

Maze of injustice

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

End injustice – Indigenous voices must be heard

“The right to exist in a world free from violence is a basic tenet in many indigenous cultures and governments. The epidemic of sexual violence perpetrated against Native American women in the United States reflects a fundamental breakdown in the cultural and legal norms that have served to provide protection to Native women from time immemorial.”

Sarah Deer (Mvskoke), Tribal Law Journal, volume 4.

“No nation is conquered until the hearts of its women are on the ground.”

Cheyenne saying

In 2003, a Native American woman was raped, beaten and thrown from a bridge by two white men. She was seriously injured but survived the attack. The man who instigated the attack was eventually sentenced to 60 years in prison while his accomplice was sentenced to 10 years. But when the case first went to trial in a state court, jurors were unable to agree on a verdict. Asked why, one of the jurors replied: “She was just another drunk Indian.”

Acts of sexual violence against Indigenous women are widespread in the USA. According to US government statistics Native American and Alaska Native women are at least 2.5 times more likely to be raped or sexually assaulted than women in the USA in general. Much of this violence remains hidden and even when it is acknowledged, it is often the victim or Indigenous society as a whole who are blamed.

The US authorities have not only failed to respond adequately to the threats faced by Indigenous women, but – as Indigenous women's organizations themselves have pointed out – federal policies and practices have actually denied Native American and Alaska Native women protections available to other women in the USA.

For example, the federal government has chronically under-funded the Indigenous police forces, courts and medical services that provide the first line of assistance to women in hundreds of Native American and Alaska Native communities. Federal and state courts have demonstrably failed to adequately prosecute men who rape Indigenous women, yet the tribal courts are prevented by law from imposing a sentence of more than one year – regardless of the severity of the crime – and from prosecuting non-Native suspects.

The federal government has failed to provide adequate support and funding for support services. Native American and Alaska Native women who have experienced sexual violence should have access to culturally appropriate, comprehensive support services, designed and overseen by Indigenous women.

Urgent action is needed to stop sexual violence against Indigenous women in the USA. But action must be shaped by understanding, not prejudice; by fact, not assumption. Indigenous women's organizations and tribal authorities have brought forward concrete proposals to help stop sexual violence against Indigenous women – but the federal government has failed to act.



Hidden crimes

“From the oldest to the youngest, Native women are disrespected and treated in the most humiliating fashion, living and dying without justice or the knowledge that their grand daughters will live free of the violence they experienced.”

Sacred Circle, testimony on the US Violence Against Women Act

Although the available statistics are shocking, the full extent of sexual violence against Native American and Alaska Native women is not yet known. Survivors of sexual violence are generally reluctant to come forward because they doubt that their privacy will be protected, because they fear the man responsible will retaliate, or because they have no confidence that justice will be done. For Native American and Alaska Native women, a history of abuse at the hands of federal and state agencies, combined with the known failings of the justice system, may mean that sexual violence is even less likely to be reported. As one support worker told AI: “Women don’t report because it doesn’t make a difference.”

There are significant gaps in the kinds of data collected about violence against Indigenous women in the USA. For example, there is no information available on the numbers of attacks on tribal lands compared to attacks in other locations. Nevertheless, the available information suggests that Indigenous women’s experiences may differ from those of other women in significant ways that need to be better understood and acted upon. For example, while all rapes are acts of violence, statistics suggest that American Indian and Alaska Native rape survivors are more likely than other women to be subjected to additional acts of physical injuries. According to the US Department of Justice, in 86 per cent of reported cases of rape or sexual assault against American Indian and Alaska Native women, survivors report that the perpetrators are non-Native men. In contrast, for non-Indigenous women statistics indicate that a majority of sexual violence is committed within an individual’s own race.

The legacy of history

“Sexual assault rates and violence against Native American women did not just drop from the sky. They are a process of history.”

Jacqueline Agtuca, Alaska Native Women’s Conference, Anchorage, Alaska, 24 May 2005

Contemporary scholars generally agree that prior to colonization women held esteemed positions in the Indigenous societies of North America. Violence against women was rare. When it occurred, it was often severely punished. This all changed following colonization.

“Early colonial literature describing the Cherokees pointed out two of our customs that were particularly unsavory from the European point of view – women’s social equality and common landholding.”

Steve Russell (Cherokee), “The Cherokee Nation”, *Eating Fire, Tasting Blood*, 2006

As Indigenous peoples were forced from their lands, Indigenous women were subjected to rape and other forms of sexual violence at the hands of settlers and government forces. Forced assimilation programmes and the overthrow of many Indigenous traditions and institutions undermined Indigenous women’s status within their own nations.

“Wincincala ki (girls) grew up with the belief instilled in them that they were sacred. As a result, they internalized this belief and it affected the way they interacted with the world. Once grown, they became strong, confident members of the tribe. But the world changed, and for good or bad the Lakota women changed with it.”

Mary Black Bonnet (Sicangu Lakota), “Winyan Wakan (Sacred Woman)”, *Eating Fire, Tasting Blood*, 2006

“... it must be acknowledged that the deliberate spread of disease, the decimation of the mighty bison herds, the use of the poison alcohol to destroy mind and body, and the cowardly killing of women and children made for tragedy on a scale so ghastly that it cannot be dismissed as merely the inevitable consequence of the clash of competing ways of life...”

