

# **LOST IN TRANSLATION: ABSENCE OF DOMESTIC IMPLEMENTATION OF INTERNATIONAL NORMS FOR THE INDIGENOUS PEOPLES OF THE UNITED STATES**

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## *Abstract*

For centuries too long, the Indigenous Peoples of the United States (“Native Americans” or “Natives”) experienced violent forms of treatment and were continuously subjected to oppressive and discriminatory policies that repetitively contradicted previously enacted treaties and promises made to the Natives. Throughout this nation’s history, Native tribal lands were forcibly reduced and ultimately constrained onto specifically designated plots of unfamiliar grounds that were separated from the rest of the city’s population. Members of the Native communities were discouraged from practicing traditional aspects of their culture within each subsequent generation, as this was considered a hindrance to forced assimilation strategies. Such actions culminated into deliberate inaction on the part of the U.S. federal government, as past governmental guarantees, that seemingly established better standards for relations with the Natives, proved to only hold relevance when it was profitable for the government.

Appeals for Native independence and rights went ignored, and federal policies prioritized economic initiatives at the cost of Native interests. The U.S. failed in pursuing necessary legislative changes in producing the required solutions for Native concerns and issues. In practice, the federal government has unjustly diminished Native rights and self-determination for the majority of the country’s history, and still today, the unfortunate fact remains that there has not been significant change in the cause for recognizing the rights and liberation of the U.S.’s indigenous peoples.

Within this context, the United Nations Declaration on the Rights of the Indigenous Peoples (“UNDRIP” or “Declaration”) was passed by the

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1. J.D. Candidate, 2022, Syracuse University College of Law. First and foremost, I would like to thank my family for their unconditional love and support throughout my academic career. Your continuous belief in me has encouraged me to challenge myself to work towards exerting my best in all that I do. Thank you for your constant inspiration. I would also like to express my deepest and sincerest appreciation to Professor Elizabeth August who provided much guidance and direction during this writing process, and notably, through my time in law school as my mentor. Lastly, thank you to my friends who have and continue to stand with me to experience all the future holds next.

General Assembly in 2007.<sup>2</sup> This passing by an international body of representation served as a landmark moment in the advocacy for Indigenous Peoples in all parts of the world. For the first time, there existed an agreed upon advancement of the need for Indigenous recognition and protection, not only as domestic exercise, but as an international norm.<sup>3</sup> The Declaration consisted of collective rights and human rights, and it further highlighted a shared consensus among Indigenous Peoples from every nation of the essential need for a universal standard that identified fundamental Indigenous rights to which states could reference and follow, and perhaps allow their respective home policies to be influenced by.<sup>4</sup>

The U.S., however, was one out of four initial states to vote against the passage of the Declaration, and it was the last nation out of the four to eventually reverse its decision in 2010.<sup>5</sup> With its eventual endorsement during President Barack Obama's administration, came a revitalized hope in acknowledgement of the Natives as an official and asserted Peoples.<sup>6</sup> Aligned with this encouragement, however, was also the fear of passivity and indifference which were the responses to which Natives had become all too familiar with when it came to defending their overall wellbeing.<sup>7</sup> Therefore, the absence of domestic implementation of the UNDRIP provisions in the U.S. illustrates another form of disappointment in the nation's narrative of its current inadequate treatment of Native rights and Native policy. One of the more disturbing cases of this is demonstrated in the use and operation of domestic criminal law, as the bureaucratic exercise of criminal law on Native reservations create various avenues of allowing the federal government to turn a blind eye to the violent crimes that occur on tribal reservations. The universally recognized security that should be afforded to all Indigenous Peoples still remains an ideal for the Natives in the U.S., as the rights contained and advanced in the UNDRIP have yet to become common application in safeguarding Native welfare,

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2. *United Nations Declaration on the Rights of Indigenous Peoples*, UNITED NATIONS: DEPT OF ECONOMIC AND SOCIAL AFFAIRS, available at <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> (last visited Aug. 6, 2021).

3. *See id.*

4. *See id.*

5. *US Acts on UN Rights of Indigenous Peoples Declaration*, PINE TREE LEGAL AID (July 26, 2011), available at <https://ptla.org/wabanaki/us-acts-un-rights-indigenous-peoples-declaration> (last visited Aug. 6, 2021).

6. *VICTORY!: U.S. Endorses UN Declaration on the Rights of Indigenous Peoples*, CULTURAL SURVIVAL, available at <https://www.culturalsurvival.org/news/victory-us-endorses-un-declaration-rights-indigenous-peoples> (last visited Mar. 22, 2021).

7. *See id.*

health, safety, and resources.<sup>8</sup> On some given reservations, the crime rate can be five to seven-times higher than the national average, and the lands are filled with multiple accounts of horrendous homicides.<sup>9</sup> In the majority of federally-recognized Native reservations, the formal processes of undertaking an investigation into any particular case that transpires on tribal grounds are faced with a jurisdictional struggle and confusion, as it is left unclear whether the county and state or the tribal government has jurisdiction, or whether the matter is entirely in the hands of the federal agencies.<sup>10</sup> As a result, this has halted initiation into certain cases that take place on tribal reservations, and many investigations persist unsolved and unprosecuted.<sup>11</sup>

In comparison to the past with the present federal Indian policy, not much is different, and the similarities that are still commonplace present a harsh reality into the federal government's continuing lack of care in prioritizing fundamental Native rights that should have been legally sanctioned centuries ago. The most glaring example of this is in the domestic field of criminal law, as it is in this component of the country's legal organ in which exists the most blatant failures of executing justice for one of the nation's most vulnerable groups of individuals. More must be done on the part of the federal government to ensure that its original dedication to the UNDRIP is satisfied, and that the principles of the universal declaration act as a proper source for influencing domestic criminal legislation to shape what should be modern Native policies with legitimate protections and indemnified security. Until the federal government changes its course and undertakes measures towards rectifying its past and its once-defining discriminatory behavior towards Natives, fairness will be delayed and the administration of required justice for Native communities will amount to nothing more than yet another broken promise.

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8. See *Frequently Asked Questions About the UN Declaration on the Rights of Indigenous Peoples*, CULTURAL SURVIVAL, available at <https://www.culturalsurvival.org/news/frequently-asked-questions-about-un-declaration-rights-indigenous-peoples> (last visited Aug. 6, 2021).

9. Timothy Williams, *Brutal Crimes Grip an Indian Reservation*, NY TIMES (Feb. 12, 2012), available at <https://www.nytimes.com/2012/02/03/us/wind-river-indian-reservation-where-brutality-is-banal.html?smid=tw-nytimesnational&seid=auto> (last visited Aug. 6, 2021).

10. Sierra Crane-Murdoch, *On Indian Land, Criminals Can Get Away With Almost Anything*, THE ATLANTIC (Feb. 22, 2013), available at <https://www.theatlantic.com/national/archive/2013/02/on-indian-land-criminals-can-get-away-with-almost-anything/273391/> (last visited Aug. 6, 2021).

11. See *id.*

## INTRODUCTION

In the U.S., the Bureau of Indian Affairs (“BIA”) of the U.S. Department of the Interior identifies 574 federally recognized American Indian and Alaska Native tribes and villages, and defines American Indian or Alaska Native person as “someone who has blood degree from and is recognized as such by a federally recognized tribe or village (as an enrolled tribal member) and/or the United States.”<sup>12</sup> At present, there are approximately 2,907,272 individuals who identify as American Indian or Alaska Native affiliated with a federally recognized tribe in the U.S.<sup>13</sup> This number has increased steadily over the years, and there is an additional 2.9 million identifying as multiple races, including American Indian.<sup>14</sup> The Native population that identifies as solely Native American expanded 13% between the years of 2000 and 2018, while the number of individuals who identify as at least partially Native American increased 77%.<sup>15</sup> An estimated 30% of the 5.8 million Natives in the U.S. live on tribal reservations, where living conditions have been said to resemble the Third World, as Native residents lack the basic necessities of water and electricity.<sup>16</sup> There is an immense housing shortage issue, and around 30% of Native housing on reservations is overcrowded, as it is not uncommon for several generations of families to live together in a single home.<sup>17</sup> The unemployment rate for Natives is 6.6%, which is significantly higher than the national unemployment average of 3.9%.<sup>18</sup> This rate is also considerably higher for those Natives who reside on

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12. *Frequently Asked Questions*, U.S. DEP’T OF THE INTERIOR INDIAN AFFAIRS, <https://www.bia.gov/frequently-asked-questions> (last visited Aug. 6, 2021); see also *Tribal Population*, CTR. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/tribal/tribes-organizations-health/tribes/state-population.html> (last visited Aug. 6, 2021).

13. *Id.*

14. Andrew Soergel, *Where Most Native Americans Live*, US NEWS (Nov. 29, 2019), available at <https://www.usnews.com/news/best-states/articles/2019-11-29/california-arizona-oklahoma-where-most-native-americans-live> (last visited Aug. 6, 2021).

15. *Id.*

16. *Living Conditions*, NATIVE AMERICAN AID (2015), available at [http://www.nativepartnership.org/site/PageServer?pagename=naa\\_livingconditions](http://www.nativepartnership.org/site/PageServer?pagename=naa_livingconditions) (last visited Aug. 6, 2021).

17. Patrice Kunesh, *Increasing Access to Affordable Housing in Indian Country*, SHELTERFORCE (Nov. 25, 2019), available at <https://shelterforce.org/2019/11/25/increasing-access-to-affordable-housing-in-indian-country/> (last visited Aug. 6, 2021).

