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## **Restoring Respect and Safety: Protecting Women and Children in Restorative Practices for Domestic Violence Cases in Tribal Communities**

### *Introduction*

Protecting women and children in restorative practices for Domestic violence (DV) cases requires a careful, culturally grounded approach that prioritizes women and children's safety, community accountability, and traditional values. This becomes even more complex when considering the unique sizes, resources, and capacities of both large and small tribal nations. For many Indigenous communities domestic violence is a pervasive issue, with women and children facing disproportionate rates of harm due to structural determinants like gender violence, loss of control, discrimination, marginalization, oppression, and political violence.<sup>1</sup> However, in more recent years, many tribal nations and Indigenous communities have experienced a resurgence of returning to restorative practices that are rooted in Indigenous values and knowledge systems. This revitalization has provided alternatives to western adversarial justice systems, seeking to address not only the legal but also the communal dimensions of harm. Restorative justice practices like peacemaking circles have offered Indigenous communities the promise of healing and increased (community) accountability while raising critical questions about how to best ensure the safety and empowerment of survivors, especially women and children, within these frameworks. Through the use of comparative analysis and the use of case studies, I hope to

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<sup>1</sup> Tassy Parker et al., "Domestic Violence in American Indian and Alaska Native Populations: A New Framework for Policy Change and Addressing the Structural Determinants of Health," *The Lancet Regional Health - Americas* 40 (November 7, 2024): 100933, <https://doi.org/10.1016/j.lana.2024.100933>.

explore best practices, challenges, and possible recommendations for integrating restorative justice in ways that effectively safeguard vulnerable community members. This paper aims to argue that effective protection for women and children in restorative responses to domestic violence requires a survivor-centered, and culturally-driven approach that is tailored to the unique capacities and needs of both large, infrastructure dense tribes and smaller, low-population tribal communities.

### *Background Context*

Indigenous women in the United States experience some of the highest rates of domestic and sexual violence, with children often directly or indirectly affected by this violence.<sup>2</sup> The roots of this crisis can be traced to historical legacies of colonization, forced assimilation, and the breakdown of traditional Indigenous governance and kinship systems. These legacies have been compounded by jurisdictional complexities that often leave survivors without clear or effective avenues for protection, justice, and/or closure. The imposition of these Western legal systems and federal policies often undermine tribal sovereignty and have historically marginalized Indigenous approaches to justice and healing. This is a significant challenge for tribal nations in addressing domestic violence in the complex legal landscape.

The jurisdictional maze created by federal, state, and tribal laws often leaves survivors in a precarious position. When a crime occurs on tribal land, determining which government (tribal, state, or federal) has the authority to investigate and prosecute can be confusing and inconsistent. This complexity is especially pronounced in cases involving non-Native offenders and Native victims. For example, the 1978 Supreme Court decision in *Oliphant v. Suquamish Indian Tribe* stripped tribes of the authority to prosecute non-Native offenders, even for crimes committed on

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<sup>2</sup> National Congress of American Indians. “Key Statistics | NCAI.” [ncai.org](https://www.ncai.org/section/vawa/overview/key-statistics), October 2021.  
<https://www.ncai.org/section/vawa/overview/key-statistics>.

tribal land.<sup>3</sup> As a result, non-Native perpetrators could commit crimes such as domestic violence or sexual assault against Native people with little fear of prosecution by tribal authorities. This legal loophole contributed to disproportionately high rates of violence against Native women and a sense of impunity for offenders.<sup>4</sup>

In the decades that followed, this jurisdictional gap left many survivors without recourse; tribal governments were powerless to seek justice for their citizens, and federal or state authorities often lacked the resources, will, or understanding of the local context to pursue these cases effectively.<sup>5</sup> Although the 2013 reauthorization of the Violence Against Women Act (VAWA) restored some tribal jurisdiction over non-Native perpetrators in certain cases specifically, domestic violence, dating violence, and violations of protection orders many gaps remain, especially for tribes lacking the resources to implement VAWA's provisions..<sup>6</sup> For example, tribes cannot prosecute non-Native offenders for crimes outside these categories, such as child abuse or sexual assault by strangers. Furthermore, the ability of tribes to exercise this restored jurisdiction is contingent upon meeting specific federal requirements, such as providing certain legal protections to defendants, which can be costly and administratively burdensome. Many tribes, especially those with limited resources, struggle to implement VAWA's provisions, leaving significant portions of their communities without meaningful access to justice. Thus, while VAWA marked a critical step forward, the patchwork of laws and persistent gaps continue to undermine the safety and rights of Native survivors.

