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Submission by Dr. Dawn Memee Harvard, Native Women's Association of Canada

### **Submission to the Expert Mechanism on the Rights of Indigenous Peoples**

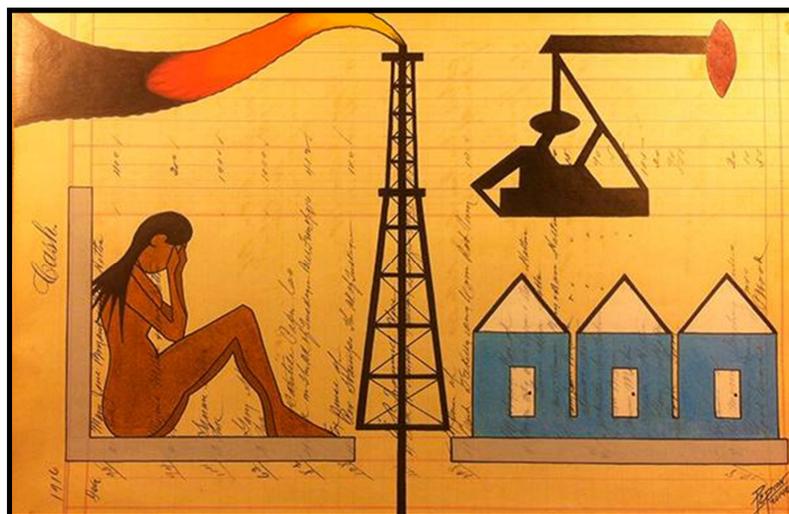
Honor the Earth, also submitted on behalf of Brave Heart Society, Minnesota Indian Women's Resource Center, A Billion Rising, Indigenous Women's Network, and individuals including Tanaya Winder, and Prairie Rose Seminole.

April 26, 2015

## **EXTREME EXTRACTION AND SEXUAL VIOLENCE AGAINST INDIGENOUS WOMEN IN THE GREAT PLAINS**

"Sexual assault rates and violence against Native American women did not just drop from the sky. They are a process of history."

- Jacqueline Agtuca, Alaska Native Women's Conference, Anchorage, Alaska, May 24, 2005



*'Indian Girl Lost In the Man Camp,' Ledger Art by John Isaiah Pepion*

**Overview:** This intervention requests the UN Special Rapporteur to host a hearing in the Indigenous territory of North Dakota, for the purpose of redress of the violence against women, in physical and sexual form which comes from the extreme extraction in the region. This is the present connection between extreme fossil fuel extraction and the ongoing epidemic of sexual violence against Native and First Nations women in North America's Great Plains and Great Lakes regions. It contextualizes the relationship between oil booms and sex trafficking booms within broader historical processes of colonization and genocide. Our request documents the urgent need for United Nations intervention, in the Bakken shale formation of western North Dakota and eastern Montana, and attendant violations of the human rights of Indigenous women in the tar sands region of Alberta.

**Background:** Sexual violence is nothing new for Indigenous women. It is the history of a war against our people. A war taken out on women. The brutalization of Native women in the historic military campaigns, and then the mining campaigns of the 1800s is well documented. We understand the relationship between taking our land and seeking to destroy our women. This has continued for generations, yet at this new time, the increased violence against Mother Earth in the process of extreme extraction, mining, exploding the bedrock, pumping lethal chemicals, and watching a land perish, is analogous and highly impactful to Indigenous women and communities who live in the violence. Violence on the land becomes violence against women. And, the invasion of Indigenous territories has increased dramatically.

A 2004 study by the U.S. Department of Justice concluded that Native American and Alaskan Native women are more than 2.5 times more likely to be raped or sexually assaulted than US women overall (5 vs. 2 per 1,000).<sup>1</sup> A study by the NIJ and CDC estimated that 34% of Native women will be raped during their lifetime, whereas for US women overall the probability is less than 20%.<sup>2</sup> Though shocking, these statistics nonetheless severely underestimate the extent of sexual violence against Native women.<sup>3</sup> The data not only understates prevalence, it also fails to paint a comprehensive picture – for example, no robust statistics exist on sexual violence specifically in Indian Country, and available data is more likely to represent urban than rural areas. There is an urgent need for UN research to collect data to inform planning and support community-based Native-led initiatives against sexual exploitation, human trafficking, and violence.

