



**Testimony and recommendations from Amnesty International USA
regarding the impacts of energy development on tribes**

March 2, 2017

Dear Special Rapporteur on the Rights of Indigenous Peoples,

Thank you for having this session for consultation, and for allowing Amnesty International to be present and raise our voices alongside our indigenous colleagues to share our concern regarding the impacts of energy development on tribes.

We wish to raise concerns in three main areas:

- 1) Violence against women
- 2) Free and Prior Informed Consent
- 3) Use of police force and the right to peaceful assembly

Violence against women

In 2007, Amnesty International issued a report [*Maze of Injustice: The Failure to protect Indigenous women from sexual violence in the USA*](#). The report confirmed what Native American and Alaska Native advocates have [long known](#): that sexual violence against women from Indian nations is at epidemic proportions and that survivors are frequently denied justice. This is not simply a public health or criminal justice issue, but a serious human rights issue, that the US government is obligated to address under internationally recognized human rights standards.

The U.S. Department of Justice's own statistics indicate that Native American and Alaska Native women are more than two and a half times more likely to be raped or sexually assaulted than women in the US in general and that 86% of the reported crimes are committed by non-Native men. Our report found that as a result of barriers including a complex jurisdictional maze and a chronic lack of resources for law enforcement and health services, perpetrators are not being brought to justice and indigenous women do not have access to basic post-rape care. Native American and Alaska Native women:

- May or may not get a police response;
- May never have access to a sexual assault forensic examination; and
- May never see their case prosecuted.

The federal government's steady erosion of tribal authority and chronic underfunding of law enforcement agencies and health service providers compounds the failure to protect indigenous women from sexual violence. Since this report was launched, we have seen some [positive changes](#) in federal law and policy regarding this matter, but major policy, legal, and structural barriers remain for indigenous women trying to access their basic rights.

We raise this in regards to the impact of energy development on tribes because there is evidence that in areas where such projects are initiated, there is an increase in sexual assault. Such projects bring in an

influx of workers into an area, many of them from far outside the community. In some areas where energy development projects have been introduced, local law enforcement have noted an increase in crime -- including domestic violence and sexual assault. In Dickinson, North Dakota, for example, an oil boom brought in multiple energy development projects and many new works, and local authorities reported a [300% increase in assault and sex crimes](#). The local mayor attributed this increase in crime to the oil and "natural" gas boom in their area. There are also reports of increases in sex trafficking in areas where energy development projects bloom.

Energy development projects threaten to exacerbate an already acute crisis for Native American and Alaskan Native women who lack meaningful protection, respect, or fulfillment of their basic human rights to live free from violence; to equal protection under the law; to equal access to health and health services; and to equal access to justice when their rights have been violated.

Free and Prior Informed Consent

The second concern we wish to raise regarding impacts of energy development on tribes is the question of free and prior informed consent.

Indigenous Peoples' rights regarding Free and Prior Informed Consent (FPIC) were recognized at the international level in response to a demand from the global movement of Indigenous Peoples. Their legally binding status has been confirmed in a number of rulings of the Inter-American Court of Human Rights. The principle has also been established in decisions of the UN Human Rights Committee and the African Commission on Human and Peoples' Rights. It has been formalized in standards such as General Recommendation no. 23 on the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), policies of UN agencies, and culminating in the UN Declaration on the Rights of Indigenous Peoples. They are an important vehicle for giving effect to the right of Indigenous Peoples to self-determination, a fundamental human right as outlined in the Universal Declaration of Human Rights.

Despite this, the concerns of Indigenous Peoples in the United States have routinely been sidelined in decisions that directly affect their well-being. The examples of this in the United States are so numerous that they can hardly be detailed; they have happened at every turn in US history—the very foundations of the United States as a nation is predicated on the figurative and literal erasure of Indigenous Peoples. The example of the Dakota Access pipeline is the latest of such examples.

The Dakota Access Pipeline 1,772-mile-long underground [oil pipeline](#) project, from North Dakota to Illinois. In North Dakota, it was originally slated to cross the Missouri River north of Bismarck, but community concerns, including concerns over water safety, moved the pipeline further south, on Army Corps of Engineer-owned land that is directly adjacent to the Standing Rock Sioux Reservation, for whom the Missouri River is their main source of water. Additionally, the pipeline route now travels through sites that the Standing Rock Sioux and other Nations have raised as potentially sacred sites.

Amnesty International has [repeatedly urged](#) the Department of the Army to ensure that the EIS fully takes into account the serious concerns of the Standing Rock Sioux Tribe, whose Federally-recognized land abuts the proposed river crossing for the pipeline as well as downriver Indigenous Peoples and other communities, about the impact of the pipeline and the proposed river crossing on the right to access to water, right to a healthy environment, indigenous rights, cultural rights, land rights, Treaty rights and other human rights recognized in international law.

The Standing Rock Sioux Tribe have repeatedly affirmed that no good faith consultations have taken place since they first learned of the project in 2014 and that their consent was never obtained. Although members of the Standing Rock Sioux Tribe have repeatedly requested to be consulted, the Army Corps has reportedly not carried out consultations with any of the tribes while carrying out their cultural and environmental impact studies relating to the pipeline.

