

Maze of injustice

The failure to protect Indigenous women from sexual violence in the USA

End injustice – better policing

In May 2004, a man raped a 16-year-old Native American girl in Grand Forks, North Dakota. Her mother told Amnesty International (AI) that the suspect was not arrested for the rape even though he had been in police custody several times on other charges after the arrest warrant was issued. After numerous calls to the police by the mother, the perpetrator was eventually arrested in late 2006 and, following a plea bargain, sentenced to five years in prison. The girl's mother said she was concerned about reporting the rape because of her experience in 1993 when her older daughter, who was 14 at the time, was raped on the Blackfeet Reservation in Montana. Tribal police were unwilling to take on the case and told her to contact the Federal Bureau of Investigations (FBI) in Great Falls, about 125 miles away. She said that although FBI agents met her daughter several times, they never brought the suspect in for questioning and did not search his home for evidence for over a month. She said when she questioned the FBI about the case, she was told: "This case isn't on the top of our list."

Indigenous women in the USA experience high levels of sexual violence. According to the US Department of Justice, more than one in three American Indian and Alaska Native women will be raped during their lifetime.

AI has documented many incidents of sexual violence against Indigenous women, but the great majority of stories remain untold. One of the factors that deter Indigenous women from reporting sexual violence is a lack of confidence that police will take reports seriously and investigate them effectively.

Many factors affect the way in which police respond to crimes of sexual violence. Issues of authority and jurisdiction (see [Jurisdiction](#), below) clearly have an impact on the effectiveness of law enforcement agencies.

"Before asking 'what happened,' police ask: 'Was it in our jurisdiction? Was the perpetrator Native American?'"

Support worker for Native American survivors of sexual violence, May 2005

FBI involvement in investigations of reports of sexual violence against Indigenous women is rare and even in those cases that are pursued by the FBI, there can be lengthy delays before investigations start.

Tribal law enforcement officers are often those who receive initial reports of sexual violence and who are first on the scene. However, policing for Indigenous peoples in the USA has been undermined by chronic under-resourcing of law enforcement agencies serving Native American and Alaska Native peoples.



Delays and failure to respond

In the three areas where AI has undertaken detailed research – the Standing Rock Sioux Reservation, Oklahoma, and Alaska – many women reported lengthy delays by police in responding to reports of sexual violence against Indigenous women. Lack of resources was a frequently cited problem; federal and state governments provide significantly fewer resources for policing on tribal land than are provided for comparable non-Native communities.

- ▶▶ The Standing Rock Sioux Reservation, which straddles the North and South Dakota border, covers 2.3 million acres (approximately 9,312km²). Generally only two Standing Rock Police Department (SRPD) officers are on duty during the day and two or three officers are on duty in the evenings. However, there are times when there is only one officer on duty for the whole Reservation.
- ▶▶ In Oklahoma, tribal law enforcement capacity varies dramatically, based in part on the size and wealth of the individual tribal nation and the level of federal funding. For example, one tribal nation maintains a police force of 14-15 officers, while others reportedly have forces consisting of only two or three officers.
- ▶▶ In Alaska the low numbers of officers in rural outposts, combined with the vast expanses and the harsh weather,

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides, among other things, that victims should be treated with compassion and respect for their dignity; kept informed of the scope, timing and progress of proceedings and of the disposition of their cases; and protected from intimidation and retaliation. It also states that there should be no unnecessary delay in the disposition of cases.

present major barriers to prompt responses by police to reports of sexual violence. Law enforcement services in Alaska range from the larger, municipal police departments found in cities such as Anchorage, to the State Troopers (state police officers), who police the outlying rural areas, to Village Public Safety Officers and Village Police Officers, which often consist of one or two individuals working in smaller villages. At least one-third of all Alaska Native villages that are not accessible by road have no law enforcement presence at all.

Inadequate and inappropriate policing

In July 2006 an Alaska Native woman in Fairbanks reported to the police that she had been raped by a non-Native man. She gave a description of the alleged perpetrator and city police officers told her that they were going to look for him. She waited for the police to return and when they failed to do so, she went to the emergency room for treatment. A support worker told AI that the woman had bruises all over her body and was so traumatized that she was talking very quickly. The support worker described how the woman was given some painkillers and some money to go to a non-Native shelter, which turned her away because they assumed that she was drunk: “This is why Native women don’t report. It’s creating a breeding ground for sexual predators.”

Alaska Native support worker (identity withheld), July 2006

Communication by law enforcement officials with survivors of sexual violence is often poor or non-existent. Survivors are left wondering whether investigations are continuing, whether the perpetrators have been arrested or charged and whether the case will reach court. Repeated phone calls and requests for information leave many survivors frustrated at the lack of information. For some survivors this can mean months or even years of fear and insecurity.

Fear of reprisals also increases when suspects are not arrested for weeks or months after an arrest warrant has been issued, as often happens.



Jurisdiction

Three justice systems – tribal, state and federal – are potentially involved in responding to sexual violence against Indigenous women. Three main factors determine which of these justice systems has authority to prosecute such crimes:

- ▶ whether the victim is a member of a federally recognized tribe or not;
- ▶ whether the accused is a member of a federally recognized tribe or not; and
- ▶ whether the offence took place on tribal land or not.