18. *American Indians and Alaska Natives in the U.S. labor force*, U.S. BUREAU OF LABOR STATISTICS (Nov. 2019), available at <https://www.bls.gov/opub/mlr/2019/article/american-indians-and-alaska-natives-in-the-u-s-labor-force.htm> (last visited Aug. 6, 2021).

reservations, as the unemployment rate on tribal reservations is estimated to be 11.6%.<sup>19</sup>

In observance of the federal crime data, the accessible information has long suggested that Native reservations have higher rates of violent crime than the national average, especially when it comes to violence against women. Approximately 46% of all Native American women have been said to have experienced some sort of physical abuse including rape, stalking, or domestic violence.<sup>20</sup> Native women are murdered at a disproportionate rate that is ten times higher than the national average when compared to other ethnicities, and homicide stands as the third leading cause of death for Indigenous women in the U.S.<sup>21</sup> The greater part of these crimes are committed by non-Natives on Native land, and the unclarity of jurisdictional lines allows the majority of these perpetrators to escape apprehension, which in turn, leaves the victims without an escape of their own from the trauma they are forced to endure in their deprivation of justice.<sup>22</sup> In 2017 alone, 5,646 Native women were reported missing in the U.S.<sup>23</sup> In the state of Montana, Native citizens consist of 6.8% of the state's population, yet between 2016 and 2018, they comprised 26% of the state's missing person's reports.<sup>24</sup> Such explicit numbers do not furnish anything close to a complete depiction, as there is not a reliable source that maintains a complete record of the number of Native women considered missing or murdered in a given year.<sup>25</sup> Researchers have discovered misclassifications of Native women under the racial categories of Hispanic or Asian, whereas thousands of

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19. *Id.*

20. *Native American Issues Today | Current Problems & Struggles 2020*, POWWOWS.COM (Sept. 7, 2019), available at <https://www.powwows.com/issues-and-problems-facing-native-americans-today/> (last visited Aug. 6, 2021).

21. *Murdered & Missing Indigenous Women*, NATIVE WOMENS WILDERNESS, available at <https://www.nativewomenswilderness.org/mmiw> (last visited Aug. 6, 2021).

22. See Carolyn Smith-Morris, *Addressing the Epidemic of Missing & Murdered Indigenous Women and Girls*, CULTURAL SURVIVAL (Mar. 6, 2020), available at <https://www.culturalsurvival.org/news/addressing-epidemic-missing-murdered-indigenous-women-and-girls> (last visited Aug. 6, 2021).

23. Nick Martin, *The Connection Between Pipelines and Sexual Violence*, THE NEW REPUBLIC (Oct. 15, 2019), available at <https://newrepublic.com/article/155367/connection-pipelines-sexual-violence> (last visited Aug. 6, 2021).

24. *Id.*

25. Jack Healy, *In Indian Country, a Crisis of Missing Women. And a New One When They're Found.*, NY TIMES (Dec. 25, 2019), available at <https://www.nytimes.com/2019/12/25/us/native-women-girls-missing.html> (last visited Aug. 6, 2021).

others had been excluded from the federal missing-persons database altogether.<sup>26</sup>

Moreover, the rate of aggravated assault among Native people is about twice the rate of the country as a whole.<sup>27</sup> Natives are also killed in police encounters at a higher rate than any other racial or ethnic group, and their deaths are less likely to garner public attention, which causes the Native American invisibility chronicle to become more solidified.<sup>28</sup> Here, the reported numbers of deaths from the data that is available likely do not capture all Native American deaths deriving from police encounters, due to people of mixed races and a relatively large homeless population that is “not on the grid.”<sup>29</sup> Again, the limited jurisdiction of state and federal resources, in association with the insubstantial resources of the tribal governments and law enforcers, act as hurdles to the carrying out of any efficient investigation.<sup>30</sup>

With such shortfalls in investigating such crimes, local law enforcement have become discouraged and hesitant in undertaking new cases, which leads to the spiraling effect of U.S. attorneys declining to prosecute 37% of cases that happen in “Indian Country.”<sup>31</sup> Of these cases that go unprosecuted, over a quarter are allegations of sexual assault against children and adults.<sup>32</sup> To validate their calculated nonintervention, federal attorneys oftentimes cite to the reason of a lack of evidence in 70% of the cases they had chosen to drop.<sup>33</sup> The U.S. Department of Justice’s prosecution rate of crimes against Natives is viewed as a failure by several lawmakers, and as further confirmation of

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26. *Id.*

27. Mihir Zaveri, *Killing of 5 on Indian Reservation Underscores Challenge With Violent Crime*, NY TIMES (June 12, 2019), available at <https://www.nytimes.com/2019/06/12/us/yakama-indian-reservation-killings.html> (last visited Aug. 6, 2021).

28. Elise Hansen, *The forgotten minority in police shootings*, CNN (Nov. 13, 2017), available at <https://www.cnn.com/2017/11/10/us/native-lives-matter/index.html> (last visited Aug. 6, 2021).

29. *Id.*

30. Martin, *supra* note 23.

31. *Id.*

32. Elena Saavedrea Buckley, *Feds fail to prosecute crimes in Indian Country*, HIGH COUNTRY NEWS (Nov. 29, 2018), available at <https://www.hcn.org/articles/tribal-affairs-feds-fail-to-prosecute-crimes-in-indian-country> (last visited Aug. 6, 2021).

33. *Id.*

the federal government allowing Native victims to “fall through the cracks of our justice system.”<sup>34</sup>

Within the provisions as provided in UNDRIP, Indigenous Peoples should be given the freedom to enjoy fundamental fairness and equality, while also being given the formal admission of their differences and their desires to be respected as such.<sup>35</sup> The Declaration reaffirms the inherent freedom from any form of discrimination, and it perceives the concern of “colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests.”<sup>36</sup> It further emphasizes an “urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,” while coincidentally being assured that “control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions.”<sup>37</sup> In accordance with UNDRIP’s provisions, there exists an international guideline to which states should appropriately consult when coordinating their own domestic policies in the treatment of the state’s Indigenous Peoples.

In the U.S., however, federal policies that address Native problems, especially in the criminal sector of domestic law, is predominantly deficient, and the legal practices that are in place fail in yielding effortful solutions to counter the foundational and historic causes of violent crimes that take place on Native reservations. There is purposeful neglect on the part of the government, and this inattention frustrates the exact duties the federal government holds in ensuring security to the nation’s vulnerable indigenous populations as outlined in UNDRIP. The previous executions of discrimination continue to define the government’s behavior towards Native groups, as it proceeds with the unchanged mindset of not focusing its policy motivations on administering genuine change on dire Native issues that remain, for the most part, invisible. The federal government’s inaction in abiding by the UNDRIP has promote the systematic continuance of discrimination and disregard against Natives.

The federal government must prioritize Native issues in its consideration of enacting legislation that supplies tribal governments

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34. Mary Hudetz, *Federal report: Indian Country criminal prosecutions plateau*, THE ASSOCIATED PRESS (Nov. 21, 2018), available at <https://apnews.com/article/f027ebe42d1d4bedb56994de78fc25e0> (last visited Aug. 6, 2021).

35. G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples (Oct. 2, 2007) [hereinafter UNDRIP].

36. *Id.*

37. *Id.*

with required resources, while also aiming to organize and set distinct lines of jurisdiction so to as avoid future debates of whether tribal, state, or federal agencies possess the authority to initiate and pursue a criminal case that occurred on tribal lands. Such disputes have been the core reason for non-prosecution of violent perpetrators against Natives, and they have further triggered multiple delays in engaging in immediate proceedings of pursuing cases that could have ultimately led to some form of apprehension and remedy. This Note will consider the historical sources and events that developed and impacted current federal Native policies in addressing violent criminal activities against Natives, while also differentiating U.S. practices from the global incentives that various nations advanced for Indigenous Peoples in the passage of the UNDRIP. This note will also examine the types of violent crimes committed against certain groups of Natives, and the corresponding enforcement system that is unable to be properly utilized due to internal uncertainty and disagreements of who has jurisdictional control and the adequate resources.

Section II of this Note studies the history of the UNDRIP and the ventures that led to its eventual and extensive passage on the international sphere. Section III presents a historical overview of Native Reservations and tribal communities. Section IV discusses commissions of violent acts against Native populations, and how such acts reflect a modern yet still identical approach as to the historical acts that have been invariably perpetrated against Native Americans. Section V addresses the concern for the lack of investigations and subsequent prosecutions of violent crimes perpetrated on tribal lands. Section VI examines the question of jurisdiction, and how the ambiguous separations of distinctive authority create a confounding effect on miscommunication and subsequent delays, thus further prohibiting the achievement of needed justice. This Note concludes with considering possible solutions for future governmental policies that could better confront the issues of violence against Natives. In closing, the Note places heavy prominence on legislative enactments to be better aligned to the principles and commitments that are explicitly fostered within the UNDRIP. Only by doing so can the U.S. begin to rectify its past crimes and offenses towards Natives, and work towards nurturing a respectable and collaborative relationship for the future years to come.

## **HISTORY OF THE UN DECLARATION ON THE RIGHTS**

## OF INDIGENOUS PEOPLES

The UN Declaration on the Rights of Indigenous Peoples was the conclusion of a 25 years process of hard negotiations.<sup>38</sup> The efforts underlying the achievement of the Declaration originated from the studies conducted by José R. Martínez Cobo, who was appointed as Special Rapporteur of the Study of the Problem of Discrimination against Indigenous Populations.<sup>39</sup> His findings, titled the Cobo Report, which contained reviews of discrimination faced by indigenous peoples throughout the world.<sup>40</sup> The Report also relayed descriptions of the oppression, marginalization and exploitation suffered by indigenous peoples.<sup>41</sup> After its scrutiny of the Cobo Report and upon agreement of a final text for a draft of a potential declaration, the Working Group submitted a first draft of a declaration on the rights of indigenous peoples to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities.<sup>42</sup> This initial draft was later approved in 1994 and then correspondingly sent to the UN Commission on Human Rights for further consideration and to commence a discussion.<sup>43</sup>

States, however, viewed the draft of the declaration with slight suspicion, and many expressed their hesitations with regard to some of the core provisions of the draft declaration, namely the right to self-determination of all Indigenous Peoples and the control over natural resources existing on indigenous traditional lands.<sup>44</sup> In 2006, internal shifts within the UN were generated, and one of the outcomes was the replacement of the U.N. Commission on Human Rights with the U.N. Human Rights Council.<sup>45</sup> At length, the UN Human Rights Council adopted the Declaration on the Rights of Indigenous Peoples on June 29, 2006.<sup>46</sup> There formed, however, an initiative led by the state of Namibia, co-sponsored by a number of African countries, that resulted in the draft being amended to have the Assembly decide “to defer consideration and

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38. *Celebrating 13 Years of the UN Declaration on the Rights of Indigenous Peoples*, CULTURAL SURVIVAL (Sept. 12, 2020), available at <https://www.culturalsurvival.org/news/celebrating-13-years-un-declaration-rights-indigenous-peoples> (last visited Aug. 6, 2021).

