

# INDIAN LAW RESOURCE CENTER

CENTRO DE RECURSOS JURÍDICOS PARA LOS PUEBLOS INDÍGENAS

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February 27, 2019

Paulo Abrão  
Executive Secretary  
Inter-American Commission on Human Rights  
1889 F Street, N.W.  
Washington, D.C., 20006

Re: **Petitioners' Response to Questions Raised by Inter-American Commission on Human Rights (Commission) during the Thematic Hearing on Violence against American Indian and Alaska Native Women in the United States (October 5, 2018)**

Dear Secretary Abrão:

The Indian Law Resource Center, on behalf of itself, the National Congress of American Indians Task Force on Violence Against Women, the National Indigenous Women's Resource Center, and the Alaska Native Women's Resource Center, respectfully submit this response to the Commission's questions and requests for information raised at the October 5, 2018 thematic hearing concerning the epidemic of violence against indigenous women in the United States.<sup>1</sup>

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<sup>1</sup> Founded in 1978 by American Indians, the *Indian Law Resource Center* (ILRC) is a non-profit organization that provides legal assistance to indigenous peoples of the Americas to combat racism and oppression, to protect their lands and environment, to protect their cultures, to achieve sustainable economic development and genuine self-government, and to realize their other human rights. Its Safe Women, Strong Nations project works with indigenous women's organizations and Native nations to end violence against indigenous women. ILRC is in consultative status with the UN Economic and Social Council. ([www.indianlaw.org](http://www.indianlaw.org)). The *National Congress of American Indians* (NCAI) is the oldest and largest national organization of American Indian and Alaska Native tribal governments, and is committed 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 regarding violence against American Indian and Alaska Native women. NCAI is in consultative status with the UN Economic and Social Council. ([www.ncai.org](http://www.ncai.org)). The *National Indigenous Women's Resource Center, Inc.* (NIWRC) is a nonprofit organization whose mission is to ensure the safety of Native women by protecting and preserving the inherent sovereign authority of American Indian and Alaska Native nations to respond to domestic violence and sexual assault.

## Commission Questions and Petitioner Responses

**Question 1.** What statistics and data on disappearances and murder of American Indian and Alaska Native women are available generally and within each individual tribe?

**Response:** Current federal data and statistics on disappearances and murders of Native women in the United States are deficient. What little is available is limited, dated, and generally of poor quality. We do not believe that such data exists regarding disappearances and murders within each tribe. This data, on a national and tribal basis, is critical to address missing and murdered indigenous women in the United States. Tribal, federal, and state governments<sup>2</sup> need accurate data to plan effective law enforcement and justice activities to respond to, investigate, and address missing and murdered Native women. Thus, we would welcome efforts by the Commission to strongly urge the United States to work on this in consultation with tribal governments. We also would appreciate greatly efforts by the Commission to raise awareness about missing and murdered indigenous women in the United States domestically and in the international human rights community because this issue is also being greatly underreported by the media.

The following available statistics exemplify current federal data deficits on missing and murdered Native women:

The Violence Against Women and Department of Justice Reauthorization Act of 2005 stated that “during the period 1979 through 1992, homicide was the third leading cause of death of Indian females aged 15 to 34.”<sup>3</sup> Since then, a study by the U.S. Department of Justice found that in some tribal communities, American Indian women face murder rates that are more than 10 times the national average.<sup>4</sup> This murder rate was also referenced in a 2011 U.S. Government Accountability report.<sup>5</sup> As horrific as that rate was in 2011, it is unclear what the murder rate of indigenous women may be now in 2019.

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NIWRC’s Board consists of Native women leaders from American Indian and Alaska Native nations across the United States. NIWRC is a national resource center for Indian nations providing technical assistance, policy development, training, materials, resource information, and the development of tribal strategies and responses to end the violence. In 2015, NIWRC launched the Violence Against Women Act (VAWA) Sovereignty Initiative to defend the constitutionality and functionality of all VAWA tribal provisions. ([www.niwrc.org](http://www.niwrc.org)). Organized in 2015, the *Alaska Native Women’s Resource Center* (AKNWRC) is a tribal nonprofit organization dedicated to ending violence against women with Alaska’s 229 tribes and allied organizations. AKNWRC board members are Alaska Native women raised in Alaska Native Villages and have 141 years of combined experience in tribal governments, nonprofit management, domestic violence, and sexual assault advocacy (both individual crisis and systems and grassroots social change advocacy at the local, statewide, regional, national and international levels), and other social service experience. AKNWRC’s philosophy is that violence against women is rooted in the colonization of indigenous nations. ([www.aknwrc.org](http://www.aknwrc.org)).

