

Protecting Indigenous Women from Acts of Marginalization and Violence

Forum: Human Rights Council

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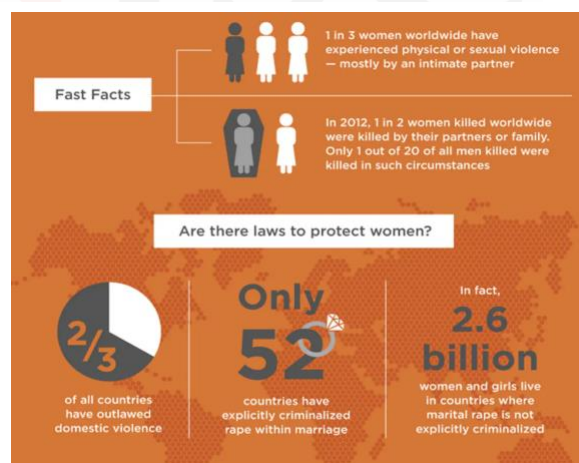
Introduction

Violence against indigenous women and girls is rooted in racism, marginalization and poverty. This issue is part of the broader context of discrimination and exclusion as indigenous women and girls face discrimination in all aspects of their life such as political, social, economic and cultural spheres. There are several major causes to violence against indigenous women and girls, and some major causes are poverty, racism, and marginalization. This issue is spread globally, majorly in LEDCs but also in some MEDCs. In addition, this issue is recognized as a form of gender-based discrimination deeply rooted in values of unequal power relations between males and females. Although actions to raise solutions to this issue have been continued, it was not successful in combating the issue completely. It is necessary for the house to realize the seriousness of this issue spread around the world, our challenge as the Human Rights Council is to actively take steps recognizing and understanding the issue thoroughly and providing feasible solutions to protect indigenous women from acts of marginalization and violence and support those currently applied laws and organizations acting for this issue.

Background

The United Nations Declaration on the Elimination of Violence Against Women is protective of females of all ages. It defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” Its impact ranges from immediate to multiple long-term consequences, such as physical, sexual and psychological, on victims as well as tremendous setback to socio-economic development. In its different manifestations —physical, sexual, psychological and economic, the most common forms include domestic violence, (including intimate partner violence) harmful practices, femicide, sexual harassment, sexual violence in conflict, attacks on human rights defenders, forced pregnancy and forced abortion.

In legal systems, the simultaneous existence and operation of national legislation, customary and religious laws often lead to tensions and complications in the implementation of the women and girls’ rights. Child marriage is one of the most serious area where violence



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against indigenous women and girls were found. Furthermore, on economic exploitation, sexual abuse, sexual exploitation, and other forms of sexual violence, ILO/IPEC finds that disaggregation by both sex and ethnicity are rare, and references to indigenous girls and women are made in sectors that engage young people in bonded labor, forced labor, domestic labor, human trafficking, in which they are also at risk of being sold.

There are many areas where violence is committed. Out of several areas, the four broad and major areas of violence, exploitation and abuse are domestic violence, harmful practices, economic exploitation, sexual abuse, sexual exploitation and other forms of sexual violence, and gender-based violence in situations of armed violence, insecurity and communal conflicts. Each and every factor should be speculated thoroughly, and feasible solutions for it should be provided.

International Actions

*Violence Against Women Act (VAWA *Expired on February 15, 2019)*

The Violence Against Women Act was developed and passed as a result of extensive grassroots efforts in the late 1980s and early 1990s. Advocates for the battered women's movement included sexual assault advocates, individuals from victim services, law enforcement agencies, prosecutors' offices, the courts, and private bars.

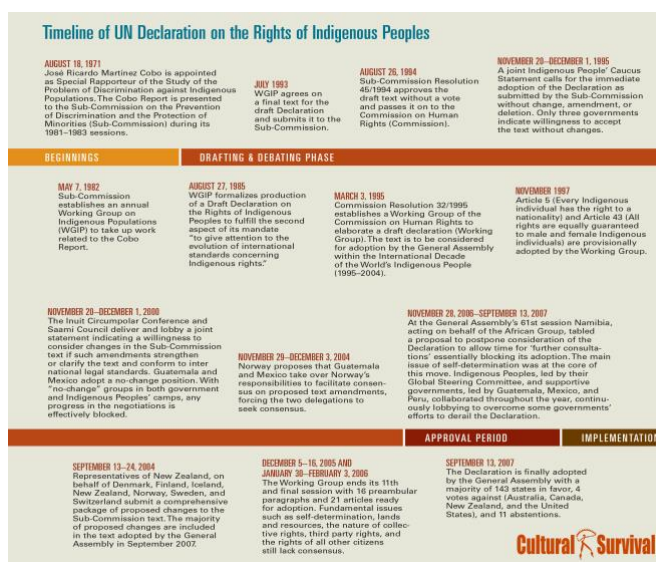
One of the greatest successes of VAWA is its emphasis on coordinated community response to domestic violence, sex dating violence, sexual assault, and stalking; courts, law enforcement, prosecutors, victim services, and the private bar currently work together in a coordinated effort that did not exist before at the state and local levels.

