

THE INDIGENOUS WORLD 2016



USA

Approximately 5.1 million people in the U.S., or 1.7% of the total population, identify as Native American or Alaska Native alone or in combination with another ethnic identity. Around 2.5 million, or 0.8% of the population, identify as American Indian or Alaska Native only.¹ Five hundred and sixty-six tribal entities were federally-recognized at the beginning of 2015,² and most of these have recognized national homelands. Twenty-three per cent of the Native population live in American Indian areas or Alaska Native villages. The state with the largest Native population is California; the place with the largest Native population is New York City.³

While socioeconomic indicators vary widely across different regions, per capita income in Indian areas is about half that of the U.S. average, and the poverty rate is around three times higher.⁴ The United States announced in 2010 that it would support the UNDRIP after voting against it in 2007. The United States has not ratified ILO Convention No. 169.

Recognized Native nations are sovereign but wards of the state. The federal government mandates tribal consultation but has plenary power over indigenous nations. American Indians in the United States are in general American citizens.

Recognition and sovereignty

In 2015, much of the political spotlight rested on the federal recognition of American Indian tribes. In the United States, only those tribes that are officially recognized as American Indian entities are entitled to benefits and operate as sovereign nations. Certain states also recognize Native tribes within their borders but that does not guarantee federal recognition. The government started a process to reform long-criticized recognition processes in 2014 (see *The Indigenous World* 2015). In March, several lawmakers sent a letter to the Department of Interior, which is in charge of the recognition process, opposing the proposed changes

and urging the department to study the issue some more. Some of the changes that lawmakers, as well as some already federally-recognized tribes, opposed were that tribes who had been denied recognition would have been able to appeal and re-petition, and that tribes seeking recognition would only have to prove their existence as tribes since 1934, instead of throughout “historical times”, which would mean since first contact. This is often impossible to fulfill because of a lack of written documentation. The final rules, published in June 2015, do not allow re-petition for denied tribes, and require documentation of existence as a tribe since 1900.⁵ In response to the changes, Representative Rob Bishop (Republican, Utah) introduced the Tribal Recognition Act of 2015, which would give Congress alone the final decision—making power over recognition. It would also demand that tribes prove their existence from first contact. In December, the bill saw a hearing in the House Committee on Natural Resources, chaired by Bishop, which considers policies about American Indian affairs in the House of Representatives. Of the two tribes invited to testify, one, the Morongo Band of Mission Indians, welcomed the bill, while the other, the United South and Eastern Tribes, urged lawmakers to leave the Bureau of Indian Affairs (BIA) with the powers of recognition.⁶

In June, the recognition of the Pamunkey Indian Tribe in the State of Virginia became official. The Pamunkey had been state-recognized but became the first federally-recognized tribe in Virginia. Also in late June, the Duwamish tribe in the state of Washington was denied recognition. The tribe, just like the neighboring Chinook nation, has vowed to continue fighting for recognition. Some of the groups opposing Duwamish recognition are neighboring tribes who fear the potential competition from a new tribal casino in the area.

Another major political issue connected to tribal sovereignty in 2015 was marijuana. In December 2014, a memorandum from the Department of Justice was made public. The memorandum responded to tribal inquiries about federal enforcement of drug laws, after several states had made medicinal and/or recreational use of marijuana legal. It reinforced eight priorities in federal law enforcement. Popular press coverage in early 2015, however, reported on this as if the federal government had given tribes the liberty to make marijuana legal as long as they did not go against those priorities. Several tribes started to weigh up the legalization of marijuana and, in February, a Tribal Marijuana Conference was attended by around 75 tribes. In January, the Pinoleville Pomo in California announced a large-scale growing operation with outside investors. In August, the



Washington state:	Duwamish; Chinook
California:	Pinoleville Pomo
Arizona:	Hopi; Navajo
Montana:	Flathead (Confederated Salish and Kootenai Tribe)
Wyoming:	Wind River
North Dakota:	Fort Totten
South Dakota:	Flandreau; Rosebud; Lower Brule; Pine Ridge; Cheyenne River
Nebraska:	Omaha
Oklahoma:	Choctaw Nation
Wisconsin:	Chippewa
Washington D.C.:	BIA; Tribal Nations Conference
Virginia:	Pamunkey Tribe
Alaska:	Kivalina; Kotzebue

nation suspended its plan and, in September, the Mendocino County sheriff seized several hundred plants from that operation under state laws. In South Dakota, the Flandreau Santee Sioux Tribe announced that it would open a marijuana resort, catering to non-Indians. However, federal authorities expressed

reservations about selling marijuana to non-Indians and the origins of the seeds for the growing operation, and the tribe burned its crop in November to avoid a potential raid by federal law enforcement. It will evaluate future plans and engage in further discussions with the federal government. In Washington, the Suquamish and Squaxin Island tribes signed agreements with the state government and opened stores selling recreational marijuana under state laws. In these cases, it seems that state laws provide more guidelines and protection for reservations than federal law, under which marijuana is still a prohibited drug.