39. *Id.*

40. *Id.*

41. *Id.*

42. United Nations: Dep't of Economic and Social Affairs, *supra* note 2.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

action on the United Nations Declaration on the Rights of Indigenous Peoples to allow time for further consultations thereon.”<sup>47</sup>

At long last, on September 13, 2007, the Declaration was adopted by a majority of 144 member states in favor, four states against, and 11 abstentions.<sup>48</sup> The four states initially voting against the Declaration were Australia, Canada, New Zealand and the U.S., conveying official explanations such as the Declaration going too far in giving Indigenous Peoples ownership of their traditional lands, veto rights over national legislation, and local management of resources.<sup>49</sup> The four states’ own histories with their Indigenous populations may also have instigated an additional cause for their separate rejections. It was simple to see then that the basis for the opposing states to decide against the Declaration’s approval was the apprehension of undermining their sovereignty of their own federal governments.<sup>50</sup> Nevertheless, Australia became the first to shift its position in support of the Declaration following an inner change in domestic government in 2009.<sup>51</sup> New Zealand was the next to follow in adopting the Declaration in 2010, accompanied by Canada later that same year.<sup>52</sup> To date, Canada has engaged in legitimate pursuits to formally implement the provisions of UNDRIP in consistency with Canadian domestic law.<sup>53</sup> Canada’s federal Minister of Justice introduced Bill C-15 titled “An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples,” which would require the federal government, in consultation and cooperation with Indigenous peoples, to “take all measures necessary to ensure the laws of Canada are consistent with UNDRIP, prepare and implement an action plan to achieve UNDRIP’s objectives, and table an annual report on progress to align the laws of Canada and on the action plan.”<sup>54</sup>

47. United Nations: Dep’t of Economic and Social Affairs, *supra* note 2.

48. *Id.*

49. Warren Hoge, *Indigenous Rights Declaration Approved*, NY TIMES (Sept. 14, 2007), available at <https://www.nytimes.com/2007/09/14/world/14briefs-nations.html> (last visited Aug. 6, 2021).

50. See Erin Hanson, *UN Declaration on the Rights of Indigenous Peoples*, INDIGENOUS FOUNDATIONS, available at [https://indigenousfoundations.arts.ubc.ca/un\\_declaration\\_on\\_the\\_rights\\_of\\_indigenous\\_peoples/](https://indigenousfoundations.arts.ubc.ca/un_declaration_on_the_rights_of_indigenous_peoples/) (last visited Aug. 6, 2021).

51. Cultural Survival, *supra* note 38.

52. *Id.*

53. Sharon Singh, Radha Curpen, Bradley Gilmour & Sean Assié, *Canada: Federal Government Fulfills Promise To Introduce UNDRIP Legislation*, MONDAQ (Dec. 9, 2020), available at <https://www.mondaq.com/canada/indigenous-peoples/1013842/federal-government-fulfills-promise-to-introduce-undrip-legislation> (last visited Aug. 6, 2021).

54. *Id.*

This left the U.S. as the last state to reverse its opposing position on December 15, 2010.<sup>55</sup> Upon the announcement of the U.S.'s support of the UNDRIP, commentators quickly noted the lurking meaning behind the Administration's statements.<sup>56</sup> Many feared that there would no change, as this was another example of treaty promises made to someday be broken the moment the federal government placed precedence elsewhere.<sup>57</sup> Still, substantial exploits have been launched to aid and guide the steps towards implementation of the UNDRIP in the U.S.<sup>58</sup> Natives have also been involved in improved participations at a number of meetings of the world indigenous peoples that were held throughout 2015 and 2016.<sup>59</sup> Moreover in 2016, the UN passed a resolution that expanded Indigenous membership and representation at hearings, meetings, autonomy, and comprehensive responsiveness for the group.<sup>60</sup>

The Declaration, however, left open many questions as to its implementation into domestic policy. It also presented supplemental questions of its precise purpose, and whether its terms were meant to be implemented at all, or simply subsist as vague international standards to which differing states could then offer up their own varying interpretations whilst not realizing the full enactment of the Declaration's provisions. In the U.S, such inquiries raised greater doubt as to the role the Declaration held when faced against settled domestic law. The legal principles within the Declaration were adopted by the nation in its acceptance of the international influence it was sure to deliver, but the realistic operation of this effect exerting any consequence in determining federal Native policy prevails in heavy doubt. In assessing the lasting practices of federal treatment towards Natives, the U.S. has failed in legislating legitimate policies that position its central endeavors on correcting the historical wrongs so that past deeds do not determine present conventions, especially in the current domain of criminal law with respect to Natives.

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55. *Obama backs U.N. indigenous rights declaration*, REUTERS (Dec. 16, 2010), available at <https://www.reuters.com/article/idUSTRE6BF3RF20101216> (last visited Aug. 6, 2021).

56. *See* PTLA, *supra* note 5.

57. *See id.*

58. *See* Kim Jerome Gottschalk, *United Nations and Indigenous Peoples*, NATIVE AMERICAN RIGHTS FUND, available at <https://www.narf.org/cases/declaration-indigenous-rights-un/> (last visited Aug. 6, 2021).

59. *See id.*

60. *See id.*

## HISTORICAL OVERVIEW OF NATIVE RESERVATIONS

Native tribal reservations were created by the federal government with the original intention to generate available expanses of land that the government possessed no legitimate stake in, nor held any justified legal rights of ownership in. Removal, however, of Natives from segments of attractive land, had to be met with a parallel solution that would result in relocation of thousands of Natives from their homelands. Therefore, the deprivation of the Natives of their historical lands, in the perspective of the federal government, was considered highly acceptable. This warped mentality would prove to be one of the most damaging moments of this nation's record.

Native reservations have and continue to hold a concentration of violence that initially was stirred by the enactment of unjustified federal policies. The Indian Removal Act signed in 1830 by President Andrew Jackson serves as the origin of government-sponsored Native relocation.<sup>61</sup> The Removal Act allowed the federal government to exchange Native land in the "cotton kingdom" east of the Mississippi for land in the west; the lands which would be referred to as the "Indian colonization zone."<sup>62</sup> Under the Removal Act, the relocation was legally required to be conducted fairly, voluntarily, and peacefully without the presence of any coercion upon the Native nations, but force was freely implemented against the Natives in order to vacate their generational lands for the incoming white settlers.<sup>63</sup>

Several northern tribes relocated peacefully and resettled in the western lands that were deemed to be too undesirable for white farmers.<sup>64</sup> A number of the southeastern tribes refused to depart from their cultivated lands to an unknown and strange land that existed as nothing more than a stated promise from the same individuals attempting to remove them to begin with.<sup>65</sup> The U.S. military threatened complete invasion of the lands, and the Native were bound in chains and marched out of the territories, with many succumbing to disease and sickness along the way.<sup>66</sup> In 1838, the Cherokee Natives were forced at bayonet points

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61. *Trail of Tears*, HISTORY.COM (Nov. 9, 2009), available at <https://www.history.com/topics/native-american-history/trail-of-tears> (last visited Aug. 6, 2021).

62. *Id.*

63. *See id.*

64. *Indian Removal Act*, ENCYCLOPEDIA BRITANNICA, available at <https://www.britannica.com/topic/Indian-Removal-Act> (last visited Jan. 17, 2022).

65. *Trail of Tears*, *supra* note 61.

66. *Id.*

to march more than 1,200 miles to the government's resettled territories, journeying through what is forever marked as the Trail of Tears.<sup>67</sup> Despite the federal government's assurance that the Native's new lands would not be interfered with in any manner, the course of history revealed such expectations to be deceptions as the push towards white settlement in the west gathered haste federal support.

Settlers continued westward and the desire of more land instigated shades of the same past problems. In 1851, the Indian Appropriations Act was passed and devised the Indian reservation system that would last into the present days.<sup>68</sup> Congress provided funds to further transport Native tribes onto lands designated as farming reservations, but the frank purpose of such an Act was to retain a routinized control over the Native tribes.<sup>69</sup> Within the confines of these limited areas of space, Native tribes faced difficulty in attempting to keep alive their respective cultures and traditions.<sup>70</sup> The federal government paid no heed to the inherent differences and clashing relations of the various Native tribes, and oftentimes, feuding tribes were kept together.<sup>71</sup>

In 1887, the Dawes Act was enacted by President Grover Cleveland to sever the new tribal reservation lands.<sup>72</sup> Assimilation became the driving mechanism as the federal government encouraged Natives to partake in farming and agricultural practices, causing a division of tribal territories into individual plots.<sup>73</sup> Underlying the government's stated purpose, once again, was a program to confiscate over 90 million acres of tribal land from Natives, in order to then sell the lands to U.S. citizens.<sup>74</sup> Soon enough, assimilation strategies proved to be a failure even in the government's eyes. The Dawes Act became replaced with the Indian Reorganization Act in 1934 that aimed to restore Native culture and return the remainder of the lands to the tribes.<sup>75</sup> Through the Reorganization Act, the government initiated a shift in its purpose by stressing self-governance of tribes and the writing of their own

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67. *Id.*

68. *Indian Reservations*, HISTORY.COM (Dec. 8, 2017), available at <https://www.history.com/topics/native-american-history/indian-reservations> (last visited Jan. 17, 2022).

69. *Id.*

70. *Id.*

71. *Id.*

72. *The Dawes Act*, NATIONAL PARK SERVICE, available at <https://www.nps.gov/articles/000/dawes-act.htm> (last visited Jan. 17, 2022).

73. *Id.*

74. *Id.*

75. *Indian Reservations*, *supra* note 68.

constitutions.<sup>76</sup> In truth, however, the Reorganization Act only resurrected the previous relocation and reservation system that the government had in place, and this restoration of the past establishment is what constitutes the tribal reservations today.<sup>77</sup>

At present, the interior structure and federal characterization of Native tribal reservations exist under the Bureau of Indian Affairs (“BIA”), and the reservations are set up through intersections of arbitrary divisions across tribal boundaries.<sup>78</sup> Essentially, the Native tribes are compelled to remain dependent on the federal government through the endurance of the trust and trustee relationship that continues to define relations between the Natives and the government.<sup>79</sup> Congress, therefore, is the ultimate decisionmaker on determining the limits of tribal sovereignty, and the extent of the aid that is provided through federal policies.<sup>80</sup> The trust relationship has perpetuated extreme poverty on Native reservations, and it has kept their economic development relatively low in comparison to other demographic groups across the nation, as the legal ownership of all assets on Native reservations legally belong to the government.<sup>81</sup> The fundamental basis on which the trust relationship relies on is a wrongful and misconceived belief that tribes are unable to manage their own lands and affairs.<sup>82</sup> This is an extremely outdated and flawed mindset, notably when tribes have demonstrated time and time again their successful capabilities in managing their own resources and benefiting the members of their respective tribes without the oversight of the federal government.<sup>83</sup> Furthermore, Article 3 and

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76. *Id.*

77. *The reservation system*, KHAN ACADEMY, available at <https://www.khanacademy.org/humanities/us-history/the-gilded-age/american-west/a/the-reservation-system> (last visited Jan. 13, 2022).