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<sup>3</sup> *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

<sup>4</sup> Rosay, Andre. "Violence against American Indian and Alaska Native Women and Men." National Institute of Justice, June 1, 2016.

<https://nij.ojp.gov/topics/articles/violence-against-american-indian-and-alaska-native-women-and-men>.

<sup>5</sup> U.S. Government Accountability Office. "U.S. Department of Justice Declinations of Indian Country Criminal Matters." GAO-11-167R, 2010.

<sup>6</sup> Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013).

These overlapping legal frameworks often force tribal nations to navigate difficult compromises in the pursuit of justice and safety for the women and children in their communities. For example, Tribal nations may enter into deputation agreements with state or federal law enforcement authorities to exercise criminal jurisdiction over non-Indians. Such agreements, however, come at the cost of subjugating a Tribal nation's authority to an external sovereign because deputation agreements often require compliance with federal or state standards, regulations, or laws that would otherwise not apply to a Tribal nation.<sup>7</sup> As a result, American Indian and Alaska Native women have been systematically targeted by violence with minimal resources and pathways to healing.<sup>8</sup>

This has resulted in many survivors facing additional barriers to accessing culturally relevant support, and perpetrators may evade accountability due to existing gaps and complexities in Tribal law enforcement and prosecution. For instance, a 2021 needs assessment by the Hopi Victim Services Program found that survivors in the Hopi community often encountered difficulties in obtaining timely and culturally appropriate assistance, partly because of limited resources and a lack of coordination between Tribal and outside agencies. The report noted that jurisdictional confusion sometimes led to cases falling through the cracks, with non-Native offenders not being prosecuted and survivors left without adequate legal protection or support services.<sup>9</sup> These systemic obstacles are compounded by the ways in which gender, age, and Indigenous identity intersect, producing layers of vulnerability that heighten the risks faced by women and children. As a result, it becomes imperative that any justice response,

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<sup>7</sup> Parker, Tassy, Allyson Kelley, Lee Redeye, and Marcello A. Maviglia. "Domestic Violence in American Indian and Alaska Native Populations: A New Framework for Policy Change and Addressing the Structural Determinants of Health." *The Lancet Regional Health - Americas* 40 (November 7, 2024): 100933. <https://doi.org/10.1016/j.lana.2024.100933>.

<sup>8</sup> Ibid.

<sup>9</sup> Hopi Victim Services Program. "Hopi Victim Services Program Needs Assessment," November 2021. <https://hopiresilience.org/wp-content/uploads/2021/11/Hopi-Victim-Services-Program-Needs-Assessment.pdf>.

including restorative practices, be carefully designed to address these intersecting harms while centering the voices and needs of women and children.

### *Restorative Practices and Domestic Violence*

Restorative justice, in its many forms, seeks to repair harm by bringing together those affected like victims, offenders, and community members, into a process of dialogue to address issues of accountability and healing. Indigenous restorative practices, such as peacemaking circles, are rooted in traditional values of respect, relationship, and collective responsibility. However, the application of restorative justice to domestic violence cases is highly contested. Critics caution that restorative processes may inadvertently pressure survivors into reconciliation with their abuser and the community at large, thereby minimizing the seriousness of abuse, and/or failing to ensure offender accountability.<sup>10</sup> Proponents argue that, if properly structured, restorative practices can validate survivors' experiences, disrupt cycles of violence, and restore a stronger sense of community kinship. The literature suggests that restorative justice can benefit some women who experience domestic violence, but only if processes are designed to: prioritize victim safety over batterer's rehabilitation; provide material and social supports for victims; function as part of a coordinated community response; engage normative judgments that oppose gendered domination as well as violence; and avoid making forgiveness the goal.<sup>11</sup> These criteria are essential for ensuring that restorative justice does not replicate the failures of adversarial systems or expose survivors to further harm. Ultimately, the success of restorative justice in domestic violence cases depends on a community's willingness to confront and face difficult

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<sup>10</sup> Nilakshi, Reeta, and Monika Rathi. "Empathy over Retribution: Examine the Role of Restorative Justice in Domestic Violence Cases." *ShodhKosh: Journal of Visual and Performing Arts* 4, no. 2 (December 31, 2023). <https://doi.org/10.29121/shodhkosh.v4.i2.2023.2702>.

<sup>11</sup> Coker, Donna. "Restorative Justice, Navajo Peacemaking and Domestic Violence." Edited by Kimberly J. Cook, Kathleen Daly, and Julie Stubbs. *Theoretical Criminology* 10, no. 1 (February 2006): 67–85. <https://doi.org/10.1177/1362480606059983>.

truths, adapt traditional practices to contemporary realities, and place the well-being of women and child(ren) survivors at the center of every process.

