



**Senate Committee on Indian Affairs Oversight Hearing  
“Native Women: Protecting, Shielding, and Safeguarding Our Sisters, Mothers, and Daughters”**

**Thursday July 14, 2011  
2:15 pm – 628 Dirksen Senate Office Building**

**Written Testimony of Professor Sarah Deer,**  
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The Honorable Chairman Akaka, Ranking Member Barasso, and Members of the Committee,

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On behalf of Amnesty International USA (AIUSA) and AIUSA’s Native American and Alaska Native Advisory Council, I would like to express my deep appreciation and thanks for inviting me to testify before the Senate Committee on Indian Affairs Oversight Hearing on “Native Women: Protecting, Shielding, and Safeguarding Our Sisters, Mothers, and Daughters”. As you may know, Amnesty International is a world-wide grassroots human rights movement with over 3 million members worldwide. On behalf of AI’s nearly half a million members here in the United States, I thank you for holding this important hearing and for the opportunity to testify before Congress and this Committee on some of the grave human rights abuses that Native American and Alaska Native women face here in the U.S. While many of these abuses exist in the broader context both current and historical injustices, my testimony will focus on the interrelated issues of sexual violence, trafficking and prostitution, and disparities in healthcare that Indigenous women face.

In April 2007, Amnesty International issued a compelling report on the epidemic levels of sexual violence against American Indian and Alaska Native women in the United States entitled “*Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA.*” The high rates of sexual and domestic violence perpetrated against American Indian and Alaska Native women are violations of human rights.

Amnesty’s report documented that according to the Department of Justice (DOJ)’s own statistics, American Indian and Alaska Native women are more than two and a half times more likely to be raped or sexually assaulted than women in the United States in general and that one in three American Indian and Alaska Native women will be raped in her lifetime. For a vast majority of these crimes, the perpetrators

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<sup>1</sup> Translation from the Mvskoke language: “I thank you for inviting me to stand before you to testify today. I am happy with this invitation.”

will go unpunished, as survivors of sexual violence frequently have to navigate a maze of federal, state and tribal law.

As other hearings have documented, it has been challenging for the legal system to respond to Native survivors of sexual violence because of jurisdictional complexities. The federal government has created a complex interrelation between federal, state and tribal jurisdictions that undermines tribal authority and often allows perpetrators to evade justice. Tribal and federal agencies responsible for providing the services necessary to ensure that survivors receive adequate care and that perpetrators are held accountable for their crimes are chronically underfunded and without the appropriate resources to uphold agency duties. Tribal governments are hampered by a complex set of laws and regulations created by the federal government that make it difficult, if not impossible, to respond to sexual assault in an effective manner.

The Senate Committee on Indian Affairs has demonstrated its leadership on this issue by passing the Tribal Law and Order Act of 2010, and by working with the Administration to make additional policy changes such as ensuring the addition of federal agents and Assistant United States Attorneys to Indian Country, which will begin to help improve public safety and ensure justice services to survivors of sexual violence in Indian Country. And with the Administration's long-awaited endorsement of the United Nations Declaration on the Rights of Indigenous Peoples this past December 2010, the U.S. now has an international human rights framework with which to address the issues that Indigenous Peoples face here in the United States.

While some progress has been made, much more still remains to be done. Both the Universal Declaration of Human Rights and the UN Declaration on the Rights of Indigenous Peoples, which the U.S. have endorsed, iterate the right of all individuals, Indigenous or otherwise, to life, liberty and security of person and to live a life free from discrimination.

Yet one in three American Indian and Alaska Native women will be raped in her lifetime, and face disparities and barriers to accessing adequate healthcare. It will take much more than a single piece of legislation to address this crisis.

As one Indigenous advocate put it,

“Sexual assault rates and violence against Native American women did not just drop from the sky. They are a process of history.”

*Jacqueline Agtuca, Alaska Native Women's Conference, Anchorage, Alaska, 24 May 2005*

Many of the current issues that American Indian and Alaska Native peoples face in the United States, particularly Native women, can be traced back to the legacy of abuse and systematic assault on Native culture, land and people as a part of European/U.S. colonization of the Americas. Gender based violence against Native women was used by settlers as an integral part of conquest and colonization. The United States federal government has historically made a series of attempts to compel American Indian and Alaska Native peoples to assimilate into the dominant Euro-American society. In the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, a number of policies designed to promote assimilation contributed to the breaking up of tribal societies, damaging communal solidarity and traditional social networks.