78. Matthew Williams, *What life on a Native American reservation really looks like*, HUCK MAGAZINE (Sept. 12, 2016), available at <https://www.huckmag.com/art-and-culture/photography-2/native-american-reservation-pine-ridge-photography/> (last visited Jan. 13, 2022).

79. *See Tribal Sovereignty*, PAUMA TRIBE, available at <https://www.paumatribes.com/government/tribal-sovereignty/> (last visited Jan. 14, 2022).

80. *See id.*

81. Shawn Regan, *5 Ways The Government Keeps Native Americans in Poverty*, FORBES (Mar. 13, 2014), available at <https://www.forbes.com/sites/realspin/2014/03/13/5-ways-the-government-keeps-native-americans-in-poverty/?sh=2f2690c72c27> (last visited Jan. 14, 2022).

82. Shawn Regan, *Unlocking the Wealth of Indian Nations: Overcoming Obstacles to Tribal Energy Development*, PERC (Feb. 18, 2014), available at <https://www.perc.org/2014/02/18/unlocking-the-wealth-of-indian-nations-overcoming-obstacles-to-tribal-energy-development/> (last visited Jan. 14, 2022).

83. *Id.*

Article 4 of the UNDRIP provide specific provisions of the “right to self-determination,” and the “right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.”<sup>84</sup> The contemporary domestic policies of the U.S. have yet to reflect both of these Articles, as bureaucratic limitations restrict tribal sovereignty on Native reservations, while simultaneously determining the areas in which tribal governments can direct their own policies without the involvement of the overarching federal government.

### THE ISSUE OF VIOLENT CRIMES ON NATIVE RESERVATIONS

The cost of the existence of tribal reservations, however, has proven to be fatal for the Natives who reside on such reservations. Violence has prevailed as a constant condition on most Native reservations, and much of the modern acts resemble an almost identical source that has consistently induced violence against Natives; economic greed and unclarity of legal enforcement and penalties. The violent crimes that befall Native reservations are mostly hidden behind undecided jurisdictional lines, raising consecutive questions of who has the exact authority to do what at which moment in time.

Presently, with the draw of resources and benefits from the Native lands, novel issues have come to light regarding the crimes committed on reservations. The level of violence against Native women occurs at a disproportionate rate when compared to the national average of other ethnicities, and homicide stands as the third leading cause of death for Native women in the U.S., trailing behind only cancer and heart disease.<sup>85</sup> According to the Department of Justice, more than half of American Indian and Alaska Native women will experience sexual violence in their lifetimes.<sup>86</sup> The legal system provides more failures than resolutions, as

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84. UNDRIP, *supra* note 35, at § 3-4.

85. *Leading Causes of Death - Females - Non-Hispanic American Indian or Alaska Native - United States, 2016*, CDC (2016), available at <https://www.cdc.gov/women/lcod/2016/nonhispanic-native/index.htm> (last visited Jan. 14, 2022).

86. Maren Machles, Carrie Cochran, Angela M. Hill, and Suzette Brewer, *1 in 3 American Indian and Alaska Native women will be raped, but survivors rarely find justice on*

investigations into sexual assaults against Native women become hindered by the absence of much needed cooperation between tribes and federal governments.<sup>87</sup> For the few cases that do end up receiving a conviction in tribal court, federal law still holds the upper hand in preventing tribal courts from sentencing non-Native perpetrators to more than a single year.<sup>88</sup> Another component that is viewed as an epidemic is the growing number of disappearances of Native women. The unnerving accounts of missing and murdered Native American women and girls have sparked a movement to bring attention to the heinous acts that are committed the majority of times by non-Native individuals on Native land.<sup>89</sup> The core of the issue reverts back to the lack of communication between state, local, and tribal law enforcement, and agencies, with the consequences coming to bear on the victims themselves.

### VIOLENCE AGAINST NATIVE WOMEN AND GIRLS

46% of Native women residing on tribal reservations are said to experience some form of physical abuse, sexual assault, stalking, or domestic violence in their lifetime.<sup>90</sup> In their entirety, 84% of Native women are said to have experienced some form of violence in their lifetime.<sup>91</sup> 34% of Native women in the U.S. are raped in their lifetimes, and 39% are victims of domestic violence.<sup>92</sup> Native women are said to experience violence at more than 10 times the national average, and due to the lack of communication and data sharing between the federal, state, county, municipal, and tribal levels of law enforcement, a series of hurdles must be faced when attempting to solve the criminal activities, obtain funding, and begin prevention efforts.<sup>93</sup> A blatant example of such a hurdle is illustrated through the National Crime Information Center's 2016 data, in which the Center received 5,712 reports of missing

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*tribal lands*, USA TODAY (Oct. 19, 2019), available at <https://www.usatoday.com/story/news/nation/2019/10/18/native-american-women-sexual-assault-justice-issue-tribe-lands/3996873002/> (last visited Jan. 14, 2022).

87. *Id.*

88. *Id.*

89. *Murdered and Missing Indigenous Women*, *supra* note 21.

90. *Native American Issues Today | Current Problems & Struggles 2020*, *supra* note 20.

91. *Murdered and Missing Indigenous Women*, *supra* note 21.

92. *Violence Against Women*, NATIONAL CONGRESS OF AMERICAN INDIANS, available at <https://www.ncai.org/policy-issues/tribal-governance/public-safety-and-justice/violence-against-women> (last visited Jan. 14, 2022).

93. Chelsea Dennis, *US Commits to Track Violence against Indigenous Women*, NON-PROFIT QUARTERLY (Oct. 15, 2020), available at <https://nonprofitquarterly.org/us-commits-to-track-violence-against-indigenous-women/> (last visited Jan. 14, 2022).

American Indian and Alaska Native women and girls, but only two percent of the identical cases had been logged with the Department of Justice's federal missing persons database.<sup>94</sup> The prevalence of sexual assault and rape have been, and remain, under-reported, and it is near impossible to dictate an exact approximation of the frequency of such violent acts.<sup>95</sup>

Violent sex offenders have continuously escaped punishment for their crimes perpetuated on tribal lands.<sup>96</sup> As observed by Grant Christensen, an Associate Justice for the Supreme Court of the Standing Rock Sioux Tribe, there is an apparent incentive on Native tribal lands for non-Native predators to specifically target Native women and girls with the knowledge that neither the given tribe nor the state can prosecute them, thus leaving only the federal courts and prosecutors that may be hours away in the city. Christensen recounted stories of individuals who enter a reservation and ask a woman whether they are Indian, and if she says no, these individuals will pass on a "potential target."<sup>97</sup> In contrast to other racial groups, Native American women are more likely to be sexually assaulted by people who are not Native American.<sup>98</sup> The majority of rapes and sexual assaults against other women were intra-racial, but the majority of victimizations against American Indian and Alaska Native women were more likely to be interracial.<sup>99</sup> Among Native women who are victims of sexual assault or rape, an average of 67% describe the offender as non-Native, and among Native women who are victims of assault, an average of 63% describe the offender as non-Native.<sup>100</sup>

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94. *Id.*

95. *Id.*

96. Renee Cooper, *Behind the grim statistics for sexual violence on reservations*, KXNET (Dec. 16, 2020), available at <https://www.kxnet.com/news/local-news/being-raped-is-a-right-of-passage-behind-the-grim-statistics-for-native-american-women/> (last visited Jan. 16, 2022).

97. *Id.*

98. Garet Bleir & Anya Zoledziowski, *Murdered and Missing Native American Women Challenge Police and Courts*, THE CENTER FOR PUBLIC INTEGRITY (Aug. 27, 2018), available at <https://publicintegrity.org/politics/murdered-and-missing-native-american-women-challenge-police-and-courts/> (last visited Jan. 16, 2022).

99. *Police Insights Brief: Statistics on Violence Against Native Women*, NATIONAL CONGRESS OF AMERICAN INDIANS (Feb. 2013), available at [https://www.ncai.org/attachments/PolicyPaper\\_tWAjznFslemhAffZgNGzHUqIWMPkCDj pFtxeKEUVKjubxfpGYK\\_Policy%20Insights%20Brief\\_VAWA\\_020613.pdf](https://www.ncai.org/attachments/PolicyPaper_tWAjznFslemhAffZgNGzHUqIWMPkCDj pFtxeKEUVKjubxfpGYK_Policy%20Insights%20Brief_VAWA_020613.pdf) (last visited Jan. 16, 2022).

100. *Id.*

As previously mentioned, cases documenting missing and murdered Indigenous women and girls have gone under-reported or unreported altogether.<sup>101</sup> This endures as a long-standing issue that is regrettably linked to inadequate resources, plain indifference, and a confusing jurisdictional maze.<sup>102</sup> Therefore, the statistics provided are conjectured estimates that are based on individual and independent studies and research projects undertaken by organization collaborations for gathering and condensing data.<sup>103</sup> One such report, the To' kee skuy' soo ney-wochek' (I Will See You Again In a Good Way) Year 1 Progress Report: MMIWG2 of Northern California, documents 2,306 missing Native American women and girls in the U.S., about 1,800 of whom were killed or vanished within the past 40 years.<sup>104</sup> According to the Progress Report, 60% of the cases are homicides and 31% involve girls 18 years old and younger.<sup>105</sup> Almost three-quarters of the cases consisted of victims who were living in the foster care system at the time they went missing.<sup>106</sup> To this day, the majority of these cases within the U.S., in addition to nearly 2,000 in Canada, remain unsolved.<sup>107</sup> The Urban Indian Health Institute (UIHI), a division of the Seattle Indian Health Board, undertook a study of assessing the number and type of cases of missing and murdered American Indian and Alaska Native women and girls in 71 urban cities in 29 states across the U.S.<sup>108</sup> UIHI found 506 unique cases of missing and murdered American Indian and Alaska Native women and girls in the selected 71 cities; 128 were missing persons cases, 280 were murder

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101. Sharon Cohen, *#NotInvisible: Why are Native American Women vanishing?*, THE ASSOCIATED PRESS (Sept. 6, 2018), available at <https://apnews.com/article/cb6efc4ec93e4e92900ec99ccbc7e05> (last visited Jan. 16, 2022).