### *Cultural Safety and Survivor-Centered Approaches*

Central to the success of restorative practices in Indigenous communities is the principle of cultural safety to ensure that processes are grounded in tribal values, traditions, and ways of knowing, and that survivors feel respected, heard, and empowered. Survivor-centered approaches require that participation in restorative processes be fully voluntary, with clear information about rights and options at every stage.<sup>12</sup> Protocols must be established to assess risk, plan for safety, and provide ongoing support, including access to advocacy, counseling, and child care.<sup>13</sup> For many Indigenous communities, the involvement of women, elders, and trusted tribal members in the design and facilitation of restorative processes helps to build trust and ensure cultural relevance. For example, in the Tlingit community of Kake, Alaska, circle peacemaking is structured around traditional values such as respect, responsibility, and care for others, with careful attention to the needs of both victims and wrongdoers. The process emphasizes validation of survivors' stories, community condemnation of violence, and the restoration of relationships where appropriate. These elements are critical for creating an environment where women and children can participate safely and meaningfully.

### *Large Infrastructure Dense Tribes*

Large tribes with substantial infrastructure, such as the Navajo Nation, are able to implement specialized domestic violence courts, advocacy centers, and integrated service

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<sup>12</sup> Pavelka, Sandra, and Anne Seymour. "Guiding Principles and Restorative Practices for Crime Victims and Survivors." American Correctional Association, February 2019.  
[https://www.aca.org/common/Uploaded%20files/Publications\\_Carla/Docs/Corrections%20Today/2019%20Articles/Guiding-Principles-and-Restorative-Practices-for-Crime\\_Victims-and-Survivors.pdf](https://www.aca.org/common/Uploaded%20files/Publications_Carla/Docs/Corrections%20Today/2019%20Articles/Guiding-Principles-and-Restorative-Practices-for-Crime_Victims-and-Survivors.pdf).

<sup>13</sup> Ibid.

networks that enhance protection for women and children.<sup>14</sup> These systems often include trained facilitators, law-trained judges, and coordinated care with social services, allowing for comprehensive risk assessment, safety planning, and ongoing monitoring of cases.<sup>15</sup> Restorative circles or peacemaking sessions can be incorporated within these frameworks, provided that survivor safety is prioritized and that participation is never coerced. For example, Navajo Peacemaking involves community leaders (naat'aanii) who guide disputants and their families through a process of dialogue or “talking things out,” with an emphasis on respect, wisdom, and community values. The presence of extended family and community members also helps to ensure accountability and support, while the structure of the process allows for the expression of harm, the setting of boundaries, and the development of consensus on appropriate remedies.<sup>16</sup>

In these contexts, restorative practices can be closely monitored, with survivors having access to advocacy, shelter, and legal remedies as needed. The Navajo Nation’s peacemaking model is often cited as a leading example of Indigenous restorative justice. Peacemaking is deeply rooted in Navajo values of *hózhó* (harmony, balance, and beauty) and emphasizes dialogue, respect, and the restoration of relationships. In domestic violence cases, peacemaking circles may include extended family, community leaders, and advocates, all of whom work together to hold offenders accountable and support survivors. Importantly, the Navajo Nation has developed protocols to ensure that participation is voluntary and that survivors have access to advocacy and legal remedies outside the peacemaking process. This integration of tradition and modern legal protections is key to safeguarding women and children.

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<sup>14</sup> Navajo Nation Judicial District. “Domestic Violence Proceedings.” Judicial Branch of the Navajo Nation, July 27, 2024. <https://courts.navajo-nsn.gov/domestic-violence-proceedings/>.

<sup>15</sup> Ibid.

<sup>16</sup> Yazzie, R., & Zion, J. W. (1996). Navajo restorative justice: The law of equality and justice. In B. Galaway & J. Hudson (Eds.), *Restorative Justice: International Perspectives* (pp. 157-171). Criminal Justice Press.

### *Small, Low Population Tribes*

Small tribes like the Hopi face unique challenges in implementing restorative practices for domestic violence due to limited infrastructure, resources, and personnel.<sup>17</sup> However, the strength of close-knit community relationships and deep cultural traditions can be leveraged to create effective, culturally grounded responses. In a traditional Hopi context, restorative circles may involve elders, survivors, offenders, and other trusted community members, with a focus on healing, accountability, and the reinforcement of Hopi values. Partnerships with regional organizations or neighboring tribes can help provide access to advocacy, shelter, and specialized services that may not be available locally, as demonstrated by the work of the Hopi-Tewa Women's Coalition to End Abuse and other tribal coalitions that offer technical assistance, advocacy, and resource referral to support survivors in small or under-resourced tribal communities.<sup>18</sup> Partnerships with organizations like the Hopi-Tewa Women's Coalition to End Abuse expand access to advocacy, shelter, and technical assistance, demonstrating how small tribes can leverage both internal and external resources to protect survivors.

