

Maze of injustice

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

End injustice – free forensic examinations

A support worker called to a hospital in 2004 to assist a Native American woman who had been beaten and raped told Amnesty International (AI) “the brutality of it was shocking... [the woman] was in a state of shock and confusion. She didn’t know what to do and was crying. She wanted to call her sister, her family... [Hospital staff] none of which were Indian... couldn’t convince her to sit down or do anything... [They] saw an Indian woman being belligerent and didn’t want to touch her — there was no empathy.”

All survivors of sexual violence should be offered a forensic examination, without charge, regardless of whether or not they have decided to report the case to the police. Indigenous women in the USA are being effectively denied access to these examinations either because there is no facility nearby equipped to carry them out or because staff are not adequately trained on how to respond to survivors of sexual violence and how to do so in a culturally appropriate manner.

“Every effort should be made to facilitate treatment and evidence collection (if the patient agrees), regardless of whether the decision to report has been made at the time of the exam.”

US National Protocol for Sexual Assault Forensic Examinations

The examination, which is performed by a health professional, involves the collection of physical evidence and an examination of any injuries. Samples collected in the evidence kit include vaginal, anal and oral swabs, finger-nail clippings, clothing and hair. Forensic examinations (sometimes referred to as “rape kits”) can provide crucial evidence for a successful prosecution. If the authorities fail to provide the examination in appropriate surroundings or do not store the results properly, this can jeopardize prosecutions and result in those responsible for rape not being brought to justice.

Jami Rozell, a Cherokee woman living in Tahlequah, Oklahoma, told AI that she decided to seek prosecution five months after she was raped in 2003. She attended a preliminary hearing, but her sexual assault forensic examination — which had been performed immediately after the rape and included the sexual assault nurse examiner’s report, photographs, and the clothing she had been wearing — had been destroyed. She was told by the police department that as she had not pressed charges at the time, the evidence had been destroyed as a routine part of cleaning their evidence storage room. Because the evidence had been destroyed, the District Attorney advised her to drop the complaint.

Law enforcement officials

As the first to respond to reports of a crime, law enforcement officials should ensure that women can get to a hospital or clinic where their injuries can be assessed and the forensic examination can be done. This is particularly important where women have to travel long distances to access a medical facility and may not have any way of getting there themselves.

In Alaska, Alaska Native women living in rural areas may need to travel by plane to reach the hospital or clinic. While State Troopers and local police are responsible for covering these costs, they may not have the funding to do so. A forensic nurse examiner told AI that one police department in Alaska with just two officers has an annual budget that does not allow even one victim to be sent to Anchorage for a forensic examination.

Once a sexual assault forensic examination has been completed, the examining doctors or nurses turn the evidence over to law enforcement officers. Law enforcement authorities are responsible for storing the evidence gathered

and having it processed and analysed by laboratories. AI received several reports of mistakes made at this stage of the process.

Health service providers

One of the reasons why many Indigenous women are denied access to these important examinations is the long-term and severe underfunding of the Indian Health Service (IHS) by the US government. The IHS is part of the US Department of Health and Human Services and is the principal and, in some areas sole, provider of health services for American Indian and Alaska Native peoples.

Many IHS facilities lack clear protocols for treating victims of sexual violence. IHS facilities also suffer from understaffing, high staff turnover and a lack of personnel trained to provide emergency services to survivors of sexual violence. For example, on some parts of the Standing Rock Sioux Reservation, a woman who has been raped may have to travel for over an hour to get to the IHS hospital in Fort Yates. Once there, she may discover that staff on duty are not trained to perform the examination and that she has to travel further, for example to a hospital in Bismarck, 80 miles (128km) away. One practitioner told AI that only a third of the women referred from Fort Yates to Bismarck actually receive an examination either because many women do not make the journey or face long delays at the hospital and leave without an examination.

An Alaska Native girl told AI that her sexual assault forensic examination was performed by a young white male doctor, even after she had asked for a woman. She said that the doctor told her that he had never done a sexual assault forensic examination before and asked her if this was the first time that she had been raped.

Adequate training on how to respond to Indigenous survivors of sexual violence in a gender sensitive and culturally appropriate way is vital if women are to feel confident in coming forward that the examinations will be carried out in a competent and respectful manner.

Sexual assault nurse examiners (SANEs) – registered nurses with advanced education and clinical preparation in forensic examination of victims of sexual violence – are a new nursing specialism and their availability varies from one institution to another. Despite the importance of this role and the recognition it has received in the USA in recent years, the IHS has not prioritized the implementation of SANE programmes. AI's research suggests that there are no SANE programmes at IHS facilities in Oklahoma and that Alaska faces a critical shortage of SANEs in hospitals and clinics.

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.

Who should pay?

"We need to start paying for [sexual assault forensic examinations]. When people know that offenders will be held accountable, report levels will go up."

Alaska state official (identity withheld), May 2005

National guidelines state that victims should not have to pay for sexual assault forensic examinations. However, survivors have sometimes been required to meet the cost of an examination or of travelling to a health facility. Activists and support workers reported that women in rural Alaska sometimes had to pay transport costs and that some had paid between US\$700 and US\$800 for the forensic examination itself because the law enforcement agency responsible for paying failed to do so.

Under Oklahoma state law, women must report their rape to law enforcement officials in order to receive a free sexual assault forensic examination. This is contrary to the recommendations of the US Department of Justice.

Although IHS services are free, American Indian and Alaska Native women who have had to go to a non-IHS hospital for an examination may be charged. The IHS has a reimbursement policy, but it is complex and in some cases the IHS has reportedly not paid for forensic examinations at non-IHS facilities. For women dealing with the trauma of very recent sexual violence, concerns about being required to travel further or to pay can be a serious disincentive to seeking health services and undergoing a forensic examination. This additional obstacle needs to be removed urgently.

AI believes that costs relating to sexual assault forensic examinations should be the responsibility of law enforcement agencies since the evidence gathered is an essential part of an investigation into a report of sexual violence. In any event, survivors should not have to pay the costs themselves.

Key recommendation

Law enforcement agencies and health service providers should ensure that all Indigenous women survivors of sexual violence have access to adequate, timely and culturally appropriate sexual assault forensic examinations, without charge to the survivor at a facility within a reasonable distance.