102. *Id.*

103. See generally Abby Abinanti, et. al., *A Year 1 Project Report on Missing and Murdered Indigenous Women, Girls, and Two Spirit People of Northern California*, (Jul. 2020) available at [https://2a840442-f49a-45b0-b1a1-7531a7cd3d30.filesusr.com/ugd/6b33f7\\_a83c3e5d9fed4906b70413a985321ac4.pdf?index=true](https://2a840442-f49a-45b0-b1a1-7531a7cd3d30.filesusr.com/ugd/6b33f7_a83c3e5d9fed4906b70413a985321ac4.pdf?index=true) (last visited Jan. 16, 2022).

104. Erik Ortiz, *Lack of awareness, data hinders cases of missing and murdered Native American women, study finds*, NBC NEWS (July 30, 2020, 2:18 PM), available at <https://www.nbcnews.com/news/us-news/lack-awareness-data-hinders-cases-missing-murdered-native-american-women-n1235233> (last visited Jan. 16, 2022).

105. *Id.*

106. *Id.*

107. *Id.*

108. *MISSING AND MURDERED INDIGENOUS WOMEN & GIRLS: A snapshot of data from 71 urban cities in the United States*, URBAN INDIAN HEALTH INST., available at <https://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf> (last visited Jan. 11, 2022).

cases, and 98 had an unknown status.<sup>109</sup> A case was flagged as “status unknown” when law enforcement was able to provide a number of total cases to a request for records, but did not specify how many of those cases were missing persons cases and how many were murdered persons cases.<sup>110</sup> Additionally, the “status unknown” classification was also applied to cases that had previously been listed on a missing persons database but had since been removed for undesignated reasons, and UIHI could not verify whether the women or girls had been safely located or had since then deceased.<sup>111</sup> The cities with the highest number of missing and murdered Indigenous women and girls cases were Seattle, Albuquerque, Anchorage, Tucson, Billings, Gallup, Tacoma, Omaha, Salt Lake City, and San Francisco.<sup>112</sup> In consideration of the disparaging absence of communication and cooperation between all levels of government, advocates have called for better tracking systems that extend across the national sphere to account for missing and murdered reports of Indigenous women and girls in every state.<sup>113</sup> Any and all currently publicized reports exist as estimates, and are likely to severely undercount the actual numbers of missing and murdered Indigenous women. To contend with this inadequacy, Native leaders have acknowledged that the data will never be 100 percent in terms of comprehensiveness, but that is “...what we need to strive for in order to protect our mothers, daughters, sisters, and aunts.”<sup>114</sup>

With this understanding, it becomes an evident tragedy to witness the disregard of the federal government in attending to the terms of the UNDRIP. In reference to Article 22, the UNDRIP states that, “Particular attention shall be given to the rights and special needs of indigenous elders, women, youth, children, and persons with disabilities.”<sup>115</sup> The Article continues to call forth states to “take measures...to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.”<sup>116</sup> With the steady increase of unexplained violence and disappearances against Native women in the U.S., the ironic complementary of insufficient reporting and evidence-gathering is nothing short of an affront to the victims, their families, and their tribal communities.

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109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. Urban Health Institute, *supra* note 108.

114. *Id.*

115. UNDRIP, *supra* note 35, at § 22.

116. *Id.*

## VIOLENCE IN CONNECTION WITH “MAN CAMPS” AND BORDERTOWNS

With the discovery and growth of oil and fracking industries on Native tribal reservations, tribal communities have been disrupted in devastating ways. Following an oil or gas boom, tens of thousands of transient workers come into temporary housing units labeled “man camps” that are set up on or near tribal lands.<sup>117</sup> The man camps are also described as “work-camp modular housing,” and are constructed for well-paid, typically male laborers who oversee the building of pipelines that cut through rural tribal nation lands and Native communities.<sup>118</sup> Within a short period of time, these camps flow into small Native communities and consist of individuals who aim to cash in on high-paying fracking and pipeline jobs.<sup>119</sup> The dark side of the booms are demonstrated by the sudden climate of crime and impunity that these once-quiet communities are now forced to face in light of the massive energy development projects.<sup>120</sup>

There is a consistent pattern between the presence of man camps and oil/pipeline projects, with the increase of the presence of drugs, crimes, and violence against Native women.<sup>121</sup> To Native residents, there is an unequivocal connection between man camps and missing and murdered Native American women.<sup>122</sup> The unforeseen and uncontrolled increase in the booming industries on Native lands have precipitated more traffic of those individuals who are experiencing high cash inflow on vast expanses of rural lands, and several submitted reports have documented the connection between extreme resource extraction and violence against nearby Natives.<sup>123</sup> Multiple studies have shown that man camps bring

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117. Garet Bleir & Anya Zoledziowski, *The missing and murdered: 'We as Native women are hunted.'* INDIANZ (Aug. 27, 2018), available at <https://www.indianz.com/News/2018/08/27/the-missing-and-murdered-we-as-native-wo.asp> (last visited Jan. 11, 2022).

118. Martin, *supra* note 23.

119. Steve Bynum & Jerome McDonnell, *Rapes and Murders Of Indigenous Women At Oil And Fracking 'Man Camps'*, WBEZ CHICAGO (Mar. 13, 2018), available at <https://www.wbez.org/stories/rapes-and-murders-of-indigenous-women-at-oil-and-fracking-man-camps/5e741ac4-a51d-4ab9-bebf-e54c8d1788ce> (last visited Jan. 11, 2022).

120. *Id.*

121. Drew Novak, *Fear Next Door; The man camp connection*, NATIVE NEWS (2019), available at <https://nativenews.jour.umt.edu/2019/fort-peck/> (last visited Jan. 11, 2022).

122. *Id.*

123. *Fossil Fuel Extraction Dangers: Native American and Women's Organizations Request UN Help on Sexual Violence*, INDIAN COUNTRY TODAY (May 12, 2015), available at

violence in places where it would not otherwise be, and the sudden presence of the camps in a given area rapidly increases the population and strains law enforcement and human services.<sup>124</sup> These attendant burdens in turn affect rural tribal areas where law enforcement already encounter a deficiency in its ability to provide services to extensive swaths of land.<sup>125</sup> The increase in population leads to a parallel increase in physical and sexual violence, assault, and sex trafficking in the affected communities.<sup>126</sup>

One significant example of the harmful consequences that result is illustrated by the effects that were confronted by the Fort Berthold Reservation in North Dakota and Montana at the time of the Bakken oil boom.<sup>127</sup> In the mid-2000's, North Dakota experienced a large oil boom that caused wells to spring up along the edges of the Fort Berthold Reservation, an area composed of prairie and rolling hills three times larger than the size of Los Angeles.<sup>128</sup> The Bakken region made up 200,000 square miles along the Montana-North Dakota state line, and the area is home to the Assiniboine and Sioux nations of the Fort Peck Indian Reservation in Montana, and the affiliated Mandan, Hidatsa and Arikara tribes who are collectively known as the MHA Nation.<sup>129</sup> Soon, the sight of derricks and tanks full of crude oil, pipes, gas flares, and semi-trucks were encompassing the once empty stretches of land.<sup>130</sup> The peak of the Bakken oil boom occurred in 2012, and oil and gas infrastructure in the Bakken area included domestic violence shelters and a new FBI office, in addition to the appointment of two new special prosecutors to handle crimes against women, and the launching of a human trafficking task

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[https://indiancountrytoday.com/archive/native-american-and-women-s-organizations-request-un-help-on-sexual-violence-\\_srxHIWjqEmyrmz9OPMmZw](https://indiancountrytoday.com/archive/native-american-and-women-s-organizations-request-un-help-on-sexual-violence-_srxHIWjqEmyrmz9OPMmZw) (last visited Jan. 14, 2022).

124. *Violence from Extractive Industry 'Man Camps' Endangers Indigenous Women and Children*, UNIV. OF COLORADO, BOULDER: FIRST PEOPLES WORLDWIDE (Jan 29, 2020), available at <https://www.colorado.edu/program/fpw/2020/01/29/violence-extractive-industry-man-camps-endangers-indigenous-women-and-children> (last visited Jan. 14, 2022).

125. *Id.*

126. *Id.*

127. Valerie Volcovici, *Red tape chokes off drilling on Native American reservations*, REUTERS (Jan. 27, 2017), available at <https://www.reuters.com/article/us-usa-trump-tribes-regulations-insight/red-tape-chokes-off-drilling-on-native-american-reservations-idUSKBN15B0E7> (last visited Jan. 14, 2022).

128. *Id.*

129. Bleir & Zoledziowski, *supra* note 98.

130. Alleen Brown, *A New Film Examines Sexual Violence as a Feature of the Bakken Oil Boom*, THE INTERCEPT (July 1, 2018, 11:30 AM), available at <https://theintercept.com/2018/07/01/nuuca-bakken-oil-boom-sexual-violence/> (last visited Jan. 14, 2022).

force.<sup>131</sup> Attacks on Native women increased with the flood of transient oil workers, as interactions between the Natives and non-Native oil workers were considered by Native residents to be inevitable.<sup>132</sup> According to MHA Nation victim services workers, “It was the transient workers that were committing these crimes ... and with the arrival of all of these men, the rape victimization had tripled.”<sup>133</sup>

In 2019, the U.S. Bureau of Justice Statistics concluded its study on violent crimes in the Bakken oil-producing regions of the two states, and found that from 2006 to 2012, the rate of violent victimization, particularly of aggravated assault, increased 70%, and violent victimization by strangers increased by 53% in the Bakken region.<sup>134</sup> Conversely, the study found that there was no corresponding increase in violent crime in the surrounding counties outside of the Bakken oil region, and instead, found that reports of violent victimizations in non-Bakken counties were down 8% during this boom period.<sup>135</sup>

Similar concerns arose once President Donald Trump made it a priority for his administration to issue permits for the highly disputed Keystone XL pipeline that would carry oil sands 1,200 miles from the Canadian province of Alberta down to the state of Nebraska.<sup>136</sup> The project was first proposed in 2008 and was estimated to conceivably cost \$8 billion.<sup>137</sup> It had long been the cause of intense controversy involving economic development groups and environmental protectionist organizations.<sup>138</sup> The Obama administration rejected the project, but Trump revived it during his time in office.<sup>139</sup> Native tribes along the pipeline route had argued that burning oil sands would worsen climate change,<sup>140</sup> and that the pipeline could spill over into natural waterways and Native sacred lands, as the original Keystone Pipeline System had

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131. *Id.*

132. Bleir & Zoledziowski, *supra* note 98.

133. *Id.*

134. University of Colorado, Boulder: First Peoples Worldwide, *supra* note 124.

135. *Id.*

136. *Keystone XL pipeline: Why is it so disputed?*, BBC NEWS (Jan. 21, 2021), available at <https://www.bbc.com/news/world-us-canada-30103078> (last visited Jan. 14, 2022).

