

Observations on the State of Indigenous Human Rights in the United States

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Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the *Cultural Survival Quarterly*; and on its website: www.cs.org

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I. Executive Summary

There are currently 573 federally recognized Native American Tribes in the United States and over 500 non federally recognized Tribes. Over 4.5 million Native Americans and Alaska Natives make up about 1.5 percent of the U.S. population. From 1778 to 1871, U.S. signed over 500 treaties with Native American Tribes, all of which have been violated. No reconciliation can happen without addressing the wrongs of the past and examining the impact of hundreds of years of genocidal and racist policies aimed at disenfranchising Native Peoples, taking over their lands and resources, while decimating Indigenous communities, languages, and cultures. This report is not comprehensive and only briefly touches upon some issues Indigenous Peoples face that are emblematic of deep-rooted systemic discrimination and injustice.

II. Previous UPR Recommendations

Eleven recommendations were made regarding Indigenous Peoples specifically during the first cycle and then ten in the second cycle, however these have not been implemented.

III. Ongoing Violations of Indigenous Rights in New England

a. Recognition

The federal and state recognition process is one that is unjust, discriminatory and can take up to 30 years. Federal services and resources reserved for Native Americans and Alaska Natives are contingent upon a Tribe securing federal recognition. Non-recognized Tribes face the expensive and daunting process of submitting applications for acknowledgement that satisfy the Bureau of Indian Affairs' Criteria to prove Tribes are distinct autonomous communities, existing as such since historical times and recognized as such since prior to 1900.

Several Tribes in New England whose federal recognition bids were denied, or whose federally recognized status had been revoked, have recently attempted to re-petition the Bureau of Indian Affairs, including: the [Eastern Pequot Nation](#) (recognized in 2002, status revoked in 2005, 2019 re-petitioning); the [Golden Hill Paugussett Indian Tribe](#) (2004 petition rejected; 2019 re-petitioning); and the [Nipmuc Nation](#) (2001 petition rejected; 2019 revised filing). These revocations are compounded by 2015 BIA rules that say Tribes cannot re-petition if they have been denied federal recognition. Natural growth and change in communities is made treacherous by increasingly restrictive federal recognition policy.

b. Violation of Land and Resource Rights

Corresponding to the [long history of colonization](#) in New England, Indigenous battles for land and protection of natural resources and sovereignty rights are increasingly difficult.

In Massachusetts, burial grounds resulting from 17th century [internment](#) of Native people could be bulldozed. For decades, the governments of the Muhheconneuk InterTribal Committee on Deer Island (MICDI) and the Muhheconnew National Confederacy (MNC), recently joined by the North American Indian Center of Boston (NAICOB), have attempted to work with the City of Boston to protect Indian burial ground sites on the Boston Harbor Islands. Renovation plans for the 3,400-foot bridge connecting Long Island to Moon Island were announced in 2018. The Tribes have not been consistently consulted regarding the construction, and the city of Boston has failed to recognize the land as a historical site of genocide.

Lands of the Mashpee Wampanoag Tribe - 170 acres that had been established into trust in Taunton, MA, and another 150 acres in Mashpee - are in jeopardy of loss under a [Trump administration decision](#). On September 7, 2018, Tara Sweeney, Assistant Secretary for Indian Affairs, issued a decision that could take the reservation out of trust. The Mashpee Wampanoag have occupied the region for over 12,000 years and have faced diminishment of their homelands since colonization. Their lands today represent less than .05 percent of their original territories. The H.R.312 - Mashpee Wampanoag Tribe Reservation Reaffirmation Act passed the House in May, but has been stalled in the Senate. Legal battles over these protected lands illustrate the [rising federal disregard](#) for Indigenous sovereignty over those lands in favor of non-Indigenous business and [competitive interests](#).

The Penobscot Nation enjoy fishing rights in waters *on* their [Penobscot River island reservation](#), but have lost [appeals in 2016](#) and [2017](#) as to whether they may fish or manage activities in waters surrounding that island.