Flexibility and adaptability are key, as is the central role of Hopi language, ceremony, and traditional knowledge in structuring restorative processes. Community education about domestic violence, trauma, and healthy relationships is also essential to shift norms and reduce stigma for survivors and victims (of DV).<sup>19</sup> Using The Hopi as a case study to examine DV experiences demonstrates that, even in the absence of extensive infrastructure, small tribes can develop survivor-centered, culturally resonant restorative practices provided that safety, consent, and community engagement are prioritized. By centering Hopi language and ceremony, restorative

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<sup>17</sup> Hopi Victim Services Program. "Hopi Victim Services Program Needs Assessment," November 2021. <https://hopiresilience.org/wp-content/uploads/2021/11/Hopi-Victim-Services-Program-Needs-Assessment.pdf>.

<sup>18</sup> Hopi Tewa Women's Coalition to End Abuse. "Trainings and Technical Assistance | HTWCEA." HTWCEA, 2022. <https://www.htwcea.org/trainings-and-technical-assistance>.

<sup>19</sup> Ibid.



processes become more than procedural—they serve as living expressions of community resilience and continuity. Ongoing education initiatives not only empower survivors but also engage the broader community in redefining norms around safety, respect, and accountability. Ultimately, the Hopi model illustrates that a commitment to cultural integrity, combined with practical partnerships and survivor-driven adaptations, can foster effective and sustainable responses to domestic violence even in resource-limited settings.

### *Ensuring Safety and Accountability in Restorative Practice*

To genuinely protect women and children in restorative responses to domestic violence, several safeguards must be embedded throughout the process. Participation must always be voluntary, with survivors given the power to shape outcomes and to withdraw at any point if they feel unsafe.<sup>20</sup> Comprehensive risk assessment and safety planning should be conducted at every stage, with input from advocates, law enforcement, and support services as appropriate. Offenders must be held accountable not only through dialogue but also through concrete commitments to behavioral change, participation in cultural healing or treatment programs, and ongoing community monitoring. Restorative agreements should be specific, enforceable, and subject to regular review, with mechanisms for follow-up and support for both survivors and offenders. Most notably, restorative processes must not be used in cases where there is ongoing risk of harm, coercion, or intimidation; in such cases, referral to formal legal remedies and protective orders is necessary.<sup>21</sup> By embedding these safeguards, tribes can leverage the strengths of restorative justice while minimizing the risks to vulnerable community members. The

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<sup>20</sup> Coker, Donna. “Restorative Justice, Navajo Peacemaking and Domestic Violence.” Edited by Kimberly J. Cook, Kathleen Daly, and Julie Stubbs. *Theoretical Criminology* 10, no. 1 (February 2006): 67–85. <https://doi.org/10.1177/1362480606059983>.

<sup>21</sup> Hopkins, C, Mary Koss, and Karen Bachar. “Applying Restorative Justice to Ongoing Intimate Violence: Problems and Possibilities.” *Saint Louis University Public Law Review* 23, no. 1 (2004): 13. [https://scholarship.law.slu.edu/cgi/viewcontent.cgi?params=/context/plr/article/1326/&path\\_info=Hopkins\\_et\\_al\\_\\_\\_\\_Article\\_.pdf](https://scholarship.law.slu.edu/cgi/viewcontent.cgi?params=/context/plr/article/1326/&path_info=Hopkins_et_al____Article_.pdf).

following table provides a comparative overview of restorative justice approaches, highlighting key differences and similarities in how large, infrastructure-dense tribes and smaller, low-population tribal communities structure, implement, and support restorative practices in response to domestic violence cases.