137. Matthew Brown, *Trump administration approves Keystone pipeline on U.S. land*, PBS NEWS HOUR (Jan. 22, 2020), available at <https://www.pbs.org/newshour/nation/trump-administration-approves-keystone-pipeline-on-u-s-land> (last visited Aug. 6, 2021).

138. *Id.*

139. *Id.*

140. Melissa Denchak, *What Is the Keystone XL Pipeline?*, NAT'L RES. DEF. COUNCIL (Jan. 21, 2021), available at <https://www.nrdc.org/stories/what-keystone-pipeline> (last visited Jan. 17, 2022).

leaked more than a dozen times in the past.<sup>141</sup> In 2018, the Native communities of the Fort Belknap of Montana and the Rosebud Sioux Tribe of South Dakota sued the Trump administration, quoting the administration's failure to adhere to historical treaty boundaries and bypassing environmental impact analyses.<sup>142</sup> The Keystone project presented other worries in addition to the economic and environmental impacts, as the oil and construction industries would have created thousands of temporary jobs in which the presence of thousands of transient workers would have likely resulted in an increase in violence in Native communities.<sup>143</sup> On January 20, 2021, however, President Biden signed an Executive Order revoking the Keystone XL pipeline permit previously issued by the Trump administration.<sup>144</sup> Environmental groups, both domestically and internationally, and Native activists applaud Biden's decision.<sup>145</sup> Tribal members viewed the pipeline as a threat to their drinking water sources and irrigation systems, and as an affront to their ancestors' previous treaties that were entered into with the federal government.<sup>146</sup> Although Biden's decision is considered to be a step in the right direction, many recognize the necessary perseverance to continue making headway in the campaign for long-term solutions to safeguard the rights and protections of Native communities. Native advocates are continuing to urge Biden to shut down other controversial fossil fuel pipelines, including the Dakota Access pipeline ("DAPL"), which was arguably sanctioned without conducting legally required consultations with Native communities.<sup>147</sup> The Standing Rock Sioux

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141. *Id.*

142. Vanessa Romo, *Native American Tribes File Lawsuit Seeking to Invalidate Keystone XL Pipeline Permit*, NPR (Sept. 10, 2018), available at <https://www.npr.org/2018/09/10/646523140/native-american-tribes-file-lawsuit-seeking-to-invalidate-keystone-xl-pipeline-p> (last visited Jan. 17, 2022).

143. See Abaki Beck, *For Indigenous Women, More Pipelines Mean More Threats of Sexual Violence*, THE REVELATOR (Oct. 10, 2019), available at <https://therevelator.org/fossil-fuel-indigenous-women/> (last visited Jan. 17, 2022).

144. *Tribes Respond to KXL Pipeline Termination*, NATIVE AM. RTS. FUND (Jan. 20, 2021), available at <https://www.narf.org/keystone-xl/> (last visited Jan. 17, 2022).

145. See Rob Gillics, *Keystone XL pipeline halted as Biden revokes permit*, THE ASSOCIATED PRESS (Jan. 20, 2021), available at <https://apnews.com/article/joe-biden-alberta-2fbccc48372f5c29c3ae6f6f93907a6d> (last visited Jan. 17, 2022).

146. Nora Mabie, *Montana tribal members, fearing water contamination, relieved as Keystone XL pipeline blocked*, USA TODAY (Jan. 21, 2021), available at <https://www.usatoday.com/story/news/nation/2021/01/21/montana-tribes-react-president-biden-blocks-keystone-xl-pipeline/6659608002/> (last visited Jan. 17, 2022).

147. Nina Lakhani, *'No more broken treaties': indigenous leaders urge Biden to shut down Dakota Access pipeline*, THE GUARDIAN (Jan. 21, 2021), available at

tribe of North Dakota rallied support for its campaign to stop the DAPL from being built on tribal lands, and as of now, the legal battles are still in progress in order to decide the fate of the roughly 470,000 barrels of crude oil that are currently being transported by pipeline.<sup>148</sup>

Likewise, the Line 3 pipelines portray another broken promise on the part of the federal government, as it also fails to honor the past treaties between the Ojibwe people and the U.S.<sup>149</sup> Located in Minnesota, Line 3 runs nearly 400 miles long and cuts across the Fond du Lac reservation.<sup>150</sup> Line 3 has also utilized monetary tactics towards the communities that run along the pipeline's route through donations, jobs, tax revenues, and money for local policing and local advertisements.<sup>151</sup> The difference in approaches is unnerving, as at Standing Rock, pipeline owners and law enforcement posed no hesitation in using rubber bullets, water cannons, and tear gas against protesters.<sup>152</sup> Enbridge, the Canadian energy transportation company heading the Line 3 pipelines project, seemingly accepts the notion that they cannot win over the hearts and minds of all the Native people, but according to Anton Treuer, professor of Ojibwe language at Bemidji State University in Minnesota, the company does not have to.<sup>153</sup> According to Professor Treuer, "if they can win over just enough to clear enough hurdles to get the next easement or next little contract or permit approved, they know they'll be able to get their work done."<sup>154</sup> Enbridge has further contracted private agreements for undisclosed sums and offered contracting, training and job opportunities

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<https://www.theguardian.com/us-news/2021/jan/21/dakota-access-pipeline-joe-biden-indigenous-environment> (last visited Jan. 17, 2022).

148. Nina Lakhani, *Dakota access pipeline: court strikes down permits in victory for Standing Rock Sioux*, THE GUARDIAN (Mar. 25, 2020), available at <https://www.theguardian.com/us-news/2020/mar/25/dakota-access-pipeline-permits-court-standing-rock> (last visited Jan. 17, 2022); see also David Blackmon, *First Keystone XL, Now Dakota Access: Pipeline Politics Swirl Around Biden*, FORBES (Feb. 10, 2021), available at <https://www.forbes.com/sites/davidblackmon/2021/02/10/first-keystonexl-now-dakota-access-pipeline-politics-swirl-around-biden/?sh=404664b10c1a> (last visited Jan. 17, 2022).

149. Sheila Regan, *'It's cultural genocide': inside the fight to stop a pipeline on tribal lands*, THE GUARDIAN (Feb. 19, 2021), available at <https://www.theguardian.com/us-news/2021/feb/19/line-3-pipeline-objibwe-tribal-lands> (last visited Jan. 17, 2022).

150. Mary Annette Pember, *Enbridge Line 3 divides Indigenous lands, people*, INDIAN COUNTRY TODAY (Feb. 19, 2021), available at <https://www.mprnews.org/story/2021/02/24/enbridge-line-3-divides-indigenous-lands-people> (last visited Jan. 17, 2022).

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

for Fond du Lac Band reservation members.<sup>155</sup> This in turn has left Native residents to question whether voicing their oppositions would thwart the distribution of the monthly per capita payment checks the Band makes in the amount of \$400 using Enbridge funds, especially during a time when the pandemic has strained tribes and left them with severe inadequacies to attend to the economic shutdown.<sup>156</sup> Protesters have opposed Line 3, contending that the pipeline would pollute sensitive waterways and spill into wild rice and other ecosystems in the region.<sup>157</sup> This would present future threats to the Ojibwe traditional act of “making rice,” which serves as a tangible expression of the Ojibwe relationship with the earth; “one of sustainability and commitment to ensuring resources are protected and available for future generations.”<sup>158</sup> As well as the environmental and cultural impacts induced through repeated broken treaties, there is also the concern of rising violence perpetrated by the pipeline workers.

Multiple allegations of sexual assault and harassment have been attributed to Line 3 workers, and local businesses have increased calls and reports of sexual harassment since construction began in December.<sup>159</sup> In order to receive state permits, Enbridge was also required to create a public safety fund to cover costs associated with anti-human trafficking efforts in adjacent areas of construction and temporary residency.<sup>160</sup> Besides this and despite Enbridge’s implementation of mandatory human trafficking and sexual harassment training programs, former pipeline workers revealed witnessing a rampant culture of misogyny and sexual harassment at Line 3 sites.<sup>161</sup> The trainings lack in ensuring substantive instruction, as each training is comprised of a single 20-minute video without a final agreement or test of acknowledgement of the information.<sup>162</sup> The programs act as awareness videos, easily passed over and casually disregarded by both workers and Enbridge management.<sup>163</sup>

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155. Pember, *supra* note 150.

156. *Id.*

157. *Id.*

158. *Id.*

159. Candice Bernd, *Exploiting More Than the Land: Sex Violence Linked to Enbridge Line 3 Pipeliners*, TRUTHOUT (Mar. 16, 2021), available at <https://truthout.org/articles/exploiting-more-than-the-land-sex-violence-linked-to-enbridge-line-3-pipeliners/> (last visited Jan. 17, 2022).

