

¹⁰³ *Id.* at 355.

¹⁰⁴ 545 U.S. 748 (2005).

the police enforce the restraining order when they have probable cause to believe it has been violated.¹⁰⁵

The Court's decision in *Gonzales* has a particularly pernicious impact on Indian women whose primary recourse against their attackers is a civil protection order and who often must rely on state law enforcement to enforce these protection orders against non-Indian perpetrators of domestic violence. As discussed in Part III.b., Indian women do not have the same access to criminal recourse against their abusers as all other women in the United States. Due to the United States' denial of adequate judicial recourse to Indian women survivors of sexual and physical violence, in many instances, protection orders become the sole legal mechanism intervening between an Indian woman and a violent perpetrator. The enforcement of protection orders is, thus, essential to preventing violence against Indian women and should not be considered discretionary.

An order of protection is issued by a court that has considered all of the factors prior to issuance. It is a court and not law enforcement officers that have the authority to deny the order. Allowing law enforcement the discretion to enforce an order jeopardizes the lives of Indian women that may have no other legal recourse. Because state law enforcement apparently will not be held accountable for not enforcing protection orders, they do not have to enforce them. Often, state law enforcement officials do not enforce tribal protection orders. This means the safety of Indian women depends on the unregulated discretion of law enforcement officers and not the rule of law.

The *Gonzales* decision clearly contradicts federal, state, and tribal laws aimed at reducing violence against women. The decision greatly weakens the already under-implemented full faith and credit provisions of VAWA, by giving state law enforcement the discretion to ignore rather

¹⁰⁵ *Id.* at 768.

than enforce protection orders. The *Gonzales* decision gives state law enforcement the discretion and thus authority over the enforcement of tribal and federal law. This tremendous discretion over the enforcement of domestic violence protection orders allows state law enforcement to disrespect the sovereignty of both Indian nations and the United States.

The *Gonzales* decision also undermines several state and tribal laws, which mandate the arrest of violators of domestic violence protection orders.¹⁰⁶ The mandatory nature of these laws addresses historical inaction and bias on the part of law enforcement in responding to domestic violence calls.¹⁰⁷ The Court’s interpretation of these laws as not mandatory condones these historically discriminatory practices and allows perpetrators of violence to act with impunity. As the Inter-American Commission on Human Rights has pointed out on several occasions, states have an obligation to use all legal means at their disposal to combat human rights violations because “impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives.”¹⁰⁸

The United States’ presentation of the *Gonzales* case as an isolated case limited to its facts misrepresents its domestic jurisprudence on the enforceability of domestic violence protection orders.¹⁰⁹ The United States relies on two cases to suggest that remedies are available to domestic violence victims who allege a failure to protect by police officers.¹¹⁰ Not only are

¹⁰⁶ For a discussion of state laws requiring mandatory arrest for violators of domestic violence protection orders, see Final Observations Regarding the Merits of the Case for the Petitioner Jessica Gonzales to the Inter-American Commission on Human Rights, *Jessica Gonzales, et al. v. United States*, Case No. 12.626, at 51 (March 24, 2008).

¹⁰⁷ 545 U.S. at 780 (Stevens, dissenting) (explaining that the Colorado statute that mandates the enforcement of domestic restraining orders upon probable cause of a violation responds to a “crisis of police underenforcement in the domestic violence sphere.”).

¹⁰⁸ IACHR, *Report on Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/VIII, Jan. 20, 2007, p. 12 (citing Inter-Am. Ct. H.R., *Loayza Tamayo Case. Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of November 27, 1998, para. 170, citing Inter-Am. Ct. H.R., *The “Panel Blanca” Case (Paniagua Morales et al.)*, Judgment of March 8, 1998, para. 173) [hereinafter “*Report on Access to Justice for Women Victims of Violence in the Americas*”].

¹⁰⁹ Response of the Government of the United States of America to the Inter-American Commission on Human Rights Regarding Jessica Gonzales, No. p-1490-05, at p. 14-15.

¹¹⁰ *Id.*

these lower court cases distinguishable on the facts because they deal with equal protection rather than due process claims,¹¹¹ but one of them has been widely discredited and rarely followed.¹¹² While the United States may believe that constitutional claims are interchangeable, the evidentiary requirements and legal tests for due process and equal protection claims differ substantially.¹¹³ An equal protection claim can only be brought in cases where the state agent treats domestic violence victims as a class differently from other victims. In cases where the state agent simply refuses to enforce a domestic violence protection order, victims are left without judicial recourse. Neither of the cases cited by the United States refute the fact that the highest court in the United States has held that women do not have a constitutional right to have domestic violence protection orders enforced when there is probable cause to believe that the order has been violated.

The Supreme Court in *Gonzales* has functionally enabled law enforcement to continue discriminatory practices against women and ignore domestic violence protection orders. The *Gonzales* case shows that law enforcement will not be held accountable for not enforcing protection orders. The Court has undermined the security of Indian women provided by civil protection orders and has sanctioned ongoing domestic violence because perpetrators know that police officers do not have to enforce protection orders.

c. The United States' Failure to Protect Indian Women from Violence Violates their Rights under the American Declaration.

The United States has an affirmative obligation to protect the human rights of Indian women. Within the Inter-American system, member states, including the United States, have a

¹¹¹ Compare *Thurman v. City of Torrington*, 595 F. Supp. 1521 (D.Ct. 1984) and *Fajardo v. County of Los Angeles*, 179 F.3d 698 (9th Cir. 1999) with *Gonzales*, 545 U.S. 748 (2005).

¹¹² Keyciting *Thurman* on Westlaw indicated that most courts have either distinguished that case or declined to follow it.

¹¹³ See generally Erwin Chemerinsky, *Constitutional Law Principles and Policies* (2d. ed. 2002).

legal obligation to protect, promote, and ensure the human rights in the American Declaration.¹¹⁴ When nation states fail to act with due diligence in response to acts of violence, they can be held responsible for human rights violations perpetrated by non-state actors.¹¹⁵ The Inter-American Commission on Human Rights considers the American Declaration’s provisions in the context of the international and Inter-American human rights systems more broadly. The Commission considers developments in international human rights law since the Declaration was first composed and other relevant rules of international law applicable to member states against which complaints of violations of the Declaration are properly lodged.¹¹⁶

The American Declaration obligates the United States to protect Indian women’s rights to life, security of the person, and an effective judicial remedy.¹¹⁷ It also explicitly provides special protection for women and children. In addition to these protections for women and children under the American Declaration, the Inter-American Commission on Human Rights has recognized Indigenous women as a population particularly vulnerable to violence.¹¹⁸

The Commission should consider the relevant provisions of the recently adopted U.N. Declaration on the Rights of Indigenous Peoples in interpreting the American Declaration. International human rights law “has advanced substantially by the evolutive interpretation of international protection instruments.”¹¹⁹ The U.N. Declaration on the Rights of Indigenous Peoples represents the most recent statement by the international community on the human rights

¹¹⁴ See Inter-Am. Ct. H.R., Advisory Opinion OC-10/89 “Interpretation of the Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights”, July 14, 1989, paras. 35-45.

¹¹⁵ *Report on Access to Justice for Women Victims of Violence in the Americas*, *supra* note 108, at paras. 29-30 (citing Inter-Am. Ct. H.R., Case of the “Mapiripan Massacre,” Judgment of September 15, 2005, para. 111).

¹¹⁶ IACHR, *Mary & Carrie Dann v. United States*, Report No. 75/02, December 27, 2002 pp. 24-25.

¹¹⁷ American Declaration, Art. I, XVIII.

¹¹⁸ *Report on Access to Justice for Women Victims of Violence in the Americas*, *supra* note 108, at 82-85.

¹¹⁹ Inter-Am. Ct. H.R., Case of the Street Children (Villagran Morales *et al.*) v. Guatemala, Judgment of November 19, 1999, para.193.

of Indigenous peoples, and its consideration by the Commission would further the evolution of human rights law within the Inter-American system.

The U.N. Declaration on the Rights of Indigenous Peoples places additional obligations on states to protect Indian women from violence. Article 22 states,

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that all indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.¹²⁰

As the most recent statement of international customary law on the rights of Indigenous peoples, the Declaration reflects growing international consensus that Indian women have a right to be free from violence and that states must take special precautions to ensure the safety of Indian women from violence. The Commission should ensure these explicit protections for Indian women in the United States.

- i. The United States is Responsible for the Epidemic of Violence Against Indian Women because It Has Failed to Prevent such Violence and Act with Due Diligence to Protect Them.

The United States is responsible for the epidemic of violence against Indian women because it has failed to prevent this violence and act with due diligence to protect them. The American Declaration on the Rights and Duties of Man places legal obligations on the United States to protect, promote, and ensure human rights.¹²¹ The Commission has explained that states must meet the due diligence standard in preventing violence against women.¹²² Within the

¹²⁰ U.N. Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/47/1, Art. 22 (2007) [hereinafter “U.N. Declaration on the Rights of Indigenous Peoples”].

¹²¹ See Inter-Am. Ct. H.R., Advisory Opinion OC-10/89 “Interpretation of the Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights”, July 14, 1989, paras. 35-45.

¹²² *Report on Access to Justice for Women Victims of Violence in the Americas*, *supra* note 108, at paras. 29-30.

Inter-American system, states can be held responsible for human rights violations perpetrated by non-state actors when they do not act with due diligence in response to acts of violence.¹²³

International human rights law has widely accepted that states must act with due diligence to prevent human rights violations, including violence against women. Several international human rights courts, including the Inter-American Court of Human Rights, have repeatedly held that states must exercise due diligence to prevent human rights violations.¹²⁴

The Court has clearly established that a violation of rights occurs if the government supports or acquiesces in the act, or if the state has allowed the act to take place without taking measures to prevent it or to punish those responsible.¹²⁵ Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women imposes the duty of due diligence on states parties.¹²⁶ Customary international law also “obligates states to prevent and respond to acts of violence against women with due diligence.”¹²⁷

The United States has failed to act with due diligence because despite its knowledge of the epidemic of violence against Indian women, it has left Indian women and Indian nations with little to no recourse against perpetrators of domestic violence. In this enforcement environment, perpetrators can act with impunity on Indian lands. The United States’ restriction of tribal jurisdiction combined with its failure to effectively police and prosecute these violent crimes violates its obligation to act with due diligence to protect, promote, and ensure human rights under the American Declaration. Further, these actions by the United States negatively impact

¹²³ *Id.* (citing Inter-Am. Ct. H.R., Case of the “Mapiripan Massacre,” Judgment of September 15, 2005, para. 111).

¹²⁴ *See, e.g.*, Inter-Am. Ct. H.R., Velasquez Rodriguez Case, Judgment of July 29, 1988.; Inter-Am. Ct. H.R., Case of the Massacre of Pueblo Bello, Judgment of January 31, 2006, para. 124. *See also* European Ct. H.R., Kilic v. Turkey, Judgment of March 28, 2000, paras. 62-63; European Ct. H.R., Osman v. United Kingdom, Judgment of October 28, 1998.

¹²⁵ Inter-Am. Ct. H.R., Case of Velásquez-Rodríguez v. Honduras, Judgment of July 29, 1988, para. 173.

¹²⁶ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, Art. 7 (1994), available at [<http://www.oas.org/cim/english/Convention%20Violence%20Against%20Women.htm>].

¹²⁷ Report of the Special Rapporteur on violence against women, its causes and consequences, The Due Diligence Standard as a Tool for the Elimination of Violence Against Women, E/CN.4/2006/61 (20 Jan. 2006) at para. 29.

entire Indian nations, which already suffer from the worst socio-economic status of any population in the United States.¹²⁸ United States laws have allowed state actors to create a law enforcement void that condones violence against Indian women and permits perpetrators to act with impunity on Indian lands.

Because of this law enforcement void, the primary recourse that Indian nations and Indian women have against non-Indian perpetrators of domestic violence is civil protection orders. The United States Supreme Court's decision in *Gonzales* undermines the protection of Indian women by giving state law enforcement officials the discretion not to enforce valid protection orders against domestic violence perpetrators when there is probable cause to believe the order is being violated. This decision leaves Indian women largely unprotected from continuing domestic violence and shows that the United States has failed to act with due diligence to remedy this dire situation.

ii. The United States Violates Indian Women's Rights to Life and Security of Person under Article I of the American Declaration.

The right to life is universally recognized as one of the most important human rights, and is included in almost every international human rights document. The full exercise of the right to life is essential for the exercise of all other human rights.¹²⁹ Article I of the American Declaration protects the right of every human being “to life, liberty, and the security of his person.”¹³⁰ Both the Commission and the Inter-American Court have interpreted the right to extend beyond arbitrary deprivations of life by the state or its agents.¹³¹ The right to life may be implicated in situations that do not necessarily result in death because it places a positive

¹²⁸ Guide for Practitioners, *supra* note 13, at 11 (stating that “American Indian and Alaska Natives are 2.5 times more likely than the rest of the population to live in poverty” and that “45 percent of Native persons live at or below the poverty level”).

¹²⁹ Inter-Am. Ct. H.R., Case of the Street Children (Villagran Morales *et al.*) v. Guatemala, Judgment of November 19, 1999, para. 144.

¹³⁰ American Declaration on the Rights and Duties of Man, Art. I.

¹³¹ See, e.g., IACHR, Parque São Lucas v. Brasil, Case 10.301, Report No. 40/03 (2003).

obligation on states to create conditions that “discourage any threat to the right to life” and ensure a dignified existence.¹³² For example, in the *Sawhoyamaxa* case, the Inter-American Court found that Paraguay had violated the right to life of members of an Indigenous community because of the inadequate living conditions faced by the community and the failure of the state to adopt necessary measures to remedy those conditions.¹³³

Other international human rights instruments, including the Universal Declaration of Human Rights¹³⁴ and the American Convention on Human Rights,¹³⁵ also protect the right to life. The right to life has consistently been interpreted as including the guarantee to be free from violence.¹³⁶ Further, Article 4 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women includes the rights to life and security of the person as rights to be protected.¹³⁷

The U.N. Declaration on the Rights of Indigenous Peoples expressly extends the right to a life free from violence to Indian women. Article 7 specifically protects the rights to life and personal security of Indigenous persons. It states,

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of the person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence.¹³⁸

¹³² Inter-Am. Ct. H.R., Case of the Street Children (Villagran Morales *et al.*) v. Guatemala, Judgment of November 19, 1999, para. 144.

¹³³ Inter-Am. Ct. H.R., Case of the Sawhoyamaxa Indigenous Community v. Paraguay, Judgment of March 29, 2006, para. 156, 166.

¹³⁴ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 Art. 3. (1948).

¹³⁵ American Convention on Human Rights, O.A.S. Treaty Series No. 36,1144, U.N.T.S. 123, entered into force July 18, 1978, Art. 4 [hereinafter “American Convention on Human Rights”].

¹³⁶ *See, e.g.*, Committee on the Elimination of All Forms of Racial Discrimination Against Women, General Recommendation No. 19, at ¶ 8, U.N. Doc. CCPR/C/21/Rev. 1/Add.10 (2000); G.A., Res. A/Res/58/147 (2004).

¹³⁷ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, Art. 4 (1994), available at [<http://www.oas.org/cim/english/Convention%20Violence%20Against%20Women.htm>].

¹³⁸ U.N. Declaration on the Rights of Indigenous Peoples, Art. 7.

Under international human rights law, the right to life includes the right to be free from violence. Thus, the United States has an affirmative obligation to protect the rights to life and personal security of Indian women.

An Indian woman is the victim of sexual and physical abuse every hour of every day.¹³⁹ The vast majority of Indian women will have their lives interrupted by violence. The United States condones this violence by unilaterally maintaining jurisdictional constraints on tribal criminal prosecutions and by refusing to ensure the enforcement of civil protection orders by state law enforcement.¹⁴⁰

The United States' failure to enforce civil protection orders undermines the rights to life and personal security of the holder of the protection order because it subjects her to the constant threat of ongoing violence. If her attacker approaches her, she has no guarantee that the state will prevent another attack. Her rights to life and personal security are constantly in jeopardy; she lives in fear of another attack and cannot enjoy her life. Further, the United States' failure to ensure the enforcement of civil protection orders allows perpetrators of violence to act with impunity. Because state law enforcement is not required to enforce protection orders and often does not, perpetrators know that they are free to victimize and revictimize Indian women. Often perpetrators escalate their attacks after a woman obtains a protection order, and the attacks become lethal. When the United States does not require law enforcement officials to enforce protection orders, Indian women can be lethally harmed.

¹³⁹ Long Brief, *supra* note 6, at 4.

¹⁴⁰ Goldfarb, *supra* note 94, at 1516 (“Even though obtaining a protection order may be valuable in and of itself, the fact remains that to achieve their full potential, orders must be properly enforced.”).

iii. The United States Does Not Provide Indian Women with an Effective Judicial Remedy as Required by the American Declaration.

Article XVIII of the American Declaration on the Rights and Duties of Man states, “Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.”¹⁴¹ Article 25 of the American Convention on Human Rights also ensures the right to an effective judicial remedy,¹⁴² and Article 7 of the American Convention on the Prevention, Punishment, and Eradication of Violence Against Women lists the establishment of “fair and effective legal procedures,” including protective measures, for women that have been subjected to violence among the duties of states parties.¹⁴³

The U.N. Declaration on the Rights of Indigenous Peoples explicitly protects the rights of Indian women to effective judicial remedies in Article 40. Article 40 states,

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parities, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.¹⁴⁴

Under international law, the United States has a legal obligation to provide Indian women with an effective judicial remedy when their rights are violated.

¹⁴¹ American Declaration on the Rights and Duties of Man, Art. XVII.

¹⁴² American Convention on Human Rights, Art. 25.

¹⁴³ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, Art. 7 (1994), available at [<http://www.oas.org/cim/english/Convention%20Violence%20Against%20Women.htm>].

¹⁴⁴ The United States violates not only the rights of Indian women to an effective remedy as protected under the American Declaration and the U.N. Declaration on the Rights of Indigenous peoples but also fails to give due consideration to the legal systems of tribes in limiting their criminal jurisdiction and restricting their ability to protect Indian women. These limitations violate Article 34, as well as Article 40, of the U.N. Declaration on the Rights of Indigenous Peoples. Article 34 declares, “Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.”

The Inter-American Court has a well-established jurisprudence on the right to an effective judicial remedy.¹⁴⁵ In *Velasquez Rodriguez v. Honduras*, the Court stated that an adequate, effective judicial remedy must suitably address the infringement of a legal right and effectively protect the right.¹⁴⁶ The Court has also found that the effective remedy must be provided on a non-discriminatory basis.¹⁴⁷ A remedy must be effective in practice, and may become ineffective when practice has shown the ineffectiveness of the remedy.¹⁴⁸

The Inter-American Commission adopted the Inter-American Court’s jurisprudence on effective judicial remedies in the case of *Maria da Penha Maia Fernandes v. Brasil*.¹⁴⁹ In that case, the Commission interpreted Article XVIII of the American Declaration in conjunction with Articles 8 (right to fair trial) and 25 (judicial protection) of the American Convention.¹⁵⁰ The Commission incorporated the jurisprudence of the Inter-American Court in explaining the obligations of states, including the obligation to take measures to prevent violations of rights.¹⁵¹

The Commission then found that Brazil had violated the petitioner’s right to justice under Article XVIII of the American Declaration because it had failed to properly investigate and prosecute Maria da Penha Maia Fernandes’ husband after he tried to kill her and left her paralyzed.¹⁵² The Commission explained,

The failure to prosecute and convict the perpetrator under these circumstances is an indication that the State condones the violence suffered by Maria da Penha, and this failure by the Brazilian courts to take action is exacerbating the direct

¹⁴⁵ See, e.g., Inter-Am. Ct. H.R., Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment of August 31, 2001, para. 112 (calling the right to an effective remedy “one of the basic mainstays, not only of the American Convention, but also of the Rule of Law in a democratic society”).

¹⁴⁶ Inter-Am. Ct. H.R., Case of Velasquez-Rodriguez v. Honduras, Judgment of July 29, 1988, paras. 64, 66.

¹⁴⁷ Inter-Am. Ct. H.R., Juridical Condition and Rights of Undocumented Workers, Advisory Opinion, Sept. 13, 2003, para. 107.

¹⁴⁸ Inter-Am. Ct. H.R., Judicial Guarantees in States of Emergency, Advisory Opinion, Oct. 6, 1987, para. 24.

¹⁴⁹ IACHR, *Maria da Penha v. Brasil*, Case 12.051, Report No. 54/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 704 (April 16, 2001).

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at para. 42.

¹⁵² *Id.* at para. 60.

consequences of the aggression by her ex-husband. Furthermore, as has been demonstrated earlier, that tolerance by the State organs is not limited to this case; rather, it is a pattern. The condoning of this situation by the entire system only serves to perpetuate the psychological, social, and historical roots and factors that sustain and encourage violence against women.¹⁵³

It continued, “That general and discriminatory judicial ineffectiveness also creates a climate that is conducive to domestic violence, since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts.”¹⁵⁴

The United States, like Brazil in the *Maria da Penha* case, condones violence against women, particularly violence against Indian women. The criminal jurisdictional scheme created by the United States leaves Indian women without meaningful recourse against their abusers. Indian women are effectively denied justice because the United States, which has sole jurisdiction over non-Indian abusers, refuses to prosecute them, and its laws prevent Indian nations from adequately punishing Indian abusers. The United States perpetrates further injustice on Indian women by not requiring states to enforce tribal protection orders when there is probable cause of a violation. The Supreme Court’s decision in *Gonzales* enables law enforcement to ignore protection orders, and allows perpetrators of domestic violence to revictimize their victims with impunity.

While the *Maria da Penha* case did not address the obligations of states to engage in precautionary measures as such, the Inter-American Commission has interpreted the right to judicial protection to include the right to seek effective precautionary protection. According to the Commission, “the right to judicial protection creates an obligation for the states to establish and guarantee appropriate and effective judicial remedies for the precautionary protection of

¹⁵³ *Id.* at para. 55.