One such policy, which started in 1869, involved removing children as young as five from their families and compelling them to attend boarding schools. The Bureau of Indian Affairs (BIA) controlled 25 boarding schools and 460 additional schools were run by churches with federal funds. Reports of

condition in the schools are harrowing: cruel and inhuman treatment was the norm and many children experienced a pattern of physical and sexual violence from the early years of the boarding school system, continuing until the end of the 1980's<sup>2</sup>. Children reportedly died by the hundreds in these schools because of inadequate food or medical care, although no firm statistics exist. One reason for the lack of statistics is that many schools sent children home when they became seriously ill, or simply never recorded their deaths.

Many of these historical actions would meet the legal definition of human trafficking if they happened today.

Negative and dehumanizing stereotypes of Native Americans in general, and Indigenous women in particular, are not confined to distant history. For example, a 1968 federal appellate court ruling upheld a statute under which an American Indian man who committed a rape in Indian Country received a lower penalty if the victim was a Native woman. It has been suggested that Congress, in passing this law, may have viewed Native women as immoral and less worthy of equal protection.

While recent steps have been made to begin to address some of the issues that American Indian and Alaska Native populations face in the United States, it will take more than one piece of legislation to comprehensively address the impact of this significant historical legacy of discrimination and abuse. Native women need and deserve continued attention and resources from the federal level.

The United States federal government has a legal responsibility<sup>3</sup> to ensure protection of the rights and wellbeing of American Indian and Alaska Native peoples, including a responsibility to provide social, educational and medical services. The legacy of abuse, disempowerment and erosion of tribal government authority, and the chronic under-resourcing of law enforcement agencies and services which should protect Indigenous women from sexual violence, must be reversed.

The Tribal Law and Order Act has begun to address the long-standing public safety and justice services disparities on tribal lands, by beginning to restore to tribal governments the authority and resources to protect their citizens. Yet, the recent increase and attention given to ending violence against Native women has failed to specifically address prostitution or sex trafficking as forms of violence against women. Two Minnesota-based organizations have issued reports in the past three years exploring the broad range of historical and current injustices that make Native women particularly vulnerable to prostitution or sex trafficking, but to my knowledge, there are no major empirical or government-led studies focusing on the factors and experiences of prostituted and trafficked American Indian and Alaska Native women in the United States.

In 2009, the Minnesota Indian Women's Resource Center (MIWRC) released *Shattered Hearts*, a report documenting the commercial sexual exploitation of American Indian women and girls in Minnesota. The report details the historical legacy of physical and psychological abuse of Native women in the U.S. in conjunction with the social, economic, and cultural factors that contribute to making American Indian women particularly vulnerable to being trafficked into prostitution<sup>4</sup>.

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<sup>2</sup> "Soul Wound: The Legacy of Native American Schools". By Andrea Smith. Amnesty International Magazine 2007. <http://www.amnestyusa.org/node/87342>. Last accessed on July 12, 2011.

<sup>3</sup> This federal trust responsibility is set out in treaties between tribal nations and the federal government, further solidified in federal law, federal court decisions and policy.

<sup>4</sup> [http://www.miwrc.org/shattered\\_hearts\\_full\\_report-web\\_version.pdf](http://www.miwrc.org/shattered_hearts_full_report-web_version.pdf). Last accessed on July 11, 2011

I am happy to share with this Committee that in my professional capacity as an Assistant Professor at William Mitchell College of Law, I have been working in partnership with my colleagues at the Minnesota Indian Women's Sexual Assault Coalition (MIWSAC) and Prostitute Research and Education (PRE), to conduct additional research and analysis on the issue and will soon be releasing our findings and report. It is our hope that the report will shed additional light on the depth and severity of the issue and that the needs assessment will have an impact on culturally appropriate services and advocacy to trafficked Native American women.