VAWA also supports community-based organizations that are engaged in work to end domestic violence, dating violence, sexual assault, and stalking; particularly those groups that provide culturally and linguistically specific services. Additionally, VAWA provides specific support for work with tribes and tribal organizations to end domestic violence, dating violence, sexual assault, and stalking against Native American women.

UN Declaration on the Rights of Indigenous People

This establishes a universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples.

However, unlike the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), it does not establish any new rights, but rather it creates an instrument that recognizes and takes account of the specificities of indigenous peoples' human



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rights (including collective human rights), thus creating a more effective framework for exercising and implementing those rights.

Community Guide to end Violence Against Aboriginal Women

Five principles identified as best practice for cultural safety:

1. Protocols - respect for cultural forms of engagement,
2. Personal Knowledge - understanding one's own cultural identity and sharing information about oneself to create a sense of equity and trust,
3. Process - engaging in mutual learning and evaluating from the service recipient perspective,
4. Positive Purpose - ensuring the process yields the right outcome for the service recipient according to their values, preferences, and lifestyle,
5. Partnership - promoting collaborative practice.

Working Group on Indigenous Populations (WGIP)

In 1982 the Working Group on Indigenous Populations (WGIP) was established as a subsidiary organ to the Sub-Commission on the Promotion and Protection of Human Rights. The Working Group provided an opportunity for indigenous peoples to share their experiences and raise their concerns at the UN.

As a subsidiary organ of the Sub-Commission, the Working Group was located at the lowest level of the hierarchy of UN human rights bodies. Its recommendations had to be considered and accepted first by its superior Commission on Human Rights and the Economic and Social Council, and then by the General Assembly.



UN Assembly

Following the reform, the Human Rights Council adopted resolution 6/16 to request the Office of the High Commissioner for Human Rights to convene an informal meeting to discuss the most appropriate mechanisms to continue the work of the Working Group on Indigenous Populations. The Informal meeting took place in Geneva on 6 and 7 December 2007. As a follow-up to the informal meeting, the indigenous caucus and a number of governments continued informal negotiations to finalize a draft resolution to submit to the Human Rights Council. On December 14, 2007 draft resolution A/HRC/6/L.42 (HRC Resolution 6/36) was adopted establishing the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP).

Expert Mechanism on the Rights of Indigenous People (EMRIP)

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) was established by the UN Human Rights Council, in 2007 under Resolution 6/36 as a subsidiary body of the Council. The Expert Mechanism provides the Human Rights Council with thematic advice, in the form of studies and research, on the rights of indigenous peoples as directed by the Council. The Expert Mechanism may also suggest proposals to the Council for its consideration and

approval.

The Expert Mechanism is made up of five independent experts on the rights of indigenous peoples which are appointed by the Human Rights Council. The Expert Mechanism holds an annual session, usually in July, in which representatives from States, indigenous peoples, indigenous peoples' organizations, civil society, inter-governmental organizations, and academia take part. The Special Rapporteur on the rights of indigenous peoples and a member of the Permanent Forum on Indigenous Issues are invited to attend the annual session of the Expert Mechanism to enhance coordination and cooperation between these indigenous mechanisms.

Funding for representatives of indigenous communities and organizations to attend the Expert Mechanism can be sought from the Voluntary Fund for Indigenous Populations.

Places of High Concern

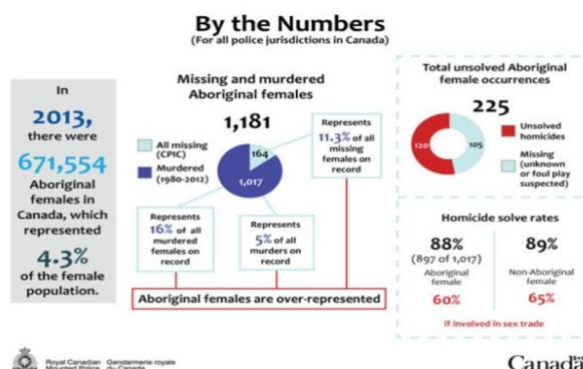
Canada

Indigenous women in Canada face a range of health and social issues including domestic violence.

