



## Justice on Tribal Lands Still Elusive

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Horrific violence toward women and children on southwestern tribal lands continues to disappoint. Up to 90 percent of girls in Hopi villages can expect to be sexually molested, according to a September 2012 interview with Arlene Honanie, the wife of the tribe's vice chairman. Ms. Honanie said that this happens, at least in part, because offenders are so rarely punished. A nearby advocate for reservation victims offered a similar observation in cases involving the Navajo Nation. Speaking to a *New York Times* reporter, Caroline Antone said, "I know only a couple of people who have not been raped, out of hundreds." If these reports are even roughly accurate, the Rule of Law within our adjacent Indian nations has lost credibility. As one human rights leader has said, "If you're not safe, nothing else matters."

For decades, the responsibility to protect tribal residents from major crimes has been reserved by the federal government. Crimes of sexual assault and felony child abuse fall largely under federal statutes. The most serious offenses are typically prosecuted within United States District Courts. Obvious problems follow when the victims of such violence within vast southwestern lands are called upon to participate in trials and hearings. Those proceedings can take place hundreds of miles away. If an uncle sexually assaults a niece in, for example, Fort Defiance, Arizona, the obstacles to quick and speedy justice are huge. A trip to Phoenix for a single court hearing would include 586 miles of roundtrip travel, consuming more than 10 hours. Despite the presence of highly competent prosecutors, a justice system that involves such logistical obstacles cannot be expected to work smoothly. And it doesn't.

American human rights experts report that some 4 billion people on our planet live outside the Rule of Law. Vulnerable citizens within developing nations are certainly at high risk. Recent reports from New Delhi confirmed that this city, which witnessed a brutal gang rape on a bus last December, had seen only one rape conviction in 2012—though approximately 635 rapes were reported in the city before Nov. 30.

One point emerges with clarity: When sexual violence can be perpetrated without consequence, it will be perpetrated. Victims will suffer. Some will die. Many will be traumatized for life. The promise of Rule of Law becomes a paper commitment, scoffed at by those who violate others indiscriminately. The security of women on native lands in this country is not much better. Amnesty International is now reporting that Native American women are 2.5 times more likely than other ethnic groups to be sexually assaulted.

Change is desperately required. The federal government has taken recent steps in the right direction. The Tribal Law and Order Act of 2010 provides tribes with more tools to handle serious offenders. Misdemeanor treatment with a one-year term for any offense had been the limit for tribal courts; the new law stops at terms of three years, but will allow cumulative penalties of nine years—a marked improvement. Accessing these new tools comes with requirements and costs that many tribes find unrealistic. In Arizona, the Hopi Tribe seems positioned to pursue these opportunities. Federal funds to satisfy federal requirements would help.

The recently expanded Violence Against Women Act (VAWA)

finally permits tribal prosecution of some non-tribal offenders who perpetrate violence against native women. The legislation contains several positives and will extend the criminal jurisdiction of tribal courts. The law, however, may be most important as a symbol of a new respect for tribal sovereignty. However, VAWA will not directly impact prosecution of the most serious offenses. Charges of sexual assault, felony child abuse or neglect, and other major crimes will still require federal involvement. And cooperation between federal and tribal governments has not always been optimal.

But a new dialogue may be in the wind. On February 15, Navajo Nation President Ben Shelly spoke fresh words at the opening of an impressive justice center in Tuba City: "We're ready to have a federal court. We're ready for a federal judge here." Federal judges in native America handling federal cases would help. Sure, new statutes would require enactment. Empaneling juries would present challenges. But until Indian nations acquire full criminal jurisdiction for offenses occurring within their boundaries, improved justice for native victims will require expanded federal efforts.

People across the globe are seeking protection through The Rule of Law. Both the ABA and the United Nations are leading efforts to promote basic justice and physical security for the most vulnerable among us. Cries for change are being heard throughout Asia. Thousands of demonstrators recently protested outside the government center of New Delhi. But there is no such outcry in Washington, DC, when hundreds of Hopi girls and women are assaulted. Though we have made promises, we have not taken the real steps to ensure that these commitments are met. It is doubtful that we will find a model for an effective public justice system anywhere on earth that involves the travel, cultural and jurisdictional barriers presented by crime in the native southwest. Access to justice—investigators, prosecutors and judges who are close by and available—needs to be real. The journey toward the Rule of Law in southwestern native lands has begun, but much more lies before us. **BT**

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