MIWSAC and PRE interviewed 105 American Indian women who were prostituted and trafficked in Minnesota. While we are currently still engaged empirical analysis – our initial research has documented the following shocking statistics. Of the 105 women interviewed in the study, their ages ranged from 18 to 60 years old, with an average of 35 years. Two thirds of the women had been used for sex by up to 300 men, with a third of the women reporting that they had been used for sex by between 400 and a thousand men. The women also reported that 70 percent of the women they knew in prostitution had been lured, tricked or trafficked into it. As shocking as these statistics are, even more horrifying is that this information is but a glimpse of an unknown, larger picture of which little research and data collection has been done. Crimes of sexual violence are often undocumented and known to be underreported - and due to the nature of trafficking and prostitution, current understanding and analysis of just how widespread and severe the problems are known to be partial at best. We advocate for future hearings that focus specifically on the issues of prostitution and trafficking of Native women. We believe that several Native women could speak to you about their experience and the failures of the system to address the ongoing systemic discrimination that they have faced.

In addition to the challenges in public safety and justice that American Indian women face as victims of sexual violence, exploitation, and trafficking, the grave disparities in quality of and access to adequate healthcare services not only have a direct impact on a the ability of an Indigenous survivor of sexual assault to obtain justice and legal services, but also impact American Indian and Alaska Native women's basic right to health care services, in many instances guaranteed by treaty rights.

Today, the Indian Health Service still suffers from severe, long-term underfunding and a chronic lack of resources and staff. The ability of any law enforcement agency or health care facility to respond to violent crime is in large part dependent on the funding they receive annually. The per capita health expenditure for American Indian and Alaska Native populations continues to be less than half that for other groups in the United States. In 2011, the IHS reported that the following per capita personal health care expenditures: IHS user population average \$2741 in contrast with the total U.S. population averaging \$6909 in healthcare expenditures<sup>5</sup>. The IHS serves members of 565 federally recognized tribes, and approximately 2 million American Indians and Alaska Natives residing on or near reservations. Unlike Medicaid, the IHS receives its funding via annual appropriations bills.

The federal government's severe under-funding of IHS results in American Indian and Alaska Native women facing a number of specific barriers in obtaining a number of critical and basic health care services - such as the ability to obtain a properly and sensitively administered sexual assault forensic examination (SAFE) in the event of sexual violence, and from receiving adequate and basic prenatal care services that reduce the risk of maternal death and morbidity as a result of pregnancy or pregnancy-related complications.

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<sup>5</sup> <http://www.ihs.gov/PublicAffairs/IHSBrochure/Profile2011.asp>. Last accessed on July 7, 2011

Prenatal care is a key element in facilitating a safe pregnancy – women who do not receive prenatal care are three to four times more likely to die than women who do. Those with high-risk pregnancies are 5.3 times more likely to die if they do not receive prenatal care. In the United States, 25 percent of women do not receive adequate prenatal care, but the figure rises to a shocking 41 percent among American Indian and Alaska Native women. Native women are also more likely to experience poorer quality of care, discrimination or culturally inappropriate treatment; and without access to adequate prenatal care - the likelihood and risk of maternal death or morbidity during pregnancy increases. According to the Center for Disease Control (CDC), nearly half of all maternal deaths in the United States are preventable – yet despite this, one sign at an Indian Health Service facility read: “You will not be seen unless you are in labor”<sup>6</sup>.

“Our reproductive choices are decided for us by the federal government...the Indian Health Service. And it’s up to them as to whether or not they want to provide various services. For instance, we cannot access emergency contraceptives [unless] there’s been a sexual assault”

*Charon Asetoyer, Executive Director of the Native American Women’s Health Education Resource Center, cited in Center for American Progress, “The Failing State of Native American Women’s Health, an interview with Charon Asetoyer”, 16 May 2007*

According to the Native American Women’s Health Education Resource Center, American Indian and Alaska Native women face particular barriers in obtaining sexual and reproductive health services – including not always being provided with adequate information or access to all contraceptive options. Native American and Alaska Native women experience disproportionate difficulty in obtaining emergency contraception – Plan B – which is approved by the federal government to be available without prescription in pharmacies. Yet, according to the Native American Women’s Health Education Resource Center, only half of IHS pharmacies stock Plan B and only 15 percent offer it without a doctor’s prescription. Adequate access to timely emergency contraception is critical, particularly in cases of rape. Failure to provide access has a disproportionate impact on American Indian and Alaska Native women, who are 2.5 times more likely than other women in the US to be raped or sexually assaulted.