A common misconception is that the epidemic of sexual violence against Indigenous women is a problem internal to the Native community. This is false. Sexual violence has been a primary tool of conquest and colonization since the day European settlers first stepped foot on North American soil. The ongoing epidemic merely continues the history of widespread human rights abuses against Indigenous peoples in North America, and the disproportionate impact on women and girls. The data confirms this. According to the US Department of Justice, the perpetrators of at least 86 per cent of reported cases of rape or sexual assault against American Indian and Alaska Native women were non-

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<sup>1</sup> Steven W Perry, American Indians and Crime- A BJS Statistical Profile 1992-2002, Bureau of Justice Statistics, US Department of Justice, Office of Justice Programs, December 2004.

<http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=386>

<sup>2</sup> Tjaden, P. & Thonennes. (2000). The Prevalence, Incidence, and Consequences of Violence Against Women: findings from the National Violence Survey Against Women. National Institute of Justice & the Centers for Disease Control & Prevention.

<sup>3</sup> In addition to the inherent challenges of under-reporting, many studies under-estimate prevalence by excluding crimes against children and adolescents, or anyone living in households without telephones.

Native men.<sup>4</sup> In contrast, sexual violence against non-Native women is usually committed within an individual's own race.<sup>5</sup>

Even for the cases that are reported, a complex jurisdictional maze of tribal, state, and federal law undermines the pursuit of justice. These problems are exacerbated by understaffing and lack of appropriate training in the relevant police forces. In some cases this has created areas of lawlessness that encourage violence.<sup>6</sup> Between 2005 and 2009, the Justice Department failed to prosecute 52 percent of violent crimes reported in Indian Country.<sup>7</sup> And the US government has interfered with the ability of tribal justice systems to respond to crimes of sexual violence, by underfunding tribal justice systems, prohibiting tribal courts from trying non-Indian suspects, and limiting the custodial sentences which tribal courts can impose for any one offence. The maximum prison sentence tribal courts can impose for crimes, including rape, is one year, compared to an average of 9-13 years in state and federal courts.<sup>8</sup> The Obama administration's 2013 reauthorization of the Violence Against Women Act helped by restoring to tribal courts the right to prosecute non-Indians for violence against Native American women on Indian land, which the U.S. Supreme Court had previously prohibited, but this provision did not come into effect for most tribes until March 2015 and many still do not have the resources or infrastructure necessary to implement it. The law also authorized up to \$25 million in tribal grants for fiscal years 2014 to 2018, but Congress has not yet appropriated any of those funds.

Sites of resource extraction are often centers of human trafficking and sexual exploitation and violence. A 2014 report by the ILO estimated that 21 million individuals are being trafficked for sex or labor globally per year and showed that sexual violence and trafficking is exponentially higher near points of extraction and worker camps, or "man camps" than it is in locales of similar population.<sup>9</sup> Destructive, resource-intensive, and often forced practices of mineral extraction are primary ways that colonialist conquest and genocide continue today, through simultaneous violence against the land and against indigenous peoples, disproportionately affecting women and girls.

### **The Bakken Oil Fields:**

"Violence against the earth begets violence against women."  
- Melina Laboucan-Massimo (Lubicon Cree First Nation)

Extreme extraction means that we behave badly and quickly, often prior to regulation and often at a high price. In the past decade there has been an accelerated expansion of extreme extraction in the Great Plains region, particularly in the Bakken shale formation of western North Dakota and eastern

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<sup>4</sup> Steven W Perry, American Indians and Crime – A BJS Statistical Profile 1992–2002, Bureau of Justice Statistics, US Department of Justice, Office of Justice Programs, December 2004

<sup>5</sup> Department of Justice Table 42: Percent distribution of single-offender victimizations, by type of crime and perceived race of offender, Bureau of Justice Statistics, US Department of Justice, 2004

<sup>6</sup> 2007. Amnesty International USA. "Maze of Injustice: The failure to protect indigenous women from sexual violence in the USA."