Recent appeals by Tribes for relief from state theft and control of Tribal lands include: the Narragansett Tribe's request for injunction against [Rhode Island](#) highway construction through burial grounds; the Schaghticoke Tribal Nation unsuccessful land theft claim against the state of [Connecticut](#) over inability to provide a [two-hundred year old deed](#); the Shinnecock Indian Nation's jurisdiction over Tribe-owned lands surrounding highways in [New York](#), especially where [wealthy neighbors](#) might [object](#); or another claim to ancestral lands on Long Island by the Shinnecock Indian Nation that was [denied](#) in 2016 because the Tribe [waited too long](#). And in frustration over "a long list of grievances" involving land and resource rights, Tribal sovereignty, and the tremendous burden on Tribes to achieve the rights protected under the UNDRIP, Passamaquoddy and Penobscot Tribal delegates, Matthew Dana II and Wayne Mitchell respectively, [withdrew from the Maine legislature](#) in 2015.

c. Representation of Native Peoples

In Massachusetts, there are still over 40 public schools that have mascots that use racist imagery and names that depict Native Americans. For years, Native American leaders and civil rights advocates have been [pushing for bills](#) to eliminate Native mascots in public schools across the Commonwealth (Bills H.443 S.247). The continued use of racist imagery is destructive to the futures of Indigenous children as well as to the futures of non-Native children exposed to inauthentic and racist representations of Native identities. The [State flag and seal](#) also depicts a Colonial broadsword suspended over the head of a Native American man. As the official symbols of Massachusetts, this is concerning as it promotes racist ideologies and perpetuates a settler colonialist mentality.

d. Legacy of Indian Residential Schools

The legacy of the forced removal of Native children from their families and boarding schools is still felt today. The Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission is the first of its kind to address issues of Native child welfare. Its final report, in 2015, found that Wabanaki children in Maine entered foster care at five times the rate of non-Native children. The report concluded that to improve Native child welfare, the state and the Tribes must continue to confront underlying racism still at work in state institutions and the public, ongoing impact of

historical trauma on Wabanaki people that influences the well-being of individuals and communities; and differing interpretations of Tribal sovereignty and jurisdiction that make encounters between the Tribes and the State contentious. The report further asserted that these conditions “can be held within the context of continued cultural genocide, as defined by the Convention on the Prevention and Punishment of the Crime of Genocide,” adopted by the UN General Assembly in 1948. Over 100 of these residential schools operated around the country.

IV. Ongoing Violations of Indigenous Rights Nationally

a. Criminalization of Protest, Unequal Access to Justice

The Dakota Access Pipeline (DAPL) 1200 mile route, designed to move over 500 million gallons of crude oil across four states per day, was set to traverse only private land along its route but for several federally regulated waterways. DAPL was granted a general [permit](#), which has been under protest and numerous lawsuits by several Indigenous nations. DAPL’s passage underneath Lake Oahe, a lake of sacred importance to the Standing Rock and Cheyenne River Sioux Tribes. Lake Oahe is federally regulated lake to which [the Standing Rock Sioux Tribe has rights](#) for fishing, hunting, and “to the extent necessary to fulfill the purposes of the treaty with the Tribe.” Indigenous Peoples’ protests at Standing Rock in 2016 drew international attention especially after military force was used to disperse water protectors.

Several new state [laws now criminalize protests](#) and demonstrations near pipelines, chemical plants and other infrastructure. In 2019 alone, Indiana, North Dakota, South Dakota, Tennessee and Texas legislatures have newly classified such activities as felonies. [Arrests of more than 700 activists](#) were made of those protesting DAPL. Penalties can extend to organizations found to have “conspired” in protests, and include sentences of up to five years and fines up to \$10,000. [Red Fawn Fallis](#), whose criminal activity (the firing of a gun at a police sweep line along the DAPL route) was complicated by her romantic relationship to [undercover FBI agent whose gun was fired](#), was sentenced to 57 months in federal prison. The [federal Pipeline and Hazardous Materials Safety Administration](#) and oil and gas [companies](#), to protect the petrochemical industry over Indigenous sovereignty and land rights, are lobbying Congress to increase these penalties.