Children

In June, both the Senate and the House of Representatives passed the Native American Children's Safety Act, a bill that would require background checks for all adults in homes into which Native children are placed for foster care. The bill was introduced by the North Dakotan delegation, in partial response to cases on the Fort Totten reservation where some foster children had been abused by adults with criminal records. Although the bill has not been signed into law, the BIA decided in August that it would provide criminal background check information to tribal social service agencies.

In March, the United States District Court for South Dakota ruled in favor of the Oglala and Rosebud Sioux Tribes and Native parents in Pennington County, and found that the state of South Dakota had been violating the Indian Child Welfare Act (ICWA) (see *The Indigenous World 2012* and *2014*). In South Dakota, nine percent of the population is American Indian but over half of the children in foster care are Native. The court ruled that Native children are routinely taken from their homes illegally, that the state did not provide adequate notice to parents, and that other constitutional rights of parents had been violated. Under ICWA, Native children fall under the sovereignty of their tribe; this law was enacted to prevent American Indian children from being predominantly placed into non-Native contexts.

In February, the BIA updated ICWA guidelines for the first time since 1979. The new guidelines strengthen efforts to prevent the breakup of Native families, even if children have to be taken care of by foster parents and clarify procedures to determine whether or not children fall under ICWA and to notify tribes. In May, the National Council for Adoption and an organization called Building Arizona

Families filed a federal lawsuit against ICWA claiming that the law prevents Native parents from freely placing their children in the best homes. The lawsuit also argues that the new BIA guidelines impose too many burdens on adoption agencies. In July, the Goldwater Institute filed a separate federal lawsuit against ICWA. This class-action lawsuit on behalf of off-reservation Native children argues that ICWA negatively affects Native children because the power to determine foster and adoptive parents rests with their tribe, and not with the parents or the children, and because under ICWA Native children should be placed into Native homes, regardless of previous exposure or interest in culture or of bonds already in place with non-Native homes.

Land and jurisdiction

In December, the Supreme Court of the United States heard arguments in the case *Dollar General Corporation v. Mississippi Band of Choctaw Indians*. The case has broad implications for the jurisdiction of tribal courts. The company Dollar General is arguing that tribal courts do not have jurisdiction in civil suits over non-members, even if these have voluntarily entered into a relationship with the tribe, for example, by opening a business on a reservation. Should the court rule in favor of the company, tribal jurisdiction would be limited. Tribes lack criminal jurisdiction over non-members but, so far, an authorization for tribes to regulate businesses that establish consensual relationships with a tribe has been interpreted as also giving tribes civil jurisdiction over non-members in those relations.

Although the federal government argued against it, the Supreme Court also agreed to review a land dispute between the Omaha Tribe of Nebraska and the town of Pender. In *State of Nebraska v Parker*, the state argues that the Omaha reservation was “diminished” - that is, its borders redrawn to a smaller size - in 1882 when half of it was opened for settlement by non-Indians and the state assumed jurisdiction there. If the reservation was not diminished, the town of Pender lies on the reservation, and the tribal government has the authority to regulate its businesses, especially, in this case, liquor stores. The tribe has proposed a licensing requirement and a 10% sales tax for these businesses. The reservation and the federal government are arguing that unless Congress explicitly diminished exterior boundaries of reservations, these have been left intact even if parts of them were opened for settlement by non-Indians. In November, a similar case

over whether the Wind River reservation in Wyoming still includes the city of Riverton went before the courts (see *The Indigenous World 2011*).

In October, a federal judge ruled that bands of the Chippewa tribe in Wisconsin would be able to conduct night hunts on certain lands outside reservation boundaries. Treaties in the 19th century had specifically reserved the tribal right to hunt on ceded lands. The state of Wisconsin argued that night hunts would be unsafe but the judge pointed to a stellar tribal hunting safety record and specific tribal guidelines and regulations in agreeing with the tribe.

In December, the Navajo Nation opposed a Senate bill that aims to reform the federal government's process to take land into trust. A need to reform the process has been acknowledged by both Congress and tribes for several years. The Secretary of the Interior, under a 1934 law, can take any land into trust for a tribe; a Supreme Court decision in 2009 limited this to tribes that were federally-recognized in 1934. Because trust lands are not taxed by states and counties, and fall under federal and tribal jurisdiction and sovereignty, the land-into-trust process has been controversial. States and counties fear a loss of tax income and an expansion of foreign sovereignty in their midst, resulting, for example, in tribal casino projects. This proposed bill would fix the time limitation, allowing all federally-recognized tribes to have lands taken into trust, but also encourages tribes to enter into cooperative agreements with other entities, which would limit sovereignty and jurisdiction over these lands.