<sup>2</sup> Some tribes’ lands are under state jurisdiction through P.L. 83-280 or other congressional authorization.

Additionally, today most Native women reside in urban areas. See Urban Indian Health Institute, *Missing and Murdered Indigenous Women and Girls*,” (2018) at 2, available at <http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf>.

<sup>3</sup> See Congressional findings codified in the Violence Against Women and Department of Justice Reauthorization Act of 2005, P.L. 109-162 (Jan. 5, 2006), Title IX, § 901.

<sup>4</sup> See also Perrelli, T. (July 14, 2011), Statement of Associate Attorney General Perrelli before the Committee on Indian Affairs on Violence Against Native American Women [citing a National Institute of Justice-funded analysis of death certificates], available at: [www.justice.gov/iso/opa/asg/speeches/2011/asg-speech-110714.html](http://www.justice.gov/iso/opa/asg/speeches/2011/asg-speech-110714.html).

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

The Urban Indian Health Institute (UIHI), a tribal epidemiology center, published one of the newest reports on missing and murdered indigenous women and girls and perhaps the only one focusing on missing indigenous women reported in urban areas throughout the United States.<sup>6</sup> The UIHI is a division of the Seattle Indian Health Board, a private, nonprofit organization that serves as a community health center for urban American Indians and Alaska Natives. UIHI noted that no research has been done on the rates of violence against American Indian and Alaska Native women living in urban areas despite the fact that some 71% of Native women live in urban areas.<sup>7</sup> The UIHI also found significant discrepancies in federal data. For example, although the National Crime Information Center reported 5,712 reports of missing American Indian and Alaska Native women and girls in 2016, the U.S. Department of Justice’s federal missing persons database NamUs logged only 116 cases.<sup>8</sup> Based on its study, the UIHI concluded that “reasons for the lack of quality data include underreporting, racial misclassification, poor relationships between law enforcement and American Indians and Alaska Native communities, poor record-keeping protocols, institutional racism in the media, and a lack of substantive relationships between journalists and American Indian and Alaska Native Communities.”<sup>9</sup> Of the 506 urban cases covered by the UIHI study, it is telling that more than 95% of them were never covered by national or international media.<sup>10</sup>

**Question 2.** What other statistics and data are available regarding violence generally against American Indian and Alaska Native women?

**Response:** As with cases of missing and murdered Native women, federal data and statistics on violence against American Indian and Alaska Native women in the United States also is deficient. We are not aware of any current data regarding violence against Native women within each individual tribe or with respect to American Indian and Alaska Native girls in the United States. Such data, on a national and tribal basis, is critical to address violence against indigenous women in the United States. Tribal, federal, and state governments<sup>11</sup> need accurate data to plan effective law enforcement and justice activities to restore safety to Native women. On July 29, 2010, while signing the Tribal Law and Order Act, President Barack Obama stated: “[I]t is unconscionable that crime rates in Indian Country are more than twice the national average and up to 20 times the national average on some reservations. And all of you believe, like I do, that when one in three Native American women will be raped in their lifetimes, that is an assault on our national conscience; it is an affront to our shared humanity; it is something that we cannot allow to continue.”

The federal government’s latest research report with statistics on violence against American Indian and Alaska Native women was published in May 2016, but was based on

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<sup>6</sup> Urban Indian Health Institute, *Missing and Murdered Indigenous Women and Girls*,” (2018) [hereinafter *MMIWG Report*], available at <http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf>.

<sup>7</sup> *MMIWG Report* at 2, available at <http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf>.

<sup>8</sup> *MMIWG Report* at 2, available at <http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf>.

