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The Failing Congressional Response to the Missing and Murdered Indigenous Persons Crisis

The Missing and Murdered Indigenous Persons (MMIP) crisis today is a continuation of the centuries of violence against Indigenous people that continues into the present. The injustice facing Indigenous communities today is sustained by the legacy of colonialism.[1] Indigenous communities and individuals are here despite atrocities like genocide, land dispossession, forced displacement, forced removal of children, and sexual violence.[2] The United States government continues to perpetuate this violence against indigenous peoples by passing insufficiently funded half-measures to address the MMIP crisis.[3]

Despite data suggesting that the MMIP crisis has been ongoing for decades, the United States government has only recently begun to acknowledge and take action to prevent the violence.[4] This attempt to provide American Indian and Alaska Native (AI/AN) communities justice is insufficient to fulfill the trust responsibility that the federal government has voluntarily accepted.[5] The federal government is meant to ensure the survival and welfare of AI/AN communities.[6] Despite these contractually obligated duties, Indigenous individuals continue to experience violence at disproportionate rates compared to any other population in the United States.[7] For example, AI/AN women are far more likely than non-Indigenous women to be victims of rape or other crimes.[8]

Legislative action addressing the MMIP crisis has thus far produced negligible results.[9] Savanna's Act [10] and the Not Invisible Act [11] aim to increase data collection around the MMIP crisis and to formulate a strategic response to the violence. These two statutes do not address one of the driving factors of the MMIP crisis, which is the lack of prosecution for non-Native perpetrators of violence against Indigenous people.[12] Neither Act requires the United States Attorney's Office to prosecute individuals who murder or sexually abuse Native people on tribal lands, and United States Attorneys continue to fail to do so.[13] Previous federal government action has limited how tribal governments can respond to acts of violence.[14] Many AI/AN victims and their families are left without access to justice.[15]

The largest hurdle these policies addressing the MMIP crisis face is a lack of funding.[16] The funding given to AI/AN communities for critical services, such as providing support for survivors of domestic abuse, is disproportionately lower than the funding allocated to other groups for the same services.[17] On paper, the Family Violence Prevention and Services Act mandates that tribal governments receive 10% of annual funds for domestic violence supportive services.[18] Despite this allocation, more than half of tribal governments lack access to these funds and are unable to provide these supportive services.[19] Without proper funding, federal agencies

and tribal governments cannot implement the few measures in place intended to address the MMIP crisis. This insufficiency of funding continues the historical pattern of discrimination the United States government has inflicted upon Native peoples.

Another huge gap in the federal response to the MMIP crisis is the government's failure to address the needs of AI/AN persons who live outside of Indian country, which is any of the self-governing AI/AN communities throughout the United States.[20] The legislation currently in place only addresses the violence being experienced by AI/AN individuals living in "Indian country." Currently, the largest population of indigenous people in the United States reside in urban centers.[21] These individuals residing in urban settings still disproportionately experience violence and face many hurdles in their access to justice.[22] The legislative response to the MMIP crisis should be stopping all violence and discrimination against all indigenous people in this country, regardless of where they reside.

The MMIP crisis is a continuation of the ongoing injustice Indigenous people in this country have faced since the era of colonization.[23] The crisis is sustained due to a lackluster response from a government that is obligated to do much more to ensure the safety and welfare of Indigenous people in this country. Congress should be passing legislation providing direct support to victims and survivors of the MMIP crisis, and work to eliminate jurisdictional issues posing as barriers to justice. Adequately funding the current policies in place and implementing new legislation to confront the MMIP crisis is a necessary step to eventually ending this violence.

[1] Abigail Echo-Hawk, Adrian Dominguez and Lael Echo-Hawk, *MMIWG: We Demand More, A corrected research study of missing and murdered Indigenous women & girls in Washington State*, URBAN INDIAN HEALTH INSTITUTE 17 (2019).

[2] Historical interactions between the United States federal government and Indigenous populations can be defined as genocide. Convention on the Prevention and Punishment of the Crime of Genocide art. 2, Dec. 9, 1948, 78 U.N.T.S. 277.

[3] See Catherine E. Lhamon, *Letter of Transmittal for U.S. Comm'n on Civ. Rts., Broken Promises: Continuing Federal Funding Shortfall for Native Americans* (2018).