¹⁵⁴ IACHR, *Maria da Penha v. Brasil*, Case 12.051, Report No. 54/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 704, para. 56 (April 16, 2001).

rights, including life and physical integrity, at the local level.”¹⁵⁵ It further explained, “while in criminal law a threat against life only constitutes an offense upon initiation of the execution of the crime, in a precautionary situation, the protection of the right to life should include protection against any act that threatens that right, regardless of the magnitude or degree of probability of the threat, so long as it is genuine.”¹⁵⁶

The United States is not ensuring Indian women’s rights to effective judicial protection. Earlier this year, the United Nations Committee on the Elimination of Racial Discrimination (CERD) expressed grave concerns about the United States’ response to violence against women in its Concluding Observations and Report.¹⁵⁷ The 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).¹⁵⁸

CERD also recommended that the United States increase its efforts to prevent and prosecute perpetrators of violence against women.¹⁵⁹ The United States has yet to comply with CERD’s recommendations.

The United States has a duty to take appropriate precautionary measures to protect Indian women from violence. If the United States is not going to prosecute domestic abusers committing offenses on Indian lands or allow Indian nations to do so adequately, the very least it can do is ensure that tribal protection orders are enforced by state law enforcement. But under

¹⁵⁵ IACHR, *Report on Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/VIII, Jan. 20, 2007, p. 24 (citing IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124, March 7, 2006, pp. 35-36.)

¹⁵⁶ *Id.* at p. 25.

¹⁵⁷ Committee on the Elimination of Racial Discrimination, *Concluding Observations United States of America*, CERD/C/USA/CO/6 (February 2008) at para. 26, *available at* [<http://www.indianlaw.org/sites/indianlaw.org/files/CERD-recommendations.pdf>].

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

Gonzales, the United States has refused to even do that. The United States Supreme Court's decision in *Gonzales* renders domestic violence protection orders ineffective because it does not require the enforcement of these orders. The situation of Indian women in the United States is especially grave because often the only recourse they have is a civil protection order. The lack of enforcement of these orders makes them useless. It leaves Indian women vulnerable to further attack and without any judicial remedy against their abusers.

IV. Conclusion and Recommendations

Domestic violence is an acute problem in the United States. Despite this, as the *Gonzales* case demonstrates, United States laws fail to protect domestic violence victims from ongoing violence. Because of *Gonzales*, law enforcement can always choose not to enforce domestic violence protection orders and leave women vulnerable to future abuse. This decision has a particularly pernicious impact on Indian women because the problem of domestic violence has reached epidemic proportions and many times, the primary recourse that Indian women have against their attackers is a protection order.

The United States has failed to fulfill its international legal obligations to women, particularly Indian women. It has failed to protect their rights to life, security of the person, freedom from violence, and an effective judicial remedy by not requiring that protection orders be enforced against domestic violence perpetrators. United States laws disproportionately affect Indian women because the United States' limitations on tribal jurisdiction leave them with limited legal remedies heightening the importance of civil protection orders. United States laws undermine the integrity of these protection orders and promote violence against Indian women by not ensuring their enforcement by law enforcement when there is probable cause to believe that they have been violated.

In consideration of the foregoing, amici curiae request that this Honorable Commission:

1. Declare that the United States is internationally responsible for a widespread and consistent pattern of human rights violations based on the perpetuation of domestic violence against women, particularly Indian women, and continues to violate the rights of women, including their rights under Articles I and XVII of the American Declaration.
2. Issue a report in accordance with Article 43.2 of the Commission's Rules of Procedure in the most expedited manner possible, incorporating into that report the findings in point (1) of this section, and recommend that the United States provide legal and programmatic reform to comport with the standards of international human rights law on violence against women, due process, and effective remedies.
3. Recommend that the United States, in consultation and cooperation with Indian nations, increase its efforts to prevent and punish violence and abuse against women by:
 - a. assisting Indian nations in their efforts to respond to, prevent, prosecute, and punish sexual and physical violence against women within Indian lands;
 - b. implementing fully the Violence Against Women Act by following the recommendations of tribal leaders at the annual consultation as mandated by section 903 of Title IX of the Violence Against Women Act, and
 - i. ensuring that state authorities comply with the full faith and credit provision of the Violence Against Women Act by recognizing and effectively enforcing tribal court protection orders;
 - ii. permitting Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from federal criminal data bases;
 - iii. ensuring enforcement of the firearms possession prohibition that includes tribal law convictions under section 908; and
 - iv. ensuring enforcement of the domestic assault by an habitual offender provision under section 909;
 - c. requiring personnel of the Department of Justice, including law enforcement and U.S. Attorneys, to submit declination reports to tribal justice officials and to coordinate the prosecution of sexual and domestic assault cases on Indian lands;
 - d. establishing state accountability for the prevention, investigation, prosecution, and punishment of sexual and physical violence against Indian women in states where the state has jurisdiction over these crimes, and in particular, addressing the unique circumstances of Alaska Native women;
 - e. working in consultation and cooperation with Indian nations to establish appropriate tribal criminal jurisdiction and sentencing authority over all persons for crimes of sexual and domestic violence committed against Indian women; AND
 - f. establishing in consultation and cooperation with Indian nations a national reporting system to investigate and prosecute cases of missing and murdered Indian women.

Dated: November 13, 2008

Respectfully Submitted:

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APPENDIX

STATEMENTS OF AMICI CURIAE

The following organizations respectfully submit this brief as Amici Curiae in support of the petitioner.

The **Indian Law Resource Center** is a non-profit law and advocacy organization established and directed by American Indians. We provide legal assistance to indigenous nations in the United States and throughout the Americas who are working to protect their lands, resources, human rights, environment and cultural heritage. Our mission is to overcome the devastating 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 equally esteem all human beings. The Center has successfully represented indigenous peoples from Nicaragua, Belize, and the United States before the Inter-American Commission on Human Rights, and played a crucial role in the drafting and adoption of the United Nations Declaration on the Rights of Indigenous Peoples. Our Safe Women, Strong Nations project collaborates with tribes and Native women's organizations to raise awareness of violence against Native women as an international human rights issue. Indian women, like all other women in the United States, should be able to seek judicial recourse against their abusers, including criminal prosecution and adequate sentencing by their tribal government and the enforcement of tribal protection orders. The United States needs to increase its efforts to prevent and punish violence and abuse against women by working in consultation and cooperation with Indian nations to establish appropriate tribal criminal jurisdiction and sentencing authority over all persons for crimes of sexual and domestic violence committed against Indian women.

Sacred Circle, National Resource Center to End Violence Against Native Women is a not-for-profit organization incorporated in the state of South Dakota in 1996 (www.sacred-circle.com). The mission of Sacred Circle is to change individual and institutional beliefs that support violence against all women. Sacred Circle provides technical assistance, training, and consultation to Indian Tribes and organizations in the development of strategies and responses to violence against women. Sacred Circle has been involved with tribal law enforcement, prosecution and courts in the development of best practices in domestic violence and sexual assault response. Sacred Circle continues to formulate new approaches and innovative legal and program response on a tribal, state, and national level to create solutions to ending domestic violence. Sacred Circle was instrumental in providing information about the outrageous rates of violence against Indian women and making recommendations that led to the enactment of Title IX, Safety for Indian Women in the Violence Against Women Act of 2005.

The **Alaska Native Women's Coalition (ANWC)** is a not-for-profit organization incorporated in the State of Alaska in 2001 (www.aknwc.org). The mission of ANWC is to provide advocacy and services to women seeking safety and services through our program. Our program serves approximately 800 native and non-native women per year. As direct service providers, we routinely work with the tribal court and other tribal justice system components to enhance the safety of Indian and non-Indian women seeking relief through tribal court civil

jurisdiction. We have worked tirelessly to help educate communities, tribes, law enforcement and others on the importance of the enactment of Title IX, Safety for Indian Women in the Violence Against Women Act of 2005. [T]his act [ensures that] . . . Indian women who are victimized at [a] much higher rate in this country, have some level of protection by legally mandating civil remedies such as protection orders across jurisdictions (i.e. tribal, state or federal).

ANWC requests the Inter-American Commission follow all recommendations as requested in the “Written Comments of Amicus Curiae” brief presented by the Indian Law Resource Center and Sacred Circle, and in particular: (1) a recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by implementing fully the Violence Against Women Act by following the recommendations of tribal leaders at the annual consultation as mandated by section 903 of Title IX of the Violence Against Women Act, and (i) ensuring that state authorities comply with the full faith and credit provision of the Violence Against Women Act by recognizing and effectively enforcing tribal court protection orders; (ii) permitting Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from federal criminal data bases; (iii) ensuring enforcement of the firearms possession prohibition that includes tribal law convictions under section 908; and (iv) ensuring enforcement of the domestic assault by an habitual offender [provision] under section 909; and, (2) a recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing state accountability for the prevention, investigation, prosecution, and punishment of sexual and physical violence against Indian women in states where the state has jurisdiction over these crimes, and in particular, addressing the unique circumstances of Alaska Native women.

The **Battered Women’s Justice Project (BWJP)** is a non-profit, national resource center that provides training and assistance for advocates, battered women, legal and justice system personnel, policymakers and others engaged in the justice system response to domestic violence. The BWJP promotes systemic change within community organizations and governmental agencies engaged in the civil and criminal justice response to domestic violence, in order to hold these institutions accountable for the safety and security of battered women and their children. The BWJP is an affiliated member of the Domestic Violence Resource Network, a group of national resource centers funded by the U.S. Department of Health and Human Services and other support since 1993. The BWJP also serves as a designated technical assistance provider for the Office on Violence Against Women of the U.S. Department of Justice.

The BWJP requests that the Inter-American Commission follow all recommendations as requested in the “Written Comments of Amicus Curiae” brief presented by the Indian Law Resource Center and Sacred Circle, and in particular: (1) A declaration by the Inter-American Commission on Human Rights that the United States is internationally responsible for the widespread and consistent pattern of human rights violations based on the perpetuation of domestic and sexual violence against women, particularly Indian women, and continues to violate the rights of women, including their right under Articles I and XVII of the American Declaration; (2) A report issued in accordance with Article 43.2 of the Commission’s Rules of Procedure in the most expedited manner possible, incorporating into that report the findings in

point (1) of this brief, and the recommendation that the United States provide legal and programmatic reform to comport with the standards of international human rights law on violence against women, due process and effective remedies as a means of strengthening the domestic initiative to hold the United States accountable to the spirit and letter of the Violence Against Women Act of 2006; (3) A recommendation that the United States, in consultation and cooperation with the Indian Nations, increase its efforts to prevent and punish violence and abuse against women by implementing fully the Violence Against Women Act by following the recommendations of tribal leaders at the annual consultation as mandated by section 903 of Title IX of the Violence Against Women Act, and (i) ensure that state authorities comply with the full faith and credit provisions of the Violence Against Women Act by recognizing and effectively enforcing all civil protection orders and specifically tribal court protection orders; (ii) permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault and stalking, to fully access federal and state criminal databases; (iii) ensure enforcement of firearms possession prohibitions as including tribal law convictions under section 908; (iv) ensure enforcement of the domestic assault by habitual offender [provision] under section 909; and (4) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing appropriate tribal criminal jurisdiction and sentencing authority over all persons charged with and/or convicted of crimes of sexual and domestic violence committed against Indian women.

Cangleska, Inc., is a not-for-profit and tribally chartered organization incorporated in the state of South Dakota and the Oglala Sioux Tribe in 1996 and 1997, respectively. The organization operates within the exterior boundaries of the Oglala Sioux Tribe and is composed of Oglala tribal members. The mission of Cangleska, Inc., is to create individual and institutional change necessary to support ending violence against native women. Cangleska, Inc., operates in four locations across the reservation and provides a multitude of programs including two shelters for women who are battered and their children, domestic violence probation services, outreach advocacy, men's re-education, women's treatment, supervised visitation, and civil legal services. Cangleska attorneys and advocates assist native and non-native women who seek legal protections through various tribal court systems throughout the region. Cangleska is nationally known for its innovative programs and work to end violence against women.

Cangleska, Inc., requests the Inter-American Commission issue the following: : (1) A declaration by the Inter-American Commission on Human Rights that the United States is internationally responsible for the widespread and consistent pattern of human rights violations based on the perpetuation of domestic and sexual violence against women, particularly Indian women, and continues to violate the rights of women, including their rights under Articles I and XVII of the American Declaration would strengthen the domestic initiative to hold the USA accountable to the spirit and letter of the Violence Against Women Act of 2006; (2) A report issued in accordance with Article 43.2 of the Commission's Rules of Procedure in the most expedited manner possible, incorporating into that report the findings in point (1) of this section, and recommendation that the United States provide legal and programmatic reform to comport with the standards of international human rights law on violence against women, due process, and effective remedies would strengthen the domestic initiative to hold the USA accountable to the spirit and letter of the Violence Against Women Act of 2006; (3) A recommendation that the

United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by assisting Indian nations in their efforts to respond to, prevent, prosecute, and punish perpetrators of sexual and physical violence against women within Indian lands; (4) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by implementing fully the Violence Against Women Act by following the recommendations of tribal leaders at the annual consultation as mandated by section 903 of Title IX of the Violence Against Women Act, and (i) ensuring that state authorities comply with the full faith and credit provision of the Violence Against Women Act by recognizing and effectively enforcing tribal court protection orders; (ii) permitting Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from federal criminal data bases; (iii) ensuring enforcement of the firearms possession prohibition that includes tribal law convictions under section 908; and (iv) ensuring enforcement of the domestic assault by an habitual offender [provision] under section 909; (5) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by requiring personnel of the Department of Justice, including law enforcement and U.S. Attorneys, to submit declination reports to tribal justice officials and to coordinate the prosecution of sexual and domestic assault cases on Indian lands; (6) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing state accountability for the prevention, investigation, prosecution, and punishment of sexual and physical violence against Indian women in states where the state has jurisdiction over these crimes, and in particular, addressing the unique circumstances of Alaska Native women; (7) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by working in consultation and cooperation with Indian nations to establish appropriate tribal criminal jurisdiction and sentencing authority over all persons for crimes of sexual and domestic violence committed against Indian women; and, (8) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing in consultation and cooperation with Indian nations a national reporting system to investigate and prosecute cases of missing and murdered Indian women.

Clan Star, Inc. (CSI) is a not-for-profit organization incorporated in the Eastern Band of Cherokee Indians in 2001 (www.clanstar.org). The mission of Clan Star is devoted to improving justice to strengthen the sovereignty of Indigenous women through legal, legislative and policy initiatives, and, education and awareness. Clan Star provides technical assistance, training and consultation to Indian Tribes and organizations in the development of public policy strategies addressing violence against women. CSI was instrumental in the development of public policy that led to the enactment of Title IX, Safety for Indian Women in the Violence Against Women Act of 2005. Clan Star provided advocacy and expert testimony on violence against Indigenous women in response to the United States Report to the UN Commission on the Elimination of Racial Discrimination (UNCERD) earlier this year in Geneva, Switzerland. Over the past 13 years since the implementation of VAWA, Tribes have developed the infrastructure for tribal justice system components to provide safety to women within tribal jurisdiction. Many tribal domestic violence codes have been developed. Personnel and training of tribal law enforcement,

tribal courts, prosecution, probation and batterers treatment program personnel have been supported. At the tribal level, efforts are coordinated to create a system of safety for women seeking safety and protection within the tribal jurisdiction.

CSI requests the Inter-American Commission issue the following: (1) A declaration by the Inter-American Commission on Human Rights that the United States is internationally responsible for the widespread and consistent pattern of human rights violations based on the perpetuation of domestic and sexual violence against women, particularly Indian women, and continues to violate the rights of women, including their rights under Articles I and XVII of the American Declaration would strengthen the domestic initiative to hold the USA accountable to the spirit and letter of the Violence Against Women Act of 2006; (2) A report issued in accordance with Article 43.2 of the Commission's Rules of Procedure in the most expedited manner possible, incorporating into that report the findings in point (1) of this section, and [the] recommendation that the United States provide legal and programmatic reform to comport with the standards of international human rights law on violence against women, due process, and effective remedies would strengthen the domestic initiative to hold the USA accountable to the spirit and letter of the Violence Against Women Act of 2006; (3) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by assisting Indian nations in their efforts to respond to, prevent, prosecute, and punish perpetrators of sexual and physical violence against women within Indian lands; (4) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by implementing fully the Violence Against Women Act by following the recommendations of tribal leaders at the annual consultation as mandated by section 903 of Title IX of the Violence Against Women Act, and (i) ensuring that state authorities comply with the full faith and credit provision of the Violence Against Women Act by recognizing and effectively enforcing tribal court protection orders; (ii) permitting Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from federal criminal data bases; (iii) ensuring enforcement of the firearms possession prohibition that includes tribal law convictions under section 908; and (iv) ensuring enforcement of the domestic assault by an habitual offender [provision] under section 909; (5) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by requiring personnel of the Department of Justice, including law enforcement and U.S. Attorneys, to submit declination reports to tribal justice officials and to coordinate the prosecution of sexual and domestic assault cases on Indian lands; (6) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing state accountability for the prevention, investigation, prosecution, and punishment of sexual and physical violence against Indian women in states where the state has jurisdiction over these crimes, and in particular, addressing the unique circumstances of Alaska Native women; (7) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by working in consultation and cooperation with Indian nations to establish appropriate tribal criminal jurisdiction and sentencing authority over all persons for crimes of sexual and domestic violence committed against Indian women; and, (8) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse

against women by establishing in consultation and cooperation with Indian nations a national reporting system to investigate and prosecute cases of missing and murdered Indian women.

The **La Jolla Indian Tribe (the “Tribe”)**, a federally recognized Indian tribe, is devoted to improving justice to strengthen the sovereignty of Indigenous women through legal, legislative and policy initiatives, education and awareness.

The tribe requests the Inter-American Commission issue the following: (1) A declaration by the Inter-American Commission on Human Rights that the United States is internationally responsible for the widespread and consistent pattern of human rights violations based on the perpetuation of domestic and sexual violence against women, particularly Indian women, and continues to violate the rights of women, including their rights under Articles I and XVII of the American Declaration would strengthen the domestic initiative to hold the USA accountable to the spirit and letter of the Violence Against Women Act of 2006; (2) A report issued in accordance with Article 43.2 of the Commission’s Rules of Procedure in the most expedited manner possible, incorporating into that report the findings in point (1) of this section, and [the] recommendation that the United States provide legal and programmatic reform to comport with the standards of international human rights law on violence against women, due process, and effective remedies [that] would strengthen the domestic initiative to hold the USA accountable to the spirit and letter of the Violence Against Women Act of 2006; (3) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by assisting Indian nations in their efforts to respond to, prevent, prosecute, and punish perpetrators of sexual and physical violence against women within Indian lands; (4) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by implementing fully the Violence Against Women Act by following the recommendations of tribal leaders at the annual consultation as mandated by section 903 of Title IX of the Violence Against Women Act, and (i) ensuring that state authorities comply with the full faith and credit provision of the Violence Against Women Act by recognizing and effectively enforcing tribal court protection orders; (ii) permitting Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from federal criminal data bases; (iii) ensuring enforcement of the firearms possession prohibition that includes tribal law convictions under section 908; and (iv) ensuring enforcement of the domestic assault by an habitual offender [provision] under section 909; (5) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by requiring personnel of the Department of Justice, including law enforcement and U.S. Attorneys, to submit declination reports to tribal justice officials and to coordinate the prosecution of sexual and domestic assault cases on Indian lands; (6) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing state accountability for the prevention, investigation, prosecution, and punishment of sexual and physical violence against Indian women in states where the state has jurisdiction over these crimes, and in particular, addressing the unique circumstances of Alaska Native women; (7) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by working in consultation and cooperation with Indian nations to establish appropriate tribal criminal jurisdiction and

sentencing authority over all persons for crimes of sexual and domestic violence committed against Indian women; and, (8) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing in consultation and cooperation with Indian nations a national reporting system to investigate and prosecute cases of missing and murdered Indian women.

Legal Momentum, a not-for-profit organization, advances the rights of women and girls by using the power of the law and creating innovative public policy. Legal Momentum advocates in the courts, Congress and state legislatures, as well as with unions and private business, to improve the protection afforded victims of domestic and sexual violence, and is a leading authority on the rights of immigrant victims of such violence.

Legal Momentum has filed a separate amicus in this matter, but is persuaded that the incidence of sexual and domestic violence perpetrated against American Indian and Alaska Native women is of such magnitude that we must lend our support by participating as amicus in this brief as well. Legal Momentum was instrumental in the enactment of the federal Violence Against Women Act (VAWA) and its reauthorizations, which sought to redress the historical inadequacy of the justice system's response to domestic and sexual violence, and specifically advocated for appropriate legal protections for Indian Women in VAWA and in other legislation. On several occasions, Legal Momentum has litigated cases and submitted *amicus curiae* briefs to the Court regarding the rights of victims of domestic and sexual violence. *See, e.g., United States v. Morrison*, 529 U.S. 598 (2000); *see also Davis v. Washington* and *Hammon v. Indiana*, 547 U.S. 813 (2006); *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005).

Legal Momentum recommends that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by assisting Indian nations in their efforts to respond to, prevent, prosecute, and punish perpetrators of sexual and physical violence against women within Indian land, and that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by implementing fully the Violence Against Women Act by following the recommendations of tribal leaders at the annual consultation as mandated by section 903 of Title IX of the Violence Against Women Act, and (i) ensuring that state authorities comply with the full faith and credit provision of the Violence Against Women Act by recognizing and effectively enforcing tribal court protection orders; (ii) permitting Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from federal criminal data bases; (iii) ensuring enforcement of the firearms possession prohibition that includes tribal law convictions under section 908; and (iv) ensuring enforcement of the domestic assault by an habitual offender under section 909.