<sup>7</sup> Sierra Crane Murdoch. High Country News, June 12, 2013. "Is the Violence Against Women Act a chance for tribes to reinforce their sovereignty?"

<sup>8</sup> Bureau of Justice Statistics Bulletin, Felony Sentences in State Courts, 2002, December 2004, NCJ 206916.

<sup>9</sup> International Labour Organization. Forced Labour, Human Trafficking, and Slavery. ILO.org, 2014.

Montana.



Since 2006, extraction from the Bakken formation in ND has increased over 300-fold, to more than 1.2 million barrels per day. This puts North Dakota in second place among domestic producing states, behind Texas alone. Environmental regulations at the tribal and state level are significantly underdeveloped and under-enforced, and spills happen all the time. An estimated 300 spills went entirely unreported in 2012 and 2013 alone.<sup>10</sup> A pipeline rupture

Photo 1: A man camp outside Watford City, ND.

in January 2015 spilled 3 million gallons of saltwater drilling waste, which contains heavy metals and radioactive materials, into the watersheds near Williston ND.

The Bakken has 3.73 billion barrels of oil in it.<sup>11</sup> The US consumed 6.8 billion barrels in 2012. In other words, the Bakken represents 6 months of oil. That's not energy independence. Meanwhile, the land, water, and bodies of the Mandan, Hidatsa, and Arikara tribes of rural ND are experiencing unprecedented and irreversible damage, and all that oil is headed for the pristine lakes and wild rice beds of Northern Minnesota, then across the Great Lake system home to 1/5 of the world's fresh water.

The man camps created by the fracking boom increase exponentially the sex trafficking of women, girls, and boys, and Native peoples are affected disproportionately.<sup>12</sup> The same ethic that allows oil companies to feel entitled to desecrate sacred lands allows them to feel entitled to the bodies of our women and children.

Assaults in Dickinson, North Dakota, are up 300 percent.<sup>13</sup> Rapes in North Dakota alone increased 17 percent statewide from 2011 to 2012.<sup>14</sup> In 2012 the tribal police department of Fort Berthold reported more murders, fatal accidents, sexual assaults, domestic disputes, drug busts, gun threats, and human trafficking cases than any year before. This was in direct correlation to the population doubling with non-Native oil workers who were brought in to work on the Bakken oil fracking operations.<sup>15</sup> "Sexual assaults on the male population have increased by 75% in that area," said Former Rosebud Sioux Tribe

<sup>10</sup> [http://www.huffingtonpost.com/2013/10/28/pipeline-spills-north-dakota\\_n\\_4170133.html](http://www.huffingtonpost.com/2013/10/28/pipeline-spills-north-dakota_n_4170133.html)

<sup>11</sup> "USGS Releases New Oil and Gas Assessment for Bakken and Three Forks Formations" May 2013. [http://www.usgs.gov/blogs/features/usgs\\_top\\_story/usgs-releases-new-oil-and-gas-assessment-for-bakken-and-three-forks-formations/](http://www.usgs.gov/blogs/features/usgs_top_story/usgs-releases-new-oil-and-gas-assessment-for-bakken-and-three-forks-formations/)

<sup>12</sup> [http://www.fbi.gov/news/news\\_blog/human-trafficking-prevention-month-raises-awareness-of-enforcement-and-victim-assistance-efforts](http://www.fbi.gov/news/news_blog/human-trafficking-prevention-month-raises-awareness-of-enforcement-and-victim-assistance-efforts)

<sup>13</sup> [http://www.bozeman-magpie.com/perspective-full-article.php?article\\_id=495](http://www.bozeman-magpie.com/perspective-full-article.php?article_id=495)

<sup>14</sup> [http://www.huffingtonpost.com/georgianne-nienaber/man-camps-and-predator-ec\\_b\\_3700640.html](http://www.huffingtonpost.com/georgianne-nienaber/man-camps-and-predator-ec_b_3700640.html)

<sup>15</sup> Sierra Crane Murdoch, The Atlantic, "On Indian Land, Criminals Can Get Away With Almost Anything". Feb 22, 2013.