The answers to these questions are often not self-evident and there can be significant delays while police, lawyers and courts establish who has jurisdiction over a particular crime. The confusion which surrounds jurisdiction often causes delays in prosecuting reported crimes. Sometimes it means that those responsible for sexual violence against Indigenous women escape justice altogether.

“When an emergency call comes in, the sheriff will say ‘but this is Indian land.’ Tribal police will show up and say the reverse. Then, they just bicker and don’t do the job. Many times, this is what occurs. And it doesn’t always get resolved, which means no rape [sexual assault evidence] kit, etc.”

Juskwa Burnett, support worker for Native American survivors of sexual violence, May 2005

Tribal authority has been undermined over time and in many ways. Four federal laws and US Supreme Court rulings in particular have limited the ability of tribal authorities to address crimes of sexual violence against Indigenous women: the Major Crimes Act, Public Law 280, the Indian Civil Rights Act and a Supreme Court ruling (*Oliphant v Suquamish*). The last two are central to the issue of criminal jurisdiction.

- ▶ The 1968 Indian Civil Rights Act limits the penalty tribal courts can impose for any one offence – including rape or murder – to one year’s imprisonment and a US\$5,000 fine.
- ▶ The 1978 Supreme Court ruling (*Oliphant v Suquamish*) effectively stripped tribal authorities of the power to prosecute non-Indian perpetrators for crimes committed on tribal land. This ruling, which means that Indian and non-Indian perpetrators will receive different treatment for the same offence committed in the same place, is discriminatory. It also has the effect in many cases of depriving victims of access to justice.

“[N]on-Native perpetrators often seek out a reservation place because they know they can inflict violence without much happening to them.”

Andrea Smith, University of Michigan, Assistant Professor of Native Studies, quoted by Jodi Rave, “South Dakota Tribal-City Police Department a National Model for Handling Domestic Abuse”, *The Missoulian*, 24 September 2006.

Federally recognized Indian tribes are sovereign under US law. They have jurisdiction over their citizens and land and maintain government to government relationships with each other and with the US federal government. The US federal government has a legal responsibility (known as the federal trust responsibility) to ensure protection of the rights and wellbeing of American Indian and Alaska Native peoples.

Scarcity of resources and lack of co-operation between jurisdictions often exacerbate this problem. In some cases lack of cooperation also reduces the effectiveness of protection orders which require an individual who has been violent to stay away from his victim. Although such orders are an important way of protecting women, state law enforcement agencies often fail to act on protection orders issued by tribal courts. This is a significant problem in areas where survivors of sexual violence may cross from one jurisdiction to another several times a day.

State and tribal prosecutors told AI that they frequently receive inadequate case reports from state and tribal law enforcement officials which do not contain even the most basic information. Poorly prepared reports can and do jeopardize the prospects of a case being successfully pursued through the courts.

"Police still blame women. They say: 'Why was she there? Why was she drinking?'"

Juskwa Burnett, support worker for Native American survivors of sexual violence, May 2005

AI's research revealed police attitudes towards Indigenous women reporting sexual violence that were sometimes unacceptable. In a number of the cases police automatically assumed that Indigenous women had been drinking when

they were targeted for sexual violence and that this somehow made the attacks on them a lesser crime.

Training

Basic training of state law enforcement officers varies from state to state and from agency to agency. However, AI is concerned that federal, state and tribal training programmes for law enforcement officials are not equipping officers to respond adequately and appropriately to crimes of rape and other forms of sexual violence against Indigenous women.

Officers need training on cultural norms and practices to enable them to respond appropriately, taking into account differences between tribes. This may have implications for how police approach and speak to victims, witnesses and suspects, including, for example, greater awareness of potential language barriers.

Training on jurisdiction also appears to be inadequate. For example, law enforcement officials in Oklahoma face a jurisdictional maze of different tribal, federal and state areas of authority, yet the Council on Law Enforcement Education and Training reportedly provides state police officers with almost no training on jurisdiction.

Key recommendation

All law enforcement officials should respond promptly to reports of sexual violence, take effective steps to protect survivors from further abuse and undertake thorough investigations. Federal authorities must take urgent steps to make available adequate resources to police forces in Indian Country and Alaska Native villages. In order to fulfil their responsibilities effectively, all police forces should work closely with Indigenous women's organizations to develop and implement appropriate investigation protocols for dealing with cases of sexual violence. Particular attention should be paid to improving coverage in rural areas with poor transport and communications infrastructures and to provide appropriate training to law enforcement officials.

For more information see Amnesty International's report, *Maze of injustice: The failure to protect Indigenous women from sexual violence in the USA* (AI Index: AMR 51/035/2007). The report is based on detailed research carried out by Amnesty International USA (AIUSA) in 2005 and 2006, with particular focus on three locations: the Standing Rock Sioux Reservation in North and South Dakota and the states of Oklahoma and Alaska. Amnesty International is indebted to all the survivors of sexual violence who courageously came forward to share their stories and to Native American and Alaska Native organizations, experts and individuals who provided advice and guidance.

