



Fact Sheet

Violence Against Women in Indian Country

The Problem

Scope and characteristics of violence against native women

American Indians, in general, experience per capita rates of violence that are much higher than those of the general population.¹ In particular, the rate of aggravated assault among American Indians and Alaska Natives is roughly twice that of the country as a whole (600.2 per 100,000 versus 323.6 per 100,000). Victimization statistics indicate similar findings.² According to the Bureau of Justice Statistics of the Department of Justice, 70% of American Indians who are the victims of violent crimes are victimized by someone of a different race, usually African American or white.³ As a result of these high rates of violence, American Indian women are at high risk of violence domestic or otherwise.

The term violence against women applies to domestic violence, sexual assault, stalking, whether by an intimate partner, family member or a stranger. Violence against women is a major problem for Native women wherever they are, including on reservations or Indian communities.

1 out of 3 American Indian and Alaskan Native women are raped in their lifetime, compared with about one out of five women in the overall national statistic.⁴ American Indian and Alaska Native women experience 7 sexual assaults per 1000 per year compared to 3 per 1000 among Black Americans, 2 per 1000 among Caucasians and 1 per 1000 among Asian Americans.⁵ American Indians were victimized by an intimate at rates higher than those for all other females – 23 American Indians per 1,000 persons age 12 or older compared to 11 blacks, 8 whites, and 2 Asians.⁶

These statistics, however, are general and do not pertain particularly to violence against Native women on reservations or under tribal jurisdiction (i.e. – in Indian Country). Accurate statistical data on violence against women in Indian country is hard to come by.⁷ There is in fact no comprehensive data on violence against women under tribal jurisdiction, since no federal or Indian agency/organization systematically collects this information. In general, data on crime in Indian country is poor, partly due to underreporting of crimes to the tribal authorities and partly due to underreporting to the federal authorities.⁸

The importance of this problem led to the establishment of a special grants program for tribes by the Department of Justice for programs to end violence against women.⁹ There are also numerous organizations of Native women that fight violence against women in Indian country by providing shelters for battered women, conducting education programs for law enforcement agencies (tribal courts and police departments) and the general public.¹⁰

A significant characteristic of violence against Native women is the identity of the offender: about 9 out of 10 rape or sexual assault victims estimated the offender was someone of a different race.¹¹ Among American Indian victims of violence, 75% of the intimate victimization¹² and 25% of the family¹³ victimization involved an offender of a different race.¹⁴ Another characteristic of domestic violence in Indian country is its intrinsic connection to alcohol abuse, the leading crime problem in Indian country, which generates most service calls.¹⁵

There are numerous problems, which enhance the problem of violence against Native women in Indian Country. Among them are lack of sufficient funding for domestic violence resources in Native communities,¹⁶ fear of victims that judicial, law enforcement or medical personnel will not be sympathetic to them because of misperceptions about Indian or tribes, racial prejudices or stereotypes of Indian people.¹⁷ Additionally when Indian victims must rely on non-Indian service providers for services, assistance is sometimes denied or slow in coming because of a mistaken, erroneous perception, rooted in prejudice, that Indians receive all the assistance they need from the Bureau of Indian Affairs or Indian Health Service.¹⁸

Problems of Law Enforcement in Indian Country

The problem of violence against women is closely related and in fact inseparable from the issue of law enforcement in Indian country. This issue has been under constant examination due to the unsatisfactory state of criminal offences in Indian country. A report of the Executive Committee for Indian Country Law enforcement Improvements of the U.S. Department of Justice submitted in October 1997 concluded that one of the major problems of law enforcement in Indian Country is the poor coordination between law enforcement bodies caused by the fragmentation of the criminal justice system.¹⁹ The only solution would be, the report concluded, to consolidate services under one authority.

NIJ report on Policing on American Indian Reservations identifies a problem of understaffing of police forces.²⁰ Most tribal police departments do not have enough officers to have specializations, and so do not have an officer that specializes in domestic violence and is able to provide the most professional assistance.