Police Chief Grace Her Many Horses.<sup>16</sup>



Photo 2: A billboard in the Bakken region of ND.

From March-May of 2014 alone, eleven men were charged with offering up children for sex in Dickinson. Two individuals were arrested for prostituting immigrants out of a massage parlor in Minot. Two men were charged with the attempted sex trafficking of children in the Oil Patch.<sup>17</sup>

Particularly in the Bakken, much of the trafficking reported involved both male and female minors. Bryan

Lockerby, administrator of the state's Department of Criminal Investigation said statistics show 70 percent of female prostitutes were brought into the sex trade via illegal human trafficking, often as young teenagers and recruited by pimps.<sup>18</sup> Many Native women are forced into prostitution, or become victims of trafficking due to factors relating to intergenerational trauma and continued conditions of colonization.<sup>19</sup> As non-native oilfield workers flock to the local reservations of the Three Affiliated Tribes, they have been immune from prosecution by tribal governments. As one told the Atlantic, "You can do anything short of killing somebody." In Williston, a single term catches both views: workers here overwhelming call this place "the Wild West."

Tribal leaders said their police forces are underfunded, understaffed and ill-equipped to combat the Mexican cartels that have infiltrated the region and are well-organized and armed with heavy weaponry, including machine guns.<sup>20</sup> 5,000 criminal cases were dismissed by the Ft Berthold Tribal Court judge because of an inadequate tribal court system, as there were not enough tribal prosecutors to prosecute the avalanche of criminal cases. Due to lack of jurisdiction, the tribal police have not been able to arrest the national or international drug rings operating within the Fort Berthold boundaries. Also, only 10% of law enforcement in the Bakken region have been trained to deal with sex trafficking.<sup>21</sup>

In response to this crisis, in August 2014 the Justice Department's Office on Violence Against Women announced \$3 million in grants to address violence against women in rural and tribal communities in the Bakken region.<sup>22</sup>

<sup>16</sup> <http://earthfirstjournal.org/newswire/2014/05/26/sexual-assault-in-the-bakken-shale-man-camps>

<sup>17</sup> Gilbertson, Lydia. Letter: End Human Trafficking Wherever It's Happening. *Bakken News*, May 23, 2014. <http://bakken.com/news/id/182654/letter-end-human-trafficking-wherever-happening/>

<sup>18</sup> McLaughlin, Shaymus. "Rise in Sex Trafficking on Bakken Oil Patch Poses New Challenges,": Minnesota Public Radio Interview with Bryan Lockerby, Administrator of the State's Department of Criminal Investigation. May 2014.

<sup>19</sup> <http://indiancountrytodaymedianetwork.com/2012/01/17/minnesota-report-examines-sex-trafficking-native-women-72637>

<sup>20</sup> <http://www.tulalipnews.com/wp/2014/09/04/tester-begins-hearings-on-sex-trafficking-in-indian-country/>

<sup>21</sup> McLaughlin, Shaymus. "Rise in Sex Trafficking on Bakken Oil Patch Poses New Challenges, Minnesota Public Radio Interview with Bryan Lockerby, Administrator of the State's Department of Criminal Investigation. May 2014.