Mending the Sacred Hoop, Inc. (MSH) is a Minnesota non-profit organization committed to strengthening the voices and vision of Native peoples. We work to end violence against Native women and children while restoring the safety, sovereignty, and sacredness of Native women. The safety and sovereignty of women is the core of our work; we carry in our hearts the understanding passed on to us by our ancestors—the inherent status of Native women as sacred. Our work to restore this status focuses on the elimination of all forms of violence against Native women. We work from a social change perspective that relies on the grassroots efforts of all our relations to restore the leadership of Native women. Mending the Sacred Hoop

provides training, support, resources, and leadership to tribal communities across the country in the development of programs to protect the safety and sovereignty of Native women. Over the past 13 years since the implementation of VAWA, Tribes have developed the infrastructure for tribal justice system components to provide safety to women within tribal jurisdiction. Many tribal domestic violence codes have been developed. Personnel and training of tribal law enforcement, tribal courts, prosecutors, probation and batterers treatment program personnel have been supported. At the tribal level, we have coordinated our efforts and worked to enhance the response towards Native women who are seeking safety and protection within our tribal jurisdictions.

MSH requests the Inter-American Commission issue the following: (1) A declaration by the Inter-American Commission on Human Rights that the United States is internationally responsible for the widespread and consistent pattern of human rights violations based on the perpetuation of domestic and sexual violence against women, particularly Indian women, and continues to violate the rights of women, including their rights under Articles I and XVII of the American Declaration would strengthen the domestic initiative to hold the USA accountable to the spirit and letter of the Violence Against Women Act of 2006; (2) A report issued in accordance with Article 43.2 of the Commission's Rules of Procedure in the most expedited manner possible, incorporating into that report the findings in point (1) of this section, and [the] recommendation that the United States provide legal and programmatic reform to comport with the standards of international human rights law on violence against women, due process, and effective remedies [that] would strengthen the domestic initiative to hold the USA accountable to the spirit and letter of the Violence Against Women Act of 2006; (3) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by assisting Indian nations in their efforts to respond to, prevent, prosecute, and punish perpetrators of sexual and physical violence against women within Indian lands; (4) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by implementing fully the Violence Against Women Act by following the recommendations of tribal leaders at the annual consultation as mandated by section 903 of Title IX of the Violence Against Women Act, and (i) ensuring that state authorities comply with the full faith and credit provision of the Violence Against Women Act by recognizing and effectively enforcing tribal court protection orders; (ii) permitting Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from federal criminal data bases; (iii) ensuring enforcement of the firearms possession prohibition that includes tribal law convictions under section 908; and (iv) ensuring enforcement of the domestic assault by an habitual offender [provision] under section 909; (5) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by requiring personnel of the Department of Justice, including law enforcement and U.S. Attorneys, to submit declination reports to tribal justice officials and to coordinate the prosecution of sexual and domestic assault cases on Indian lands; (6) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing state accountability for the prevention, investigation, prosecution, and punishment of sexual and physical violence against Indian women in states where the state has jurisdiction over these crimes, and in particular, addressing the unique circumstances of Alaska Native women; (7) A recommendation that the

United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by working in consultation and cooperation with Indian nations to establish appropriate tribal criminal jurisdiction and sentencing authority over all persons for crimes of sexual and domestic violence committed against Indian women; and, (8) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing in consultation and cooperation with Indian nations a national reporting system to investigate and prosecute cases of missing and murdered Indian women.

The **National Center on Domestic and Sexual Violence** is a not-for-profit organization incorporated in the State of Texas in 1998. The mission of the National Center is to design, provide and customize training and consultation; influence policy, promote collaboration; and enhance diversity with the goal of ending domestic and sexual violence. Our agency provides technical assistance to approximately three million visitors to our web site, www.ncdsv.org per year and provides 36 training events per year. Our work has also included consultation with the Red Nacional de Mexico, the network of shelters and service providers working to end domestic and sexual violence in Mexico.

The NCDSV requests the Inter-American Commission issue the following: (1) A declaration by the Inter-American Commission on Human Rights that the United States is internationally responsible for the widespread and consistent pattern of human rights violations based on the perpetuation of domestic and sexual violence against women, particularly Indian women, and continues to violate the rights of women, including their rights under Articles I and XVII of the American Declaration would strengthen the domestic initiative to hold the USA accountable to the spirit and letter of the Violence Against Women Act of 2006; (2) A report issued in accordance with Article 43.2 of the Commission's Rules of Procedure in the most expedited manner possible, incorporating into that report the findings in point (1) of this section, and recommendation that the United States provide legal and programmatic reform to comport with the standards of international human rights law on violence against women, due process, and effective remedies would strengthen the domestic initiative to hold the USA accountable to the spirit and letter of the Violence Against Women Act of 2006; (3) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by assisting Indian nations in their efforts to respond to, prevent, prosecute, and punish perpetrators of sexual and physical violence against women within Indian lands; (4) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by implementing fully the Violence Against Women Act by following the recommendations of tribal leaders at the annual consultation as mandated by section 903 of Title IX of the Violence Against Women Act, and (i) ensuring that state authorities comply with the full faith and credit provision of the Violence Against Women Act by recognizing and effectively enforcing tribal court protection orders; (ii) permitting Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from federal criminal data bases; (iii) ensuring enforcement of the firearms possession prohibition that includes tribal law convictions under section 908; and (iv) ensuring enforcement of the domestic assault by an habitual offender under section 909; (5) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women

by requiring personnel of the Department of Justice, including law enforcement and U.S. Attorneys, to submit declination reports to tribal justice officials and to coordinate the prosecution of sexual and domestic assault cases on Indian lands; (6) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing state accountability for the prevention, investigation, prosecution, and punishment of sexual and physical violence against Indian women in states where the state has jurisdiction over these crimes, and in particular, addressing the unique circumstances of Alaska Native women; (7) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by working in consultation and cooperation with Indian nations to establish appropriate tribal criminal jurisdiction and sentencing authority over all persons for crimes of sexual and domestic violence committed against Indian women; and (8) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing in consultation and cooperation with Indian nations a national reporting system to investigate and prosecute cases of missing and murdered Indian women.

The **National Congress of American Indians ("NCAI")** is the oldest and largest national organization addressing the interests of Indian tribal governments, representing more than 250 American Indian Tribes and Alaskan Native villages. Dedicated to protecting the rights and improving the welfare of American Indians, NCAI has a firm commitment to effective law enforcement in Indian country, believing that maintenance of law and order is a fundamental responsibility of tribal governments, with cooperation and assistance from both federal and state governments. NCAI also has a firm commitment to the view that tribal governments must be free to exercise their sovereign power, without undue state interference, to preserve the political integrity and core dignity of Tribes and to ensure the success of the federal policy of tribal self-determination. NCAI has non-governmental status with the United Nations.

The **National Organization of Sisters of Color Ending Sexual Assault (SCESA)** is a women of color-led nonprofit dedicated to working with our communities to create a just society in which Women of Color are able to live healthy lives free of violence.

SCESA requests that the Inter-American Commission follow all recommendations as requested in the "Written Comments of Amicus Curiae" brief presented by the Indian Law Resource Center and Sacred Circle, and in particular: (1) A report issued in accordance with Article 43.2 of the Commission's Rules of Procedure in the most expedited manner possible, incorporating into that report the findings in point (1) of this section, and recommendation that the United States provide legal and programmatic reform to comport with the standards of international human rights law on violence against women, due process, and effective remedies [that] would strengthen the domestic initiative to hold the USA accountable to the spirit and letter of the Violence Against Women Act of 2006; (2) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by assisting Indian nations in their efforts to respond to, prevent, prosecute, and punish perpetrators of sexual and physical violence against women within Indian lands; (3) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by implementing fully the Violence Against Women Act by following the

recommendations of tribal leaders at the annual consultation as mandated by section 903 of Title IX of the Violence Against Women Act, and (i) ensuring that state authorities comply with the full faith and credit provision of the Violence Against Women Act by recognizing and effectively enforcing tribal court protection orders; (ii) permitting Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from federal criminal data bases; (iii) ensuring enforcement of the firearms possession prohibition that includes tribal law convictions under section 908; and (iv) ensuring enforcement of the domestic assault by an habitual offender [provision] under section 909; and (4) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing state accountability for the prevention, investigation, prosecution, and punishment of sexual and physical violence against Indian women in states where the state has jurisdiction over these crimes, and in particular, addressing the unique circumstances of Alaska Native women.

As an organization committed to ending violence in the lives of all women we understand that for Communities of Color, such as Native Communities we recognize and support a coordinated and effective response to ending violence against women.

The **Ohitika Najin Win Oti** is a not-for-profit organization incorporated in South Dakota in 2008. The mission of the program is to provide advocacy and services to women seeking safety. Our program serves approximately 250 women annually. As direct service providers, we routinely work with the tribal court and other tribal justice system components to enhance the safety of Indian and non-Indian women seeking relief through our tribal court's civil jurisdiction.

Our Sister's Keeper Coalition (OSKC) is a non-profit, non-governmental coalition incorporated in the states of Colorado and was founded in May of 2006. The central office of the OSK is located on the Southern Ute Indian Reservation in Colorado. OSK assists victims of domestic violence and sexual assault within the state of Colorado. The preference of OSK is to assist Native American victims, but OSK never denies services to anyone who seeks our assistance. The goals and objectives is to ensure the safety and sovereignty of Native American victims of domestic violence and sexual assault.

The **Pauma Band of Mission Indians (the "Tribe")**, a federally recognized Indian Tribe, is devoted to improving justice to strengthen the sovereignty of Indigenous women through legal, legislative and policy initiatives, education and awareness.

The Tribe requests the Inter-American Commission issue the following: (1) A declaration by the Inter-American Commission on Human Rights that the United States is internationally responsible for the widespread and consistent pattern of human rights violations based on the perpetuation of domestic and sexual violence against women, particularly Indian women, and that the United States continues to violate the rights of women, including their rights under Articles I and XVII of the American Declaration would strengthen the domestic initiative to hold the United States accountable to the spirit and letter of the Violence Against Women Act of 2006; (2) A report issued in accordance with Article 43.2 of the Commission's Rules of Procedure in the most expedited manner possible, incorporating into that report the findings in point (1) of this section, and a recommendation that the United States provide legal and programmatic reform to comport with the standards of international human rights law on

violence against women, due process and effective remedies [that] would strengthen the domestic initiative to hold the United States accountable to the spirit and letter of the Violence Against Women Act of 2006; (3) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by assisting Indian nations in their efforts to respond to, prevent, prosecute and punish perpetrators of sexual and physical violence against women within Indian lands; (4) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by implementing fully the Violence Against Women Act by following the recommendations of tribal leaders at the annual consultation, as mandated by Section 903 of Title IX, and by (i) ensuring that state authorities comply with the full faith and credit provision of the Violence Against Women Act by recognizing and effectively enforcing tribal court protection orders; (ii) permitting Indian law enforcement agencies in cases of domestic violence, dating violence, sexual assault and stalking to enter information into and obtain information from federal criminal data bases; (iii) ensuring enforcement of the firearms possession prohibition that includes tribal law convictions under Section 908 of Title IX; and (iv) ensuring enforcement of the domestic assault by an habitual offender [provision] under Section 909 of Title IX; (5) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by requiring personnel of the Department of Justice, including law enforcement and U.S. Attorneys, to submit all declination reports to tribal justice officials and to coordinate the prosecution of sexual and domestic assault cases on Indian lands; (6) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing state accountability for the prevention, investigation, prosecution and punishment of sexual and physical violence against Indian women in states where the state has criminal jurisdiction over these crimes, and in particular, addressing the unique circumstances of Alaska native women; (7) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by working in consultation and cooperation with Indian nations to establish appropriate tribal criminal jurisdiction and sentencing authority over all persons for crimes of sexual and domestic violence committed against Indian women; and, (8) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing, in consultation and cooperation with Indian nations, a national reporting system to investigate and prosecute cases of missing and murdered Indian women.

The **Qualla Women's Justice Alliance** is a group of Cherokee and other tribal women that are formally recognized by Cherokee Tribal Council Resolution No. 68 (1999). The Qualla Women's Justice Alliance is committed to improving the response of the Cherokee tribal justice system and coordination of direct service providers to victims of domestic violence, sexual assault, stalking and dating violence on Cherokee trust lands located in Cherokee, North Carolina. The Alliance provides leadership and, more importantly, Cherokee cultural perspective to the non-Indians that are employed by our tribe, are the actual direct service providers, and who reside on our lands. Likewise, our tribal lands have been and continue to be visited by thousands of tourists and visitors each year since the 1940's.

The Alliance requests the Inter-American Commission issue the following: (1) A declaration by the Inter-American Commission on Human Rights that the United States is internationally responsible for the widespread and consistent pattern of human rights violations based on the perpetuation of domestic and sexual violence against women, particularly Indian women, and continues to violate the rights of women, including their rights under Articles I and XVII of the American Declaration would strengthen the domestic initiative to hold the USA accountable to the spirit and letter of the Violence Against Women Act of 2006; (2) A report issued in accordance with Article 43.2 of the Commission's Rules of Procedure in the most expedited manner possible, incorporating into that report the findings in point (1) of this section, and recommendation that the United States provide legal and programmatic reform to comport with the standards of international human rights law on violence against women, due process, and effective remedies would strengthen the domestic initiative to hold the USA accountable to the spirit and letter of the Violence Against Women Act of 2006; (3) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by assisting Indian nations in their efforts to respond to, prevent, prosecute, and punish perpetrators of sexual and physical violence against women within Indian lands; (4) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by implementing fully the Violence Against Women Act by following the recommendations of tribal leaders at the annual consultation as mandated by section 903 of Title IX of the Violence Against Women Act, and (i) ensuring that state authorities comply with the full faith and credit provision of the Violence Against Women Act by recognizing and effectively enforcing tribal court protection orders; (ii) permitting Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from federal criminal data bases; (iii) ensuring enforcement of the firearms possession prohibition that includes tribal law convictions under section 908; and (iv) ensuring enforcement of the domestic assault by an habitual offender [provision] under section 909; (5) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by requiring personnel of the Department of Justice, including law enforcement and U.S. Attorneys, to submit declination reports to tribal justice officials and to coordinate the prosecution of sexual and domestic assault cases on Indian lands; (6) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing state accountability for the prevention, investigation, prosecution, and punishment of sexual and physical violence against Indian women in states where the state has jurisdiction over these crimes, and in particular, addressing the unique circumstances of Alaska Native women; (7) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by working in consultation and cooperation with Indian nations to establish appropriate tribal criminal jurisdiction and sentencing authority over all persons for crimes of sexual and domestic violence committed against Indian women; and, (8) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing in consultation and cooperation with Indian nations a national reporting system to investigate and prosecute cases of missing and murdered Indian women.

The **Shelter of Safety (SOS)** is a not-for-profit organization incorporated in the Eastern Band of Cherokee Indians in 2006. Shelter of Safety, Inc., is a native specific Domestic Violence Transitional Housing Program located on the Qualla Boundary in Cherokee, NC. The primary goal of SOS is to fill the current gap between crisis shelter and permanent housing on our tribal lands and create public awareness. This program provides stable transitional housing and support services to battered women. Housing is essential to securing safe and healthy lives on and around the Eastern Band of Cherokee Qualla Boundary.

The SOS requests the Inter-American Commission issue the following: (1) A declaration by the Inter-American Commission on Human Rights that the United States is internationally responsible for the widespread and consistent pattern of human rights violations based on the perpetuation of domestic and sexual violence against women, particularly Indian women, and continues to violate the rights of women, including their rights under Articles I and XVII of the American Declaration would strengthen the domestic initiative to hold the USA accountable to the spirit and letter of the Violence Against Women Act of 2006; (2) A report issued in accordance with Article 43.2 of the Commission's Rules of Procedure in the most expedited manner possible, incorporating into that report the findings in point (1) of this section, and [the] recommendation that the United States provide legal and programmatic reform to comport with the standards of international human rights law on violence against women, due process, and effective remedies [that] would strengthen the domestic initiative to hold the USA accountable to the spirit and letter of the Violence Against Women Act of 2006; (3) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by assisting Indian nations in their efforts to respond to, prevent, prosecute, and punish perpetrators of sexual and physical violence against women within Indian lands; (4) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by implementing fully the Violence Against Women Act by following the recommendations of tribal leaders at the annual consultation as mandated by section 903 of Title IX of the Violence Against Women Act, and (i) ensuring that state authorities comply with the full faith and credit provision of the Violence Against Women Act by recognizing and effectively enforcing tribal court protection orders; (ii) permitting Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from federal criminal data bases; (iii) ensuring enforcement of the firearms possession prohibition that includes tribal law convictions under section 908; and (iv) ensuring enforcement of the domestic assault by an habitual offender under section 909; (5) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by requiring personnel of the Department of Justice, including law enforcement and U.S. Attorneys, to submit declination reports to tribal justice officials and to coordinate the prosecution of sexual and domestic assault cases on Indian lands; (6) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing state accountability for the prevention, investigation, prosecution, and punishment of sexual and physical violence against Indian women in states where the state has jurisdiction over these crimes, and in particular, addressing the unique circumstances of Alaska Native women; (7) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by working in consultation and

cooperation with Indian nations to establish appropriate tribal criminal jurisdiction and sentencing authority over all persons for crimes of sexual and domestic violence committed against Indian women; and, (8) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing in consultation and cooperation with Indian nations a national reporting system to investigate and prosecute cases of missing and murdered Indian women.

The **Tribal Law and Policy Institute (TLPI)** (www.tlpi.org) is an Indian owned and operated non-profit corporation organized to design and deliver education, research, training, and technical assistance programs which promote the improvement of justice in Indian country and the health, well-being, and culture of Native peoples. TLPI has an extensive track record concerning the effective provision of training and technical assistance in Indian Country, especially training and technical assistance addressing violence against Native women issues. Hindering the civil jurisdiction of tribal courts over non-Indians will endanger women who are served by the direct service provider programs that are the focus of our training and technical assistance services. These direct service providers routinely work with the tribal court and other tribal justice system components to enhance the safety of Indian and non-Indian women seeking relief through our tribal court's civil jurisdiction.

White Buffalo Calf Woman Society, Inc. (WBCWS) is a not-for-profit organization incorporated in the State of South Dakota in 1978. The mission of White Buffalo Calf Woman Society, Inc. is to provide advocacy and services to women seeking safety and services through our agency. Our agency provides services to approximately 400 women and 800 children per year. A finding that tribal courts lack jurisdiction over non-Indians could endanger women that we serve. As a grassroots woman's organization located on the Rosebud Sioux Reservation in the state of South Dakota, we work with tribal woman and non-Indian woman who seek services from us. Our agency routinely works with the tribal court and other tribal justice system components to enhance the safety of Indian and non-Indian women seeking relief through our tribal court's civil jurisdiction. With the passage of the Full Faith and Credit provision of the Violence Against Women Act in 1994, Congress codified the constitutional principle that courts in one jurisdiction must honor civil protection orders from other jurisdictions. The FFC provision clarified that tribal courts had the authority to issue civil protection orders and have the authority to enforce such orders, either from another tribe or state, as their own local law permitted. A finding that Tribal Courts have no civil jurisdiction over non-Indians will severely curtail the authority of tribal courts to enter civil orders against non-Indians, thus removing life-saving protection order remedies, including divorce decrees, child custody issues, etc. The White Buffalo Calf Woman Society, Inc. provides services in a five county area which are Todd, Mellette, Tripp, Gregory and Lyman. White Buffalo Calf Woman Society, Inc. has utilized the FFC provision to successfully obtain protection orders when women from these counties who are fleeing from their perpetrators, seeking shelter for their safety off the parameters of the Rosebud Sioux Reservation or their small rural town on other tribal reservations or in the larger cities. In addition, the FFC provision has protected our children, as our tribal court honors the provisions regarding custody of children in tribal domestic violence custody orders. The provision ensures that tribes that are often hundreds of miles apart the time necessary to investigate custody issues.

The WBCWS requests the Inter-American Commission follow all recommendations as requested in the "Written Comments of Amicus Curiae" brief presented by the Indian Law

Resource Center and Sacred Circle, and in particular: (1) A declaration by the Inter-American Commission on Human Rights that the United States is internationally responsible for the widespread and consistent pattern of human rights violations based on the perpetuation of domestic and sexual violence against women, particularly Indian women, and continues to violate the rights of women, including their rights under Articles I and XVII of the American Declaration would strengthen the domestic initiative to hold the USA accountable to the spirit and letter of the Violence Against Women Act of 2006; (2) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by assisting Indian nations in their efforts to respond to, prevent, prosecute, and punish perpetrators of sexual and physical violence against women within Indian lands; (3) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by implementing fully the Violence Against Women Act by following the recommendations of tribal leaders at the annual consultation as mandated by section 903 of Title IX of the Violence Against Women Act, and (i) ensuring that state authorities comply with the full faith and credit provision of the Violence Against Women Act by recognizing and effectively enforcing tribal court protection orders; (ii) permitting Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from federal criminal data bases; (iii) ensuring enforcement of the firearms possession prohibition that includes tribal law convictions under section 908; and (iv) ensuring enforcement of the domestic assault by an habitual offender [provision] under section 909; (4) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by requiring personnel of the Department of Justice, including law enforcement and U.S. Attorneys, to submit declination reports to tribal justice officials and to coordinate the prosecution of sexual and domestic assault cases on Indian lands; (5) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing state accountability for the prevention, investigation, prosecution, and punishment of sexual and physical violence against Indian women in states where the state has jurisdiction over these crimes, and in particular, addressing the unique circumstances of Alaska Native women; (6) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by working in consultation and cooperation with Indian nations to establish appropriate tribal criminal jurisdiction and sentencing authority over all persons for crimes of sexual and domestic violence committed against Indian women; and, (7) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing in consultation and cooperation with Indian nations a national reporting system to investigate and prosecute cases of missing and murdered Indian women.

The **Women Spirit Coalition (WSC)** is a not-for-profit organization incorporated in Washington State in 2005. (www.womenspiritcoalition.org). The mission of WSC is devoted to improving justice to strengthen the sovereignty of Indigenous women through legal, legislative and policy initiatives, and, education and awareness. WSC provides technical assistance, training and consultation to Indian Tribes and organizations in the development of public policy strategies addressing violence against women.