<sup>9</sup> *MMIWG Report* at 3, available at <http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf>.

<sup>10</sup> *MMIWG Report* at 18, available at <http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf>.

<sup>11</sup> Some tribes’ lands are under state jurisdiction through P.L. 83-280 or other congressional authorization.

findings from a 2010 national survey. These statistics indicate that violence against indigenous women has reached unprecedented levels. More than 4 in 5 American Indian and Alaska Native women (84.3%) have experienced violence in their lifetimes, including:

- 56.1% who have experienced sexual violence;
- 55.5% who have experienced physical violence by an intimate partner and 90% of these victims report being victimized by a non-Indian perpetrator, while only 18% report being victimized by an Indian;
- 48.8% who have experienced stalking; and
- 66.4% who have experienced psychological aggression by an intimate partner.<sup>12</sup>

Alaska Native women are subjected to the highest rate of forcible sexual assault in the country,<sup>13</sup> yet federal data and statistics are extremely limited or lacking. In 2013, the Indian Law and Order Commission issued “A Roadmap for Making Native America Safer,” its Report to the President and Congress of the United States. The Commission was established by the federal Tribal Law and Order Act of 2010 and given the task of preparing a comprehensive report with recommendations on criminal justice issues in tribal communities throughout the country.<sup>14</sup> The Roadmap report is one of the most thorough assessments to date of the criminal justice systems that serve American Indians and Alaska Native communities. The Roadmap report is especially significant for Alaska where 40% of the federally recognized tribes in the United States are located. Chapter Two is devoted solely to reforming justice for Alaska Natives. Notably, the Commission stated its opinion “that the problems in Alaska are so severe and the number of Alaska Native communities affected so large, that continuing to exempt the State from national policy change is wrong.”<sup>15</sup> The Commission found that “Alaska Natives are disproportionately affected by crimes, and these effects are felt most strongly in Native communities.”

With respect to the extreme and disproportionate levels of violence being experienced by Alaska Native women, the Roadmap report cites research finding that Alaska Native women make up nearly a third of all victims of assault in domestic violence, despite being only about 10% of the state’s population. The report continues:

On average, in 2003-2004 an Alaska Native female become a victim of reported sexual assault or of child sexual abuse ever 29.8 hours, as compared to once every 46.6 hours for non-Native females. Victimization rates, which take account of underlying population proportions, are even more dissimilar: the rate of sexual violence victimization among Alaska Native women was at least seven times the non-Native rate. In Tribal villages and Native communities (excluding the urban Native population), problems are even more severe. Women have reported rates of domestic violence up to 10 times higher than in the rest of the United States and physical assault victimization rates up to 12 times higher. During the period 2004-2007, Alaska Natives were 2.5 times more likely to die by homicide than Alaskans who reported “White” as their race and 2.9 times more likely to die by homicide

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<sup>12</sup> Andre B. Rosay, Ph.D, National Institute of Justice Research Report, *Violence Against Indian and Alaska Native Women and Men, 2010 Findings From the National Intimate Partner and Sexual Violence Survey* (May 2016).

<sup>13</sup> S. 1474, the Alaska Safe Families and Villages Act of 2013, § 2(a)(3).

<sup>14</sup> The report, *A Roadmap for Making Native America Safer* (November 2013) is available at [https://www.aisc.ucla.edu/iloc/report/files/A\\_Roadmap\\_For\\_Making\\_Native\\_America\\_Safer-Full.pdf](https://www.aisc.ucla.edu/iloc/report/files/A_Roadmap_For_Making_Native_America_Safer-Full.pdf).

<sup>15</sup> *A Roadmap for Making Native America Safer* (November 2013), Chapter 2 at 33, available at [https://www.aisc.ucla.edu/iloc/report/files/A\\_Roadmap\\_For\\_Making\\_Native\\_America\\_Safer-Full.pdf](https://www.aisc.ucla.edu/iloc/report/files/A_Roadmap_For_Making_Native_America_Safer-Full.pdf).

than all Whites in the United States.<sup>16</sup>

Notably, Alaska Native communities still need the baseline study authorized in the 2013 Violence Against Women Reauthorization Act to determine what the specific circumstances are in Alaska and whether they do or do not reflect the same circumstances occurring in the lower 48.

