

# Human Rights Watch

## Indigenous Peoples' Rights

<https://www.hrw.org/news/2015/01/12/interview-tribal-council-mismanagement-and-millions-missing>

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*On South Dakotas impoverished Lower Brule Sioux reservation, \$1.2 million of US government funding dedicated to providing the tribe with drinking water has disappeared. Roughly \$2.6 million in federal money earmarked for education and other social programs went missing after which the reservations school system performed so poorly it had to be overhauled.*

*Then there was the scandal involving the Tribal Governments purchase of a nearly insolvent Wall Street firm, a federally backed loan, and about \$20 million that hasnt been accounted for. At the center of this financial chaos is the reservations Tribal Council, a group of six elected officials, some of whom have held their position for a decade or longer. Three are still in office, while three others lost their seats to reform candidates in September 2014.*

*For years now, the council has only released select information about its actions. Since 2007, it has refused to share any documentation about its spending with members of the tribe, including some members of the council itself, despite repeated requests. In 2007, tribe members began writing their senators and the Bureau of Indian Affairs requesting a formal investigation, to no avail. Two years ago, the Human Rights Watch business division director, [Arvind Ganesan](#), began probing allegations of abuse on the reservation, helping unravel the tale of the councils shady dealings. He talks with Amy Braunschweiger about the new report, [Secret and Unaccountable](#), and about how last falls elections have turned the tribe upside down.*

### What made you want to research this topic?

This came out of nowhere. I was researching predatory lending practices on US Indian reservations throughout South Dakota and elsewhere. While I was at the Crow Creek reservation, directly across the Missouri River from Lower Brule, a woman approached me, and began telling me about allegations of secrecy and mismanagement at Lower Brule, asking me to investigate. Later that day, I was in an office when another woman called, asked for me, told me that I needed to investigate what was happening in Lower Brule, then hung up. In general, when people approach you with allegations, you have to be skeptical. They could have political motivations or they could simply be unhappy. But I decided to go to the reservation and check it out to see why people were asking me to look into this.

I had already visited three reservations in South Dakota two of them considered the poorest in the country but Lower Brule looked even worse. People began calling and emailing me documents. When I looked over budget information, things looked off. So I began digging.

### How is it possible that the Lower Brule Tribal Council can refuse to share how it spent federal money?

They shouldnt be able to. It goes against their tribal constitution, not to mention general principles of good governance. But the council chose not to honor those commitments and there isnt much that can be done about it.

In 2007, tribal members began to really protest the councils secrecy and allegations of financial mismanagement. People started to comment publicly about it, and some documents were leaked online. The council responded by basically withholding all information and documentation about its activities from the public, violating provisions in the tribal constitution and the peoples right to information under international human rights law.

Last fall, to the surprise of pretty much everyone, the tribe voted in three new council members who ran on a platform of fighting for transparency, accountability and better social services. The vice-chairman was voted out. But when these new members asked to look into the councils financial practices, Michael Jandreau, who has been chairman for almost 35 years, and the remaining three long-standing members stonewalled them. The situation deteriorated to the point at which the three new councilmembers held a nonbinding meeting where they voted to remove Jandreau and two other councilmembers from office. Jandreau and the others then petitioned to remove them from office for gross misconduct. The dispute is in the tribal courts.

### Why would federal agencies not investigate? This is federal money, after all.

Some agencies have asked the council questions about the money, but it is not clear why they didnt investigate. In some cases, they seem to have just wanted the council to repay the funds, and in others it isnt clear why. We tried to contact agencies like the Bureau of Indian Affairs repeatedly and only later did they say they couldnt talk to us because of an investigation.

Tribal members, including councilmembers, had asked the federal government to investigate for years. But agencies cant do anything without hard evidence and it is hard for people to obtain that, especially if the council wont release information.

### **What exactly did your research uncover?**

First, a total of \$3.8 million slated to fund education, water programs, and assistance for the poor has disappeared from the budget. We know this because federally mandated audits disclosed this and then the federal government wrote to the council, asking what happened to the money. But we cant find evidence of any investigation. The tragedy is that the average salary in Lower Brule is roughly \$10,000 a year, and about 40 percent of the reservations 1,600 people require food assistance. The diversion of these funds with no explanation as to where they went violates tribal members right to water and education and has severely undercut efforts to provide people with desperately needed services.

But we uncovered much more brazen case of mismanagement. In 2009, the council set up shell companies to buy the floundering Wall Street brokerage house Westrock Group a company that had already been repeatedly fined for unethical business practices. It went bankrupt two years after the purchase. To buy the company, the council used scarce tribal resources as well as a \$22.5 million federally backed loan guarantee from the Bureau of Indian Affairs, under a loan program meant to promote economic development and poverty alleviation. Normally, the Bureau of Indian Affairs gives loans of around \$500,000 to individuals or tribes, but in this case it gave a guarantee for a \$22.5 million loan to a shell company of the Tribe to help buy Westrock.