[4] *The Never-Ending Maze: Continued Failure to Protect Indigenous Women from Sexual Violence in the USA*, AMNESTY INTERNATIONAL 23-27 (2022).

[5] Am. Indian Pol'y Rev. Comm'n, 95th Cong., Final Rep.: Vol. One of Two Vols. 130 (Comm. Print 1977) ("The purpose behind the trust is and always has been to insure the survival and welfare of Indian tribes and people. This includes an obligation to . . . raise the standard of living and social well-being of the Indian people to a level comparable to the non-Indian society").

[6] Through treaties, statutes, case law, and Executive Orders, it has been established that the federal government is obligated to provide tribal sovereign entities with services such as education, housing, and healthcare. Enforcing a trust duty owed by the federal government requires identifying a statutory source that contains the specific duty. See *Seminole Nation v. United States*, 316 U.S. 286 (1942) (where the Supreme Court acknowledged a legally enforceable fiduciary responsibility to tribal governments).

[7] André B. Rosay, Nat'l Inst. of Just., *Violence Against American Indian and Alaska Native Women and Men* 44-46 (2016).

[8] *Id.*

[9] Kerri Colfer, *2022 Legislative Update: Reforms and Increased Resources to Remove Barriers to Safety and Justice for Native Women*, Restoration of Native Sovereignty and Safety for Native Women 31 (June, 2022)

[10] Savanna's Act, PUB. L. NO. 116-165, 134 Stat. 760 (2020).

[11] Not Invisible Act of 2019, PUB. L. NO. 116-166, 134 Stat. 766 (2020).

[12] Amnesty Int'l, *The Never-Ending Maze: Continued Failure to Protect Indigenous Women From Sexual Violence in the USA* 11.

[13] *Id.* at 52.

[14] For example, Public Law 280, passed in 1953, transferred federal criminal jurisdiction over all offenses involving AI/AN in Indian country to certain state governments. This violates tribal sovereignty and creates complex jurisdictional issues that can impede access to justice. *Id.* at 38.

[15] *Id.* at 9. “The USA has formed a complex interrelation between federal, state and tribal jurisdictions that undermines tribal authority and allows perpetrators of violence against AI/AN women to evade justice.” *Id.*

[16] U.S. Gov’t Accountability Off., GAO-22-104045, *Missing or Murdered Indigenous Women: New Efforts are Underway but Opportunities Exist to Improve the Federal Response* 55-60 (2021).

[17] U.S. Gov’t Accountability Off., GAO-22-104045, *Missing or Murdered Indigenous Women: New Efforts are Underway but Opportunities Exist to Improve the Federal Response* 17 (2021).

[18] 42 U.S.C.S. §§ 10403(2)(B), 10409(a).

[19] Family Violence Prevention & Services Program, *FY 2021 FVPSA ARP Supplemental Grant Award Allocations for Tribes* (2021) (296 tribes and tribal organizations received funding in FY 2021, while there are 574 federally recognized tribes in the US). See *Family Violence and Prevention Services Act 2021 Reauthorization: Tribal Consultation Confirms Urgent Need to Increase Funding for Shelter and Services*, Restoration of Native Sovereignty and Safety for Native Women 52-53 (Oct. 2021) (indicating the current funding is not sufficient to provide supportive services for AI/AN survivors of domestic violence).

[20] The first nationally representative study of violence against AI/AN women only focused on AI/AN women living in Indian Country or Alaska Native villages. Comm. on the Elimination of Racial Discrimination, *Combined Tenth to Twelfth Periodic Reports Submitted by the United States Of America Under Article 9 of the International Convention On The Elimination Of All Forms Of Racial Discrimination*, U.N. DOC. CERD/C/USA/10-12, ¶ 101 (Dec. 20, 2021).

[21] Urban Indian Health Inst., *Missing and Murdered Indigenous Women & Girls* 3 (2018).

[22] *Id.* at 2.

[23] Abigail Echo-Hawk, Adrian Dominguez and Lael Echo-Hawk, *MMIWG: We Demand More, A corrected research study of missing and murdered Indigenous women & girls in Washington State*, Urban Indian Health Institute 17 (2019).