Finally, economic profiles of all American Indian and Alaska Native tribes are included in an important reference book, *Tiller's Guide to Indian Country*.<sup>17</sup> This resource provides basic information but does not address legal needs.

**Question 3.** If one possibility to address the epidemic of violence against American Indian and Alaska Native women is to enable tribal governments to exercise more criminal authority under the federal law such as the Violence Against Women Act, in what way would that put an end to the impunity we see today in the United States?

**Response:** Restoring tribal criminal jurisdiction and strengthening tribal civil authority offers local control for local issues including ensuring safety for American Indian and Alaska Native women, combatting impunity for perpetrators who do violence against them, and thereby helping to break the cycle of violence in Native communities. In considering the 2013 amendments to the Violence Against Women Act that would restore limited criminal authority to tribes over certain perpetrators of violence against Native women in Indian country, Congress explicitly recognized the terrible impact on indigenous women of United States' law that stripped tribes of all criminal jurisdiction over non-Indians:

Without the authority to prosecute crimes of violence against women, a cycle of violence is perpetuated that allows, and even encourages, criminals to act with impunity in Tribal communities and denies Native women equality under the law by treating them differently than other women in the United States.<sup>18</sup>

Thereafter, in its assessment of criminal justice systems serving Native communities, the Indian Law and Order Commission concluded that:

More lives and property can and will be saved once Tribes have greater freedom to build and maintain their own criminal justice systems. The Commission sees breathtaking possibilities for safer, strong Native communities achieved through home-grown, tribally based systems that respect the civil rights of all U.S. citizens, and reject outmoded Federal command-and-control policies in favor of increased local control, accountability, and transparency.<sup>19</sup>

With respect to Alaska, the Indian Law and Order Commission stated that:

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<sup>16</sup> *A Roadmap for Making Native America Safer* (November 2013), Chapter 2 at 41 [citations omitted from quoted material], available at [https://www.aisc.ucla.edu/iloc/report/files/A\\_Roadmap\\_For\\_Making\\_Native\\_America\\_Safer-Full.pdf](https://www.aisc.ucla.edu/iloc/report/files/A_Roadmap_For_Making_Native_America_Safer-Full.pdf).

<sup>17</sup> Veronica E. Velarde, PhD, *Tiller's Guide to Indian Country* (3<sup>rd</sup> Edition 2015).

<sup>18</sup> S. Rep. No. 112-265, at 7 (2012).

<sup>19</sup> *A Roadmap for Making Native America Safer* (November 2013), Preface at iii, available at [https://www.aisc.ucla.edu/iloc/report/files/A\\_Roadmap\\_For\\_Making\\_Native\\_America\\_Safer-Full.pdf](https://www.aisc.ucla.edu/iloc/report/files/A_Roadmap_For_Making_Native_America_Safer-Full.pdf).

The strongly centralized law enforcement and justice systems of the State of Alaska are of critical concern to the Indian Law and Order Commission. They do not serve local and Native communities adequately, if at all. The Commission believes that devolving authority to Alaska Native communities is essential for addressing local crimes. Their governments are best positioned to effectively arrest, prosecute, and punish, and they should have the authority to do so—or to work out voluntary agreements with each other, and with local governments and State on mutually beneficial terms.<sup>20</sup>

The Commission went on to call for specific policy changes to remedy this situation, recommending that:

Congress should overturn the U.S. Supreme Court’s decision in *Alaska v. Native Village of Venetie Tribal Government*, by amending ANCSA to provide that former reservation lands acquired in fee by Alaska Native villages and other lands transferred in fee to Native villages pursuant to ANCSA are Indian country.<sup>21</sup>

This recommendation would create the necessary legal preconditions for Alaska Native villages to begin exercising criminal jurisdiction in their lands and territories, and is a step we strongly endorse.