WSC requests the Inter-American Commission follow all recommendations as requested in the “Written Comments of Amicus Curiae” brief presented by the Indian Law Resource Center and Sacred Circle, and in particular: (1) A declaration by the Inter-American Commission on Human Rights that the United States is internationally responsible for the widespread and consistent pattern of human rights violations based on the perpetuation of domestic and sexual violence against women, particularly Indian women, and continues to violate the rights of women, including their rights under Articles I and XVII of the American Declaration would strengthen the domestic initiative to hold the USA accountable to the spirit and letter of the Violence Against Women Act of 2006; (2) A report issued in accordance with Article 43.2 of the Commission’s Rules of Procedure in the most expedited manner possible, incorporating into that report the findings in point (1) of this section, and recommendation that the United States provide legal and programmatic reform to comport with the standards of international human rights law on violence against women, due process, and effective remedies would strengthen the domestic initiative to hold the USA accountable to the spirit and letter of the Violence Against Women Act of 2006; (3) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by assisting Indian nations in their efforts to respond to, prevent, prosecute, and punish perpetrators of sexual and physical violence against women within Indian lands; (4) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by implementing fully the Violence Against Women Act by following the recommendations of tribal leaders at the annual consultation as mandated by section 903 of Title IX of the Violence Against Women Act, and (i) ensuring that state authorities comply with the full faith and credit provision of the Violence Against Women Act by recognizing and effectively enforcing tribal court protection orders; (ii) permitting Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from federal criminal data bases; (iii) ensuring enforcement of the firearms possession prohibition that includes tribal law convictions under section 908; and (iv) ensuring enforcement of the domestic assault by an habitual offender under section 909; (5) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by requiring personnel of the Department of Justice, including law enforcement and U.S. Attorneys, to submit declination reports to tribal justice officials and to coordinate the prosecution of sexual and domestic assault cases on Indian lands; and, (6) A recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by establishing in consultation and cooperation with Indian nations a national reporting system to investigate and prosecute cases of missing and murdered Indian women.

The mission of the **YWCA Clark County** is to build a community of peace, justice, freedom, and dignity for all people. The YWCA focuses on empowering women, preventing violence and eliminating oppression. Over 10,000 people are served each year, including victims of domestic violence, sexual assault and child abuse; youth aging out of foster care; homeless preschool children; and women in jail.

The YWCA Clark County requests the Inter-American Commission follow all recommendations as requested in the “Written Comments of Amicus Curiae” brief presented by the Indian Law Resource Center and Sacred Circle, and in particular: (1) Issue a report in

accordance with Article 43.2 of the Commission's Rules of Procedure in the most expedited manner possible, incorporating into that report the findings in point (1) of this section, and recommendation that the United States provide legal and programmatic reform to comport with the standards of international human rights law on violence against women, due process, and effective remedies [that] would strengthen the domestic initiative to hold the USA accountable to the spirit and letter of the Violence Against Women Act of 2006; and (2) Issue a recommendation that the United States, in consultation and cooperation with the Indian nations, increase its efforts to prevent and punish violence and abuse against women by implementing fully the Violence Against Women Act by following the recommendations of tribal leaders at the annual consultation as mandated by section 903 of Title IX of the Violence Against Women Act, and (i) ensuring that state authorities comply with the full faith and credit provision of the Violence Against Women Act by recognizing and effectively enforcing tribal court protection orders; (ii) permitting Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from federal criminal data bases; (iii) ensuring enforcement of the firearms possession prohibition that includes tribal law convictions under section 908; and (iv) ensuring enforcement of the domestic assault by an habitual offender under section 909.

The following is an excerpt from the Inter-American Commission's Merits Report on the Gonzales case. The full report is available at www.oas.org/en/iachr/decisions/merits.asp.



REPORT No. 80/11
CASE 12.626
MERITS
JESSICA LENAHAN (GONZALES) ET AL.
UNITED STATES (*)
July 21, 2011

I. SUMMARY

1. This report concerns a petition presented to the Inter-American Commission on Human Rights (hereinafter the "Commission" or "IACHR") against the Government of the United States (hereinafter the "State" or the "United States") on December 27, 2005, by Caroline Bettinger-Lopez, Emily J. Martin, Lenora Lapidus, Stephen Mcpherson Watt, and Ann Beeson, attorneys-at-law with the American Civil Liberties Union.¹ The petition was presented on behalf of Ms. Jessica Lenahan, formerly Jessica Gonzales,² and her deceased daughters Leslie (7), Katheryn (8) and Rebecca (10) Gonzales.

2. The claimants assert in their petition that the United States violated Articles I, II, V, VI, VII, IX, XVIII and XXIV of the American Declaration by failing to exercise due diligence to protect Jessica Lenahan and her daughters from acts of domestic violence perpetrated by the ex-husband of the former and the father of the latter, even though Ms. Lenahan held a restraining order against him. They specifically allege that the police failed to adequately respond to Jessica Lenahan's repeated and urgent calls over several hours reporting that her estranged husband had taken their three minor daughters (ages 7, 8 and 10) in violation of the restraining order, and asking for help. The three girls were found shot to death in the back of their father's truck after the exchange of gunfire that resulted in the death of their father. The petitioners further contend that the State never duly investigated and clarified the circumstances of the death of Jessica

*Commission Member Dinah L. Shelton did not take part in the discussion and voting on this case, pursuant to Article 17(2) of the Commission's Rules of Procedure.

¹ By note dated October 26, 2006, the Human Rights Clinic of Columbia University Law School was accredited as a co-petitioner, and on July 6, 2011 Peter Rosenblum was accredited as co-counsel and Director of said Clinic. By note dated October 15, 2007, Ms. Araceli Martínez-Olguín, from the Women's Rights Project of the American Civil Liberties Union, was also accredited as a representative. The University of Miami School of Law Human Rights Clinic was later added as co-petitioner, with Caroline Bettinger-Lopez as a representative of the Human Rights Clinic and lead counsel in the case. Sandra Park from the Women's Rights Project of the American Civil Liberties Union was also accredited later as co-counsel in the case.

² The Commission will refer throughout the report to the presumed victim as Jessica Lenahan, which she has indicated is the name she currently uses. See, December 11, 2006 Observations from Petitioners, Ex. E: Declaration of Jessica Ruth Lenahan (Gonzales).

Lenahan's daughters, and never provided her with an adequate remedy for the failures of the police. According to the petition, eleven years have passed and Jessica Lenahan still does not know the cause, time and place of her daughters' death.

3. The United States recognizes that the murders of Jessica Lenahan's daughters are "unmistakable tragedies."³ The State, however, asserts that any petition must be assessed on its merits, based on the evidentiary record and a cognizable basis in the American Declaration. The State claims that its authorities responded as required by law, and that the facts alleged by the petitioners are not supported by the evidentiary record and the information available to the Castle Rock Police Department at the time the events occurred. The State moreover claims that the petitioners cite no provision of the American Declaration that imposes on the United States an affirmative duty, such as the exercise of due diligence, to prevent the commission of individual crimes by private actors, such as the tragic and criminal murders of Jessica Lenahan's daughters.

4. In Report N° 52/07, adopted on July 24, 2007 during its 128th regular period of sessions, the Commission decided to admit the claims advanced by the petitioners under Articles I, II, V, VI, VII, XVIII and XXIV of the American Declaration, and to proceed with consideration of the merits of the petition. At the merits stage, the petitioners added to their allegations that the failures of the United States to conduct a thorough investigation into the circumstances surrounding Leslie, Katheryn and Rebecca's deaths also breached Jessica Lenahan's and her family's right to truth in violation of Article IV of the American Declaration.

5. In the present report, having examined the evidence and arguments presented by the parties during the proceedings, the Commission concludes that the State failed to act with due diligence to protect Jessica Lenahan and Leslie, Katheryn and Rebecca Gonzales from domestic violence, which violated the State's obligation not to discriminate and to provide for equal protection before the law under Article II of the American Declaration. The State also failed to undertake reasonable measures to protect the life of Leslie, Katheryn and Rebecca Gonzales in violation of their right to life under Article I of the American Declaration, in conjunction with their right to special protection as girl-children under Article VII of the American Declaration. Finally, the Commission finds that the State violated the right to judicial protection of Jessica Lenahan and her next-of kin, under Article XVIII of the American Declaration. The Commission does not consider that it has sufficient information to find violations of articles V and VI of the American Declaration. As to Articles XXIV and IV of the American Declaration, it considers the claims related to these articles to have been addressed under Article XVIII of the American Declaration.

...

VIII. FINAL CONCLUSIONS AND RECOMMENDATIONS

...

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES ITS RECOMMENDATIONS THAT THE UNITED STATES:

1. Undertake a serious, impartial and exhaustive investigation with the objective of ascertaining the cause, time and place of the deaths of Leslie, Katheryn and Rebecca Gonzales, and to duly inform their next-of-kin of the course of the investigation.

2. Conduct a serious, impartial and exhaustive investigation into systemic failures that took place related to the enforcement of Jessica Lenahan's protection order as a guarantee

³ Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, October 17, 2008, p. 1.

of their non-repetition, including performing an inquiry to determine the responsibilities of public officials for violating state and/or federal laws, and holding those responsible accountable.

3. Offer full reparations to Jessica Lenahan and her next-of-kin considering their perspective and specific needs.

4. Adopt multifaceted legislation at the federal and state levels, or to reform existing legislation, making mandatory the enforcement of protection orders and other precautionary measures to protect women from imminent acts of violence, and to create effective implementation mechanisms. These measures should be accompanied by adequate resources destined to foster their implementation; regulations to ensure their enforcement; training programs for the law enforcement and justice system officials who will participate in their execution; and the design of model protocols and directives that can be followed by police departments throughout the country.

5. Adopt multifaceted legislation at the federal and state levels, or reform existing legislation, including protection measures for children in the context of domestic violence. Such measures should be accompanied by adequate resources destined to foster their implementation; regulations to ensure their enforcement; training programs for the law enforcement and justice system officials who will participate in their execution; and the design of model protocols and directives that can be followed by police departments throughout the country.

6. Continue adopting public policies and institutional programs aimed at restructuring the stereotypes of domestic violence victims, and to promote the eradication of discriminatory socio-cultural patterns that impede women and children's full protection from domestic violence acts, including programs to train public officials in all branches of the administration of justice and police, and comprehensive prevention programs.



National
Congress of
American
Indians



National Indigenous
Women's Resource Center



INDIAN LAW
RESOURCE CENTER
JUSTICE FOR INDIGENOUS PEOPLES



FOR IMMEDIATE RELEASE
August 18, 2011

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International Commission Decision Brings New Hope to Native Women Facing Domestic Violence in the U.S.

WASHINGTON, D.C. – An international human rights body has done something that federal courts, including the United States Supreme Court, failed to do – bring justice to a domestic violence survivor.

“This decision is important for Native women who face the highest rates of sexual and physical assault of any group in the United States,” said Jana Walker, Indian Law Resource Center attorney. “Although this case did not originate in Indian Country, it has major implications for an ethnic group who rarely sees their abusers brought to justice.”

On August 17, 2011, the Inter-American Commission on Human Rights issued a landmark decision in *Jessica Lenahan (Gonzales) v. United States*. The decision is the first women's human rights case involving domestic violence brought before an international body against the United States. The Commission determined that the United States violated its obligations under international human rights laws by failing to use due diligence and reasonable measures to protect Ms. Lenahan and her daughters from violence by her estranged husband. The case was based on a tragic incident in 1999, involving the deliberate failure of the Castle Rock, Colorado police to enforce a domestic violence restraining order. Ms. Lenahan had repeatedly called the police for help after her estranged husband kidnapped her three children in violation of the order. Ten hours after Ms. Lenahan's first call, the husband drove to the police station, where he and the three children were killed in an exchange of gunfire. Ms. Lenahan sought justice in the federal courts, including the United States Supreme Court, for violation of her rights by the police.

After the United States Supreme Court held that women do not have a constitutional right to have civil protection orders enforced by the police, *Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748 (2005), Ms. Lenahan filed a petition with the Inter-American Commission on Human Rights alleging that the United States' failure to act with due diligence to prevent violence against women violated its obligations under international human rights law.

In 2008, the Indian Law Resource Center and Sacred Circle National Resource Center to End Violence Against Native Women filed a friend-of-the-court brief with the Commission in support of Ms. Lenahan, on behalf of numerous non-profit organizations and tribal governments working to end violence against Native women. In its decision, the Commission took notice of this brief and acknowledged that domestic violence has a disproportionate impact on Native women and other low income minority women.

"We want our voices to be heard around this case, because the United States Supreme Court decision had vast implications for Native women and the enforcement of tribal protection orders by state law enforcement officials," said Terri Henry, Co-chair of the National Congress of American Indians Task Force on Violence Against Women and Principal Director of Clan Star, Inc. "Violence against Native women in the United States has reached epidemic proportions. One out of three Native women will be raped in her lifetime, and three out of five will be physically assaulted."

Because the United States has greatly limited tribal criminal jurisdiction and sentencing authority, often the only recourse that Native women have against their abusers is a civil protection order.

"By allowing state law enforcement to choose not to enforce domestic violence protection orders, the United States Supreme Court decision in the *Gonzales* case greatly undermines the security of Native women, because no one else has the authority to enforce these orders outside of Indian country," said Lucy Simpson, Executive Director, National Indigenous Women's Resource Center. "This decision gives Native nations and our communities an instrument to change and improve the lives of Native women."

The Inter-American Commission on Human Rights is an autonomous organ of the Organization of the American States, created by countries to protect human rights in the Americas. The Commission is charged with investigating and determining whether international human rights treaties, declarations, and other instruments have been violated by its 35 member-states, including the United States. If such violations are found, the Commission can make specific recommendations to the appropriate member-state.

In relation to the *Gonzales* case, the Commission handed down several recommendations which encourages further investigation into the death of Ms. Lenahan's daughters; a review of systemic failures that took place in regards to the protection order; full reparations to Jessica Lenahan; legislation reform to enforce protection orders and to better protect children in the context of domestic violence; and policies and programs aimed at restructuring the stereotypes of domestic violence victims.

“The recommendations to the United States sends a strong message that immediate action is needed to fix systemic failures in the way protection orders are enforced in the U.S. and to reform federal law to protect all women, including Native women, from violence,” said Juana Majel Dixon, National Congress of American Indians, 1st Vice President, and Co-Chair of its Task Force on Violence Against Women. Restoration of tribal criminal jurisdiction, effective enforcement of tribal protection orders, and meaningful access to justice will be absolutely critical in protecting Native women from domestic and other violence within Indian country and Alaska Native villages. “Such reforms reflect a broken justice system based in a history of colonization that is now recognized as failing to protect Native women.”

For a copy of the Inter-American Commission on Human Rights decision and the friend-of-the-court brief by the Indian Law Resource Center and Sacred Circle National Resource Center to End Violence Against Native Women, visit www.indianlaw.org.

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Partner Organizations

About the Clan Star, Inc.

Contact: Terri Henry
(828) 497-5507

Clan Star, Inc. is a not-for-profit organization incorporated under the Eastern Band of Cherokee Indians in 2001 (www.clanstar.org), devoted to improving justice to strengthen the sovereignty of Indigenous women through legal, legislative, and policy initiatives, and, education and awareness. Clan Star provides technical assistance, training, and consultation throughout the United States to Indian tribes and tribal organizations in the development of public policy strategies addressing violence against women.

About the National Congress of American Indians

Contact: Katy Jackman, Attorney
(202) 466-7767, email: Katy_Jackman@NCAI.org

The National Congress of American Indians (NCAI) is the oldest and largest national organization of American Indian and Alaska Native tribal governments. As the collective voice of tribal governments in the United States, NCAI is dedicated to ending 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 Indian women. The NCAI Task Force represents a national alliance of Indian nations and tribal organizations dedicated to the mission of enhancing the safety of American Indian and Alaska Native women.

About the Indian Law Resource Center

The Indian Law Resource Center is a non-profit law and advocacy organization established and directed by American Indians. The Center is based in Helena, Montana and also has an office in Washington, DC. We provide legal assistance to Indian and Alaska Native nations who are working to protect their lands, resources, human rights, environment, and cultural heritage. Our principal goal is the preservation and well-being of Indian and other Native nations and tribes. For more information, visit www.indianlaw.org.

About the National Indigenous Women's Resource Center

Contact: Lucy Simpson, Executive Director
Email: lsimpson@niwrc.org

The National Indigenous Women's Resource Center is a nonprofit 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. For more information, visit www.niwrc.org.

Thematic Hearing on Violence Against Native Women



Hearing Participants Jacqueline Agtuca, Terri Henry, Lisa Brunner, Dorma Sahneyah, and Jana Walker.

Native Women and Indian Organizations Request Thematic Hearing and Inform Commission about Epidemic Levels of Violence Against American Indian and Alaska Native Women in the United States (2011)

On October 25, 2011, the Inter-American Commission on Human Rights held a thematic hearing in Washington, D.C. on “Violence Against Native Women in the United States.” The purpose of the hearing was to inform the Commission about the extreme rates of violence against Native women and the role of United States law in creating and sustaining an epidemic of violence in Indian country.

The request for the thematic hearing was filed by the Indian Law Resource Center, on behalf of itself, the National Congress of American Indians Task Force on Violence Against Native Women, Clan Star, Inc., and the National Indigenous Women’s Resource Center. This was the second time a request for a hearing on violence against Native women had been filed. Participants in the hearing included:

- Terri Henry, Co-Chair, National Congress of American Indians Task Force on Violence Against Native Women; Tribal Council Representative, Eastern Band of Cherokee Indians; and Principal Director, Clan Star, Inc.
- Lisa Brunner, Executive Director, Sacred Spirits Nation Coalition.
- Dorma Sahneyah, Vice Chairperson, National Indigenous Women’s Resource Center and Executive Director, Hopi Tewa Women’s Coalition to End Abuse.
- Jana L. Walker, Senior Attorney, Indian Law Resource Center.
- Jacqueline Agtuca, Director of Public Policy, Clan Star, Inc.

Representatives of the United States also appeared and testified at the hearing, including representatives from the Department of Justice and the Interior Department.

The petitioners for the hearing asserted that the U.S. government's failure to respond to the epidemic of violence against Native women is a violation of its obligations under international human rights law. The petitioners used the hearing to inform the Commission, and to engage it in exploring how international human rights law can help end the epidemic of violence against Native women. Because the Commission can conduct site studies, prepare reports, and issue recommendations, a thematic hearing presents an additional avenue to pressure the United States to take action to end violence against Native women.



Jodi Gillette and other representatives from the U.S. government testified before the Commission. Juan Manuel Herrera - OAS/OEA Photo



INDIAN LAW
 RESOURCE CENTER
 JUSTICE FOR INDIGENOUS PEOPLES

August 18, 2011

By Electronic Mail

Dr. Santiago A. Cantón
 Executive Secretary
 Inter-American Commission on Human Rights
 1889 F Street, N.W.
 Washington, D.C., 20006

Re: Request for a Thematic Hearing on Violence against Native Women in the United States

Dear Secretary Cantón:

The Indian Law Resource Center, on behalf of itself, the National Congress of American Indians Task Force on Violence Against Native Women, Clan Star, Inc., and the National Indigenous Women's Resource Center, respectfully requests a thematic hearing on the epidemic of violence against American Indian and Alaskan Native women (Native women) in the United States during the 143rd General Session of the Inter-American Commission on Human Rights. This is our second request for the Commission to hold a thematic hearing on this extremely urgent issue.

I. Purpose

In accordance with Article 66 of the Commission's Rules of Procedure, the purpose of this thematic hearing is to inform the Commission about the epidemic of sexual and domestic violence against Native women in the United States and their lack of meaningful access to justice. According to the United States Department of Justice, the incidence of sexual violence against Native women is 2.5 times greater than any other racial group in the United States and, within some Native communities, as much as 20 times greater. Nationally, 1 in 3 Native women will be raped in her lifetime, and 6 in 10 will be victims of domestic violence. A recent National Institute of Justice study found that, in some communities, Native women are murdered at a rate 10 times the national average. The actual incidence of violence against Native women is most likely even higher due to improper and under-reporting. These disproportionately high rates of violence against Native women are directly linked to a discriminatory system of federal laws and United States court decisions governing Indian country and to the United States' persistent failure to respond to the violence against Native women in Indian country and on Native lands.

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II. Summary

There are 565 Native nations, also known as federally recognized Indian tribal governments, that are officially acknowledged by the United States. These Native nations possess broad sovereign powers over their members and territories, including rights of self-government, and have government-to-government relationships with the United States. Despite often having limited financial and technical resources, many Native nations nevertheless have enacted tribal specific laws, maintain court systems, operate tribal police departments, and provide other services to keep their citizens safe. Because many Native nations are located in remote areas, far away from state or federal law enforcement centers, Native nation governments and their tribal police frequently are the only protection available to Native women in their communities. Nonetheless, there are severe restrictions placed on Native nations by the federal government that significantly limit their ability to adequately protect these women.

At the root of the epidemic of violence against Native women are these restrictions on the inherent criminal jurisdiction of Native nations over their territories. A complex system of federal laws and decisions of the United States Supreme Court have created a jurisdictional maze, involving federal, Native nation, and state governments, and requiring a case-by-case analysis of the location of each crime, race of the victim and the perpetrator (which is not necessarily obvious), and the type of crime. In no other jurisdiction within the United States does a government lack the legal authority to prosecute violent crimes illegal under its own laws. Moreover, the complexity of this jurisdictional arrangement contributes to the violation of Native women's human rights by treating Native women differently from all other women and causing confusion over who has authority to respond to, investigate, and prosecute violence against Native women. In short, federal limitations placed on Native nations create an unworkable race-based system for administering justice within Native communities. These federal limitations allow sexual abusers to go unpunished and give Native women little or no legal recourse to protect themselves. Because of this, Native women are very vulnerable to sexual predators and domestic abusers; Native women and entire communities suffer from unceasing attacks.