In the event of sexual violence, forensic evidence collected by a health care provider plays a significant role in the prosecution of perpetrators. Yet there are no national figures on how many IHS hospitals have sexual assault nurse examiners (SANE) – health care providers with advanced education and clinical preparation in collecting forensic evidence in cases of sexual violence. In 2005, the Native American Women’s Health Education Resource Center found that 44 percent of IHS facilities lacked personnel trained to provide emergency services in the event of sexual violence.

From prevention to response, the quality and availability of public safety, justice, and health care services for Native women in the U.S. are disproportionately and chronically underfunded and prioritized. The historical discrimination and ongoing economic, social, and cultural abuse of Native peoples in the U.S. results in shocking levels of violence, including trafficking and sexual exploitation. It must be addressed immediately.

It is Amnesty International’s recommendation that Congress and the Administration continue to prioritize ending sexual violence against American Indian and Alaska Native women in the U.S. As a starting point for doing so, we urge the committee to ensure the full and timely implementation of the Tribal Law and Order Act, including by ensuring full funding, resources, and agency capacity as necessary and required

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<sup>6</sup> Reported by a tribal representative during a two-day summit with federal officials 15 and 16 April 2009. Carol Berry, “Native Health Needs and Federal Apathy are Told at an IHS Conference”, Indian Country Today, 23 June 2009; available at <http://www.indiancountrytoday.com/national/midwest/48618202.html>, last visited 15 December 2009.

for full implementation of the law. The Tribal Law and Order Act will begin to address the long-standing public safety and justice service disparities in Indian Country by beginning to restore to tribal governments the authority and resources to protect their citizens, particularly women and girls.

Yet, despite the strides made by Congress and the Administration to restore tribal authority, true tribal empowerment and sovereignty will not be possible without addressing the Supreme Court's 1978 ruling on *Oliphant vs. Suquamish*, which effectively strips tribal authorities of the power to prosecute crimes committed by non-Indian perpetrators on tribal land, and denies due process and equal protection of the law to survivors of sexual violence. We therefore urge Congress to re-recognize the concurrent jurisdiction of tribal authorities over all crimes committed on tribal lands, regardless of the Native identity of the accused, legislatively overriding the U.S. Supreme Court's decision on *Oliphant vs. Suquamish*.

Additionally, while we recognize the difficulties posed by the current budget climate, we further call on Congress to, at a minimum, fully support the President's FY12 budget request as relevant to the full and necessary funding for agencies and programs affecting Native peoples in the U.S. This includes but is not limited to increased funding for the Indian Health Service in order to ensure the timely and appropriate collection of forensic evidence in cases of sexual assault, and to ensure that American Indian and Alaska Native women are able to access and receive basic and adequate healthcare, in particular, pre-natal and maternal health care services. In addition to increased funding for IHS, we also call on Congress to ensure the specific designation of increased appropriations for public safety and tribal law enforcement training programs, and specific funding allocations within the Office of Violence Against Women in the Department of Justice to ensure the specific analysis, research and data collection on violence against Native women, with a particular focus on the sexual exploitation and trafficking of Native women in the U.S. We urge Congress to also support the President's FY12 request for the development of a national clearinghouse to provide information and technical assistance on violence against Indigenous women within the OVW – and further urge Congress to ensure that that much needed information on sex trafficking of Indigenous women and girls is included.

Chairman Akaka and the Committee, I am grateful for the opportunity to testify on behalf of Amnesty International on how we may all work together to uphold the human rights of Native women by addressing and responding to the past and present challenges that Native American and Alaska Native women in the U.S. particularly face. We are grateful for the Committee's continued leadership and partnership with Native people, as well as the renewed commitment that both Congress and the Administration have demonstrated toward addressing the urgent and pressing concerns of Native people, particularly Native women. We hope that this progress will continue until all people can enjoy and exercise their full and equal human rights.

In closing, I would like to impress upon you the importance of prioritizing Native women's health and safety for the long term. It will take many years – maybe even decades – to reverse the alarming trends that have only recently been officially documented. We need to know that the federal government will stand with us for the foreseeable future until such time that Native women are restored to their traditional status of honor in tribal communities.

Thank you for the Committee's time and consideration. Mvto!