In March 20, 2018, the National Congress of American Indians released “VAWA 2013’s Special Domestic Violence Criminal Jurisdiction (SDVCJ) Five-Year Report.”<sup>22</sup> As of the date of the report, only 18 tribal governments were implementing SDVCJ. Yet, the implementing tribes reported 143 arrests of 128 non-Indian abusers, leading to 74 convictions and 5 acquittals, with 24 cases pending.<sup>23</sup> For some tribes, the SDVCJ provisions included in the 2013 reauthorization of the Violence Against Women Act are clearly helping bring justice to those Native women survivors whose abusers previously were just out of reach.

**Question 4.** What are the root causes of the unprecedented levels of violence against American Indian and Alaska Native women?

**Response 4:** The root causes of violence against Native women are directly linked to the discriminatory system of federal laws and court decisions governing Indian country and Alaska Native lands and to the failure of federal and state officials with the authority to protect Native women to do so. Further important causes include the circumstance of U.S. colonization of indigenous peoples of North America and the failure on the part of the United States government to uphold its treaty and trust responsibilities to tribal nations.

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<sup>20</sup> *A Roadmap for Making Native America Safer* (November 2013), Chapter 2 at 35, available at [https://www.aisc.ucla.edu/iloc/report/files/A\\_Roadmap\\_For\\_Making\\_Native\\_America\\_Safer-Full.pdf](https://www.aisc.ucla.edu/iloc/report/files/A_Roadmap_For_Making_Native_America_Safer-Full.pdf). The Commission went on to note the remoteness of many of the 229 federally recognized tribes located in Naïve villages within off road systems with little regular access to police, courts, and related services. At least 75 of these communities lack any law enforcement presence. *Id.* At 35-39.

<sup>21</sup> *A Roadmap for Making Native America Safer* (November 2013), Chapter 2 at 51, available at [https://www.aisc.ucla.edu/iloc/report/files/A\\_Roadmap\\_For\\_Making\\_Native\\_America\\_Safer-Full.pdf](https://www.aisc.ucla.edu/iloc/report/files/A_Roadmap_For_Making_Native_America_Safer-Full.pdf).

<sup>22</sup> The report, *VAWA 2013’s Special Domestic Violence Criminal Jurisdiction (SDVCJ) Five-Year Report*, is available at [http://www.ncai.org/resources/ncai-publications/SDVCJ\\_5\\_Year\\_Report.pdf](http://www.ncai.org/resources/ncai-publications/SDVCJ_5_Year_Report.pdf).

<sup>23</sup> *Id.* at 1.

Discriminatory United States Legal System. Native women are protected less and denied meaningful access to justice by the United States legal system because they are Indian and Alaska Native and are assaulted on tribal lands. Federally recognized tribal governments have inherent sovereign authority and self-govern their territories and people. Despite this, violence against Native women cannot be addressed by Indian nations solely through local community action. This is so because the root cause arises from United States law that denies Indian nations the full jurisdictional authority needed to prevent violence against Native women and to prosecute and punish all perpetrators of such violence. The United States took a step forward with passage of the reauthorization of the Violence Against Women Act in 2013, restoring limited criminal jurisdiction to Indian nations over certain non-Indian perpetrators who commit domestic and dating violence against American Indian and Alaska Native women in Indian country or who criminally violate protection orders. Unfortunately, there are serious gaps in that law. Congress drafted the statute in a way that excludes all but one of the 229 federally-recognized Indian tribes in Alaska and tribes in several other states, including Maine. These tribes are barred from using the important new protections. Further, the 2013 legislation recognizes tribal jurisdiction over only a limited set of crimes and a limited class of offenders. It does nothing to ensure that non-Indians who commit sexual assault, stalking, trafficking, or child abuse crimes are held accountable.

Impunity. The disproportionately high rates of violence against American Indian and Alaska Native women are directly linked not only to the discriminatory system of federal laws and court decisions governing Indian country and Alaska Native lands, and but also to the United States' persistent failure to respond adequately to this violence against indigenous women. A discriminatory justice system still leaves many perpetrators either unpunished or inadequately punished. United States laws continue to limit the criminal jurisdiction and sentencing power of Indian nations, especially Alaska Native nations, and federal and state governments are not fairly and effectively prosecuting violent crimes against American Indian and Alaska Native women. The federal government's own studies report a troubling history of high declination rates for federal prosecutions in Indian country. For example, between 2005 and 2009, U.S. Attorneys declined to prosecute 67% of the Indian country matters referred to them involving sexual abuse and related matters.<sup>24</sup> A report released by the Department of Justice in 2017 reported a negligible reduction in overall declination rates from 38% in 2011 to 37% in 2017. Still, the majority of declinations in 2017 continue to concern physical assaults (33.7%), sexual assaults and sexual exploitation (25.9%), and murder (6.8%).<sup>25</sup>