Our Concerns

The Jurisdiction Problem

The first and foremost concern regarding VAW is that tribes lack jurisdiction in many of the cases. The Supreme Court held that tribal courts do not have jurisdiction over non-Indian

residents of its reservation.²¹ Then in *Duro v. Reina*, the Supreme Court ruled that Indian nations lacked authority to prosecute nonmember Indians for criminal acts.²² Although congress was quick to respond by amending the Indian Civil Rights Act (ICRA)²³ by reaffirming tribes' ability to prosecute nonmember offenders,²⁴ it created further jurisdictional difficulties.²⁵

Several acts enacted by Congress provide jurisdiction to other law enforcement bodies over Indian country. The General Crimes Act's²⁶ primary present function is to provide for prosecution of crimes by non-Indians against Indians and of non-major crimes by Indians against non-Indians.²⁷ The Indian Major Crimes Act²⁸ provides federal jurisdiction in cases of major crimes, including crimes associated with VAW such as assault and sexual abuse, when committed by an Indian against an Indian on Indian country, and also when the victim is non-Indian.

However, tribal authorities often criticized enforcement of the Major Crimes Act (like that of the General Crimes Act) as being too lax. Overburdened U.S. attorneys have often been unenthusiastic about prosecuting the less serious of the major crimes.²⁹ Although theoretically Tribes can exercise concurrent jurisdiction³⁰ and prosecute Indian offenders of these crimes, this solution is problematic for different reasons. First, according to the Indian Civil Rights Act of 1968³¹ the jurisdiction of the tribal courts is limited to sentences not exceeding one year's imprisonment and a \$5,000 fine or both.³² Second, tribes have more difficulty to develop comprehensive crime strategies for crimes that are under Federal jurisdiction (such as serious youth violence, drug-related crime, child abuse, domestic violence, or sexual assault).³³ Third, Federal jurisdiction of crimes within Indian country is limited to specific enumerated crimes, and does not include misdemeanor violations of protective orders.³⁴ Thus, tribes must not only engage the BIA in developing responses to crime, they must also engage the FBI, the U.S. Attorney's Office, and the Federal courts. When control of policy and management is so divided, tribes may have less incentive to develop their own approaches to these problems,³⁵ including violence against women.

The Jurisdictional Complexities Create Serious Enforcement Problems

The Ninth Circuit Gender Bias Task Force report acknowledges that, "Jurisdictional complexities, geographic isolation, and institutional resistance impede effective protection of women subjected to violence within Indian country."³⁶ It further notes that although federal jurisdiction is technically available in some districts over spouse abuse, such prosecutions are rare.³⁷ It concludes that crimes against women are under- prosecuted in this setting.³⁸

Due to the jurisdictional complexity of the matter, each incident of violence against women occurring in Indian country involves a cumbersome procedure to establish who has jurisdiction over the case according to the nature of the offence committed, the identity of the attacker, the identity of the victim and the exact legal status of the land where the crime took place.³⁹ The US attorney stated that due to this complexity some violent crimes convictions are thrown into doubt, and that this confusion has made the investigation and prosecution of criminal conduct in Indian Country very difficult.⁴⁰ The Gender Bias Task force Report describes the procedure:⁴¹

The first law enforcement officials called to the scene may be tribal police or BIA officers, and these officers may initiate investigation and/or detain a suspect. Then a decision has to be made whether the crime is of the type warranting federal intervention, and then federal law enforcement officials (usually the FBI) needs to be notified. These officers then decide if to refer the case to the U.S. Attorney's office. After referral, the U.S. Attorney may call for further investigation, pursue prosecution, or dismiss the case.