Restrictions on the criminal authority of Native nations also deny Native women who are victims of sexual and domestic violence on Native lands meaningful access to justice. It is believed that 88% of the violence against Native women is committed by non-Natives, over which tribal governments have no authority to prosecute. Many of these non-Natives are very aware of this jurisdictional void and know that they may commit violence against Native women without any fear of punishment. The erosion of tribal criminal authority over all persons committing crimes within their jurisdictions, coupled with a shameful record of investigation, prosecution, and punishment of these crimes by federal and state governments, has directly resulted in the disproportionate rates of violence against Native women. In 2010, the United States Government Accountability Office released a report on criminal matters in Indian country, finding that, between 2005 and 2009, U.S. Attorney's Offices (USAO) declined to prosecute 52%

of all violent criminal cases occurring on Indian lands.¹ Of the types of cases being referred to the USAO, 55% of all those cases were assault and sexual abuse. USAO declined to prosecute 46% of the physical assault cases and 67% of the sexual abuse and related cases.²

These enforcement inequalities permit perpetrators to act with impunity on Native nation lands, and deny Native women the right to equal protection under both the United States and international law. The rights to personal security and freedom from fear are internationally recognized human rights. If the United States ignores the ongoing systemic problems relating to these crimes, it does so in violation of various international principles and of the human rights of Native women under international law.

Even in cases where tribes have jurisdiction, *i.e.*, the offender is Native and the victim is Native, federal laws have severely limited the authority of Native nations to impose just criminal punishment. Previously, Native nations were only allowed to sentence offenders to a maximum of one year, regardless of the severity of the crime. With the passage of the Tribal Law and Order Act in 2010, the United States Congress increased the maximum tribal court sentence to three years per offense and a fine of up to \$15,000. However, this enhanced sentencing authority can only be exercised when a Native nation provides certain protections to the accused such as a defense counsel for indigent defendants, publicly available laws, and legal trained and licensed judges. As some of the most impoverished areas in the United States, the reality is that most Native nations do not have the resources to meet these requirements and will remain limited to a one year criminal sentencing cap. Additionally, even with expanded sentencing power, Native nations do not have the same level of sentencing authority as possessed by non-Native governments for crimes against women committed off Native nation lands. For example, the typical sentence in state court for rape is at least 4 years, but sentences of 25 years or more are common for violent sexual assaults. The fact of the matter is that, when a Native commits violence against a Native woman, the Native nation can prosecute the offender, but the woman victim is denied a just and effective remedy.

Recent decisions by the United States courts regarding protection orders have further jeopardized the safety of Native women. In *Town of Castle Rock, Colo. v. Gonzales*, the United States Supreme Court dismissed Ms. Gonzales' case arising from the police department's failure to enforce a protection order, which resulted in the death of her children by her estranged husband. The Court held that the United States Constitution does not require state law enforcement to investigate or enforce alleged violations of domestic violence protection orders.³ This means that state law enforcement agencies are free to choose whether or not to enforce these orders. Tribal courts also may issue civil protections orders against non-Native abusers, and often such

¹ U.S. Gen. Accounting Office, GAO-11-167R Declinations of Indian Country Matters 3, 9 (2010).

² *Id.*

³ 545 U.S. 748 (2005).

orders are a Native woman's only recourse.⁴ *Gonzales* significantly hampers the ability of Native nations to protect Native women outside the boundaries of Native communities.

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*. The report concluded that women in the Americas seeking justice around violence faced multiple barriers, including: (1) inefficacy and 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 and Afro-descendant women. Native women who are victims of violence and seeking justice in the United States face these same barriers. Because United States laws limit the criminal jurisdiction and sentencing power of Native nations, and because federal and state governments are not equitably prosecuting violent crimes against Native women, an unworkable race-based justice system is created that leaves perpetrators either unpunished or inadequately punished.

Access to Justice for Women Victims of Violence in the Americas found similar problems with other countries in the Americas:

The pattern in a number of countries is one of systematic impunity in the judicial prosecution of and proceedings on cases of violence against women. This is because the vast majority of these cases are never effectively investigated and punished or proper redress provided. The impunity that attends these human rights violations perpetrates a social acceptance of gender-based violence, which in turn feeds women's sense of insecurity and their abiding mistrust of the administration of justice system.⁵

Inadequate response by the United States to hold violent offenders legally accountable for these crimes violates the human rights of Native women. The United States, like other countries in the Americas, is failing to protect Native women from violence and this failure denies Native women their right to *feel* and to *be* safe in the areas where they should feel and be most secure—in their communities and homes.

This Fall, it is expected that the United States will consider major changes in its laws and policies that will confront these injustices and better protect Native women. To help Native women be heard strongly on this issue throughout the Americas and the international community, we urge you to hold a thematic hearing on violence against

⁴ *But see, Martinez v. Martinez*, Case No. C08-5503 FDB, Order Denying Defendants' Motions to Dismiss and Granting Plaintiff Declaratory and Injunctive Relief (W.D. Wash. Dec. 16, 2008) (a federal district court held that a tribal court had no authority to issue a civil protection order in favor of a Native woman, who was not a member of the tribe, against her non-Native husband, leaving Ms. Martinez with no way to receive protection from her abuser).

⁵ Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Violence in the Americas*, 49, IACHR Doc. 68 OEA/Ser.L/V/II (Jan. 20, 2007).

Native women and their lack of access to justice in the United States. This thematic hearing will inform the Commission about violence against Native women in the United States, raise the visibility of violence against Native women, and the information provided will dovetail with the Commission's study of violence against women in the Americas. The thematic hearing also will serve to engage the Commission in exploring further how international human rights law can help address the epidemic of violence against Native women in the United States.

III. Request

Pursuant to Article 66 of the Commission's Rules of Procedure, we request that the Commission grant us sufficient time to present oral and written information that will fully inform the Commission about the epidemic of violence against Native women in the United States and their lack of meaningful access to justice. The following individuals will speak on behalf of the National Congress of American Indians Task Force on Violence Against Native Women, Clan Star, Inc., the National Indigenous Women's Resource Center, and the Indian Law Resource Center:

- (1) Terri Henry, Co-Chair, National Congress of American Indians Task Force on Violence Against Native Women, and Principal Director, Clan Star, Inc.;
- (2) Lisa Brunner, Executive Director, Sacred Spirits First Nation Coalition;
- (3) Lucy Rain Simpson, Executive Director, National Indigenous Women's Resource Center; and
- (4) Jana L. Walker, Attorney, Indian Law Resource Center.

We also request the attendance and participation of the United States at the hearing.

We further respectfully request that this hearing be held before October 27, 2011. The National Congress of American Indians is holding its annual conference in Portland, Oregon, and its Task Force on Violence Against Native Women, the Indian Law Resource Center, and many of the Native women's advocates will be unavailable October 27 through November 4, 2011.

We thank the Commission in advance, and we greatly appreciate its consideration of this extremely urgent issue affecting Native women and their communities in the United States.

Sincerely,
Indian Law Resource Center

Jana L. Walker, Attorney - jwalker@indianlaw.org
Philomena Kebec, Attorney - pkebec@indianlaw.org
Armstrong A. Wiggins, Director, Washington, D.C. Office - awiggins@indianlaw.org



INTER - AMERICAN COMMISSION ON HUMAN RIGHTS
 COMISION INTERAMERICANA DE DERECHOS HUMANOS
 COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS
 COMMISSION INTERAMÉRICAINÉ DES DROITS DE L'HOMME



ORGANIZATION OF AMERICAN STATES
 WASHINGTON, D.C. 20006 U.S.A.

September 22, 2011

RE: Violence against Native Women in the United States
Hearing – 143th ordinary period of sessions

Dear Petitioners:

I am pleased to address you concerning your note of August 18, 2011, in which you express your interest in attending a hearing before the Inter-American Commission on Human Rights during its 143th ordinary period of sessions to address matters relating to the general situation of the Violence against Native Women in the United States.

In this respect, I am pleased to inform you that the Commission has decided to convene a hearing on October 25, 2011, from 10:15 a.m. to 11:15 a.m., in the Ruben Dario (8th floor) of the GSB Building of the Organization of American States, situated at the following address:

1889 F St. N.W.
 Washington, D.C. 20006

The persons attending the hearing must be properly accredited. For this purpose, I hereby request that you submit, as soon as possible, a list of persons who you wish to include as members of your delegation, together with confirmation of your attendance on the date and at the time indicated above. If any of the aforementioned persons require a written communication from this Executive Secretariat in order to request travel documents to the United States, you are hereby requested to inform us accordingly within the next 48 hours and provide the following information for each interested person:

Indian Law Resource Center
 Jana L. Walker
jwalker@indianlaw.org
 Philomena Kebec
pkebec@indianlaw.org
 Armstrong A. Wiggins
awiggins@indianlaw.org

- Full name
- Date of birth
- Nationality
- Passport number
- Country and city in which visa will be requested
- Organization
- Contact information (including fax number)

Also in the interests of facilitating the documentary procedures applicable to all interested persons, and in consideration of the terms of Article XV, section 1(a) of the Headquarters Agreement between the Organization of American States and the Government of the United States of America signed on May 14, 1992, we wish to bring to your attention that the Commission has prepared for submission to the Permanent Mission of each country before the OAS the list of persons who will be requesting a visa for entry to the United States with the purpose of attending the Commission's hearings. Therefore, if there are any participants who you do not wish to be included on this list, we hereby request that you inform us within the time limit stated in the previous paragraph.

I would like to ask that you submit to the Commission, within 20 days of transmission of this communication, a written document with a summary of the main points of your presentation, as well as any documents that you consider necessary for the hearing.

I have also enclosed as an attachment a copy of a document entitled "Rules of Procedure for Hearings of a General Nature," and request that you follow the guidelines provided therein. In that sense, I respectfully request that you arrive at the specified location 15 minutes prior to the hearing time.

Sincerely,



Elizabeth Abi-Mershed
Assistant Executive Secretary

Enclosure

“Violence Against Native Women in the United States”

A Thematic Hearing Before the Inter-American Commission on Human Rights 143rd Ordinary Period of Sessions

October 25, 2011

Summary of Presentation

- I. General Introduction** – *Jana L. Walker, Senior Attorney, Indian Law Resource Center*
- II. Institutionalized Barriers to Access to Justice for Native Women and Failure to Respond to Violence Against Native Women** – *Dorma Sahneyah, Vice Chairperson, National Indigenous Women’s Resource Center; and Executive Director, Hopi Tewa Women’s Coalition to End Abuse*
 - a. The Jurisdictional Maze and Diminishment of Tribal Authority
 - b. Prosecution Rates, Persistent Failure to Respond, and Problems of Impunity
- III. The Devastating Impact of Public Law 280 on the Safety of Native Women and the Development of Tribal Justice Systems** – *Lisa Brunner, Executive Director, Sacred Spirits First Nation Coalition*
- IV. Call for United States Law Reform to Protect Native Women and Recommendations** – *Terri Henry, Co-Chair, National Congress of American Indians Task Force on Violence Against Native Women; Tribal Council Representative, Eastern Band of Cherokee Indians; and Principal Director, Clan Star, Inc.*
- V. Commission Questions**

Testimony of Jana L. Walker

Senior Attorney, Indian Law Resource Center



Introductory Remarks

Good Morning esteemed Commissioners and distinguished representatives of the United States government.

My name is Jana Walker, and I am a senior attorney with the Indian Law Resource Center, a legal organization that works to protect the human rights of American Indian and Alaska Native nations and indigenous peoples throughout the Americas.

We would like to express our appreciation for the convening of this hearing on the critical issue of violence against Native women in the United States. We dedicate this hearing to our murdered and missing Native sisters throughout the Americas and the lost generations.

Native women in the United States are being subjected to domestic violence and assault at staggering rates -- rates 2.5 times higher than any other group in the United States suffers. 1 in 3 Native women will be raped; and 3 out of 5 will be physically assaulted. Because of under-reporting, we believe the numbers are much, much higher. And, in the vast majority of these cases, the assailants are non-Indian. Even more horrific, on some Indian reservations, Native women are being murdered at a rate 10 times the national average.

There are 565 federally recognized tribal governments, including more than 200 Alaska Native villages. These Native nations retain sovereign authority over their lands and peoples. However, current United States law now imposes significant legal restrictions on the authority of Native nations—restrictions that have stripped tribes of their criminal jurisdiction over non-Indians. Systemic legal barriers and chronic lack of enforcement

permits rapists and batterers to commit crimes against Native women with impunity. Additionally, the fact of the matter is that very few of these Native women ever see their assailants prosecuted, and few have any access to meaningful justice.

The right to be safe and live free from violence is a fundamental human right that many in the United States take for granted—but not Native women. The United States’ failure to protect Native women violates their rights under the American Declaration of the Rights and Duties of Man. Article I of the Declaration recognizes the right of every human being to life, liberty, and security of his person, and, Article II makes clear that these rights apply without distinction to sex. Violence against Native women is a human rights crisis that Indian country has been aware of for some time. Again, we very much appreciate the Commission’s attention and welcome its interest in protecting the human rights of Native women in the United States.

This morning you will hear from Dorma Sahneyah, Vice-Chair of the National Indigenous Women’s Resource Center, and Executive Director of the Hopi Tewa Women’s Coalition to End Abuse. Ms. Sahneyah is also a former chief prosecutor for the Hopi Tribe. She will describe institutionalized barriers that deny Native women access to justice and the United States’ failure to respond to this violence.

Next, Lisa Brunner, Executive Director of Sacred Spirits First Nation Coalition, will speak on the devastating impact of a United States law, Public Law 280, on the safety of Native women and its impact on tribal justice systems.

Finally, you will hear from Terri Henry, Co-Chair of the National Congress of American Indians Task Force on Violence Against Native Women. She is also a Tribal Council Representative for the Eastern Band of Cherokee Indians. Ms. Henry will call for United States law reform to protect Native women.

Testimony of Dorma Sahneyah

Vice Chairperson, National Indigenous Women's Resource Center; and
Executive Director, Hopi Tewa Women's Coalition to End Abuse



Institutionalized Barriers to Accessing Justice for Native Women and Failure to Respond to Violence Against Native Women

In everyday life, security and justice for a woman depends largely on whether the local government has the authority to police, prosecute, and punish crimes, and to pass laws that criminalize violence perpetrated against women. In most non-Indian communities in the United States, county or city governments have, by and large, unquestionable authority to investigate and prosecute both misdemeanor and felony crimes committed against women. U.S. law has left tribal governments with inadequate legal authority to protect its citizens, allowing perpetrators to prey on Native women with impunity.

Restrictions placed on the authority of tribal governments have created major systemic barriers that deny Indian women access to justice. Current U.S. law promotes a system of major legal barriers that obstruct the ability of Indian nations to protect the safety of Native women living within their territories. Some examples of such barriers include stripping tribal criminal jurisdiction and limiting sentencing authority of tribal courts.

As a result of these legal barriers, criminal jurisdiction on Indian lands is currently divided among three governments - federal, tribal, and state. A determination of which government has jurisdiction often requires a complicated, confusing, and time consuming analysis of several factors – location, type, and severity of the crime, Indian status of the perpetrator and Indian status of the victim.

Assumption of Federal Jurisdiction Over Felonies. The United States began asserting criminal jurisdiction on Indian lands in the 1800s. Congress has passed a series of statutes giving the federal government criminal jurisdiction over certain crimes. The Major Crimes

Act authorizes federal jurisdiction over 15 crimes committed by Indians in Indian country, regardless of whether the victims are Indians or non-Indians.¹ It can be said that the Major Crimes Act reflects a major intrusion by the federal government into the internal affairs of tribes, and that the federal government has not adequately fulfilled its obligations under the Act to investigate, prosecute, and punish felony-level crimes committed in Indian Country.

Removal of Criminal Jurisdiction Over Non-Indians. The United States Supreme Court, in *Oliphant v. Suquamish Tribe*, stripped tribal governments of inherent authority to criminally prosecute non-Indians.² Thus, for the last thirty years, Indian nations have been denied the authority to prosecute and punish non-Indians who commit physical or sexual violence against Indian woman on Indian lands in spite of the fact that, nationally, 88% of all violent crimes against Indian women are committed by non-Indians.³

The major problem with the *Oliphant* decision is that, while placing even more limitations on tribes, it failed to place corresponding responsibility on the United States government or state governments to prosecute non-Indians who commit misdemeanor offenses on Indian lands. And so, although the United States or state government - where the United States has delegated this authority to the state, has the authority to prosecute non-Indian offenders, these governments regularly fail to do so. According to a recent study, federal prosecutors failed to prosecute 62% of all criminal cases, 75% of all rape and sexual assault cases, and 72% of child sexual assault cases occurring in Native communities.

Limitation on Sentencing Authority of Tribal Courts. United States law limits tribal sentencing authority over Indian perpetrators on their own lands. Under the Major Crimes Act, Indian nations have concurrent authority to prosecute crimes committed by Indians.⁴ However, the Indian Civil Rights Act (ICRA) limits the sentencing authority of tribal courts to one year in jail and/or a \$5,000 fine, even for crimes as serious as rape. Recently, the Tribal Law and Order Act amended the Indian Civil Rights Act to allow tribes to sentence Indian offenders up to three years in prison and to pay a fine of up to \$15,000, or both. However, this enhanced sentencing authority can only be exercised when certain protections have been afforded to the accused. While this is a tremendous step forward for some Indian nations, the reality is that many tribes do not have the resources to meet the TLOA requirements. It may take a significant amount of time before any tribes are able to take

¹ 18 U.S.C.A. § 1153.

² *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978).

³ Patricia Tjaden & Nancy Thoennes, U.S. Dep't of Justice, *Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey 22* (2000).

advantage of this enhanced sentencing authority, leaving, in the meanwhile, many Indian women, without an adequate remedy.

The inadequate response of the United States to the epidemic of violence against Native women adversely impacts entire Native nations, which already suffer from the worst socio-economic status of any population in the United States. United States laws have created a law enforcement void that appears to condone violence against Native women and permits perpetrators to act with impunity on Native lands. The United States has not used all the legal means at its disposal to combat the human rights violations occurring against Native women. Consequently, Native women and Native nations are left essentially defenseless to countless human rights violations.

⁴ 18 U.S.C.A. §§ 1152, 1153; *see also* United States v. Kagama, 118 U.S. 375 (1886) (upholding the constitutionality of the Major Crimes Act).

Testimony of Lisa Brunner

Executive Director, Sacred Spirits First Nation Coalition



The Devastating Impact of Public Law 280 on the Safety of Native Women and the Development of Tribal Justice Systems

Under the U.S. Constitution, governmental relations with Indian nations are the function of the federal government. In 1953, in violation of this responsibility and without consultation with Indian nations, the United States Congress passed Public Law 280, which essentially delegated criminal jurisdiction over Natives on Indian lands to some states. While this delegation of authority did not alter the authority of Indian nations in those states, it has had a devastating impact on the development of tribal justice systems and the safety of Native women.

This transfer of criminal jurisdiction was done without any consent of Tribal Nations during an era in which the federal government was trying to extinguish tribes altogether known as the Termination Era.

P.L. 280, as originally passed only applied to six “mandatory states”: Minnesota, California, Wisconsin, Alaska, Nebraska and Oregon. Several other states later opted in and are known as “optional states.” And additionally, I also want to note that there are a handful of states that have a similar jurisdictional scheme to that in PL 280 states, as the result of state laws and land claims settlements. So, of the 565 federally recognized Tribes, the majority are located within states governed by Public Law 280 or states similarly situated.

Even though P.L. 280 involved solely the transfer of major crimes and criminal jurisdiction to the relevant state governments—and technically tribes within those states still maintain criminal and civil/regulatory jurisdiction—tribes’ hands in those states were essentially tied because, since 1953, they have not had access to the same resources and funding to establish, maintain, and enhance tribal justice systems as tribes in non-PL 280 states. Moreover, state

governments often do not take their responsibility to investigate and prosecute crime in Indian Country seriously, creating a legal vacuum on the reservation, where perpetrators can commit crimes with impunity.

Many P.L. 280 states are situated along International borders, which has inevitably created a gateway to human sex trafficking of Native women on and off Indian Reservations. The trafficking, or transporting of Native women across borders to engage in commercial sexual activities, is an often overlooked part of the epidemic of violence against Native women. Exact statistics on the prevalence Native women in the sex trade are lacking because law enforcement generally does not keep appropriate records or track racial/ethnic statistics. Nonetheless, it is clear that Indigenous populations on both sides of the border are among those most vulnerable to trafficking.

I also especially want to highlight Alaska—Alaska has one of the highest per capita rates of physical and sexual abuse in the Nation. Violence against women and children is being perpetuated in communities where there exist no form of law enforcement and no local infrastructure to address these incidences.

The following are some examples of the barriers that face Alaska Native women in their efforts to live free of violence:

- Alaska is home to 229 tribes. Of these, 165 are off road communities, meaning that it is accessible by air only most of the year. 90 of these 165 off road communities also do not have any form of law enforcement.
- When, and if a community reports an act of violence against a woman or child, it can take Alaska state troopers from 1 to 10 days to respond. In some cases, it may take longer depending upon weather conditions.

As it stands, Native women and girls in P.L. 280 states are not able to feel safe because of the seemingly insurmountable legal barriers. Additionally, the failure of counties to respond to, or address calls for service, creates a climate where adult rapists of 12-13 year old girls voluntarily seek to establish paternity. They do so with the confidence that they can rape with impunity.

The following are some examples of the barriers that Native women in the lower 48 face.

- Tribal law enforcement is not linked into the 911 systems.
- Counties have used law enforcement compact agreements to threaten tribal law enforcement criminal jurisdiction.
- Upon tribes using Secure Net to access 911 calls dispatched, the county proceeded to dispatch 911 calls via “push to talk” cell phones, creating public and officer safety issues.

- When calls are made to 911 for violations of Order for Protections or missing women and children, the response is often “we have better things to do with our time.”

Further, I want to raise the issue of missing and murdered Native women. Violence against Native women often occurs over the spectrum of a women’s life. Many times it begins during girlhood and continues until the elder years of life. In this context I want to share that today in the United States this violence often takes the ultimate toll of ending a woman’s life. Many times murder victims are found and returned to their families and communities. Other times a Native woman goes missing and never returns to her loved ones. The issue of missing and murdered Native women demands immediate attention and creation of a national protocol and system for monitoring this horrific result of the epidemic of violence.