The tribal company then sold the loan for \$20 million. For the purchaser, it was seemingly risk-free; if the tribe defaulted, the US government would pay. But the tribal government has not accounted for the \$20 million it received from that sale. Thats equal to nearly two-thirds of the tribes annual budget. This deal is yet another example of how financial diversions have undermined the tribes economic and social rights.

The council and its business partners claim that they used the money to repay the firms investors. But I tracked down a number of creditors, and all said that they received no money from the tribe. In fact, the tribe approached them to ask for more money. But some people did get money, including board members of a tribal government company, according to a judges ruling in a New York court case related to purchase of Westrock.

### **How do you know all this if the tribe wouldnt release any documentation? Where did you get your information?**

We have regularly asked the council and its general counsel for documentation since 2013, but they refused. So we filed Freedom of Information Act requests with the federal government, searched elsewhere for financial documents, obtained court testimony from people involved in questionable transactions, and interviewed people with knowledge of these activities. I spent over 18 months tracking down this information.

In the end, we collected hundreds, if not thousands, of pages of information. I went through Westrock Groups bankruptcy documents, and had a three-hour interview with the man who brokered the deal to sell the government-backed loan. I tracked down people at government agencies, the Internal Revenue Service, the Bureau of Indian Affairs. Not all of the agencies provided information, but others did.

Interestingly, the Department of Housing and Urban Development sent us a letter saying the tribe asked the agency to refuse our request for information. The letter went on to say that they believed withholding the information would force them to break the law. They sent us everything.

### **Are these problems endemic among Indian reservations?**

No. There are more than 500 federally recognized tribes in the US, so it would be wrong to generalize. Some tribes have had problems, others have more and better ways to hold their council accountable and protect tribal members. But Lower Brule is striking for the degree of secrecy and the lack of effective mechanisms to hold government accountable. The way tribal sovereignty in the US works means that tribal governments have to put those protections in place. The federal government can examine some issues, but not all. That is why it is critically important for tribes to include human rights protections within their governments.

### **What do you want to see done?**

In an ideal world, we would see real reforms and transparency within Lower Brules tribal government. They need to disclose what has happened with public funds and to make information available generally, as their constitution requires. They also need an ombudsman or some other mechanism that can independently investigate allegations of human rights violations or mismanagement in tribal government, including the Tribal Council. But the federal government needs to disclose what happened to federal funds, investigate any allegations of wrongdoing, and change the rules so that disclosure of funds and audits is mandatory and readily available. The good news is that the Interior Departments Office of Inspector General said that it is beginning to examine why the Bureau of Indian Affairs extended a loan guarantee to the tribe that was used to buy Westrock.

### **How are things changing now that new council members have been elected?**

Things havent changed yet. Jandreau, the chairman, held two cursory meetings in October and has refused to hold any Tribal Council meetings since then. Now Jandreau has initiated legal proceedings to remove the new councilmembers from office.

Clearly frustrated, the new members actually staged a mock-no confidence vote, symbolically removing Jandreau and the two other members who denied them access to financial documents. They made a [video of the event](#) and posted it on YouTube. Chairman

Jandreaus representative responded by petitioning the tribal court to remove the three new council members from office. The first hearing takes place today, January 12, in front of a judge appointed by Jandreau. Weve repeatedly tried to talk to Jandreau and the other council members in power about the alleged abuses we uncovered, but they refused to meet with us or comment on our findings.

**All the evidence youve laid out certainly indicates questionable dealings by the Tribal Council. But why is Human Rights Watch investigating the tribe when its clear that for centuries the main perpetrator of abuse against Native Americans was the US government?**

What happened to Native Americans at the hand of the US government was horrific and wrong, and we detail it in the report. But in 2014, the problems in protecting their human rights are more complicated. Tribal governments have human rights responsibilities and are largely responsible for managing the public funds needed to realize human rights, such as funds for education, water, or health. If they are not responsive to their own members, act in secret, and are not accountable, then major problems can occur.

Our job at Lower Brule or in other parts of the world where we have done this work is to rigorously and fairly examine the facts and objectively look at who the responsible parties are. That doesnt minimize the responsibility of the federal government, and we think it should have done much more to investigate any potential wrongdoing and to disclose how federal funds are used. But we have to see the situation for what it is and recognize that much of what needs to be done to improve rights on the reservation and for the people at Lower Brule involves the Tribal Government.

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