Further complicating the situation is PL 280⁴² under which many states have assumed full or partial jurisdiction over crimes committed within Indian Country in their states.⁴³ The difficulties of prosecution in general, coupled with traditions of non-involvement by law enforcement officials in spousal abuse, make federal and state enforcement more difficult.⁴⁴ Additionally the wide dispersion of people in a vast area of land puts extra burden on investigators who need to interview witnesses and gather evidence.⁴⁵

The national Institute of Justice report “Policing on American Indian Reservations” determines that increased tribal control over tribal institutions is key to improvement in local economic and social conditions. The report emphasizes that self-determined institutions, ones that reflect American Indian nations' sovereignty, are more effective and uses this to argue that law-enforcement agencies run by the tribes (and not the BIA) would better cope with crime on reservations.⁴⁶

The Gender Bias Task Force Report recognizes that the solution of calling for greater enforcement by the Federal law enforcement agencies is inadequate in the case of violence against women in Indian country. This is due to special concerns related to this setting:⁴⁷ under-reporting of such offenses may be linked to a view that federal jurisdiction is intrusive on tribal sovereignty; victims may not seek assistance from federal (or other) authorities, and federal authorities may be reluctant to assert the full breadth of their jurisdictional powers, including due to resources confines.⁴⁸

Other problems of enforcement in violence against women cases may arise even if the violence was not done in Indian country. For example, under the Violence Against Women Act of 2000 (VAWA), violation of a protection order against an abuser issued by any State or tribe will be given “full faith and credit by the court of another State or Indian tribe”.⁴⁹ This legislation was enacted to prevent the common situation where an abused or threatened woman would have to get a new protection order in each jurisdiction where she lived or worked or moved to by making valid protection orders enforceable by any State or Indian tribe.⁵⁰ However, under the Supreme Court’s decisions, tribes do not possess jurisdiction over non-Indians. VAWA itself did not explicitly expand tribes’ jurisdiction in this respect, leaving an ambiguity whether it gave tribes broader civil jurisdiction to enforce protection orders, but making it clear that tribes’ criminal jurisdiction is not expanded.⁵¹ The lack of comprehensive criminal jurisdiction in Indian country over misdemeanors also effects women’s safety, since the majority of batterers who violate protective orders are subject to no prosecution at all.⁵² Additionally, the lack of enforcement of tribal protective orders by other jurisdictions place Indian Women and their children at severe risk.⁵³

Aside from the jurisdictional problem, the lack of resources is also a major obstacle for effective VAW programs. The lack of resources for policing, for conducting trials and even for jails, along with lack of resources for treatment programs, seriously put in question the success of an effort to battle VAW notwithstanding the jurisdictional issues.⁵⁴

Solution: Legislative Steps

Duro concluded that any practical deficiencies in the present jurisdictional scheme should be addressed by Congress, "which has the ultimate authority over Indian affairs."⁵⁵ The United States Supreme Court in *US v. Lara* confirmed Congress' authority in Indian affairs in passing the ICRA Amendments, thereby upholding tribes' ability to prosecute nonmember Indians.⁵⁶

The facts presented above demonstrate the existing gaps in tribal jurisdiction within Indian country and the complexity of the jurisdictional issues that still need resolution. The gaps can be summarized as these: (1) lack of jurisdiction over some of the major crimes related to violence against women (sexual assault including rape, other assault) towards Indians and non-Indians; (2) lack of jurisdiction over non-Indians for most matters, including misdemeanors, which include violation of protective orders; (3) lack of civil jurisdiction over non-Indians, when some of the protection orders are civil in nature.

The problems of enforcement by federal agencies are also evident, and at least partly created by the division of jurisdiction and the priorities of each agency.

Recently the NCAI adopted resolution #PHX-03-014 which among other things declared NCAI's support for the development of legislation that will support tribal authority to address crimes against Native women. Additionally, in another NCAI resolution (#PHX-03-34) NCAI resolved to support amendments to the Violence Against Women Act to increase the Federal response to violence against American Indian and Alaska Native women such as increasing the sentencing authority of Indian tribes in cases of domestic violence and sexual assault cases beyond one year and \$5,000; increasing criminal authority of Indian tribes to prosecute non-Indian rapists and batterers; increasing Federal support to Indian tribes to enhance their response to violence against American Indian and Alaska Native women.