c. Obstacles to Voting

Native people face significant obstacles to voting. An investigation published in October 2018 on obstacles for Native American voters in North Dakota, by the [Center for Public Integrity](#), found that between 2008- 2016, Sioux County, which encompasses the Standing Rock reservation, had the lowest voter turnout rate of any county in the state. Two other counties whose populations are majority Native American had the second- and third-lowest turnout in the state over the same period. After Democratic Senator Heidi Heitkamp’s narrow victory in 2012, North Dakota’s Republican lawmakers passed a new law requiring voters to present an ID that lists their current residential street address. A lower court judge previously ruled that the law’s requirements would disproportionately Native American voters, but his ruling was overturned after the State appealed. In October 2018, the U.S. Supreme Court ruled to permit state voter identification requirements, proving exact residential street address, to go into force for the November 2018 election. Many people who live on reservations have no street names or residential addresses and cannot obtain them.

d. Violations of Indigenous Rights at the U.S./Mexico Border

Forced removal of children from their families represents the continuity of a historical pattern of colonial violence by the U.S. government against Native Americans, African slaves, and now Latinxs and Indigenous Latinxs. There is a lack of visibility for Indigenous migrants, as Indigenuity is not recognized or addressed. Linguistic resources for speakers of Indigenous languages are severely limited, lacking both verbal interpretation, and translation of print materials such as legal documents and documents intended to make people aware of their rights.

U.S. Department of Justice [Executive Office for Immigration Review](#) found that in the past five years, there has been an increase in migrants who speak any of 23 Indigenous Guatemalan languages, especially Mam and K'iche. Immigration courts have no experience with these languages. Hearings for Indigenous-language speakers are often delayed for a full year due to limited availability of interpreters. When interpreters are not present or fully qualified, native speakers of Indigenous languages may not be able to accurately convey the details of their situation in Spanish nor English, hindering the possibility of gaining asylum.

Miscommunication within courts is common with “relay” translating, where English is translated to Spanish before being translated to an Indigenous language, or with many Indigenous migrants relying on a rudimentary understanding of Spanish. The issue extends beyond border services and impacts families seeking legal representation and due process throughout the legal system. One immigration legal service based in San Diego said that of the 2,000 cases from Latin America handled last year, nearly one-quarter did not speak Spanish or English. Resources must be devoted to train qualified court interpreters.

The language barriers can particularly harm Indigenous children, who are unlikely to receive the same counseling services as Spanish-speaking children. The inability to express their needs becomes especially dangerous when children fall ill, which may have been a contributing factor in the [deaths of six migrant children](#) at the border since December 2018, all of whom were Indigenous. Border agents may be unable to understand when Indigenous parents and children are [separated](#). Many Indigenous migrants held in detention are forced to sign paperwork without fully understanding the content of the documents. This can include waiving family reunification without awareness. Before 7-year-old Jakelin Caal Maquin died of sepsis at the Texas border last December, her father had signed a form saying his daughter was in good health. Caal speaks Q'eqchi' and was not provided an interpreter.

The Inter-American Commission on Human Rights conducted a [working visit](#) to the U.S. southern border on [August 19–23, 2019](#), and concluded that “there were not enough translators and interpreters, which hurdles the possibility to express oneself in one’s own language, and the capacity to understand administrative and judicial documents and proceedings. Indigenous persons are therefore at a disadvantage in terms of their access to procedures and the exercise of their right to counsel, since they lack the interpretation services they need and they lack access to administrative and judicial officials who understand their sociocultural representations and linguistic diversity...the IACHR recalls that in accordance with international standards, States must take measures to ensure that Indigenous persons can understand and be understood in legal proceedings—including administrative migration procedures— by providing interpreters or other means necessary for this purpose.”