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

The connection between the extractive industries and violence against Native women and Native communities is not a novel recognition. In 2019, Canada's National Inquiry into Missing and Murdered Indigenous Women and Girls released a 1,200-page report that condensed three years of community hearings, story gathering, and forensic research.<sup>164</sup> The report demonstrated a strong link between extraction zones on the missing and murdered women crisis in Canada, and it specifically explained rotational shift work, sexual harassment in the workplace, substance abuse, economic insecurity, and a large transient workforce as contributing to increased violence against Native women in communities near fossil fuel infrastructure.<sup>165</sup> A number of Native leaders, such as the Executive Director of the Sovereign Bodies Institute, Annita Lucchesi, have brought attention to the harmful culture that is manufactured by the conjured logic of upturning the natural waterways and lands that translates into an analogous pattern of abuse and violence.<sup>166</sup> As Lucchesi asserts, the thought process of such individuals is simple; "If you can use and abuse the water and land, you can use and abuse the people around you too."<sup>167</sup>

In evaluation of crimes against Natives in the context of extraction companies' expansions, the federal government evidently has aligned its policies alongside economic interests, and there remains considerable efforts to be initiated for violence against Indigenous peoples, especially Indigenous women, to be curtailed. Such federal actions are attached to the treatment of Native lands, and the allowance of industries to misuse traditional Native lands for a non-consented purpose is in direct opposition to the UNDRIP's commitments of states cooperating "in good faith before adopting and implementing legislative or administrative measure that may affect [Indigenous peoples]."<sup>168</sup> UNDRIP further emphasizes that Indigenous groups have the "right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources."<sup>169</sup> With the growing threats posed by the construction of unnatural pipelines through the upheaval of traditional lands, environmental dangers increase and natural waterways are contaminated, as in direct contrast to the Natives' right of states taking "effective measures to ensure that no storage or disposal of hazardous

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164. Beck, *supra* note 143.

165. *Id.*

166. *Id.*

167. *Id.*

168. UNDRIP, *supra* note 35, at § 19.

169. *Id.* at § 29(1).

materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.”<sup>170</sup> Most notably, and perhaps most disturbingly, the UNDRIP seemingly foretold the perils that would emerge with industrial proposals and operations, as in Section 32(2), the UNDRIP called for states to obtain the Indigenous peoples’ “free and informed consent prior to the approval of any project affecting their lands or territories.”<sup>171</sup>

### VIOLENCE IN POLICE ENCOUNTERS

Excessive police force against minority groups in the U.S. remains a core issue the federal government has failed to remedy on all fronts. The invisible narrative that Natives endure is further induced by the majority of their violent stories proceeding unnoticed. Statistically, Natives are killed in police encounters at a higher rate than any racial or ethnic group.<sup>172</sup> In a given group of every one million Natives, 2.9 have died annually from 1999 to 2015 due to “legal intervention,” with the main cause of these deaths resulting from police shootings.<sup>173</sup> This reveals a mortality rate that is 12% higher in comparison to African-Americans, and three times that of whites.<sup>174</sup> In some instances, the investigations into cases of fatal use of police force have been ruled as justified, whereas the identical encounters portray a different story when caught on video of excessive or inappropriate use of force.<sup>175</sup>

A number of factors are attributed to the growing statistic of Native killings at the hands of law enforcement. The lack of mental health services for Natives has exacerbated the issue without concern for addressing the central cause, as nearly half of the Native victims had histories of mental illness.<sup>176</sup> There is also the historical and continued strained relationship between Natives and non-Native police officers, as the murky jurisdictional designations place a number of tribal reservations within the confines of non-tribal authorities.<sup>177</sup> Distraught individuals become particularly vulnerable when placed in tense

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170. *Id.* at § 29(2).

171. *Id.* at § 32(2).

172. Hansen, *supra* note 28.

173. *Id.*

174. *Id.*

175. *Id.*

176. Sarah Tory, *Police shootings of Native Americans spark a movement*, HIGH COUNTRY NEWS (May 22, 2017), available at <https://www.hcn.org/articles/tribal-affairs-native-lives-matter-a-movement-emerges> (last visited Jan. 17, 2022).

177. *Id.*

encounters with those who harbor certain prejudices. Treatment as second-class citizens by both police and public agencies highlights a shared experience of Natives with the entirety of minority communities in the U.S., and the discrimination experienced on reservations is reminiscent of historically documented events in which Natives are overcome with unnecessary and lethal force with no proper means of a justified counter and cure.

The frequency of police brutality against Natives is not a novel occurrence. Natives consider such violence to be an echo of what they have had to endure for centuries.<sup>178</sup> However, mainstream U.S. media does not report on the Native killings, and the actual number of Native deaths by law enforcement is likely much higher than what is able to be discovered by conducted studies.<sup>179</sup> The issue of underreporting is a hindrance, and it may be at times that Native deaths just go unrecorded altogether.<sup>180</sup> The remoteness of rural reservations and border towns are scarce in media coverage, and in the cases when media reports cover Native killings, they are often misidentified as another race.<sup>181</sup>

Native activists have led movements to call attention to the high rates of violence against Natives at the hands of law enforcement. They seek to hold the involved police accountable for their actions, despite whether the victim is Native or non-Native.<sup>182</sup> Activists also seek to spotlight the unrecognized Native deaths that are rarely covered by the media.<sup>183</sup> The activist campaigns and protests have been inspired by the recent Black Lives Matter movements that were aimed at emphasizing police brutality against vulnerable minority individuals, and the overall systematic racial injustice underlying the killings.<sup>184</sup>

The UNDRIP affords Indigenous peoples the “right to be free from any kind of discrimination.”<sup>185</sup> This fundamental right should withhold a standing on its own, but the federal government has yet to implement

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178. *Id.*

179. *Id.*

180. *Id.*

181. Tory, *supra* note 176.

182. Stephanie Woodard, *The Police Killings No One Is Talking About*, IN THESE TIMES (Oct. 17, 2016), available at [https://inthesetimes.com/features/native\\_american\\_police\\_killings\\_native\\_lives\\_matter.html](https://inthesetimes.com/features/native_american_police_killings_native_lives_matter.html) (last visited Jan. 15, 2022).

183. *Police Killings Against Native Americans Are Off the Charts and Off the Radar*, EQUAL JUSTICE INITIATIVE (Oct. 31, 2016), available at <https://eji.org/news/native-americans-killed-by-police-at-highest-rate-in-country/> (last visited Jan. 15, 2022).

184. *Id.*

185. UNDRIP, *supra* note 35, at § 2.

this provision, along with other similar provisions, into domestic policy that goes to Native treatment. The UNDRIP further secures the “rights to life, physical and mental integrity, liberty and security of person.”<sup>186</sup> In view of the past and current brutalities against Natives and Native communities, federal policies have been severely inadequate in their attempts to eradicate themselves from past inequities.

### LACK OF INVESTIGATIONS AND REFUSALS OF PROSECUTIONS

Native women on tribal reservations are said to lack the most government protections from threats of violence made against them.<sup>187</sup> U.S. federal attorneys declined to prosecute nearly 52% of violent crimes that occurred in Native country, and 67% of the cases that were declined were sexual abuse related cases.<sup>188</sup> The Department of Justice reserves to itself the responsibility of prosecuting the most serious crimes that occur on Native tribal reservations.<sup>189</sup> The Department, however, has been responsible in filing charges for only half of the murder investigations from Native Country, and it declines generally two-thirds of all sexual assault cases that are sent by tribal law enforcement.<sup>190</sup>

In 2017 alone, the Department released a report that revealed the U.S. Attorney Offices had declined to prosecute 37% of Indian Country cases they deemed resolved within that same year, usually citing insufficient evidence.<sup>191</sup> The low rate of prosecutions have exuded a dangerous effect on tribal communities, as it amounts to a second-class system of justice that provokes law-breaking.<sup>192</sup> Without the necessary prosecutions, witnesses and victims are left without any sense of relief, as they have directly experienced the failings of the justice system for not delivering the proper resolutions. Family and communal tribal members are given no relief and no explanation as to the majority of disappearances or murders that occur on their own tribal lands, and the probability of novel crimes and criminal retaliation are heightened as the government’s

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186. *Id.* at § 7.

187. NATIONAL CONGRESS OF AMERICAN INDIANS, *supra* note 99.

188. *Id.*

189. Timothy Williams, *Higher Crimes, Fewer Charges on Indian Land*, NY TIMES (Feb. 20, 2012), available at <https://www.nytimes.com/2012/02/21/us/on-indian-reservations-higher-crime-and-fewer-prosecutions.html> (last visited Jan. 15, 2022).

190. Bleir & Zoledziowski, *supra* note 98.

191. *Id.*

192. Williams, *supra* note 189.

passivity towards Native crimes conveys an all too clear message: perpetrators will not face justice.

The explanation for the low number of prosecutions, as provided by federal prosecutors regularly, is that such cases lack admissible evidence.<sup>193</sup> Another reason for the low number of prosecutions can again be attributed to limited data collection and lack of clear protocols for authorities' handling of cases, which have in part hampered investigations, prosecutions, and strategic crime-fighting in Native American communities, according to Senator Tom Udall who serves as the vice chairman of the Senate Committee on Indian Affairs.<sup>194</sup> There are also a plethora of obstacles that exist in the federal management of Native cases. For major crimes like murder or child abuse, victims and witnesses have to travel long distances just to provide a testimony in federal court.<sup>195</sup> Federal investigators and prosecutors are also distinctly separated from tribal communities, as they are not based in Native reservations and therefore, are unable to foster meaningful relationships with the Native individuals they are meant to legally serve.<sup>196</sup> This causes a disconnect between those who should be the executioners of necessary justice, and those who are in need of that justice being efficiently and wholly administered, as both sides view the other as strangers who are unaware of the lives at stake.<sup>197</sup> Most disappointingly, there is a fundamental lack of care and awareness, and the tribal communities interpret the inactions of the federal government as a purposeful statement that nothing will be done for the crimes.<sup>198</sup> The acute frustration of some tribal members is understandable, and some have gone to sue the government for declining prosecutions and "sloppy police work."<sup>199</sup> Natives sense that the federal officers place the shame and blame on the individuals reported to be missing, as some have received formal responses that suggest that the missing person may soon show up as the individual was out drinking and, "probably took up with some man."<sup>200</sup> For other Native families, they have decided to take the matter into their own hands and have launched their own investigations and

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193. *Id.*

194. Hudetz, *supra* note 34.

195. Buckley, *supra* note 32.

196. *Id.*

197. *Id.*

198. Williams, *supra* note 189.

199. *Id.*

200. Cohen, *supra* note 101.

search parties, and have since created their own missing persons posters as the government did not publish the case in their official database.<sup>201</sup>

Despite the initiation of programs and attempts to increase overall public safety and prosecutions on tribal lands, there have not been any significant changes in the recent years of the Department's prosecution record for Native Country crimes.<sup>202</sup> There is still no sense of urgency in closing cold cases, and there is no noticeable drive for federal investigators to present any sort of explanation or discovery in connection to such cases.<sup>203</sup> One solution to contend with the lack of prosecutions is to provide more funding and the resources necessary to support additional investigators, tribal courts, and forensic work in crime laboratories, which would all contribute to an increase in prosecutions.<sup>204</sup> In extension of this, U.S. attorneys should staff their national offices with special prosecutors that focus exclusively on crimes that are perpetrated in "Indian Country."<sup>205</sup> Another solution is to send the cases directly to tribal courts, which already is considerably more effective in representing the recognition of tribes' sovereignty and ability to handle cases locally.<sup>206</sup> Recently, tribal courts have increased their own prosecutions of non-Native offenders, but tribal prosecutors are still restricted due to jurisdictional constraints.<sup>207</sup> On top of that, any such solutions must begin with federal programs that specifically go to improving policing and prosecutions in tribal communities, and this must begin by initial awareness of the absent prosecutions and a push for legislation to change this.