Accordingly, NCAI would like to develop legislation to cope with this serious social problem. One possibility is to expand tribal jurisdiction over all matters related to violence against women. It is reasonable to assume that if full territorial jurisdiction over violence against women cases was resumed to tribes, it will create better enforcement. Tribes will be more committed to the problem as a whole if they are the sole authority responsible for the well being of women within their territory. The confusion over the jurisdiction will be eliminated, thus streamline the procedures for treating VAW cases and giving tribes the ability handle cases in a complete manner.

Expanding jurisdiction over non-Indian offenders, especially in domestic violence cases, is justified by the close voluntary link established by a non-Indian who marries an Indian woman. By marrying a tribal member and living in the tribal community they give their consent to be part of the tribal community and therefore should be subject to tribal laws if they abuse their spouse, partner or children. Voluntary marriage is a kind of implied consent to the tribal court's jurisdiction. This argument can be made, also with greater difficulty, for non-Indians who had a relationship with a tribal member that resulted in a protection order. If they come onto a reservation and violate the protection order, they have impliedly consented to tribal power over their conduct as part of their relationship with the tribal member.

Another factor that could be used to support the argument for expansion of jurisdiction is the limited sentencing powers of tribal courts, which now stands on \$5000 fine or one year imprisonment.⁵⁷ Consequently, there is no danger of tribal judges or juries handing out disproportionately harsh sentences. Additionally, the Supreme Court made it clear in *Santa Clara v. Martinez*⁵⁸ that the civil rights of persons subject to tribal criminal jurisdiction are protected by habeas corpus -- they can always appeal to the federal courts to ensure that their rights were not violated, thereby supporting increasing the maximum fine and penalties a tribe can give.

Attention should be paid, however, to current NCAI resolutions, which imply that the Indian Civil Rights Act restrictions on sentencing should be amended through legislation. These two strategies are thus potentially contradicting and a conclusive approach should be adopted that will define the priorities of this legislative effort.

For more information please contact NCAI at (202) 466-7767.

¹ U.S. Department of Justice, Office of Justice Programs, Census of State and Local Law Enforcement Agencies, 2000 - Tribal Law Enforcement, 2000 (January 2003, NCJ 197936). In terms of the number of crimes per 100,000 residents, American Indians and Alaska Natives experienced violence at a higher rate, compared to the country as a whole (656.5 per 100,000 versus 506.1 per 100,000).

² See American Indians and Crime, NCJ 173386, and Violent Victimization and Race, 1993-98, NCJ 176354.

³ U.S. Department of Justice, Bureau of Justice Statistics, American Indians and Crime, February 1999, VI, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/aic.pdf>.

⁴ Patricia Tjaden and Nancy Thoennes, Prevalence, Incidence and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey (November 2000, NCJ 183781), exhibit 7 p. 22, available at <http://www.ncjrs.org/pdffiles1/nij/183781.pdf>

⁵ American Indians and Crime, Office of Justice Programs, Bureau of Justice Statistics (February 1999, NCJ 173386), Table 3, p. 3, available at <http://www.ojp.usdoj.gov/bjs/abstract/aic.htm>

⁶ Victimization report 1993-98, available at <http://www.ojp.usdoj.gov/bjs/abstract/vvr98.htm>

⁷ Violence Against Women Online Resources, Domestic Violence, Sexual Assault & Stalking Prevention and Intervention in Rural Native American Communities: Training, Research and Education Programs, Section 1: Domestic Violence Dynamics, available at <http://www.vaw.umn.edu/documents/nativeamerican/nasection1.shtml#stats>

⁸ Stuart Wakeling et. al., Policing on American Indian Reservations, National Institute of Justice 2001, available at <http://www.ncjrs.org/txtfiles1/nij/188095.txt>. Some of the reasons for underreporting are distrust of the police are the shame or humiliation associated with certain kinds of crime, including domestic violence, and fear of retaliation by the assailant. Other factors are geographic isolation from police departments and from tribal social service agencies and even in some case the lack of means of communication such as a telephone. Finally, in those tribes where traditional means of dispute resolution and social norm enforcement have declined, but where new methods--like police intervention--are not readily available or are not viewed as legitimate or effective by the tribal community, many crimes may never come to the attention of police authorities. *Id.*

⁹ OFFICE OF JUSTICE PROGRAMS, STOP Violence Against Indian Women Discretionary Grant Program. For a description of the grants program and the tribes receiving funds see the website http://www.ojp.usdoj.gov/vawo/stop_vaiw_grant_desc.htm.

