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Missing and Murdered Indigenous Women:

How the law has disregarded violence against Indigenous women

Tavniah Dyer

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### **Abstract**

This paper explores the concerns encompassed in the Missing and Murdered Indigenous Women issue and the recently begun movement. The MMIW movement is bringing recognition to the problems of unequal consideration given to Native American women and how our country has not responded effectively to crimes against members of the Native community. The majority of Native women will experience sexual violence within their lifetime. Additionally, there are many cases of missing and murdered women, in addition to those surrounding sexual violence, that are not addressed or investigated. Indigenous women are left to suffer on their own with no hope of justice due to the complicated legal system and the ignorance of the United States government. The lasting ideals of history and the disputes in governmental jurisdiction have severely contributed to the newly highlighted situation amongst indigenous communities. The fact of the matter is that women, of all types, deserve the right to be safe in their own communities, this is what the indigenous women are deprived of.

## **Introduction**

Imagine if it was discovered that thousands of white women and girls were marked as missing in government databases, and that years later these thousands of cases had never been solved. The world would freak out, wouldn't they? All branches of government would be under backlash for their lack of effort, and they would be forced to work harder to solve the cases of these missing women/girls. Yet, every year indigenous women and girls are victims of crimes and the majority of their cases never get solved, for some an investigation is never even started. Indigenous women to North America live in a forgotten realm, where the cases of their missing and murdered women are ignored, and there is no way to seek justice for the staggering number of indigenous women who suffer from acts of sexual violence. This problem has been able to exist for decades when it should have ended long ago. The lasting ideals of history and the disputes in governmental jurisdiction have severely contributed to the newly highlighted situation amongst indigenous communities. The fact of the matter is that women, of all types, deserve the right to be safe in their own communities, this is what the indigenous women are deprived of.

## **Background Information**

The United States refers to indigenous women as Native women, and in Canada those indigenous to the land are referred to as aboriginal women. In Canada, over 16% of female homicides and 11% of missing women are made up of aboriginal women, yet they only occupy 4% of the country's population (Simons, 2014). In the United States, more than 50% of Native American and Alaska Native women will experience some form of sexual violence in their lifetime (Machles, 2019). The MMIW movement is bringing recognition to the problems of

unequal consideration given to Native American women and how our country has not responded effectively to crimes against members of the Native community.

### **Details of the Missing and Murdered Indigenous Women (MMIW) Movement**

In 2010, a surge of activism erupted as groups in both the United States and Canada demanded their respective governments begin an inquiry into the actions surrounding the cases of indigenous women. These groups called for improved reporting and investigative procedures as well as more complete data collection. The stories of Native families affected by the government's lack of concern detailed how often less finances and fewer resources are given to the cases of indigenous people than non-indigenous people. The fact that the federal government has failed to keep adequate records of cases involving indigenous people is often forgotten, or thought to be a part of history. Recently, activist groups have brought attention to the MMIW epidemic through marches and the use of social media with the #AmINext. Those in the public's eye like Jaime Black, a Metis artist, and Jordan Marie Brings Three White Horses Daniel, a Boston marathon runner, have used their positions to call attention to the problem as well. (Missing and Murdered Indigenous Women. 2019). Not only does the group bring attention to missing and murdered indigenous women, but also to those who have experienced sexual or domestic violence, which is almost all indigenous women. According to Weldon, Native American and Alaskan Native women are 2.5 times more likely to be raped than non-native women. Canadian aboriginal women are 3 times as likely to be victims of violence compared to non-aboriginal women, and in these cases the violence is often more severe (2018).

### **Canada**

#### **Actions taken by the Canadian Government**

As reported by Amnesty International (2014), between the years of 1980 and 2012 1,017 indigenous women and girls were murdered in Canada. It was not until September of 2016 that the Liberal Party, headed by Justin Trudeau, launched the National Inquiry into Missing and Murdered Indigenous Women and Girls. This was a major step towards confronting the problem, and one that the families of victims had been requesting for years. Previously, there had been no official government actions of this gravity confronting the epidemic of MMIW despite the desire for such. Amnesty International's Stolen Sisters report stated that.

Indigenous women's organizations, government commissions such as the inquiry into the murder of Helen Betty Osborne and the Royal Commission on Aboriginal Peoples, and United Nations human rights bodies have all called on Canadian officials to address the marginalisation of Indigenous women in Canadian society and to ensure that the rights and safety of Indigenous people are respected and upheld by police and courts (p. 2, 2004).

Canada's National Inquiry, though it had potential, turned out not to be what was essential to improving the situation. Families of the MMIW wanted a seat at the table, they wanted to be able to share their stories in hopes of creating a process that would help those in their positions.

Unfortunately, only a small portion of individuals were able to speak given the grand scheme of the situation. Fay Blaney, a feminist and powerful advocate for First Nations, revealed how "People submit their names and they don't hear back. No confirmations, no follow-ups. No one knows what's going on" (Hutchinson, para. 15, 2017). Following the original discussion in Whitehorse, there has been no report released given the inclosed discussion, and there have been no plans made for another meeting of this type. Those involved seem to think the process is at a standstill.

## **The United States of American**

### **Actions taken by the United States Government**

As The United States' Department of Justice has declared, 50% of Native American and Alaska Native women will experience sexual violence in their lifetime (Machles, 2019).