Treaty and Trust Violations. On tribal lands, the U.S. government long-ago assumed the responsibility to provide basic governmental services like health care, public safety, and education as a part of its treaty negotiations with tribal nations in exchange for land cessions. Over the past 200 years, as the U.S. became one of the wealthiest economies on the planet, it repeatedly failed to provide the funding and support owed to tribal nations. The federal government's failure to provide adequate funding is a significant impediment to tribal government services, including tribal justice programming, particularly given restrictions on

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<sup>24</sup> See U.S. Government Accountability Office, U.S. Dep't of Justice Declinations of Indian Country Criminal Matters Report No. GAO-11-167R, 3 (Dec. 13, 2010), available at <http://www.gao.gov/assets/100/97229.pdf>.

<sup>25</sup> 2017 U.S. Department of Justice Indian Country Investigations and Prosecutions at 37, available at <https://www.justice.gov/tribal/page/file/1113091/download>.

tribal taxation authority under U.S. law. In December 2018, the U.S. Commission on Civil Rights released its report, "Broken Promises: Continuing Federal Funding Shortfall for Native Americans," which updates its 2003 report that also examines the budgets and spending of federal agencies sponsoring Native American programs.<sup>26</sup> While acknowledging some progress, the Commission concludes that the civil rights crisis it found in 2003 remains and that the federal government is still failing to provide adequate support for the social and economic wellbeing of Native Americans. The identified failures include longstanding disregard for tribes' self-governance, infrastructure, housing, health, education, criminal justice, and economic and natural resources development. The Commission found that, due at least in part to these failures of the federal government over the last two centuries, Native Americans continue to rank near the bottom of all Americans in health, education, and employment outcomes.

Writing specifically on safety for Native women, the U.S. Commission on Civil Rights concluded that "[c]ompounding the problem of crime and victimization in Indian Country is the systematic underfunding of tribal law enforcement and criminal justice systems, as well as structural barriers in the funding and operation of criminal juristic systems in Indian Country.<sup>27</sup> The Commission pointed out two specific examples of the federal funding inequity between the nation's criminal justice system as a whole and Native American criminal justice systems. First, in 2016, the Bureau of Indian Affairs found that in 2016 \$337 million more in funding was needed to bring the level of Indian law enforcement staffing up to par with county government law enforcement throughout the nation.<sup>28</sup> Second, the Commission explained how the Victims of Crime Act, the largest source of federal funding for victims of crime—some \$3 billion in FY 2016-17, has not provided tribal governments access to such funds as is the case for states and territories. Until FY 2018 when three percent of the Crime Victims Fund was set aside for victims in Indian Country, tribal governments had to rely on "pass-through" funding from the states amounting to less than one percent of the funds over from 2010-2014 according to the Department of Justice.<sup>29</sup>

In March 20, 2018, the National Congress of American Indians released "VAWA 2013's Special Domestic Violence Criminal Jurisdiction (SDVCJ) Five-Year Report."<sup>30</sup> As of the date of the report, only 18 tribal governments were implementing SDVCJ. The report found that a key reason that more tribes have not been implementing SDVCJ, which can be prohibitively expensive, is a lack of resources. "During and beyond the implementation phase, tribes need funding, access to resources, and services to support implementation."<sup>31</sup>

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<sup>26</sup> "Broken Promises: Continuing Federal Funding Shortfall for Native Americans," Briefing Before The United States Commission on Civil Rights Held in Washington, DC, Briefing Report December 2018 at <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>

<sup>27</sup> "Broken Promises: Continuing Federal Funding Shortfall for Native Americans," Briefing Before The United States Commission on Civil Rights Held in Washington, DC, Briefing Report December 2018, pg. 32, at <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>