<sup>22</sup> <http://www.justice.gov/opa/speech/remarks-associate-attorney-general-tony-west-four-corners-conference>

As is true for any economic activity, the impacts of the sex trafficking boom in the Bakken oil fields are not limited to the local area. A 2009 report by the Minnesota Indian Women's Resource Center showed that the Twin Ports of Duluth, Minnesota, and Superior, Wisconsin, have played a role in cross-border human trafficking to feed the market for sex in the Bakken specifically.<sup>23</sup> Many women come from the surrounding reservations or are smuggled across the border from Thunder Bay, Ontario. A 2013 report by the Minnesota Indian Women's Sexual Assault Coalition was the first study to detail the personal experiences of Native women who have been prostituted and trafficked in Minnesota. Based on interviews with 105 Native women in Minneapolis, St. Paul, Duluth and Bemidji, it found that 98 percent were homeless at the time, 92 percent said they wanted to leave their situation immediately, and 62 percent saw a connection between prostitution and colonization, "and explained that the devaluation of women in prostitution was identical to the colonizing devaluation of Native people."<sup>24</sup>

The impacts also reach large metropolitan centers in the region. A landmark 2014 study of trafficking in Minneapolis found that 75 percent of juvenile trafficking cases in Minneapolis in 2013 involved Native American victims, although Native Americans make up only 2 percent of the city's population.<sup>25</sup> The largest percentage of buyers were white.

### **The Athabasca oil sands of northeastern Alberta**

The Aboriginal community of Canada, which is also heavily impacted by this violence and sex trafficking, has little to no protection.

In addition to the violence committed by people brought in by industry, industry such as the tar sands and other pipeline projects are causing displacement to many women who must flee their own communities, which has led to more women being exposed to homelessness and violence in large cities such as Vancouver, a place "notorious for sexual assault and its high number of missing and murdered women"<sup>3</sup>. At last year's Powershift conference, Melina Laboucan-Massimo, climate justice activist and member of the Lubicon Cree First Nation, summarized the long-standing connection between colonialism, sexualized violence, and resource extraction: "violence against the earth begets violence against women."<sup>26</sup>

"[A]ttention must be paid to the social ways in which industry and development are impacting the right to life, sexual rights and sexual health, and the right to live a life free of violence. Indigenous communities continue to articulate that the introduction of resource extractive industries, including

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<sup>23</sup> Alexandra Pierce. "Shattered Hearts: The Commercial Sexual Exploitation of American Indian Women and Girls in Minnesota." Minnesota Indian Women's Resource Center. 2009.

<sup>24</sup> Minnesota Indian Women's Sexual Assault Coalition, and Prostitution Research and Education. "Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota." October 2013.

<sup>25</sup> Martin & Pierce et al. (2014). "Mapping the Market for Sex with Trafficked Minor Girls in Minneapolis: Structures, Functions, and Patterns." Full report: Preliminary Findings (available at [aturoc.umn.edu/sextrafficking](http://aturoc.umn.edu/sextrafficking)). September 2014

<sup>26</sup> McLaren, Jesse. (February 5, 2014). *February 14: Women's Memorial March*.  
From: <http://www.socialist.ca/node/2078>

mining, drilling, logging *et cetera* has resulted in increased sexual violence and sexual exploitation of Indigenous women and girls in many communities.”<sup>27</sup>

This tragedy is augmented by the continued murders and disappearance of Native women, particularly in Canada, where over 1000 Indigenous women have disappeared or been murdered in the past decade. These are current cases.

**Mandate for United Nations Intervention:**

Article 22 of the United Nations Declaration on the Rights of Indigenous Peoples states:

*Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration*

*. 2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.*

*This is not the case*

**Request:**

**We are requesting that the UN Special Rapporteur on the Rights of Indigenous Peoples hold a hearing and fact finding mission to Mandan, Hidatsa, Arikara, Anishinaabeg and Lakota territory to take testimony and begin to redress this issue. We are requesting similar hearings to be held in Dene territory in the north.**

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<sup>27</sup> Native Youth Sexual Health Network. (March 11, 2014). *Joint Statement on Environmental Violence and Reproductive Health in the 25th session of Human Rights Council*. <http://www.nativeyouthsexualhealth.com/march112014.pdf>