FPIC applies in those cases where the rights of an indigenous People might be impacted by a particular policy or development project. It is important to emphasize that the necessity of FPIC rights for Indigenous Peoples arises from their collective modes of living and decision-making structures; the irreparable damage that can be caused by initiatives which impact significantly on their cultural integrity or land rights; and cumulative impacts of human rights violations stemming from colonization or external rule.

That this pipeline is slated to cross through land that is un-ceded treaty land points to a major and underlying issue facing energy development projects in the United States: indigenous people's lands were coerced or forcibly taken from them, treaties regarding land were continually broken by the United States, and tribes continue to not enjoy full tribal sovereignty, something codified in the 1978 United States Supreme Court ruling *Oliphant v. Suquamish Indian Tribe*.

Use of police force and the right to peacefully protest

The third concern we wish to raise is that of the use of police force and the right to peacefully assemble and protest.

As energy development projects continue to rise in the United States, we have seen a rise in protests. We have also seen that the right to freedom of assembly is under threat specifically in regards to protests against energy development projects.

Again, the Dakota Access Pipeline offers a useful and troubling example of our concerns. The interests of the protestors in these situations have not been the focus of the State. In North Dakota, Amnesty International repeatedly [called on](#) the governor, sheriff, and other officials to police the protests in line with human rights and to facilitate and not try to restrict the right to peaceful assembly. The dispersal of an assembly should be taken in line with the principles of necessity and proportionality, and only when there are no other means available to protect public order from an imminent risk of violence.

In North Dakota, however, there has been multiple incidents reported by media sources where we have seen the use of unnecessary and excessive force against largely peaceful protestors. Multiple protestors were arrested throughout the course of many months. Those arrested have [reported](#) being strip searched and held in kennel-like facilities. Others were driven hours away to be processed, and then were released without any way to return back to their cars or belongings. In freezing temperatures, police used a [water cannon](#) against peaceful protestors.

We are also deeply concerned about the increased militarization of police forces across the United States, and we saw this in Standing Rock with the deployment of local SWAT teams and the National Guard, as well as the use of military-style vehicles and weapons. Such tactics and decisions escalate tension between police and protestor and establish an adversarial relationship between law enforcement and assemblies.

We are concerned about energy development impact on tribes in regards to the question of private security and contractors and police forces. The line between official state or federal police and private security or contractors for an energy development project threatens to be increasingly blurred.

We [saw this](#) in North Dakota, where private security contractors released dogs on protestors and used what appears to be Oleoresin Capsicum spray (OC spray) against several of the protestors. The relationship between police and private security at the site was unclear, with the police not fulfilling their obligation to fulfill the right of peaceful protest.

We also note with concern the arrest of [multiple journalists](#), specifically at energy development project protests, and a rise in anti-protest laws that spring directly from protests surrounding energy development projects protests by indigenous people. In North Dakota, [three anti-protest laws](#) were introduced to the State House as an immediate response to the protests at Standing Rock. Each of these bills would undermine the rights to peaceful protest and freedom of expression.

Across American communities, there are deep and lasting histories of racism against Indigenous Peoples, specifically by police and state forces, thus effecting indigenous communities differently than other communities who seek to exercise their right to peaceful assembly. We [detailed our concerns](#) to the Governor of North Dakota, but have received no response, a further indication that the human rights of protestors are not the priority of government and police and a further cause for alarm as energy development projects impact tribes in the future.

Conclusion

The context in which energy development projects impact indigenous communities is rooted in the historical reality of European and U.S. colonization, which forcibly relocated many Indigenous Peoples from their land and subjected indigenous people to a myriad of human rights abuses.

Indigenous Peoples' communities continue to face discrimination and other barriers to their rights and face deeply entrenched marginalization. These energy development projects are not proposed in a bubble, they are conditioned by a legacy of human rights abuses and marginalization, and without fully addressing the systemic issues that face Indigenous Peoples here in the United States, it is hard to see how energy projects will not further exacerbate the lack of access Indigenous Peoples have to their basic rights.

Recommendations:

In light of the above, we respectfully make the following recommendations:

1. That the United States adequately fund indigenous courts, the Violence Against Women Act, and indigenous health and safety initiatives.
2. That the United States implement national police training based in human rights approaches to law enforcement, including training in anti-racism and particular cultural training for police who frequently interact with Indigenous Peoples.
3. That the Indian Health Service make implementation of the standardized sexual assault protocols mandatory and make publically available its implementation plan for standardized sexual assault protocols that were developed according to the General Accounting Office in 2011.
4. That the United States Congress should recognize the jurisdiction of tribal authorities over all crimes committed on tribal land, regardless of the indigenous identity of the accused.

5. That the United States adopt explicit policy that it will not engage in any infrastructure project with the full prior and free consent of the tribe or tribes affected by the project, on whose land the project would rest or affect, or who have claims to cultural sites potentially affected by such projects whether or not that land is currently recognized by the federal government as tribal land.