Indigenous women are six times more likely to be killed than non-Aboriginal women. Aboriginal women are 2.5 times more likely to be victims of violence than non-Aboriginal women. These and other statistics highlight a significant difference in the level of violence experienced by Indigenous women to that experienced by women in the mainstream population in Canada.

The historical impacts of colonization and forced assimilation are viewed as the main social determinant of aboriginal people in Canada, as they led to intergenerational trauma, with communities struggling today against discrimination, stigma, poverty and social exclusion. Most disturbing and damaging are the outcomes of domestic violence, mental health and addiction issues. First Nation's women who want to leave a violent situation have limited access to helping services, as most are located in large cities and towns, far from remote reserves where many of the women live. Services were originally designed by and for the mainstream population. First Nation's women who manage to access these programs often find staff with limited cultural competence and program supports with little cultural safety or relevance.

Indigenous culture is defined in various levels of legislation as having a set of specific rights based on their historical ties to a particular region, with cultural or historical distinctiveness from the mainstream and other populations. In Canada, indigenous cultural beliefs are closely tied to belief in a creator, ancestors and the natural world, influencing their spirituality and their political perspectives. Cultural safety, a concept that emerged in the 1980's in New Zealand, is viewed as an environment that is spiritually, socially, emotionally and physically safe for people; where cultural identity is recognized and valued through shared respect, meaning, knowledge and the experience of learning together.



America

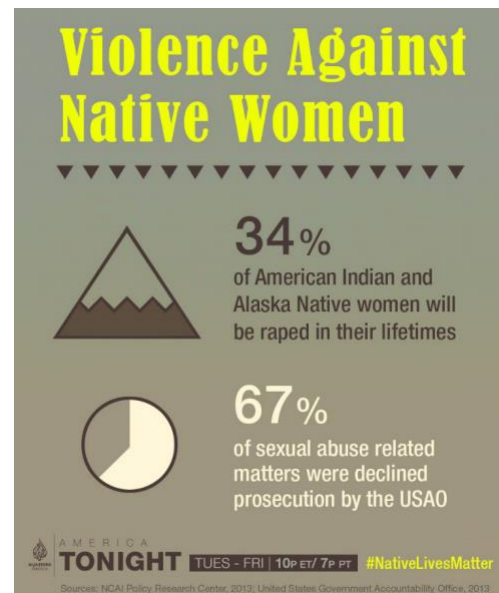
National averages hide the extremely high rates of murder against American Indian and Alaska Native women present in some counties comprised primarily of tribal lands. Some counties have rates of murder against American Indian and Alaska Native women that are over ten times the national average. Like other women, American Indian and Alaska Native women are more likely to be killed by their intimate partners compared to other offenders.

An analysis of the National Crime Victimization Survey (NCVS) reveals that rates of rape and other sexual assaults are higher for

American Indian and Alaska Native women compared to both African American and white women. These results are consistent with findings from the National Violence Against Women Survey (NVAWS) that found American Indian and Alaska Native women were significantly more likely to experience a rape in their lifetimes compared to other women.

The unique position of American Indian and Alaska Native tribes as both sovereign and dependent creates problematic jurisdictional barriers that sometimes prohibit an effective criminal justice response to American Indian and Alaska Native victims of violence. Several federal laws have limited tribal government's power to prosecute offenders including the Major Crimes Act (1885), which mandated that virtually all violent crimes committed on tribal lands were to be prosecuted by the federal government. Although tribes have the power to concurrently prosecute cases of violence, the Indian Civil Rights Act (1968) mandates that tribal courts are not permitted to punish offenders with more than \$5,000 in fines, one year in jail or both. Importantly, tribal sovereignty in punishing offenders does not apply to non-American Indian and Alaska Natives (*Oliphant v. Suquamish Indian Tribe*, 435 U.S. 1978). Additional problems in law enforcement are exacerbated on many tribal lands by insufficient funding, inadequate training, and victims' lack of trust for outside authority.