<sup>28</sup> "Broken Promises: Continuing Federal Funding Shortfall for Native Americans," Briefing Before The United States Commission on Civil Rights Held in Washington, DC, Briefing Report December 2018, pg. 48, at <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>

<sup>29</sup> "Broken Promises: Continuing Federal Funding Shortfall for Native Americans," Briefing Before The United States Commission on Civil Rights Held in Washington, DC, Briefing Report December 2018, pg. 48-49, at <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>

<sup>30</sup> The report is available at [http://www.ncai.org/resources/ncai-publications/SDVCJ\\_5\\_Year\\_Report.pdf](http://www.ncai.org/resources/ncai-publications/SDVCJ_5_Year_Report.pdf)

<sup>31</sup> *Id.* At 29.

Colonization. The negative effects of colonization continue to be seen in American Indian and Alaska Native communities generally and with respect to violence against Native women:

The inconsistent handling of violent crimes against Native women reaches far beyond the lack of training or failure of individuals to respond appropriately to such crimes. It is current federal law based on the historical relationship between the United States and Indian tribes as governments that shapes current legal authority over such crimes. This historic legal relationship also serves as the foundation for American cultural tolerance of violence against Native women. The current epidemic rates of violence against Native women are the contemporary mirror of the violence adopted by European nations to achieve domination of Indian nations.<sup>32</sup>

**Question 5.** With respect to the extractive industries, is there currently any work being done with the private enterprises, which also have a responsibility for human rights and due diligence?

**Response 5:** Oil and gas development on and near tribal lands raise the already high risk that American Indian and Alaska Native women and girls will become victims of violence, murder, and sex trafficking. While federal officials have acknowledged that human trafficking is increasing in Native communities and among Native populations, there is little hard data on sex trafficking and forms of sexual exploitation within the energy development context. There have been some arrests and at least one federal conviction involving victims from Indian reservations at the heart of the North Dakota oil boom. Most of the defendants are believed to be Bakken oil patch workers from out-of-state. Much of the risk of sex trafficking and other forms of sexual exploitation stems from a major influx of out-of-area workers, many of whom are housed in extremely large temporary housing complexes known as “man camps.” Wherever the boomtown pattern draws large numbers of outside workers into close proximity with Native communities, similar risks of sexual violence and sex trafficking may arise. Given the lack of tribal criminal jurisdiction over these crimes committed by non-Indians, American Indian and Alaska Native women are denied the legal protection of their respective tribal governments.<sup>33</sup> The VAWA 2013 amendment restored criminal jurisdiction to certain Indian tribes only in cases of domestic violence, dating violence, and violation of an order of protection within Indian country.

In the United States, laws and regulations already exist that could provide Native women with important opportunities to raise their concerns and obtain meaningful protections during the planning process for extraction projects in Indian country. These rules provide at least a framework to address concerns about human trafficking associated with projects like the oil development taking place in the Bakken oil patch in North Dakota. Executive Order 13175 requires tribal consultations on federal projects that are likely to impact them.<sup>34</sup> Executive Order 12898 explicitly requires consideration of health and well-being impacts on minority

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<sup>32</sup> See Jacqueline Agtuca, *Safety for Native Women: VAWA and American Indian Tribes*, Chapter 2 at 29 (NIWRC 2014). For further details, see Sarah Deer, *The Beginning and End of Rape: Confronting Sexual Violence in Native America* (2015).

<sup>33</sup> Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 120, § 904(c).

<sup>34</sup> Executive Order No. 13175, 65 Fed. Reg. 67249 (Nov. 6, 2000).

communities.<sup>35</sup> The National Environmental Policy Act (NEPA) regulations require federal agencies to consider the cultural, economic, social, or health impacts of major federal projects.<sup>36</sup> Unfortunately, these rules regarding tribal consultations and impact assessments are disappointingly under-utilized.