Recently, the United States has presented a few laws/acts that could possibly aid in the eradication of the MMIW issue. However, few of these laws have passed all levels of Congress and thus have not been able to help improve the situation. Savanna's Act, named after Savanna LaFontain-Greywind, a 22 year old pregnant Native American who was murdered, was submitted in 2018 with the idea of combating problems in law enforcement surrounding Native cases, it passed unanimously through the Senate, but did not receive the vote in the House. In 2019, the bill was reintroduced with the hope of passing because those who had previously declined the bill had retired (Missing and Murdered Women, 2019). Other than occasional sparks of hope, such as Savanna's Act, the United States has remained unwavering by the stories of the Native Americans.

### **United States legal system in relation to tribal law**

Sarah Deer, acclaimed Native American lawyer, describes the United States legal system in relation to the tribal community as a "patchwork of laws" (Machles, para. 14, 2019). The combination of many treaties throughout history, multiple branches having jurisdiction, and the fact that the government has not adjusted tribal law to cater towards the times and this specific issue have contributed to the lasting issue of violence against Native American women.

According to the 2014 Amnesty International report entitled, "Indigenous Peoples' Long Struggle to Defend their Rights in the Americas," "in the USA Native American and Alaska

Native women face complex jurisdictional issues that make protection, reporting, and prosecution of domestic violence nearly impossible” (2014). For decades the tribal court system has been placed under high restriction. Few reservations have developed enough courts that they can fully prosecute sexual violence cases, but even the ones that have the desire to help are not able to. In her documentary, “A Broken Trust,” (2019) Maren Machles reveals how tribal courts are restricted to giving a max of a 1 year sentence, despite what the crime may be. The large majority would argue that this is not long enough for someone who has committed rape or another form of harsh sexual violence. The reality that rapists will be released back into Native communities in no time is frightening. In a USA Today article, Twila Szymanski, a victim of sexual violence at ages 13, 14, and 34, shared how families teach girls what to do *when* they get raped, not if they get raped. The occurrences of these crimes are so common they have just become the norm (Machles, 2019).

Furthermore, tribal courts cannot prosecute non-Native Americans, and because 86% of crimes reported involve non-Native perpetrators, the tribal courts sit in limbo unable to do anything significant (Weldon, 2018).

When major cases, those involving rape and sexual assault, occur on tribal land the Federal Bureau of Investigations, the Bureau of Indian Affairs, and the US Attorney’s Office are all mandated to work alongside tribal officials due to the magnitude of the case and the little power tribal courts have on their own. However, United States federal governments have not fulfilled their part of the bargain. Many cases involving Native Americans get pushed to the side, and the government is not giving tribal courts needed financial support either, therefore they are not able to carry out as extensive of an investigation. In 2010, President Obama passed the Tribal Law



and Order Act, which extended the tribal court sentencing cap to 3 years. However, in order to implement this new process there is a long set of criteria that a court system must fulfill. Of the 573 federally recognized tribes, “Only 16 tribes have implemented the three-year sentencing enhancement” (Machles, para. 19, 2019). A criteria to be able to sentence criminals to 3 years includes having all jobs filled within the court. This goes back to the lack of staff and resources in tribal court systems and on reservations. The likelihood of non-Natives coming to work within tribal court systems is slim, the living conditions on reservations are rough and most reservations are secluded from the rest of the world, which leaves commuting to work difficult. Additionally, very few Natives, if they are able to escape the reservation life, would choose to come back and work on the reservations, raising their families there. In 2019 Deb Haaland, one of two Native American women in Congress, introduced H.R.2438, the Not Invisible Act. Although this bill has only been introduced, it produces much hope for improving the governments and taking better actions surrounding crimes committed on tribal land. The act’s mission is to “...increase intergovernmental coordination to identify and combat violent crime within Indian lands and of Indians” (Not Invisible Act of 2019, para. 1, 2019). Representative Haaland, as well as others, recognizes the high numbers of Natives that experience violence and how the federal government has not helped the situation.

### **Why is this still a problem?**

The initial occurrence of indigenous women disappearing out of thin air and the issue of violence against indigenous women began as explorers came across the seas to conquer the indigenous peoples’ land. The sense that Native and aboriginal women are “less than” has been propelled throughout history by the hands of racism, sexism, and colonialism. These groups

of male explorers established the idea that indigenous women are easy prey, easy victims of rape, violence, and waiting to be taken advantage of. In her essay, Weldon describes how author Catherin Lu argues the existence of colonialism in our current American system, “our state’s system perpetuates colonial injustice... deconstructing or disaggregating nation states reveal the ways that colonial legacies continue to permeate contemporary problems of justice” (para. 1, 2018). Within the complicated US legal system, there have been laws that leave out native women. The Violence Against Women act, passed under Clinton in 1994, was a huge step for women’s rights. However, this act does not protect Native women from violence (Weldon, 2018). In Canada, there are still echoes of The Indian Act which was enacted in 1876. This created a paternalistic government hold over the indigenous people that still exists in the legal system today (Watson, 2018).

### **Conclusion**

In their book, *Is Everyone Really Equal? An Introduction to Key Concepts in Social Justice Education*, Sensoy and Di Angelo argued “oppression is reproduced through policies, practices, traditions, norms, definitions, and discourses that systematically exploit one group to the benefit of another” (as cited in Watson, para. 8, 2018). The current lack of protection for indigenous women from violence is a result of decades of historic mistakes and mistrust. In the last couple years, with the rise of the Me Too movement and this immense support for victims of rape, sexual harassment, sexual assault, and other forms of sexual violence, it is crucial to take the steps needed to protect indigenous women. The reality of sexual violence being a normal part of life in Native and aboriginal communities is horrid. No girl should grow up in a community understanding the fact that she *will* encounter violence at some point in her life. Society must

work to provide as safe and prosperous life for indigenous women and girls as for all other women and girls.

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