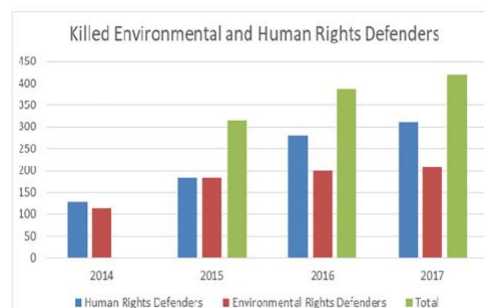
Although tribal governments do not have jurisdiction to prosecute non-American Indian and Alaska Native offenders in criminal courts, they do have authority to enact civil orders against them, including Personal Protection Orders (PPOs). PPOs provide injunctive relief for petitioners who seek to use legal remedies to end threatening behavior, cease contact with another individual, or to alter custody arrangements. The Violence Against Women Act (VAWA) of 1994 established "Full Faith and Credit" for PPOs, which mandates jurisdictions to honor PPOs enacted in other jurisdictions. Importantly, this means that States and tribal governments must enforce the protection orders of other State and tribal jurisdictions. In reality, however, the variety of orders and accompanying legal punishments and the understanding of the intent of the order vary by each State and tribal government, creating significant barriers to the enforcement of "Full Faith and Credit."



Emerging Issues

Indigenous Human Rights Defenders

Indigenous human rights defenders are increasingly targeted as terrorists for promoting and protecting decades-old guaranteed rights. This alarming trend is seen all around the world. Thus, relevant special procedures of the Human Rights Council collaborate with each other and with other human rights bodies to address the situation through monitoring, mediation, analysis and the provision of concrete recommendations for the effective protection of indigenous human rights defenders.



Dialogue and Consultations

There is a need for governments to establish mechanisms and processes for comprehensive dialogue and consultations with indigenous peoples to obtain their free, prior and informed consent in relation to any project that will have an impact on their territories and resources; therefore respecting the fundamental rights of indigenous peoples and ensuring they are able to exercise their rights in accordance with international human rights standards.

Cross-border Areas

Governments need to pay special attention to indigenous peoples residing in cross-border areas, in accordance with article 36 of the United Nations Declaration on the Rights of Indigenous Peoples, to ascertain the human rights situation in those areas.

Possible Solutions

Fortifying the Existing Laws that Support Indigenous Women in International Scale

The act of marginalization and violence against indigenous women is not a national level issue, but a global (international) level of issue as it can be seen in several regions of the world (The issue is seen not only in America or Canada, as mentioned previously, but also in India, China, Latin America, and many other nations). In addition, although there are some organizations or laws that were established to protect the indigenous, those weren't been successful nor significantly effective that it reduced the issue. Therefore, it is necessary for all to cooperate and establish a firm international level law or organization that would be able to effectively handle this issue. It would be a wise decision to inspect over the previous attempts (the established laws, or organizations) and acknowledge the lacking aspects of the previous attempts and the strong aspects of it. This will allow the further fortification or establishment of new laws or organizations to be even more successful than ever before.

National Scale Solution (Amending the Laws to have Greater Authorities)

As explained before, Canada and America suffer from the act of marginalization and violence against the indigenous women in various areas. Although this is a serious issue, this haven't been publicized in a national scale, nor have been an effective solution to solve the

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problem. Some of the previous attempts which established several acts and laws by both governments have failed in many areas as those weren't forceful enough or did not have enough authority to be implemented in the actual society. Alongside increasing the effectiveness of the acts or the laws for the indigenous people, the fact that many indigenous people do not report the act of marginalization and violence often shouldn't be disregarded. There could be an organization that would regularly inspect the indigenous people to check the status if any marginalization and violence have happened to the targets, or education or support from the government that would allow the indigenous women to be more courageous in reporting the inhumane acts against them.

Glossary

Marginalization: to treat a person, group, or concept as insignificant or peripheral

LACHR (Inter-American Commission on Human Rights): The Inter-American Commission on Human Rights is an autonomous organ of the Organization of American States. The separate Inter-American Court of Human Rights is an autonomous judicial institution based in the city of San José, Costa Rica.

OAS (Organization of American States): It is an organization formed to promote economic, military, and cultural cooperation among its members, which include almost all of the independent states of the Western Hemisphere. The OAS's main goals are to prevent any outside state's intervention in the Western Hemisphere and to maintain peace between the various states within the hemisphere.

International Labor Organization (ILO): The International Labor Organization is a United Nations agency whose mandate is to advance social and economic justice through setting international labor standards. Founded in October 1919 under the League of Nations, it is the first and oldest specialized agency of the UN.



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