Climate change and presidential support

In August and September, President Obama paid a visit to Alaska, and included several rural regions in his travels, in part to see the effects of climate change. His visit to Kotzebue, an Inupiat community, was preceded by a short flyover of his plane above the village of Kivalina. That village is being slowly eroded by the sea, in part because warming sea temperatures prevent early ice build-ups that would shelter the shoreline from storms. After the presidential visit, the shoreline at Kivalina was eroded a further 10 feet toward the airport and village in an early October storm. While the ice used to build in August, the sea now freezes in November or December. The president announced a US\$4 million initiative to promote clean energy projects in Native villages. Kotzebue is trying to protect itself

from coastal erosion with a US\$40 million erosion control project. Obama also visited the Choctaw Nation in Durant, Oklahoma, in July.

In November, President Obama rejected the permit application for the Keystone XL pipeline, a planned 1,100-mile project across the plains to increase oil flows from Alberta in Canada to Louisiana. The permit process took seven years and saw multiple protests from Native people, especially in South Dakota, where the pipeline would have crossed ancestral homelands and treaty lands of several Lakota tribes. Obama remarked that, "Ultimately, if we're going to prevent large parts of this Earth from becoming not only inhospitable but uninhabitable in our lifetimes, we're going to have to keep some fossil fuels in the ground rather than burn them and release more dangerous pollution into the sky".⁷

The decision to finally reject the pipeline came a day after the seventh White House Tribal Nations Conference, an annual meeting of tribal leaders with the president. On that occasion, the president remarked that, "I've said that while we couldn't change the past, working together, nation-to-nation, we could build a better future. I believed this not only because America has a moral obligation to do right by the tribes and treaty obligations, but because the success of our tribal communities is tied up with the success of America as a whole." After listing socioeconomic, health and educational issues faced by Native communities, Obama said, "In these circumstances, sometimes it's hard to dream your way to a better life. And these challenges didn't just happen randomly to Indian Country. They are the result, the accumulation, of systemic discrimination".⁸

Health

Some of these challenges were found in Indian Health Service (IHS) hospitals on the Pine Ridge and Rosebud reservations in South Dakota during an inspection by the Centers for Medicaid and Medicare in October and November. According to reports obtained by the Associated Press, inspectors found non-working sterilization equipment, errors in patients' medical records, and medical staff without the necessary documentation to practice. In one case, a patient delivered a baby in the bathroom. One emergency room was a health hazard to patients.⁹ While IHS has authorized plans to redress these issues, it has been underfunded for years.

Water

In April, the Hopi Tribe in Arizona lost its quest to force the federal government to provide clean water to the communities. The water on the reservation shows arsenic levels that are higher than the standards set by the Environmental Protection Agency (EPA). The tribe tried to sue the government to fix the water system under its trust obligations. The Federal Circuit Court of Appeals upheld a lower-level court decision that the Hopi had failed to cite a specific obligation of the federal government that has been violated: "Regardless of the United States' actual involvement in the provision of drinking water on the Hopi Reservation, we cannot infer from that control alone that the United States has accepted a fiduciary duty to ensure adequate water quality on the reservation".¹⁰

In Montana, a water agreement between the state and the Confederated Salish and Kootenai Tribes was signed by the state governor in April. The compact finalizes tribal water rights on the Flathead reservation after more than a decade of negotiations. However, the agreement faces much opposition as it is making its way to Congress for approval, as some people – water users in the state as well as those in general opposed to specific Native rights – argue that the state owns and controls all water within its boundaries.

In South Dakota and Nebraska, a coalition of Native and non-Native people has continued its struggle against new or expanded uranium mining for fear of water contamination. In April, a Nuclear Regulatory Commission (NRC) panel ruled that Azarga Uranium has to complete a cultural resources consultation process with the Lakota according to the National Historic Preservation Act. The proposed mine, which would use an in-situ or solution process, using pressurized water, sits at the headwaters of the Cheyenne River, which is a water source for the Cheyenne River Sioux Reservation. Azarga is seeking an exemption from the Safe Drinking Water Act. The site is also home to several culturally-significant places. In August, Native people were actively involved in an NRC hearing on a planned expansion of the Crow Butte Resources uranium mine in Crawford, Nebraska, also an in-situ operation. The Oglala Sioux tribe maintained that there had been no adequate cultural survey of the site.

Governance and honors

In December, John Trudell died at the age of 69. A poet, activist, actor and songwriter, Trudell was national chairman of the American Indian Movement (AIM) in the 1970s and was involved in the Alcatraz occupation before that. He had distanced himself from AIM but remained an outspoken advocate for Native rights. President Obama awarded a posthumous Presidential Medal of Freedom to another activist, Billy Frank, Jr., in December, as one of the recipients “who have challenged us to live up to our values”.¹¹ (see *The Indigenous World 2015*). ○

Notes and references

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