We asked in a youth group what would you do if you were raped and a 14-year-old girl said, “my mom and I already talk about this, that *when* I’m raped we will not report it because nothing is ever done and we don’t want to cause problems for our family.” When the issue in Native communities becomes a matter of preparing your daughter to be raped, the U.S. has failed in its federal trust responsibility to tribes. The U.S. has domestic and international legal obligations that they have ignored for far too long. We urge the Commission to hold the U.S. accountable for creating and maintaining a national human rights crisis where it is not a matter of if a Native woman is raped, but when.

Testimony of Terri Henry

Co-Chair, National Congress of American Indians Task Force on Violence Against Native Women;
Tribal Council Representative, Eastern Band of Cherokee Indians; and
Principal Director, Clan Star, Inc.



Call for United States Law Reform to Protect Native Women and Recommendations

Good Morning Honorable Commissioners and Representatives of the United States.

Since taking office President Obama and Vice President Biden have led the United States in increasing governmental efforts toward addressing the epidemic of violence against Native women. These efforts demonstrate a commitment to increasing the safety of Native women by addressing fundamental legal barriers embedded within the laws, policies and institutions of the United States.

While these changes are commendable, much remains to be done to end the human rights crisis that threatens the safety of Native women on a daily basis. All too often, this crisis results in the loss of life or in many cases Native women going missing. Legal reforms are urgently needed to bring the United States into full compliance with international human rights law in the context of violence committed against American Indian women.

In the Violence Against Women Act of 2005, Congress recognized that *“the unique legal relationship of the United States to Indian tribes creates a Federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women.”* In light of this governmental responsibility to Indian tribes we present to the Commission the following recommendations to consider in reviewing violence against Native women in the United States. We hope that the Commission will support and make the following eight (8) recommendations to the United States:

1. Enact legislation that contains the Department of Justice's legislative proposal to restore the criminal authority of Indian nations to prosecute non-Native perpetrators of dating violence and domestic violence in Indian country. This lack of recognition of tribal authority is the fundamental legal barrier that denies Native women full and meaningful access to justice;
2. Fully fund and implement the Tribal Law and Order Act, particularly with respect to bolstering tribal capacity to exercise enhanced sentencing authority; ensure that federal prosecutors share information on declinations of Indian country cases; and provide training for and cooperation among tribal, state, and federal agencies;
3. Launch a national initiative in consultation with Indian nations to examine and implement reforms to increase the safety of Native women living within tribal lands under concurrent tribal state jurisdictional authority (Public Law 280 states), including the speedy response to any request by Indian nations for the U.S. Department of Justice to reassume federal criminal jurisdiction;
4. Increase federal technical and financial support to Indian nations to enhance their response to violence against Native women. This is critical to ensure tribes have the capacity to keep women safe, specifically, providing resources for tribes to assume criminal jurisdiction if Congress decides to pass legislation;
5. Create a grant program to provide sufficient federal support to non-profit, non-governmental Native women's organizations to provide effective services, including shelters, transitional housing and rape crisis centers;
6. Incorporate tribal specific provisions in sex trafficking legislation, ensuring that Native women are prioritized in research on sex trafficking; provide tribes with adequate resources to combat the influx of sex trafficking on tribal lands; and train justice officials on how to respond to sex trafficking of Native women;
7. Develop a national protocol and reporting system for handling and monitoring cases of missing Native women; and,
8. Create a forum for dialogue, collaboration, and cooperation among tribal courts, federal courts, and state courts on the issue of violence against Native women and how the jurisdictional scheme under United States law unjustly discriminates against Native women.

Finally, we call your attention to and offer our help and guidance in providing you with additional information on these ongoing human rights violations against Native women in the United States.

Federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women.
In light of this governmental responsibility to Indian tribes we present to the Commission

the following recommendations to consider in reviewing violence against Native women in the United States. We encourage you to conduct site visits to Indian nations throughout the United States to further investigate the epidemic of violence against Native women and its implications for the United States' international human rights obligations. We request that the Commission issue a Special or Country Report on how the United States, in consultation and collaboration with tribes, could better protect the human rights of Native women. We also urge the Commission to include information related to this hearing in its press release on this session and in its Annual Report to the Organization of American States General Assembly.

Thank you in advance for your commitment to the human rights of indigenous peoples, and Native women in particular, in the United States.



“VIOLENCE AGAINST NATIVE WOMEN IN THE UNITED STATES”

**Briefing Paper
for
Thematic Hearing before the
Inter-American Commission on Human Rights
143rd Ordinary Period of Sessions
October 25, 2011**

Submitted By:

**National Congress of American Indians Task Force on Violence Against Women;
Clan Star, Inc.;
National Indigenous Women's Resource Center, Inc.; and
The Indian Law Resource Center**

SUBMITTING ORGANIZATIONS

The National Congress of American Indians (NCAI) is the oldest and largest national organization of American Indian and Alaska Native tribal governments. As the collective voice of tribal governments in the United States, NCAI is dedicated to ending 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 Indian women. The NCAI Task Force represents a national alliance of Indian nations and tribal organizations dedicated to the mission of enhancing the safety of American Indian and Alaska Native women.

Clan Star, Inc. (CSI), a not-for-profit organization incorporated under the Eastern Band of Cherokee Indians in 2001, is devoted to improving justice to strengthen the sovereignty of indigenous women through legal, legislative, and policy initiatives, and, education and awareness. CSI provides technical assistance, training and consultation throughout the United States to Indian tribes and tribal organizations in the development of public policy strategies addressing violence against women. CSI was instrumental in the establishment of the National Congress of American Indians Task Force on Violence Against Women in 2003 and since that time, CSI staff have served as policy advisors to the Task Force. CSI has led national efforts in filing amicus briefs in key cases before the United States Supreme Court bearing on violence against Native women and has helped in the development of public policy leading to the enactment of Title IX, Safety for Indian Women in the Violence Against Women Act of 2005.

The National Indigenous Women's Resource Center, Inc. (NIWRC) was established as a non-profit organization in 2011. Through a grant from the United States Department of Health and Human Services under the Family Violence Prevention and Services Act, the NIWRC provides technical assistance, policy development, training, public education, materials, and resource information for Indian and Alaska Native nations, Native Hawaiians, and Native non-profit organizations addressing safety for Native women. The NIWRC's primary mission is to restore safety for Native women.

Founded in 1978 by American Indians, the Indian Law Resource Center is a 501(c)(3) non-profit legal organization. The Center assists indigenous peoples to combat racism and oppression, realize their human rights, protect their lands and environment, and achieve sustainable economic development and genuine self-government. The Center works throughout the Americas to overcome the devastating 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 providing legal assistance without charge to indigenous peoples fighting to protect their lands and ways of life. One of the Center's overall goals is to promote and protect the human rights of indigenous peoples, especially those human rights recognized in international law. The Center believes it is especially important to encourage the recognition of these human rights at the country level in order to preserve indigenous cultures and lives, and also to protect the environments where indigenous peoples live.

SUMMARY

We submit this Briefing Paper to the Inter-American Commission on Human Rights (Commission) to provide information on violence against Native women in the United States. Native women face staggering rates of domestic violence and sexual assault. Despite this horrific fact, United States law has diminished the authority and capacity of Indian and Alaska Native nations (Indian nations) to safeguard the lives of Native women. Jurisdictional limitations placed by the United States on Indian nations have created a systemic barrier denying Native women meaningful access to justice and preventing them from living free of violence or the threat of violence.

The first section of this Briefing Paper details the epidemic of violence against American Indian and Alaska Native women. The second section explains how United States domestic law contributes to this human rights crisis. The third section discusses the United States' response to violence against Native women. The final section describes how the United States' failure to protect Native women is a violation of its obligations under international human rights law to use due diligence and reasonable measures to prevent violence against Native women. We conclude with recommendations to the Commission regarding improving the United States' commitment to protect the human rights of Native women.

We call the Commission's attention to these grave human rights violations and ask that the Commission conduct site visits to Indian nations throughout the United States to investigate the epidemic of violence against Native women. We also ask that the Commission issue a comprehensive report with recommendations on how the United States, in consultation and collaboration with Indian nations, could reform its domestic law to better protect the human rights of all Native women.

DISCUSSION

I. Violence Against Native Women in the United States is a Human Rights Crisis

Violence against Native women in the United States has reached epidemic proportions. Native women face greater rates of domestic violence and sexual assault than any other group in the United States.¹ The jurisdictional limitations that United States law places on Indian nations have created an unworkable race-based system for administering justice in Native communities. This system denies Native people, particularly Native women, their right to life, security, equal treatment under the law, and access to meaningful and effective judicial remedies.

Violence against Native women greatly exceeds that of any other population in the United States.² Native women are 2.5 times more likely to experience violence than

¹ See, e.g., P.L. No. 109-162 § 901 (2006).

² *Id.*

other women in the United States.³ The statistics of the United States Department of Justice report that 1 in 3 Native women will be raped and 3 in 5 will be physically assaulted in their lifetime.⁴ Native women are also stalked at a rate more than double that of any other population.⁵

Native women experience a per capita rate of interracial violence that greatly exceeds that of the general population. United States Department of Justice statistics reflect a high number of inter-racial crimes, with white or black offenders committing 88% of all violent victimizations of Native women from 1992 to 2001.⁶ Nearly 4 of 5 Native victims of sexual assault described the offender as white.⁷ Three out of 4 Native victims of intimate partner violence identified the offender as a person of a different race.⁸

The epidemic of violence against Native women in the United States jeopardizes their human rights under international law, including but not limited to the American Declaration on the Rights and Duties of Man. The grossly inadequate response of the United States to the epidemic of violence against Native women adversely impacts entire Native and Alaska Native nations, which already suffer from the worst socio-economic status of any population in the United States. United States law has created a law enforcement void that appears to condone violence against Native women and permits perpetrators to act with impunity on Indian lands. Because Native women play crucial roles in Native communities, the well documented epidemic of violence and the fear of violence it creates throughout the life of Native women disrupt the stability of their families, their communities, and entire Native nations.

II. How United States Law Contributes to the Human Rights Crisis

A. Law and Policy Problems Generally

There are 565 federally recognized Indian tribal governments in the United States, including more than 200 Alaska Native villages,⁹ which retain sovereign authority over

³ See Steven W. Perry, U.S. Dep't of Justice, *American Indians and Crime* 8 (2004).

⁴ 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).

⁵ See 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)*.

⁶ 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* 22 (2000).

⁷ See *id.* at 9.

⁸ Lawrence A. Greenfield & Steven K. Smith, U.S. Dep't of Justice, *American Indians and Crime* 8 (1999) (noting that among American Indian victims, "75% of the intimate victimizations and 25% of the family victimizations involved an offender of a different race," a much higher percentage than among victims of all races as a whole).

⁹ See *Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs*, 75 Fed. Reg. 60810 (Oct. 1, 2010), *supplemented by* 75 Fed. Reg. 66124 (Oct. 27, 2010) (adding as of October 1, 2010, the Shinnecock Indian Nation, the 565th federally recognized tribe with the dismissal of objections by the Interior Board of Indian Appeals).

their lands and peoples.¹⁰ These Indian nations are pre-existing sovereigns that possess inherent authority over their people and territory, including the power “necessary to protect tribal self-government [and] to control internal relations.”¹¹ Indian nations also have such additional authority as Congress may expressly delegate.¹² The basis for tribal authority is the inherent need to determine tribal citizenship, to regulate relations among their citizens, and to legislate and tax activities on Indian lands, including certain activities by non-citizens.¹³ Indian nations have broad legislative authority to make decisions impacting the health and safety of the community including tribal civil and criminal justice responses to violence against women and services for victims. Tribal law enforcement officials are often the first responders to violence against women committed within their communities.

The United States, without the agreement of or consultation with Indian nations, imposed legal restrictions upon the inherent jurisdictional authority that Indian nations possess over their respective territories. These restrictions, described in detail below, have created systemic barriers that deny Native women equal treatment and access to justice and prevent them from living free of violence or the threat of violence.

Unlike other governments in the United States, Indian nations cannot investigate and prosecute most violent offenses that occur in their local communities. Significantly, Indian nations are unable to effectively protect Native women from violence within their homelands through adequate policing and effective judicial recourse against violent crimes because they cannot prosecute non-Native offenders.¹⁴ Moreover, even where prosecutions can proceed, Indian nations can only sentence Native offenders to prison terms of up to three years per offense, not to exceed a sentence for a term greater than nine years in any criminal proceeding resulting in imprisonment.¹⁵

¹⁰ *Babbitt Ford, Inc. v. Navajo Indian Tribe*, 710 F.2d 587, 591 (9th Cir. 1983) (quoting *United States v. Wheeler*, 435 U.S. 313, 323 (1978)) (“Indian tribes have long been recognized as sovereign entities, ‘possessing attributes of sovereignty over both their members and their territory.’”). *See also* *Worcester v. Georgia*, 31 U.S. 515 (1832); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831).

¹¹ *Montana v. United States*, 450 U.S. 544, 564 (1981). *See also* Cohen’s *Handbook on Federal Indian Law* §4.01[1][a] (Nell Newton ed. 2005); Vine Deloria, Jr. & David E. Wilkins, *Tribes, Treaties, and Constitutional Tribulations* 26 (1999) (describing the constitutional status of tribal governments, which existed prior to and independent of the United States Constitution).

¹² *Strate v. A-1 Contractors*, 520 U.S. 438 (1997).

¹³ *Plains Commerce Bank v. Long Family Land & Cattle Co., Inc.* 554 U.S. ____ (2008), *available at* <http://supreme.justia.com/us/554/07-411/>.

¹⁴ *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978).

¹⁵ Tribal Law and Order Act of 2010, P.L. No. 111-211 (2010). This enhanced tribal court sentencing authority comes with additional requirements for tribal court criminal proceedings that, as a practical matter, may be fiscally prohibitive for many Indian nations such as requiring that Indian nations: provide defendants with a right to effective assistance of counsel; at the expense of the Indian nation, provide indigent defendants with a defense attorney licensed to practice law by any jurisdiction in the United States; and provide legally trained and licensed judges to preside over such criminal proceedings. *Id.* at Section 234.

These limitations are a key factor creating and perpetuating the disproportionate epidemic of violence against Native women.¹⁶ As a result, Native women cannot rely upon their tribal governments for safety or justice services and are forced to seek recourse from foreign federal or state government agencies. The response of federal and state agencies is generally inadequate given the disproportionately high number of domestic and sexual violence crimes committed against Native women.¹⁷

The major legal barriers obstructing the ability of Indian nations to enhance the safety of women living within their jurisdictional authority include:

- a. The assumption of federal jurisdiction over certain felony crimes under the Major Crimes Act (1885);
- b. The removal of tribal criminal jurisdiction over non-Indians by the U.S. Supreme Court in *Oliphant v. Suquamish Tribe* (1978);
- c. The imposition of a one-year, per offense, sentencing limitation upon tribal courts by the U.S. Congress through passage of the Indian Civil Rights Act (1968);¹⁸
- d. The transfer of criminal jurisdiction from the United States to certain state governments by the U.S. Congress through passage of Public Law 53-280 (1953) and other similar legislation; and
- e. The failure to fulfill treaties signed by the United States with Indian nations as recognized by the court in *Elk v. United States* (2009).

Due to these legal restrictions imposed by the United States federal government on Indian nations, criminal jurisdiction on Indian lands is divided among federal, tribal, and state governments. Which government has jurisdiction depends on the location of the crime, the type and severity of the crime, the Indian status of the perpetrator, and the Indian status of the victim.

The complexity of this jurisdictional arrangement contributes to violations of women's human rights because it treats Native women different from all other women and causes confusion over who has the authority to respond to, investigate, and prosecute violence against Native women.¹⁹ In no other jurisdiction within the United States does a government lack the legal authority to prosecute violent criminal offenses illegal under its laws.

¹⁶ Amnesty International, *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA* 2, 6-8 (April 2007), available at [www.amnesty.org.ru/library/pdf/AMR510352007ENGLISH/\\$File/AMR5103507.pdf](http://www.amnesty.org.ru/library/pdf/AMR510352007ENGLISH/$File/AMR5103507.pdf) (finding that there is a clear pattern of discriminatory and inadequate law enforcement in cases of violence against Indian women) [hereinafter "Maze of Injustice"].

¹⁷ *Id.* at 8.

¹⁸ *But see* P.L. No. 111-211 (2010) (expanding tribal court sentencing authority under ICRA to three years when specific conditions are met).

¹⁹ *Maze of Injustice*, *supra*, at 8 ("Before asking 'what happened,' police ask: 'Was it in our jurisdiction? Was the perpetrator Native American?'" – Support worker for Native American survivors of sexual violence, May 2005).

B. Removal of Tribal Criminal Jurisdiction over Non-Natives

Inherent tribal criminal jurisdiction over crimes committed by non-Indians was stripped by the United States Supreme Court in 1978. The Supreme Court ruled in *Oliphant v. Suquamish Tribe* that Indian nations lack the authority to impose criminal sanctions on non-Indian citizens of the United States who commit crimes on Indian lands.²⁰ For the last thirty years, Indian nations have been denied criminal jurisdiction over non-Indians and the authority to prosecute non-Indians committing crimes on Indian lands. When a non-Indian commits physical or sexual violence against an Indian woman on Indian lands, the Indian nation does not have the authority to prosecute the offender. Yet, nationally, non-Natives commit 88% of all violent crimes against Native women.²¹

Only the United States, or—in cases where the United States has delegated this authority to the state—the state government, has the authority to prosecute non-Indian offenders committing crimes on Indian lands. As the United States Civil Rights Commission pointed out, the problem is that the *Oliphant* decision did not place any responsibility on the United States government or its delegates to prosecute non-Indian offenders on Indian lands. In the words of the Commission, “[T]he decision only dealt with limitations to tribal power, not the federal responsibility to compensate for those limitations based on the trust relationship. The Court did not *require* the federal government to protect tribes or prosecute non-Indian offenders who commit crimes on tribal lands.”²² If the United States (or relevant state government) does not prosecute the non-Native offender, then the offender goes free without facing any legal consequences for his actions, and the Native woman is denied any criminal recourse against her abuser.

Federal authorities, who are often the only law enforcement officials with the legal authority to investigate and prosecute violent crimes in Native communities, have regularly failed to do so.²³ Prior to the passage of the Tribal Law and Order Act in July 2010, United States federal prosecutors neither did nor were required to release official reports detailing the crimes they chose not to prosecute. The Tribal Law and Order Act’s requirement that federal prosecutors report on their prosecutions and declinations is a major step forward in holding federal law enforcement officials accountable for fulfilling their responsibilities in Indian country.

Nonetheless, many violent crimes continue to go unprosecuted in Indian country. According to a recent United States Government Accountability Office study, from 2005 through 2009, U.S. attorneys failed to prosecute 52% of all violent criminal cases,

²⁰ *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978).

²¹ Patricia Tjaden & Nancy Thoene, U.S. Dep’t of Justice, *Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey 22* (2000).

²² U.S. Commission on Civil Rights, *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country*, 67 (2003) (italics in original), available at http://www.usace.army.mil/CECW/TribalIssues/Documents/quiet_crisis.pdf.

²³ Mary Claire Jalonick, *DOJ Will Not Provide Indian Crime Data*, News From Indian Country (Sept. 2008), available at http://indiancountrynews.net/index.php?option=com_content&task=view&id=4641&Itemid=33.

including 67% of sexual abuse cases and 46% of assault cases occurring on Indian lands.²⁴ As these numbers indicate, Native women are routinely denied their right to adequate judicial recourse, if the opportunity to prosecute is offered at all. This treatment distinguishes Native women from other groups under the law. The United States' restriction on tribal criminal authority combined with its failure to effectively police and prosecute violent crimes on tribal lands violate its obligation to act with due diligence to protect Native women from violence and punish perpetrators. This obligation stems not only from its recognized trust relationship with Indian nations, but also from its international human rights obligations, including but not limited to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

C. Transfer of Federal Criminal Jurisdiction to Certain State Governments

Under the U.S. Constitution, governmental relations with Indian nations are the function of the federal government.²⁵ In 1953, in violation of this responsibility and without consultation with Indian nations, the United States Congress passed Public Law 280, delegating criminal jurisdiction over Natives on Indian lands to some states.²⁶ While this delegation of authority did not alter the authority of Indian nations in those states, it had a devastating impact on the development of tribal justice systems and the safety of Native women.²⁷

It is important to realize that the effect of Public Law 280 is extremely broad. Public Law 280 controls criminal justice and law enforcement for approximately 70% of all the Indian nations in the United States. That includes 51% of all the federally recognized Indian nations in the lower 48 states and, generally, all Alaska Natives and their villages and nations.²⁸

In Public Law 280 states, the state government has the criminal jurisdiction normally exercised by the federal government over crimes on Indian lands. The state government has exclusive jurisdiction over non-Natives and felony jurisdiction over Natives. Accordingly, when a non-Native commits physical or sexual violence against a Native woman on Indian lands, the state has exclusive jurisdiction over the offender. When a Native person commits physical or sexual violence against a Native woman on Indian lands, only the state government has the criminal authority to impose a sentence of more than three years.

²⁴ United States Government Accountability Office, U.S. Department of Justice Declinations of Indian Country Criminal Matters 3 (December 13, 2010), *available at* <http://www.gao.gov/new.items/d11167r.pdf>.

²⁵ U.S. Const. Art. 1, § 8.

²⁶ P.L. 280, § 7, 67 Stat. 588, 590 (1953). For information on jurisdiction under P.L. 280, see Carole E. Goldberg-Ambrose, *Public Law 280: State Jurisdiction Over Reservation Indians*, 22 UCLA L. REV. 535-94 (1975).

²⁷ Carole Goldberg & Duane Champagne, *Is Public Law 280 Fit for the Twenty-First Century?*, 38 CONN. L. REV. 697 (2006).

²⁸ Final Report on Law Enforcement and Criminal Justice under Public Law 280, Carole E. Goldberg & Duane Champagne, 12 (Nov. 1, 2007). Metlakatla Indian Community, located on the Annette Islands Reserve, is a statutorily created Indian reservation and the only recognized Indian country in Alaska. Metlakatla Indian Community is not subject to Public Law 280.