The NEPA provisions, for instance, have been used infrequently, although agencies have analyzed health and social impacts for certain projects. For example, a Bureau of Land Management assessment in Alaska integrated an extensive Health Impact Assessment into the environmental impact statement, analyzing health and social impacts of oil and gas development on Alaska Native communities.<sup>37</sup> The assessment addressed the direct and indirect public health impacts of oil and gas development, including “social pathology” and domestic violence.<sup>38</sup> It found that the loss of subsistence culture associated with abrupt cultural modernization and transition to a cash economy is often linked with substance abuse and violence—key factors that make women and girls vulnerable to trafficking.<sup>39</sup>

In 2016, as part of the litigation surrounding the Dakota Access Pipeline, a coalition of indigenous organizations led by National Indigenous Women’s Resource Center filed an amicus brief arguing that the federal government’s Environmental Impact Statement process was inadequate because it did not consider the pipeline’s potential impacts on the safety and welfare of Native women and children.<sup>40</sup> All efforts to stop the Dakota Access Pipeline, including this argument, have so far been unsuccessful. Much more work is needed to clarify and strengthen existing law and create new, stronger provisions to obligate business entities to integrate human rights impact assessments and other forms of human rights due diligence into their planning and decision-making processes.

We hope that these responses will be useful to the Commission. Additionally, our Briefing Paper and Recommendations on Violence Against American Indian and Alaska Native Women in the U.S., previously submitted for the Thematic Hearing, may also be informative.<sup>41</sup> We would greatly appreciate any attention that the Commission can offer that will help put pressure on the United States to take firm action with respect to restoring safety to Native women, including but not limited to addressing missing and murdered American Indian and Alaska Native women, reauthorizing the Violence Against Women Act, and amending the Victims of Crime Act so that tribal governments have direct access to such funds as is the case for states and territories. We also hope that the Commission will continue monitoring the situation of violence against American Indian and Alaska

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<sup>35</sup> Executive Order No. 12898, 59 Fed. Reg. 7629 (Feb. 16, 1994).

<sup>36</sup> 40 C.F.R. § 1508.14 (2012).

<sup>37</sup> U.S. Bureau of Land Management, *Northeast National Petroleum Reserve – Alaska: Final Supplemental Integrated Activity Plan/ Environmental Impact Statement* (Apr. 22, 2008), available at [https://archive.org/stream/northeastnationa04unit/northeastnationa04unit\\_djvu.txt](https://archive.org/stream/northeastnationa04unit/northeastnationa04unit_djvu.txt). Several articles have praised the inclusion of health impacts in this EIS and noted its applicability to EIS processes elsewhere. See, e.g., Rajiv Bhatia & Aaron Wernham, *Integrating Human Health into Environmental Impact Assessment: An Unrealized Opportunity for Environmental Health and Justice*, 116 ENVTL. HEALTH PERSPECTIVES 991 (2008).

<sup>38</sup> *Id.* at § 4.3.19.

<sup>39</sup> *Id.*

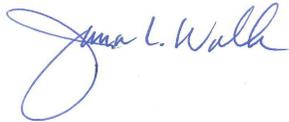
<sup>40</sup> National Indigenous Women’s Resource Center and additional *Amici*’s Brief as *Amici Curiae* in support of Plaintiff Standing Rock Sioux Tribe’s Motion for Partial Summary Judgment, No. 1:16-cf-01534-JEB (D.D.C., Feb. 21, 2017), available at <https://indianlaw.org/issues/human-rights/standing-rock>.

<sup>41</sup> The submitted Briefing Paper and Recommendations on Violence Against American Indian and Alaska Native Women in the U.S. are available at <https://indianlaw.org/safewomen/IACHR-Hearing-2018>.

Native women and exploring further how international human rights law can help restore safety to them and strengthen the ability of Indian and Alaska Native nations to address these issues in the United States.

We deeply appreciate the Commission's consideration of these extremely urgent human rights issue affecting American Indian and Alaska Native women, Indian nations, and their communities in the United States. Please do not hesitate to let us know if you have questions or need any additional information.

Sincerely,

A handwritten signature in blue ink that reads "Jana L. Walker". The signature is fluid and cursive, with the first name "Jana" being the most prominent.

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Indian Law Resource Center

cc: Alaska Native Women's Resource Center  
National Congress of American Indians Task Force on Violence Against Women  
National Indigenous Women's Resource Center