### THE ISSUE OF CRIMINAL JURISDICTION ON NATIVE RESERVATIONS

Tribal reservations possess an intricate jurisdictional scheme that is comprised of imprecise distinctions of authority. For decades and still today, Native tribes are confiscated of the right to arrest and prosecute non-Natives who commit crimes on Native land.<sup>208</sup> If the perpetrator is non-Native and the victim is Native, then a federally certified agent is the sole authority as the federal government has jurisdiction, rather than the

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201. *Id.*

202. Hudetz, *supra* note 34.

203. Cohen, *supra* note 101.

204. Hudetz, *supra* note 34.

205. *Id.*

206. *Id.*

207. Buckley, *supra* note 32.

208. Crane-Murdoch, *supra* note 10.

state or tribal governments.<sup>209</sup> If the opposite was true and the perpetrator was Native and the victim was non-Native, then a tribal officer may make the arrest, but the case must go to federal court.<sup>210</sup> If both parties are Native tribal members, a U.S. attorney generally takes the case despite tribal courts having the authority to prosecute tribal members for crimes committed on reservations, as tribal courts still do not have the authority to execute sentences onto defendants that are more than three years in prison.<sup>211</sup> As expected, such jurisdictional entanglements compound the existing difficulties in prosecuting crimes committed on tribal reservations, further delaying the enactment of justice for the victims.<sup>212</sup>

On tribal reservations, the default authority would usually rest with tribal police and investigators from the BIA.<sup>213</sup> The FBI, however, investigates certain serious offenses, depending on whether the perpetrator or the victim were tribal members or not, and if there is sufficient evidence, the Department of Justice will have the authority to prosecute major felonies that occur on tribal lands.<sup>214</sup> Initially, the legal rules appear to be straightforward. A deeper view of jurisdictional practices on Native reservations reveals complications of overlapping authority and differing laws depending on the crime, whether it occurred on reservation lands, and whether a tribal member is the victim or perpetrator.<sup>215</sup> Essentially, such jurisdictional laws amount to non-Native criminals not being arrested or prosecuted by the correct authorities if they commit a crime against a Native on reservation land, which results in the lack of necessary prosecutions. In other words, if a non-Native individual commits murder or rape against a Native individual, the federal government will have jurisdiction instead of the tribe or state, and most of the time, the federal government will not decide the case immediately, and predominantly, it will decline to prosecute.<sup>216</sup>

Because of the jurisdictional perplexities, many reservations experience the crimes perpetrated against their communities as slipping through the "jurisdictional cracks."<sup>217</sup> Questions arise as to where a Native individual should go to file a report, or to which legal officer they

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209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.*

213. Cohen, *supra* note 101.

214. *Id.*

215. *Id.*

216. Williams, *supra* note 189.

217. Crane-Murdoch, *supra* note 10.

should notify upon the occurrence of a crime.<sup>218</sup> It still stands that tribal law enforcement has no jurisdiction over transient workers that come on reservations to construct and maintain the numerous pipelines.<sup>219</sup> The non-Native individuals who reside in man camps do not fall within tribal jurisdictional authority, even when the camps are built on Indigenous lands.<sup>220</sup> This accentuates an alarming danger, especially in light of the massive increase in reports of sexual assaults against Native women perpetrated by the peak of oil production in the Bakken regions.<sup>221</sup> Without a clear defining demarcation of jurisdictions, the ability of such crimes to be prosecuted will be more greatly prohibited. Additionally, in the process of attempting to make sense of this ambiguous jurisdiction on reservations, the victims will be deprived of justice that much longer, as seemingly the majority of the authoritative forces are left doubtful as to whether they possess the jurisdictional authority to prosecute or not.

The Violence Against Women Act (“VAWA”) permitted tribes to bring criminal charges against non-Native perpetrators in selected cases.<sup>222</sup> VAWA was last reauthorized in 2013, but it lapsed in 2018 due to Congress’ failure to act against partisan disputes over other issues.<sup>223</sup> However, as of now, the House of Representatives voted to renew VAWA, thus approving its reauthorization.<sup>224</sup> Subsequently, the legislation will go to the Senate where its passage is expected.<sup>225</sup> Since VAWA first passed in 2013, tribal communities have experienced better collaboration with other governments in relation to certain crimes against women, like domestic violence.<sup>226</sup> The Act allows tribes to charge non-Natives for domestic violence against partners or spouses, and when

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218. Cohen, *supra* note 101.

219. Bleir & Zoledziowski, *supra* note 98.

220. *Id.*

221. *Id.*

222. See Felicia Fonseca, *Tribes see improvements, hurdles as they charge non-Natives*, THE ASSOCIATED PRESS (Apr. 2, 2018), available at <https://www.businessinsider.com/ap-tribes-see-improvements-hurdles-as-they-charge-non-natives-2018-4> (last visited Jan. 14, 2022).

223. Susan Davis, *House Renews Violence Against Women Act, But Senate Hurdles Remain*, NPR (Mar. 17, 2021), available at <https://www.npr.org/2021/03/17/977842441/house-renews-violence-against-women-act-but-senate-hurdles-remain> (last visited Jan. 14, 2021).

224. Annie Karni, *House Passes Bill to Bolster Protections for Women Facing Violence*, NY TIMES (Mar. 9, 2022), available at <https://www.nytimes.com/2022/03/09/us/politics/house-passes-violence-against-women-act.html> (last visited Mar. 11, 2022).

225. *Id.*

226. Fonseca, *supra* note 222.

protection orders are violated.<sup>227</sup> The limitations, however, are that VAWA does not extend to violence against children or other family members, and it does not include crimes by non-Natives perpetrated against victims they do not know, or crimes by tribal members against non-Natives.<sup>228</sup> Additional limitations are that tribal authorities cannot charge property crimes, sexual misconduct, false imprisonment, threats, trafficking or stalking.<sup>229</sup> In the initial reauthorization legislation draft, Congress sought to address a number of these concerns and limitations.<sup>230</sup>

The issue of jurisdictional restrictions inhibits Native communities from exercising their right of complete autonomy and self-governance “in matters relating to their internal and local affairs.”<sup>231</sup> Tribal authorities should be permitted to decide their methods of prosecutions to ensure that perpetrators who commit crimes on tribal lands, no matter if they are non-Native or Native, are faced with the proper sentence as determined in tribal courts. As stated in Article 5, Indigenous peoples should have the “right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions.”<sup>232</sup> It would be a justified benefit for Native communities to be given this choice to determine their own respective legal resolutions, so that victims are not delayed or eventually deprived of their right to relief.

## CONCLUSION

Indigenous peoples in the U.S. have persistently encountered broken treaties and forgotten promises from the federal government. Historical practices have bled into present contexts, and the policies once guaranteed towards Native treatment and Native betterment have become transformed into Native invisibility. The federal government continues in its lack of prioritization of Native rights, while further initiating economic interests that go to directly diminishing the little control withheld by tribal reservations and Native communities. Criminal law and criminal jurisdictional practices present a discriminatory mindset of dishonoring previous warranties of tribal interests and furthering the delay and enactment of justice for the vulnerable class of victims. As a nation, the U.S. must do better in converting the objectives carried forth

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227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

231. UNDRIP, *supra* note 35, at § 4.

232. *Id.* at § 5.

in the UNDRIP to legislative policies that can be enforced domestically for the advancement of Native rights.

A primary purpose of the UNDRIP is to protect the welfare of Indigenous peoples' rights while working to establish minimum standards for the recognition, protection, and promotion of such rights.<sup>233</sup> It is meant to act as a framework for the survival and dignity of the world's Indigenous peoples.<sup>234</sup> Consequently, the UNDRIP's provisions are meant to ensure that the voices of the Indigenous Native populations are heard and that their calls for necessary change for their respective communities are perceived and translated into actual domestic policies with definite solutions. One such solution is to allow tribal communities to implement criminal justice policies in tribal courts and through tribal law enforcement. This would allow direct authority of tribal authorities to hear and try crimes that are perpetrated against the communities that they themselves are a member of. There is an increased anticipation of cooperation and direct relations that would benefit investigations and prosecutions. One other solution is for the federal government to increase necessary funding for tribal reservations to engage in initiating the needed prosecutions by providing additional tribal law enforcement personnel and investigatory aid. The federal government could also increase the attendance of tribal resources by working to set up helplines and shelters that provide structural protections for the individuals most vulnerable to being victims of assault, especially in times of growing industrial presence on Native reservations.

Despite the absence of UNDRIP in domestic U.S. policies, it is notable that the Indigenous Native populations of the U.S. have time and time again exhibited fortitude in overcoming their encountered adversities. The tenacity of Native communities in their efforts to not be a forgotten people is an inspiring and hopeful teaching, and it endorses a heartening promise towards what is to come. As the UNDRIP incorporates a standard to which all countries should hold as a minimum, the U.S. should heed the rights as stated in this international treaty, so that all individuals residing in the U.S., whether on tribal reservations or not, can hold themselves accountable to a higher standard than that which the U.S. has historically, and still currently, has in place.

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233. *United Nations Declaration on the Rights of Indigenous Peoples*, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (Sept. 13, 2007), available at <https://www.ohchr.org/en/issues/ipeoples/pages/declaration.aspx> (last visited Jan. 16, 2021).

234. *Id.*