¹⁰ It is difficult to list all organizations since they are numerous and many are local and are not well known outside of the region where they operate. Some of the more visible organizations are Cangleska, Inc., which is an advocacy program and intervention project for the Oglala Lakota Nation located on the Pine Ridge reservation; Sacred Circle South Dakota, which is a project of Cangleska; Mending the Sacred Hoop S.T.O.P. Violence Against Women Technical Assistance Project; Clan Star, New Mexico.

¹¹ American Indians and Crime, table 10, p. 7.

¹² Intimate violence is by a current or former spouses, boyfriends or girlfriends.

¹³ Family violence is defined as victimization by spouses and other relatives.

¹⁴ American Indians and Crime, p. 8.

¹⁵ Policing on American Indian Reservations 2001; American Indians and Crime, Table 11, p. 9.

¹⁶ See Illinois coalition against Domestic Violence Website, How Big Is the Problem of Domestic Violence for Native American Women?, available at

http://www.ilcadv.org/legal/special_NA.htm#10 (stating that the lack of funds often means that there is only a crisis-oriented response rather than a more comprehensive one to the battering of women and children).

¹⁷ Violence Against Women Online Resources, Domestic Violence, Sexual Assault & Stalking Prevention and Intervention in Rural Native American Communities: Training, Research and Education Programs, Section 1: Domestic Violence Dynamics, available at <http://www.vaw.umn.edu/documents/nativeamerican/nasection1.shtml#stats>

¹⁸ Violence Against Women Online Resources, Domestic Violence, Sexual Assault & Stalking Prevention and Intervention in Rural Native American Communities: Training, Research and Education Programs, Section 1: Domestic Violence Dynamics, available at <http://www.vaw.umn.edu/documents/nativeamerican/nasection1.shtml#stats>

¹⁹ Report of the Executive Committee for Indian Country Law enforcement Improvements of the U.S. Department of Justice submitted in October 1997, executive summary.

²⁰ Policing on American Indian Reservations 2001, p. vi. (Most of the police departments in Indian reservations are very small, numbering only up to 9 officers. The second group is police departments numbering 10-50 officers.)

²¹ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 98 S.Ct. 1011, 55 L.Ed.2d 209 (1978); *United States v. Wheeler*, 435 U.S. 313, 325-26, 98 S.Ct. 1079, 55 L.Ed.2d 303 (1978).

²² *Duro v. Reina*, 495 U.S. 676, 685, 110 S.Ct. 2053, 109 L.Ed.2d 693 (1990).

²³ 25 U.S.C. § 1301

²⁴ 25 U.S.C. § 1301(2).

²⁵ See **U.S. v. Lara** 324 F.3d 635 (8th Cir. March 24, 2003) (tribal court's power to prosecute non-member Indian is a result of Congressional delegation of power, rather than tribe's inherent sovereign powers, and therefore federal prosecution is barred on Double Jeopardy grounds).

²⁶ 18 U.S.C.A. § 1152

²⁷ William C. Canby Jr., *American Indian Law*, 144.

²⁸ 18 U.S.C. § 1153

²⁹ *American Indian Law*, p. 158

³⁰ Canby, p. 160 (claiming that the Major Crimes Act does not preclude concurrent jurisdiction by Indian tribes and citing one court case in which the court concluded that tribes have concurrent jurisdiction to punish conduct that also constitutes an offense under the Major Crimes Act. **Wetsit v. Stafne**, 44 F. 3d 823 (9th Cir. 1995). But see the recent **U.S. v. Lara** 324 F.3d 635 (8th Cir. March 24, 2003) (tribal court prosecution of non-member Indian is possible due to delegation of Congressional power, rather than tribe's inherent sovereign powers, and therefore federal prosecution is barred on Double Jeopardy grounds).