e. Missing, Murdered, and Trafficked Indigenous Women

Indigenous women in the U.S. disproportionately face violence and are murdered at much higher rates. According to the National Crime Information Center, [5,712 missing](#) American Indian and Alaska Native women and girls were reported in 2016, while only 116 cases were reported by the US Department of Justice's federal missing person database. The 1994 Violence Against Women Act largely failed to protect Native women. A Department of Justice report says 96 percent of Native women who experienced sexual violence in their lifetime had a non-Native perpetrator who and non-Native perpetrators were often not held accountable for crimes against women on Tribal land. Until 2013, Tribal courts were not allowed to prosecute non-Native suspects regardless of whether the victim was Native. The 2013 reauthorization of VAWA allowed Tribes jurisdiction over domestic-violence cases committed against Native Americans on Tribal lands. A provision in the 2019 reauthorization would extend that jurisdiction to include perpetrators of sexual violence and stalking. The current authorization of VAWA passed the House in April, it is stalled in the Senate. Many serious crimes committed on Tribal lands fall under a mishmash of federal, state and Tribal jurisdictions, and are hard to prosecute.

A number of recent [legislative responses](#) been proposed, including the creation of committees and task forces to study the problem, new laws relating to reporting of missing persons, establishing duties and procedures to collect data on this issue, and improving law enforcement. Lucchesi, with the Urban Indian Health Institute, says federal agencies to assist underfunded Tribal law enforcement and governments is the solution. "The problem is Tribes' sovereignty isn't being honored and respected... Tribes aren't able to protect their women." Tribes not having jurisdiction over these cases and the lack of interagency coordination can lead to victims falling through the cracks. Part of the answer is building the capacity and sovereignty of Tribal government, courts, law enforcement and grassroots organizations.

VI. Recommendations

Cultural Survival urges the government of USA to:

1. Implement UNDRIP and incorporate it into domestic policies and laws
2. Reexamine treaties signed with Tribal Nations and set up commissions to find ways they can be implemented in today's circumstances in line with UNDRIP
3. Implement National Congress of American Indians' plan for a streamlined process for federal acknowledgement and work with its Federal Recognition Task Force to address the interests of all Tribes, both federally and non-federally recognized.
4. Pass the Mashpee Wampanoag Tribe Reservation Reaffirmation Act (H.R.312) in the Senate
5. Reauthorize the Violence Against Women Act which is stalled in the Senate
6. Pass the Not Invisible Act of 2019, H.R. 2438, to address the crisis of missing and murdered Indigenous women, establishing an advisory committee on violent crime.
7. Enact bans on racist mascots state-wide and nationally
8. Work with local Tribes to change Massachusetts state seal and flag.

9. Set up national and State truth and reconciliation commissions based on the example from Maine and work on reparations to survivors and families.
10. Ensure Indigenous participation in decision making in all matters affecting Indigenous Peoples
11. Work with Tribes to ensure all Native Americans have access to voting.
12. Pass the “For the People Act” (H.R. 1 / S. 949)—to improve voter turn-out including provisions to promote automatic voter registration; same-day voter registration; early voting; voting by mail; the re-enfranchisement of ex-felony offenders; an improvement in provisional ballots; while at the same time prohibiting voter caging, voter deception and voter intimidation.
13. Enact the “Voting Rights Advancement Act” (H.R. 4 / S. 561) to ensure that last-minute voting changes do not adversely affect voters; to protect voters against discrimination, and to expand the Federal Observer Program; and improve voting rights protections for Native Americans and Alaska Natives.
14. Devote resources to recruiting, training, and compensating licensed interpreters of Indigenous Central American languages.
15. Disaggregate data at the border to recognize the ethnicity of Indigenous migrants, and devote resources accordingly.
16. Reverse the inhumane policy of separating children from parents at the border and provide a mechanism for redress.
17. Ratify CEDAW, CRC, CED, CRPD, ICESCR, Optional Protocol to CAT, Optional Protocol ICCPR