**Table 1.** *Comparative Overview of Restorative Justice Approaches in Large, Infrastructure-Dense Tribes and Smaller, Low-Population Tribal Communities*

Approach	Large Tribes	Small Tribes
<b>Specialized Courts/Program</b>	Yes, with infrastructure	Limited, community-based circles
<b>On-site Advocacy &amp; Services</b>	Available	Partner with outside resources
<b>Survivor Safety Measures</b>	Enhanced security, child care	Community vigilance, flexibility
<b>Restorative Process Facilitation</b>	Trained Staff	Elders, trusted community
<b>Monitoring &amp; Follow-Up</b>	Regular court check-ins	Ongoing community involvement

### *Challenges and Limitations*

Despite their promise, restorative practices in domestic violence cases face significant challenges and limitations. In small communities, survivors may fear breaches of confidentiality, community gossip, or pressure to reconcile with abusers.<sup>22</sup> Power dynamics both within families

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<sup>22</sup> Milligan, Kelley, Allyson Kelley, Melanie Ogletton, and Cardea. “Trauma and Resilience in Native Communities Incorporating Indigenous Perspectives,” 2022.  
<https://www.acesaware.org/wp-content/uploads/2022/01/Trauma-resilience-practice-paper.pdf>.

and within the broader community can sometimes undermine the voluntariness and safety of restorative processes, particularly for women and children<sup>23</sup>. There is also the risk that restorative justice may be seen as a substitute for, rather than a complement to, formal legal protections, potentially leaving survivors without recourse in cases of severe or repeated abuse. Balancing tradition with the need for legal clarity and rights protection will require ongoing dialogue, training, and policy development. Tribes must establish clear criteria for when restorative justice is appropriate and when cases should be excluded or referred to other systems. Ongoing evaluation, community education, and survivor feedback are also essential for identifying gaps, addressing unintended consequences, and ensuring that restorative practices continue to evolve to meet the needs of all community members.

### *Recommendations and Future Directions*

To strengthen the protection of women and children in restorative responses to domestic violence, several policy recommendations emerge. First, tribes should invest in culturally competent, trauma-informed training for all participants in restorative processes, including facilitators, advocates, and community members.<sup>24</sup> Funding and infrastructure should be increased for both large and small tribes, with special attention to the unique needs of communities like the Hopi.<sup>25</sup> Intertribal collaboration and learning networks can facilitate the sharing of best practices, resources, and support as demonstrated by the ongoing work of Hopi Tewa Women's Coalition to End Abuse. Tribal sovereignty and jurisdiction must be vigorously defended and expanded, enabling tribes to develop and enforce their own culturally grounded

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<sup>23</sup> Lyubansky, Mikhail, and Elaine Shpungin. "Challenging Power Dynamics in Restorative Justice," n.d. <https://cdn2.psychologytoday.com/assets/Challenging%20power%20dynamics%20in%20restorative%20justice.pdf>.

<sup>24</sup> Milligan, Kelley, Allyson Kelley, Melanie Ogletton, and Cardea. "Trauma and Resilience in Native Communities Incorporating Indigenous Perspectives," 2022.

<https://www.acesaware.org/wp-content/uploads/2022/01/Trauma-resilience-practice-paper.pdf>.

<sup>25</sup> Hopi Victim Services Program. "Hopi Victim Services Program Needs Assessment," November 2021.

<https://hopiresilience.org/wp-content/uploads/2021/11/Hopi-Victim-Services-Program-Needs-Assessment.pdf>.

responses to domestic violence.<sup>26</sup> Finally, ongoing research and evaluations that are rooted in Indigenous methodologies are needed to document outcomes, identify challenges, and refine restorative practices over time. By centering the voices and experiences of women and children, and by drawing on the strengths of both tradition and innovation, tribes can build justice systems that truly serve the needs of their local communities.

### *Conclusion*

Restorative practices rooted in Indigenous values offer a powerful alternative to adversarial justice systems, holding the potential to heal individuals, families, and entire communities affected by domestic violence. Yet, as this paper has demonstrated, the paramount concern must always be the protection and empowerment of women and children, which requires survivor-centered, culturally safe, and adequately resourced approaches tailored to the unique capacities of each tribal nation. Large, infrastructure-rich tribes, like the Navajo Nation, can leverage their resources to build comprehensive systems of support and accountability, while smaller tribes like the Hopi draw strength from close community relationships, traditional knowledge, and innovative collaborations with neighboring nations and advocacy organizations. By centering tribal sovereignty, cultural integrity, and the lived experiences of survivors, Indigenous communities can create restorative responses that honor their traditions while meeting the urgent needs of their most vulnerable members. The ongoing challenge (and opportunity) is to balance tradition with innovation, healing with accountability, and collective well-being with the rights of individuals. If approached with care, humility, and a commitment to

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<sup>26</sup> Smith, Quinn. "An Expansion of Tribal Sovereignty Is Essential to Protecting Women." *The Wellian Magazine*, November 29, 2020. <https://sites.duke.edu/thewellianmag/2020/11/29/an-expansion-of-tribal-sovereignty-is-essential-to-protecting-women/>.

learning, restorative justice can fulfill its promise as a path toward safety, justice, and healing for all members of Indigenous communities.

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