³¹ 25 U.S.C.A. sect 1302(7).

³² *American Indian Law*, at 161.

³³ Policing on American Indian Reservations, National Institute of Justice 2001

³⁴ See Indian Major Crimes Act, 23 Stat. 362, 385 (1885) (codified as amended at 18 U.S.C. § 1153 (1994)).

³⁵ Policing on American Indian Reservations, p. 45.

³⁶ 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 (1994), at 906.

- ³⁷ Gender Bias Task Force Report, p. 908.
- ³⁸ Gender Bias Task Force Report, p. 910. However, the findings of the task force were that violence against women is under prosecuted in the states as well, *see id.*, FN 27.
- ³⁹ Testimony of [The Honorable Thomas B. Heffelfinger](#), U. S. Attorney, Minneapolis, Minneapolis, Oversight Hearing before the Senate Committee on Indian Affairs on Contemporary Tribal Governments: Challenges in Law Enforcement Related to the Rulings of the United States Supreme Court, July 11 2002.
- ⁴⁰ Thomas B. Heffelfinger testimony, p. 4 (he further recommends that the energy and resources spent on the jurisdictional question would be better spent on providing tangible public safety benefits).
- ⁴¹ Gender Bias Task Force Report, p. 909.
- ⁴² Act of Aug. 15, 1953, Public Law 53-280, ch. 505, 67 Stat. 588.
- ⁴³ Gender Bias Task Force Report, p. 909, FN 25 (quoting the legislative history of PL 280 which notes Congressional perceptions of under-enforcement of crimes occurring on **Indian** land by the federal authorities.)
- ⁴⁴ Gender Bias Task Force Report, p. 909.
- ⁴⁵ Gender Bias Task Force Report, p. 910.
- ⁴⁶ Policing on American Indian Reservations, p. viii
- ⁴⁷ Gender Bias Task Force Report, p. 910-11.
- ⁴⁸ *Id.* See also Allison M. Dussias, Geographically-Based and Membership Based Views of Indian Tribal Sovereignty: The Supreme Court's Changing Vision, 55 U. Pitt. L. Rev. 1 (1993), 38-43 (stating that tribes repeatedly report difficulty getting federal or state prosecutors to act on the crimes in Indian Country over which they possess jurisdiction).
- ⁴⁹ 18 U.S.C. sec.2265(a) (2000)
- ⁵⁰ See Melissa L. 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), 131-2.
- ⁵¹ Tatum, at 169-70.
- ⁵² Stacy L. Leeds, CROSS-JURISDICTIONAL RECOGNITION AND ENFORCEMENT OF JUDGMENTS: A TRIBAL COURT PERSPECTIVE, 76 NDLR 311 (2000), 354.
- ⁵³ See Illinois coalition against Domestic Violence Website, How Big Is the Problem of Domestic Violence for Native American Women?, available at http://www.ilcadv.org/legal/special_NA.htm#10. See also Nancy Thorington, CIVIL AND CRIMINAL JURISDICTION OVER MATTERS ARISING IN INDIAN COUNTRY: A ROADMAP FOR IMPROVING INTERACTION AMONG TRIBAL, STATE AND FEDERAL GOVERNMENTS, 31 McGeorge L. Rev. 973 (2000).
- ⁵⁴ Based on a conversation with Cangleska Inc. staff. She gave the example of the Oglala Lakota people on the Pine Ridge reservation, where there are almost no non-Indians involved in VAW cases, but the enforcement efforts are problematic due to lack of resources, including jails for the convicted offenders.
- ⁵⁵ *Id.* at 698, 110 S.Ct. 2053.
- ⁵⁶ Case No. 03-107; 541 U.S. ___, (April 19, 2004).
- ⁵⁷ See the Indian Civil Rights Act.

⁵⁸ 436 U.S. 49 (1978)