Like the United States government, states often fail to promptly and thoroughly investigate reports of violence against Native women and to prosecute criminal cases occurring within Indian lands.²⁹ The criticisms of United States prosecutors and their failure to prosecute violent crimes also apply to state prosecutors. The failure to prosecute crimes occurring on Indian lands, however, is often more acute in these states because they do not receive any additional funding from the United States to handle these cases.³⁰ Funding was also reduced to tribal authorities after the jurisdictional shift of authority to states. This often results in the understaffing of police on Indian lands, scarcity or lack of resources, and overall reluctance on the part of state prosecutors to take cases.

D. Limitations on Sentencing Authority of Tribal Courts

United States law also limits tribal authority over Native perpetrators on their own lands.³¹ Indian nations have concurrent criminal authority with the federal government under the Major Crimes Act and may prosecute crimes committed by Natives.³² However, under the recently amended Indian Civil Rights Act (ICRA), tribal courts can only sentence Native offenders to prison terms not greater than 3 years per offense (with a total of 9 years for consecutive sentences for separate offenses) and a fine of up to \$15,000. This enhanced sentencing authority (the Tribal Law and Order Act enacted in July 2010 increased tribal court sentencing authority from up to one year in prison and a \$5,000 fine to the current standards) can only be exercised when certain protections are provided to the accused. While a tremendous step forward for some Indian nations, the reality is that most tribes do not have the resources to meet the requirements under the Act, and are thus effectively still limited to the one year sentencing cap. It may take a significant amount of time before any tribes are able to take advantage of this enhanced sentencing authority. As a result, when a Native person commits violence against a Native woman, the Indian nation can prosecute the offender, but the woman will quite likely still be denied an effective remedy.

The complexity of this jurisdictional arrangement contributes to violations of Native women's human rights by denying Native women rights to:

1. equality and equal protection of the laws by subjecting them to a law enforcement scheme distinct from all others in the United States;
2. life and security by allowing perpetrators to commit acts of rape and domestic violence without legal consequence for their violence; and
3. access to justice by denying them legal recourse and allowing an ongoing pattern of violence that often increases in severity and frequency over time, sometimes resulting in homicide.

²⁹ *Id.*

³⁰ *Id.*

³¹ 18 U.S.C. §§ 1152, 1162 (providing for federal jurisdiction over crimes in Indian country).

³² 18 U.S.C.A. §§ 1152, 1153; *see also* United States v. Kagama, 118 U.S. 375 (1886) (upholding the constitutionality of the Major Crimes Act).

E. Other Issues Faced by Tribal Courts, Prosecutors, and Law Enforcement

In the past decade, Indian nations have developed the infrastructure for tribal justice system components to provide safety to women within their jurisdiction, including tribal police departments, codes, and courts. Many Indian nations have developed their own law enforcement departments. Police powers follow the criminal jurisdiction of the tribal, federal, and state governments in Indian country.³³ Tribal law enforcement departments have the authority to stop all persons and detain them for the purpose of transferring the person to federal or state authorities. They do not have the authority to arrest or investigate crimes committed by non-Natives. Tribal law enforcement departments are subject to nearly all the same jurisdictional complications associated with the authority to prosecute. In some circumstances, the complexities of tribal, state, and federal jurisdiction may be lessened by practical necessity, by inter-governmental agreements, or by statutes.

Many Indian nations have developed domestic violence codes.³⁴ They have supported personnel and training of tribal law enforcement, tribal courts, prosecutors, and probation officers. Tribal courts have also ordered that offenders enroll in re-education programs, and tribes have supported programs to encourage boys and young men to respect women.³⁵ According to tribal organizations working to end domestic violence against Native women, “[a]t the tribal level, efforts are coordinated to create a system of safety for women seeking safety and protection within the tribal jurisdiction.”³⁶

Efforts by Indian nations, however, are diluted by a lack of essential resources. Native women are greatly disadvantaged by the lack of basic services for victims of sexual and physical violence within tribal jurisdictions. There is an acute need for basic education on domestic violence and sexual assault among law enforcement personnel.³⁷ Many health clinics and hospitals on Indian lands either do not have, or lack sufficient numbers of rape kits or Sexual Assault Nurse Examiners.³⁸

Funding for law enforcement on Indian lands is also inadequate. States spend an average of one hundred thirty one dollars per year per person to provide law enforcement

³³ For a fuller discussion of law enforcement issues on Indian lands, see *Maze of Injustice*, *supra*.

³⁴ *See, e.g.*, Office on Violence Against Native Women and the National Center on Full Faith and Credit, *Violence Against Native Women: A Guide for Practitioner Action* 15 (2006); Melissa Tatum, *Law Enforcement Authority in Indian Country*, 4 Tribal L.J. 2 (2003/2004). For an example of a tribal domestic violence code, see the Navajo Nation Domestic Abuse Protection Act, IX Navajo Trib. Code § 1601 *et seq.* (1993).

³⁵ *See, e.g.*, Cangleska Inc. Men’s Re-Education Program, at <http://www.cangleska.org/Mens%20program.htm>.

³⁶ Brief of Amici Curiae The National Network to End Domestic Violence, Sacred Circle, National Resource Center to End Violence Against Native Women, et al. in Support of Respondents at 4, *Plains Commerce Bank v. Long Family Land & Cattle Co., Inc., et al.*, No. 07-411 5a (2008) [hereinafter “Long Brief”].

³⁷ *See, e.g.*, *Guide for Practitioners*, *supra*, at 23-24.

³⁸ *Maze of Injustice*, *supra*, at 53-58 (finding that there is a clear pattern of discriminatory and inadequate law enforcement in cases of violence against Indian women).

services.³⁹ The United States spends considerably less per year per individual on law enforcement within tribal jurisdictions.⁴⁰ Many Indian nations have only a few officers to police their vast territories.⁴¹ For example, within the state of Alaska, at least eighty Alaska Native Villages lack any form of law enforcement services. This public safety crisis confronting Indian nations is well documented,⁴² and often attributed to the United States government's failure to provide adequate resources for essential criminal justice services.⁴³

Lacking the necessary criminal authority to prosecute non-Indian offenders, tribal courts have used civil laws and remedies to respond to cases of violence against Native women. Indian nations still exercise limited civil jurisdiction in their territories, despite attempts and inroads by United States law to restrict it.⁴⁴ In general, “the inherent sovereign powers of an Indian Tribe do not extend to the activities of non-members of the tribe.”⁴⁵ This principle, however, is “subject to two exceptions: first, activities concerning non-members who enter consensual relationships with the tribe or its members; and second, activities that directly affect the tribe’s political integrity, economic security, health, or welfare.”⁴⁶ Domestic relationships are one of the most common “consensual relations” between Natives and non-Natives.

Indian nations have used civil laws and remedies against both Native and non-Native offenders, including civil contempt proceedings, banishment, issuance of tribal protection orders, monetary penalties, community service, restitution, civil commitment, forfeiture, treatment and classes, and posting of a peace bond, as well as tribal specific remedies such as suspension of certain tribal benefits.⁴⁷

Tribes historically banished batterers and rapists from their communities, giving women and the community the confidence that their villages and communities were safe. Today numerous Indian tribes such as the Eastern Band of Cherokee Indians maintain and continue this practice to exclude batterers and rapists from their tribal jurisdictional boundaries. Banishment prevents a woman, and many times her children, from being

³⁹ A Quiet Crisis, *supra*, at 75.

⁴⁰ *Id.* (“It is estimated that tribes have been 55 and 75 percent of the resources available to non-Indian communities, a figure that is even more exaggerated considering the higher crime rates.”).

⁴¹ *Id.* at 75-76; Law and Order in Indian Country: Hearing Before the Senate Committee on Indian Affairs, 110th Cong. 8 (June 21, 2007) (statement of Chairman Marcus Wells, Jr., Three Affiliated Tribes of the Fort Berthold Reservation) (noting the “catastrophic shortage of law enforcement personnel” on the Reservation due to unfilled Bureau of Indian Affairs police positions).

⁴² *See, e.g.*, Maze of Injustice, *supra*, at 42; Examining the Prevalence of and Solutions to Stopping Violence Against Indian Women: Hearing Before the Senate Committee on Indian Affairs, 110th Cong. (Sept. 27, 2007); Law and Order in Indian Country: Field Hearing Before the Senate Committee on Indian Affairs, 110th Cong. (March 17, 2008); Law and Order in Indian Country: Hearing Before the Senate Committee on Indian Affairs, 110th Cong. (May 17, 2007); Law and Order in Indian Country: Hearing Before the Senate Committee on Indian Affairs, 110th Cong. (June 21, 2007).

⁴³ *See generally* A Quiet Crisis, *supra*.

⁴⁴ *See, e.g.*, *Montana v. United States*, 450 U.S. 544 (1980).

⁴⁵ *Id.* at 565.

⁴⁶ *Strate v. A-1 Contractors*, 520 U.S. 438, 446 (1997).

⁴⁷ Hallie Bongar White, et al., *Creative Civil Remedies Against Non-Indian Offenders in Indian Country, Roundtable on Creative Civil Remedies Against Non-Indians in Indian Country, 2008 Report* (2008).

forced to flee her community and home due to violence. The necessity of “hiding” or “exiling” battered women is a tragic statement about the inability of a community to protect a woman from such abuse. Unlike state and county governments, Indian tribes have the authority to protect their members by restricting perpetrators of such crimes from entering their borders.

Indian nations have the inherent authority to issue civil protection orders to protect both Native and non-Native women from domestic abusers on Indian lands. They regularly issue civil protection orders to prevent violence, award temporary custody of children, and resolve other urgent issues.⁴⁸ Tribal law enforcement enforces tribal protection orders on Indian lands.

Once Native women leave tribal lands, they must rely on other governments for the enforcement of their tribal protection orders. If these jurisdictions do not enforce tribal protection orders, then Native women are left unprotected because no other law enforcement has the authority to enforce the orders. States are primarily responsible for the enforcement of protection orders outside of tribal jurisdictions. Many states, however, do not recognize and enforce tribal protection orders. For example, in 2003, the State of Alaska instructed state troopers to disobey a state court order recognizing a tribal court protection order and claimed that both orders were illegal.⁴⁹

In *Town of Castle Rock, Colo. v. Gonzales*, the United States Supreme Court held that the United States Constitution does not require state law enforcement to investigate or enforce alleged violations of domestic violence protection orders.⁵⁰ Thus, state law enforcement of protection orders is entirely discretionary. Because state law enforcement officers face no consequences for not enforcing protection orders, it is common for them to choose not to do so.⁵¹ Thoughtless decisions by local law enforcement therefore leave Native women vulnerable to ongoing violence by domestic abusers. The result is a larger human rights issue of state-sanctioned violence and government impunity that further perpetuates the epidemic of violence against Native women.

On August 17, 2011, the Inter-American Commission on Human Rights issued a landmark ruling recognizing in *Jessica Lenahan (Gonzales) v. United States*, that the United States violated its obligations under international human rights law by failing to use due diligence and reasonable measures to enforce civil protection orders and prevent violence against women. Because United States law has greatly limited tribal criminal jurisdiction and sentencing authority, often the only option that Native women have against abusers is a civil protection order.

Federal courts have further undermined the safety of Native women by holding that tribal courts do not have jurisdiction to issue domestic violence protection orders

⁴⁸ Guide for Practitioners, *supra*, at 16.

⁴⁹ Sheila Tomey, *Trouble in Perryville*, ANCHORAGE DAILY NEWS, Nov. 3, 2003, available at <http://dwb.adn.com/front/story/4325477p-4335352c.html>.

⁵⁰ 545 U.S. 748 (2005).

⁵¹ *Id.*

requested by a non-member Native woman against her non-Native husband.⁵² In *Martinez v. Martinez*, an Alaska Native woman residing on the Suquamish Reservation in Washington State sought a domestic violence protection order against her non-Native husband in the Suquamish Tribal Court. The federal district court held that the tribal court did not have the authority to issue the protection order because issuance of the order was not necessary to protect tribal self-government and the husband's conduct was not a threat to the safety and welfare of the Tribe.

The *Martinez* decision fails to recognize that tribal courts are critical in maintaining law and order in Native communities. Generally, non-member Natives, non-Natives, and member Natives live within the territorial boundaries of most Native communities. The tribal court may be the most responsive institution to meet the needs of the residents of the community (Native communities are often located in rural areas, physically distant from state courts and police stations). The court's ruling may cause many victims of domestic and sexual violence seeking a protection order from a tribal court to question whether such an order will increase their safety.

Orders of protection are a strong tool to prevent future violence but are only as strong as their recognition and enforcement. The *Martinez* decision undermines the safety of all women living on tribal lands because it suggests that tribal courts can only issue protection orders for and against their own members. It also makes it difficult for women living and being abused on tribal lands to seek any recourse against non-Native abusers because it is unclear which government authority can issue a protection order against them if the tribal government cannot.

III. Federal Response to Violence Against Native Women

Led by Vice President Joseph Biden, Congress took essential steps to address the systemic barriers denying access to justice for Native women in the Safety for Indian Women title of the Violence Against Women Act of 2005 (VAWA). Dedicated tribal leaders, advocates, and justice personnel are prepared to implement these amendments to federal code and programs established under this title. Unfortunately, since passage of this landmark legislation, implementation of key provisions has been slow, and some federal departments charged with the responsibility of implementation have minimized the need for immediate action.⁵³ While the Obama-Biden Administration and Attorney General Eric Holder have prioritized violence against Native women, these directives must be institutionalized and implemented at all levels of government to be effective.

For example, Congress responded to the epidemic of violence committed against Native women by creating a new federal felony, *Domestic Assault by a Habitual Offender*, within the 2005 VAWA. This new felony enhances the punishment available for domestic violence and sexual assault perpetrators that have at least two prior

⁵² See, e.g., *Martinez v. Martinez*, Case No. C08-5503 FDB, Order Denying Defendants' Motions to Dismiss and Granting Plaintiff Declaratory and Injunctive Relief (W.D. Wash. Dec. 16, 2008).

⁵³ Restoration of Native Sovereignty and Safety for Native Women, Vol. XIV 17, 22-26 (Oct. 2010), available at http://www.clanstar.org/wp-content/up/2010/09/sovereignty_safety_volxiv.pdf.

convictions of domestic violence or sexual assault.⁵⁴ The habitual offender provision of the 2005 VAWA includes tribal court convictions as among the convictions that count in a subsequent federal prosecution of the offender. However, while Congress has acknowledged that tribal court convictions matter, some federal courts have not.⁵⁵ In such cases, habitual offenders have challenged the use of tribal court convictions in their federal prosecution by claiming their Sixth Amendment right to counsel was violated if they were not afforded an attorney by the tribe during previous tribal court prosecutions. While these defendants, as citizens of the United States, are protected by the U.S. Constitution, the Constitution does not govern Indian tribes or matters before tribal courts. ICRA and tribal law govern tribal court proceedings. Unlike the Constitution, ICRA does not require a tribe to provide counsel, only that no tribe shall “deny to any person in a criminal case the right ... at his own expense to have the assistance of counsel.”⁵⁶ While Indian tribes can choose to provide an indigent defendant a court-appointed attorney, they are not required to do so under ICRA. Congress, recognizing that tribal courts are not required to provide indigent offenders court-appointed attorneys, did not include this requirement under the habitual offender provision of VAWA 2005.

Federal courts refusing to recognize the authority of tribal court convictions under the Habitual Offender provision undermine the safety and violate the equal protection of Native women. This is so because habitual offenders of domestic violence against Native women, who have been convicted in tribal court, will not face the same enhanced penalties as other habitual offenders. By refusing to accept tribal court convictions as a basis for indictment, federal courts send a message that domestic violence against Native women is not a serious crime, and that tribal court convictions do not matter. In effect, habitual offenders can continue to abuse and violate Native women and will face no legal recourse for their crimes. Moreover, these federal court decisions illogically provide a higher standard for tribal prosecution of domestic and sexual assault cases than any other crime prosecuted by a tribal court under current federal law.

Congress enacted, and President Obama signed, the Tribal Law and Order Act in 2010, which is a major step towards the eradication of violence against Native women. If implemented, the Act has the potential to decrease violence against Native women by allowing tribal governments to exercise increased sentencing authority over Natives, requiring federal prosecutors to share information on declinations of Indian country cases, and requiring more training for, and cooperation among, tribal, state, and federal agencies. Congress, however, has yet to appropriate any adequate funds for the implementation of the Act.

⁵⁴ 18 U.S.C. § 117.

⁵⁵ *See, e.g., U.S. v. Cavanaugh*, 680 F.Supp.2d 1062 (D. N.D. 2009) (holding that defendant’s prior uncounseled tribal court convictions could not count toward a federal charge of domestic assault by a habitual offender, and thereby violated defendant’s due process and Sixth Amendment right to counsel), *rev’d*, 643 F.3d 592 (8th Cir. 2011); *see also, e.g., U.S. v. Shavanaux*, 2010 WL 4038839 (D. Utah 2010) (granting defendant’s motion to dismiss on the basis that use of tribal court convictions in a federal prosecution for purposes of a federal charge of domestic assault by a habitual offender violates the Sixth Amendment right to counsel), *rev’d*, 647 F.3d 993 (10th Cir. 2011).

⁵⁶ 25 U.S.C. § 1302(6).

IV. The United States' Failure to Protect Native Women Violates its Obligations under International Human Rights Laws

The international community has universally condemned violence against women as a human rights violation. Violence against women violates many of the human rights enshrined in international human rights treaties and declarations, including, *inter alia*, women's rights to life, security of the person, freedom from inhumane treatment, discrimination, equal protection under the law, and access to effective judicial remedies. These rights are protected by countless human rights instruments, including, *inter alia*, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women; American Declaration of the Rights and Duties of Man; American Convention on Human Rights; International Convention on the Elimination of All Forms of Racial Discrimination; UN Convention on the Elimination of All Forms of Discrimination Against Women; UN Declaration on the Elimination of Violence Against Women; and the UN Declaration on the Rights of Indigenous Peoples. The proposed American Declaration on the Rights of Indigenous Peoples also specifically addresses gender equality and the duty of states to prevent and eradicate violence against Native women.

International human rights law places an affirmative obligation on the United States to protect the human rights of Native women. Under international human rights law, states must act with due diligence to prevent human rights violations, including violence against women. When states fail to act with due diligence in response to acts of violence, they can be held responsible for human rights violations perpetrated by non-state actors.

As you know, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have repeatedly held that states must exercise due diligence to prevent human rights violations. Within the Inter-American system, when states do not act with due diligence in response to acts of violence, they can be held responsible for human rights violations perpetrated by non-state actors. The Commission and Court have both found that states must meet the due diligence standard in preventing violence against women.⁵⁷ Customary international law also "obligates states to prevent and respond to acts of violence against women with due diligence."⁵⁸

The epidemic of violence against Native women in the United States jeopardizes their human rights to life, security of the person, discrimination, equal protection under the law, and access to effective judicial remedies. In 2008, the United Nations Committee on the Elimination of Racial Discrimination condemned the United States for

⁵⁷ IACHR, *Report on Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/VIII, Jan. 20, 2007, at paras. 29-30; Inter-Am. Ct. H.R., *Case of Velásquez-Rodríguez v. Honduras*, Judgment of July 29, 1988, para. 173.

⁵⁸ Report of the Special Rapporteur on violence against women, its causes and consequences, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, E/CN.4/2006/61 (20 Jan. 2006) at para. 29.

its inadequate response to violence against Native women. In its Concluding Observations and Report, the Committee 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 (arts. 5(b) and 6).⁵⁹

It also recommended that the United States increase its efforts to prevent and prosecute perpetrators of violence against women. The United States has yet to comply with the Committee's recommendations.

Despite its awareness of the epidemic of violence against Native women, the United States continues to violate the rights of Native women to equal treatment under the law and adequate judicial recourse under the American Declaration on the Rights and Duties of Man. Article XVIII of the American Declaration on the Rights and Duties of Man states, "Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights."

The United States violates the rights of Native women to equal treatment under the law and adequate judicial remedies by leaving Native women and Indian nations with little recourse against perpetrators of violence. Native women experience a per capita rate of interracial violence that greatly exceeds that of the general population. Six out of ten Native women will be violently assaulted in their lifetime. Non-Natives commit 88% of all violent crimes against Native women. Yet, unlike other local communities in the United States, Indian nations cannot investigate and prosecute most violent offenses occurring in their local communities. United States law has stripped tribes of much of the ability to protect their own citizens. Today, tribes cannot effectively protect Native women from violence. Tribes do not have the resources to provide adequate policing and effective judicial recourse against violent crimes on their lands because they cannot prosecute non-Native offenders and can prosecute Natives only for misdemeanors. Unlike other women in the United States, Native women often do not have a choice to pursue criminal relief against their perpetrators because the United States has greatly impaired tribal criminal jurisdiction and diminished the ability of tribes to adequately respond to violent crimes.

The inadequate response of the United States government to address violence against Native women further undermines their human rights. Because of the limited criminal authority of tribes, tribes and Native women must rely on the federal

⁵⁹ Committee on the Elimination of Racial Discrimination, Concluding Observations United States of America, CERD/C/USA/CO/6 (February 2008) at para. 26, *available at* <http://www.indianlaw.org/sites/indianlaw.org/files/CERD-recommendations.pdf>.

government to investigate and prosecute violent felonies. Yet, more often than not, the United States government fails to investigate and prosecute violent felonies committed on Indian lands. The Inter-American Commission on Human Rights has found that a state's failure to properly investigate and prosecute violent offenses against women violates Article XVIII of the American Declaration. In *Maria da Penha Maia Fernandes v. Brasil*, the Commission explained,

The failure to prosecute and convict the perpetrator under these circumstances is an indication that the State condones the violence suffered by Maria da Penha, and this failure by the Brazilian courts to take action is exacerbating the direct consequences of the aggression by her ex-husband. Furthermore, as has been demonstrated earlier, that tolerance by the State organs is not limited to this case; rather, it is a pattern. The condoning of this situation by the entire system only serves to perpetuate the psychological, social, and historical roots and factors that sustain and encourage violence against women.⁶⁰

A pattern of state tolerance that condones violence against Native women also appears to exist in the United States. Federal authorities, who are often the only law enforcement officials with the legal authority to investigate and prosecute violent crimes in Native communities, regularly fail to do so. Native women are routinely denied their right to adequate judicial recourse. Nor do Native women receive equal treatment under the law, as no other group is treated this way. The United States' restriction of tribal jurisdiction, combined with its failure to effectively police and prosecute these violent crimes, violates its obligation to act with due diligence to protect, promote, and ensure human rights under the American Declaration.

The failure of the United States to punish perpetrators of violence against Native women also undermines their rights to life and security of the person under Article I of the American Declaration. As the Commission pointed out in *Maria da Penha Maia Fernandes v. Brasil*, "general and discriminatory judicial ineffectiveness . . . creates a climate that is conducive to domestic violence, since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts."⁶¹ Such a climate endangers the lives of women. In the United States, where most violent perpetrators of violence against Native women go unpunished, the majority of Native women will have their lives interrupted by violence. Many feel that a violent attack is inevitable. An advocate for survivors of sexual abuse from a tribe in Minnesota describes it not as a question of *if* a young Native woman is raped, but *when*. Studies show that violent offenders are likely to commit additional acts of violence when they are not held responsible for their crimes. Dr. Lisak, a leading researcher on sexual assault predators in the United States, described the inherent danger the United States' inadequate response presents to the lives of Native women when he

⁶⁰ IACHR, *Maria da Penha v. Brasil*, Case 12.051, Report No. 54/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 704, para. 55 (April 16, 2001).

⁶¹ *Id.* at para. 56.

stated, “Predators attack the unprotected. The failure to prosecute sex crimes against American Indian women is an invitation to prey with impunity.”⁶²

The inadequate response of the United States to address the epidemic of violence against Native women adversely impacts entire Indian nations, which already suffer from the worst socio-economic status of any population in the United States. United States laws have created a law enforcement void that appears to condone violence against Native women and permits perpetrators to act with impunity on Indian lands. As the Inter-American Commission on Human Rights has pointed out on several occasions, states have an obligation to use all legal means at their disposal to combat human rights violations because “impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives.”⁶³ The United States has not used all the legal means at its disposal to combat human rights violations occurring against Native women. Rather, it has left Native women vulnerable and largely defenseless to violent attacks. These human rights violations are happening every hour of every day.

CONCLUSION

While the Obama Administration has taken some important steps toward addressing the epidemic of violence against Native women, much, much more needs to be done to end this human rights crisis and to bring the United States into full compliance with international human rights law. We suggest that the United States could improve the current situation by:

1. Restoring the criminal authority of Indian nations to prosecute non-Native offenders within Indian country, particularly those committing violent and sexual crimes against Native women;
2. Increasing federal technical and financial support to Indian nations to enhance their response to violence against Native women;
3. Creating a grant program to provide sufficient federal support to non-profit, non-governmental Native women’s organizations to provide effective services to survivors of domestic and sexual violence;
4. Creating a grant program to provide sufficient federal support to non-profit, non-governmental Native women’s organizations to build shelters and transitional housing for Native women who are survivors of domestic and sexual violence;

⁶² David Lisak & P.M. Miller, *Repeat Rape and Multiple Offending Among Undetected Rapists*, 17 *Violence and Victims* 1 (2002).

⁶³ IACHR, *Report on Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/VIII, Jan. 20, 2007, p. 12 (citing Inter-Am. Ct. H.R., Loayza Tamayo Case. Reparations (Art. 63(1) American Convention on Human Rights), Judgment of November 27, 1998, para. 170, citing Inter-Am. Ct. H.R., The “Panel Blanca” Case (Paniagua Morales et al.), Judgment of March 8, 1998, para. 173).

5. Fully funding and ensuring and promoting the implementation of the Tribal Law and Order Act, particularly with respect to the exercise of enhanced sentencing authority by Indian nations; the obligation of federal prosecutors to share information on declinations of Indian country cases; and the provision of training for and cooperation among tribal, state, and federal agencies;
6. Creating a forum for dialogue, collaboration, and cooperation among tribal courts, federal courts, and state courts on the issue of violence against Native women on Indian lands and how the jurisdictional scheme under United States law unjustly discriminates against Native women; and
7. Launching a national initiative in consultation with Indian nations to examine and implement reforms to increase the safety of Native women living within tribal lands under concurrent tribal state jurisdictional authority (Public Law 280 states), including the speedy response to the request by Indian nations for the United States Department of Justice to reassume federal criminal jurisdiction and for the provision of federal technical and financial support to Indian nations within Public Law 280 states to support their response to violence against Native women.

Finally, we call your attention to and offer our help and guidance in providing you with additional information on these ongoing human rights violations against Native women in the United States. We encourage you to conduct site visits to Indian nations throughout the United States to further investigate the epidemic of violence against Native women and its implications for the United States' international human rights obligations. We request that the Commission issue a special report or country report on how the United States, in consultation and collaboration with tribes, could better protect the human rights of Native women. We also urge the Commission to include information related to this hearing in its press release on the 143rd Ordinary Period of Sessions and in its Annual Report to the Organization of American States General Assembly.

Thank you in advance for your commitment to the human rights of indigenous peoples, and Native women in particular, in the United States. At your request, we would welcome the opportunity to answer any questions you may have or provide you with additional and/or more complete information on violence against Native women.

Briefing Paper Appendices

- I. Amnesty International, *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA* (April 2007).

English: <http://amnesty.org/en/library/asset/AMR51/035/2007/en/cbd28fa9-d3ad-11dd-a329-2f46302a8cc6/amr510352007en.pdf>

Spanish: <http://amnesty.org/en/library/asset/AMR51/035/2007/en/d2bc6e46-d3ad-11dd-a329-2f46302a8cc6/amr510352007es.pdf>

- II. Written testimony submitted by the Eastern Band of Cherokee Indians, Terri Henry, Tribal Council Representative, for the Third Governmental Consultation of the United States and Indian Tribes on Enhancing the Safety for American Indian and Alaska Native Women on October 4, 2010, in Spokane, Washington.

www.indianlaw.org/sites/default/files/ECBI_Testimony.pdf

- III. Written comments of Amici Curiae presented by Indian Law Resource Center and Sacred Circle National Resource Center to End Violence Against Native Women in *Jessica Gonzales v. the United States of America* before the Inter-American Commission on Human Rights (November 13, 2008).

www.indianlaw.org/sites/default/files/resources/final_with_signons_12Nov08_amicus_brief_gonzales_v_US.pdf

- IV. *Restoration of Native Sovereignty and Safety for Native Women*, Vol XVI (Summer 2011).

www.clanstar.org/wp-content/up/2011/06/Sovereignty&Safety_vol16.pdf



National
Congress of
American
Indians



National Indigenous
Women's Resource Center



INDIAN LAW
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Clan Star
Increasing Safety for Native Women

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International Commission Holds Historic Hearing on Violence Against Native Women in the U.S.

U.S. officials and Native advocates agree violence must end

WASHINGTON, D.C. – During an historic hearing dedicated to their missing and murdered Native sisters throughout the Americas, Native women and tribal advocates resorted to an international human rights body to raise global awareness on the epidemic of violence against Native women in the United States. Representatives of the United States appearing at the hearing admitted that this level of violence against Native women is “an assault on the national conscience.”

“The right to be safe and live free from violence is a fundamental human right that many take for granted—but not Native women in the United States,” said Jana Walker, Director of the Safe Women, Strong Nations project at the Indian Law Resource Center. “Through this unprecedented hearing—the first of its kind—the Inter-American Commission on Human Rights has made it clear that others in the world are now focusing on this crisis too.”

The October 25, 2011 thematic hearing before the Inter-American Commission on Human Rights, an autonomous organ of the Organization of American States (OAS) created by countries to protect human rights in the Americas, was the first ever to focus specifically on violence against Native women in the United States. The Commission, located in Washington, D.C., took testimony during an hour long hearing from representatives of the Indian Law Resource Center, National Congress of American Indians Task Force on Violence Against Women, Eastern Band of Cherokee Indians, Clan Star, Inc., and the National Indigenous Women's Resource Center, Inc.

A Human Rights Crisis

The epidemic of violence against Native women in the United States is a human rights crisis that Indian country has been aware of for far too long. “It was imperative for this panel to make clear to the Commission how systemic legal barriers in U.S. law and chronic lack of enforcement is allowing rapists and batterers to commit crimes against Native women without fear of punishment whatsoever,” noted Juana Majel Dixon, First Vice President of the National Congress of American Indians and Co-Chair of the NCAI Task Force on Violence Against Women.

According to U.S. Department of Justice statistics, 1 out of 3 Native women will be raped in her lifetime and 3 out of 5 will be physically assaulted while their offenders escape prosecution under the color of discriminatory United States law. In this human rights crisis, Native women are murdered at rates 10 times the national average, and subjected to domestic violence and assault at staggering rates — rates 2½ times higher than any other group in the United States.

These distressing statistics are linked to systemic barriers imposed by United States law—barriers that prevent Indian nations from effectively safeguarding their citizens and adequately responding to crimes. Unlike local communities or state governments, Indian nations and Alaska Native villages are legally prohibited from prosecuting non-Indians. Furthermore, federal law has greatly restricted the sentencing authority of tribal courts for offenders committing acts of sexual and domestic violence that occur within tribal lands and communities. In effect, United States law condones violence in Indian country and Alaska Native villages, where 88% of the violent crimes against Native women are committed by non-Indian perpetrators. Very few of these Native women have access to meaningful justice and ever see their assailants prosecuted. According to a recent United States Government Accountability Office study, U.S. attorneys failed to prosecute 52% of all violent criminal cases, including 67% of sexual abuse cases and 46% of assault cases occurring on Indian lands.

“In most non-Indian communities in the United States, county or city governments have by-and-large unquestionable authority to investigate and prosecute both misdemeanor and felony crimes committed against women,” testified Dorma Sahneyah, Vice Chairperson, National Indigenous Women’s Resource Center; and Executive Director, Hopi Tewa Women’s Coalition to End Abuse. “United States law has left Tribal governments with inadequate legal authority to protect its citizens, allowing perpetrators to prey on Native women with impunity.”

Lisa Brunner, Executive Director Sacred Spirits First Nation Coalition, described the devastating impacts of Public Law 280 on the safety of Native women and tribal justice systems. “Many young Native girls and their mothers are forced to plan for a rape and how they will respond,” testified Brunner. She described one pre-rape decision by a 14-year-old girl and her mother to not report the event when it happens for fear that nothing would be done and it would cause problems for their family. “When the issue

within Native communities becomes a matter of preparing your daughter to be raped, the United States has failed in its federal trust responsibilities to our tribes."

Recommendations to Improve Safety for Native Women in the U.S.

The Native women and tribal advocates concluded by urging the Commission to issue strong recommendations to the United States with respect to its obligations to Native women under international human rights law. Terri Henry, Co-Chair, National Congress of American Indians Task Force on Violence Against Native Women, and Tribal Council Representative, Eastern Band of Cherokee Indians detailed the following recommendations targeted at the United States:

- enact legislation that contains the Department of Justice's legislative proposal to restore criminal authority of Indian Nations to prosecute non-Indian perpetrators on dating and domestic violence;
- fully fund and implement the Tribal Law and Order Act, particularly as to bolstering capacity to exercise enhanced sentencing authority, ensuring federal prosecutors share information on declamations of Indian country cases, and providing training and cooperation among the tribal state and federal agencies;
- launch a national initiative and consultation within Indian nations to examine and implement reforms to increase the safety of Native women living within tribal lands under concurrent tribal, state, and jurisdictional authority of Public Law 280;
- increase federal technical and financial support to Indian nations to enhance their responses to violence against Native women;
- create a grant program to provide sufficient federal support to non-profit government Native women's organizations to provide effective services including shelters, transitional housing, and rape crisis centers;
- incorporate tribal specific provisions in sex trafficking legislation, ensure Native women are prioritized in research on sex trafficking, and provide adequate resources and training for justice officials on how to respond to sex trafficking of Native women;
- develop a national protocol and reporting system for handling and monitoring cases of murdered and missing Native women; and
- create a forum for dialogue collaborating and cooperating among tribal, federal, and state courts on the issue of violence against Native women.

Henry also urged the Commission to conduct site visits to Indian nations throughout the United States to further investigate these ongoing human rights violations against Native women and its implications for U.S. international human rights obligations. Additionally, Henry asked the Commission to issue a special report or country report on how the United States, in consultation and collaboration with tribes, could better protect the human rights of Native women. The panel of advocates also urged the Commission to include information related to this hearing in its press release on the 143rd Ordinary Period of Sessions and in its Annual Report to the Organization of American States General Assembly.

Representatives of the United States appearing at the hearing acknowledged that much more needs to be done to protect Native women. Virginia Davis, U.S. Department of Justice, explained that, for many reasons, the current legal structure for prosecuting crimes of violence against women in Indian country is just not working. The Department of Justice and the Department of the Interior are recommending legislation and refinement to existing laws to better protect Native women, and both Departments support the reauthorization of the Violence Against Women Act and proposed amendments. Jodi Gillette, U.S. Department of the Interior, echoed Ms. Davis' comments, adding that the goal is to move towards a system that will eliminate the devastating problem of violence against Native women.

Taking Action—Next Steps

The Violence Against Women Act is up for reauthorization in the U.S. Congress and, since the thematic hearing, on October 31, 2011, Chairman Daniel Akaka of the Senate Committee on Indian Affairs introduced S.1793, the “Stand Against Violence and Empower (SAVE) Native Women Act.” Given the epidemic of violence against Native women, it is crucial that the United States do something quickly to restore safety and justice for Native women and to strengthen Native nations and communities.

For more information about the Violence Against Women Act, SAVE Native Women Act, and to view or read about the thematic hearing on violence against Native women, visit www.indianlaw.org.

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Partner Organizations

About the Indian Law Resource Center

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About the National Congress of American Indians

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About Clan Star, Inc.

Contact: Terri Henry
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About the National Indigenous Women's Resource Center

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Commission Press Release on 143rd Session

Following the 143rd Session of the Inter-American Commission in which the thematic hearing took place, the Commission issued a press release summarizing its activities and decisions. Below are excerpts from the annex to the press release wherein the Commission highlighted the issue of violence against women, including Native women in the U.S.

Annex to Press Release 117/11 on the 143rd Regular Session of the IACHR

Washington, D.C., November 4, 2011 – The Inter-American Commission on Human Rights (IACHR) held its 143rd regular session from October 19 to November 4, 2011. The IACHR is composed of Dinah Shelton, Chair; José de Jesús Orozco Henríquez, First Vice-Chair; Rodrigo Escobar Gil, Second Vice-Chair; and Commissioners Luz Patricia Mejía, María Silvia Guillén, Felipe González, and Paulo Sérgio Pinheiro. The Executive Secretary is Santiago A. Canton.

During its 143rd session, the Commission held 46 hearings and 29 working meetings. It also approved reports on individual cases and petitions. . . .

Situation of Women

During this session, the IACHR received information on the magnitude and gravity of the problem of sexual violence in educational institutions and on gaps in access to education for indigenous women, peasant women, women of African descent, and women from rural areas. These gaps keep women from being able to pursue an educational path that is free from discrimination, with an intercultural perspective and under equal conditions, and keep them from fully exercising their economic, social and cultural rights.

...

The IACHR reminds the States of the need to recognize diversity and the specific needs of women in adopting laws, public policies, and programs geared toward advancing and guaranteeing their rights. Moreover, the IACHR recalls that States have an obligation to act with due diligence to eliminate all types of discriminations, racism, and social exclusion.

In another vein, the IACHR received troubling information about violence against women in the region. Specifically, it received information about sexual violence in Nicaragua; killing of women in Honduras; violence against indigenous women in Colombia; and difficulties in the implementation of precautionary measures. The IACHR notes with concern that these situations tend to be accompanied by impunity and an inadequate response on the part of the States. The IACHR urges the States to diligently

continue to carry out efforts through laws, policies, and programs to address all forms of violence against women, in close collaboration with the women affected their representatives.

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Visit http://www.oas.org/en/iachr/media_center/PReleases/2011/117A.asp for Annex text.

Press Release on Violence Against Women Act



National
Congress of
American
Indians



National Indigenous
Women's Resource Center



INDIAN LAW
RESOURCE CENTER
JUSTICE FOR INDIGENOUS PEOPLES



FOR IMMEDIATE RELEASE:

October 9, 2012

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VAWA – Violence Against Native Women Gaining Global Attention – Will Congress Do Something?

***Recent Report by U.N. Special Rapporteur on the Rights of Indigenous Peoples says
legislation protecting Native women should be an “immediate priority” in U.S.***

HELENA, MONTANA - According to the U.N. Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, the U.S. Congress should make legislation protecting Native women an “immediate priority.” Following a month long tour to hear from indigenous peoples and tribal Nations within the United States, the Special Rapporteur presented his report in September on the situation of indigenous peoples in the United States to the UN Human Rights Council in Geneva. The report recommended that the United States immediately address violence against women through legislation. The report pointed to the fact that Native women in the United States are suffering horrendous rates of domestic and sexual violence—violence considered one of the most pervasive human rights violations in the United States. Legislation such as the Violence Against Women Act (VAWA) reform advocated by indigenous peoples and proposed by the executive to extend protections for Native women against violence remains stalled in Congress and tribal organizations are calling for this international human rights crisis to be addressed immediately.

The Indian Law Resource Center, the National Congress of American Indians Task Force on Violence Against Women, Clan Star, Inc., National Indigenous Women’s

Resource Center, and other Native women's organizations have turned to the international human rights community for help. In response, independent international experts and human rights bodies have repeatedly called on the United States to take action to combat the epidemic levels of violence against Native women right here at home—levels now on a par with and even exceeding estimates of violence against women globally. With VAWA stalled by partisanship and politics and with little time remaining, Congress must act immediately to bring long overdue justice to Native women in the United States.

“One of the most basic human rights recognized under international law is the right to be free of violence. While many in the United States take this right for granted, Native women do not,” said Jana Walker, senior attorney and director of the Indian Law Resource Center's Safe Women, Strong Nations project.

Indian women are 2½ times more likely to be assaulted and more than twice as likely to be stalked than other women in this country. Today, one in three Native women will be raped in her lifetime, and six in ten will be physically assaulted. Even worse, on some reservations, the murder rate for Native women is ten times the national average. Some 88% of these types of crimes are committed by non-Indians over which tribal governments lack any criminal jurisdiction under U.S. law and, according to the Census Bureau, 77% of the population residing on Indian lands and reservations is non-Indian.

“This leaves Indian nations, which have sovereignty over their territories and people, as the only governments in America without jurisdiction and the local control needed to combat such violence in their communities,” added Terri Henry, Co-Chair, National Congress of American Indians Task Force on Violence Against Women, Councilwoman, Eastern Band of Cherokee Indians, and Board member for the Indian Law Resource Center. While federal authorities have exclusive jurisdiction over most of these crimes, U.S. attorneys, often located hundreds of miles from a reservation, are declining to prosecute 67% of sexual abuse matters referred to them from Indian country.

Criminals act with impunity in Indian country and Alaska Native villages, threaten the lives of Native women daily, and perpetuate an escalating cycle of violence in Native communities. “Young women on the reservation live their lives in anticipation of being raped,” said Juana Majel Dixon, 1st Vice President of the National Congress of American Indians and Co-Chair of the NCAI Task Force on Violence Against Women. “They talk about ‘how will I survive my rape’ as opposed to not even thinking about it. We shouldn't have to live our lives that way. Congress can act now and NCAI is calling on members of the House and Senate to not let this crisis continue for one more day.”

Experts within both the United Nations and the Organization of American States have examined violence against Native women in the United States and issued recommendations, yet the United States has done nothing. UN Special Rapporteur on the Rights of Women, Ms. Rashida Manjoo, concluded in her report to the UN General Assembly in New York in 2011 that the United States “consider restoring . . . tribal authority to enforce tribal law over all perpetrators, both Native and non-Native, who

commit acts of sexual and domestic violence within their jurisdiction.” In October 2011, after a thematic hearing, *Violence Against Native Women in the United States*, the OAS’ Inter-American Human Rights Commission expressed strong concern about violence against women in Honduras, Nicaragua, Columbia, and indigenous women in the United States, urging these countries to address such violence through laws, policies, and programs in collaboration with the women affected.

The United States’ position to get tough on violence against women globally and international human rights law calls out for Congress to remove the legal barriers in United States law that discriminate against Native women. “Native women should not be protected less just because they are Indian and are assaulted on an American Indian reservation or in an Alaska Native village,” said Walker. “The epidemic of violence against Native women is a human rights crisis that Indian country has long been aware of and now the world is taking notice and supporting justice for Native women in the United States,” added Henry.

Congress should too.

Immediate action is needed to pass a better VAWA that protects Native women and all women in the United States from violence. Help us get the attention of lawmakers who must act now. Visit www.indianlaw.org to sign our petition for a stronger VAWA.

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Resources

Indian Law Resource Center

<http://www.indianlaw.org/>

Safe Women Strong Nations Project

<http://www.indianlaw.org/safewomen>

Organization of American States

<http://www.oas.org/en/>

Inter-American Commission on Human Rights

<http://www.oas.org/en/iachr/>

Guide to the IACHR Petition and Case System

<http://www.oas.org/en/iachr/mandate/petitions.asp>

Rules of Procedure of the Inter-American Commission

<http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>

Basic Documents in the Inter-American System

http://www.oas.org/en/iachr/mandate/basic_documents.asp

Global Rights

Using the Inter-American System for Human Rights: A Practical Guide for NGOs

http://www.globalrights.org/site/DocServer/ENGLISH_-_REVISED_7-19.pdf?docID=4923

International Justice Resource Center

Advocacy before the Inter-American System: Manual for Attorneys and Advocates

<http://ijrcenter.org/wp-content/uploads/2009/12/Manual-for-Attorneys-and-Advocates.pdf>

Columbia Law School Human Rights Clinic

Jessica Gonzales v. United States: Case Documents & Amicus Briefs

<http://web.law.columbia.edu/human-rights-institute/inter-american-human-rights-system/jessica-gonzales-v-us/gonzales-case-page>