Nor did the consequences of war have to include the futile and destructive efforts to annihilate Indian cultures...

These wrongs must be acknowledged if the healing is to begin.”

Kevin Gover, then Assistant Secretary – Indian Affairs, US Department of the Interior, at the Ceremony Acknowledging the 175th Anniversary of the Board of Indian Affairs, 8 September 2000

Such abuses against Indigenous women were not limited to the early years of the USA. In the 1970s, thousands of



Indigenous women were sterilized for no legitimate medical reason and without their free and informed consent. Dehumanizing stereotypes of Indigenous women continue to echo in contemporary US popular culture.

Indigenous peoples in the USA

"There seems to be very little mainstream awareness of Native Americans as contemporary people. Most people still think in stereotypes."

Louise Erdrich (Anishinaabe)

http://www.english.uiuc.edu/maps/poets/a_f/erdrich/onlineinterviews.htm

"Many young Indians have some concept of their tribal identity, yet an outside 'other' constructs an alternative 'Indian' identity for them. How many of us have been told, 'Funny, you don't look Indian,' or asked, 'How come you don't have black hair?' or 'Do you have a tipi in your backyard?' or 'I knew you were an Indian; you're so spiritual!' We are constantly barraged by images of the pretend, or the Hollywood Indian. If we don't wear beads, feathers, or turquoise, then the non-Indian 'other' does not see us as authentically Indian."

Carolyn Dunn and Cindi Alvitre "Performing Nation, Performing Identity," *Eating Fire, Tasting Blood*, 2006

There are more than 550 federally recognized American Indian and Alaska Native tribes in the USA. 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.

However, not all Indigenous peoples within the USA and its overseas territories have been accorded the status of federally recognized tribes, including, for example, the Indigenous peoples of Hawaii.

According to the 2000 US Census there are an estimated 4.1 million Native American and Alaska Native individuals living in the USA today – around 1.5 per cent of the total population. More than 250 Indigenous languages are spoken in the USA.

The persistence of negative stereotypes also affects police attitudes and response to Indigenous women who report sexual violence. A lack of police training on cultural norms and practices can be an obstacle to effective communication between law enforcement officials and Indigenous peoples. This is frequently compounded by insufficient training on issues surrounding jurisdiction and on appropriate responses to and investigation of rape and other forms of sexual violence. There is a need for all law enforcement officials to receive training that enables them to respond competently and appropriately, taking into account differences between tribes including, for example, potential language barriers.

"It would be good if non-Native American police could be trained on how to work with Native Americans and to understand cultural norms, for example, that one does not look elders in the eye. It makes police suspicious when Native Americans don't make eye contact with them because they don't understand. It would help if the BIA [Bureau of Indian Affairs] would require standards on cultural sensitivity training."

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

A unique legal responsibility

"While the federal government has a significant responsibility for law enforcement in much of Indian country, tribal justice systems are ultimately the most appropriate institutions for maintaining order in tribal communities. They are local institutions, closest to the people they serve. With adequate resources and training, they are most capable of crime prevention and peace keeping. Fulfilling the federal government's trust responsibility to Indian nations means not only adequate federal law enforcement in Indian country, but enhancement of tribal justice systems as well."

Janet Reno, former US Attorney General

The legal relationship that exists between the US federal government and tribal nations (trust responsibility) places on the US government a unique legal obligation to ensure the protection of the rights and wellbeing of American Indian and Alaska Native peoples. This federal trust responsibility is set out in treaties between tribal nations and the federal government, further solidified in federal law, federal court decisions and policy. It includes the protection of the sovereignty of each tribal government.

The federal government must honour this trust responsibility by removing the barriers to justice created by jurisdictional confusion and complexity and by putting an end to the erosion of tribal authority and the chronic under-resourcing of tribal law enforcement agencies and justice systems.

A commitment that must be honoured

"I also want to be remembered for emphasizing the fact that we have indigenous solutions to our problems. Cherokee values, especially those of helping one another and of our interconnectedness with the land, can be used to address contemporary issues."

Wilma Mankiller (Cherokee)

<http://www.alumni.utah.edu/continuum/spring01/finally.htm>

In 2005, the US Violence Against Women Act (VAWA) was amended to incorporate for the first time specific measures for the protection of Native American and Alaska Native women. These historic changes came as the result of a long struggle led by tribal governments and Indigenous women's organizations to make their voices heard.

"Congress finds that:

- ▶ Indian tribes require additional criminal justice and victim services resources to respond to violent assaults against women; and
- ▶ The unique legal relationship of the United States to Indian tribes creates a federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women."

Violence Against Women Act (2005), Section 901, Findings

The new provisions in VAWA include funds set aside for anti-violence programmes and services for victims of sexual violence on tribal lands. The Act directs the Attorney General to conduct a national study to examine violence against Native American and Alaska Native women and to evaluate the effectiveness of tribal, federal, state and local responses. The Act also requires a second study to be carried out on the incidence of injuries and homicides of Native women from domestic and sexual violence and the cost of associated health services.

Implementation of VAWA will stand as a critical test of the US government's commitment to assist tribal governments and institutions in stopping violence against Native American and Alaska Native women. However, as of February 2007, funds remained unavailable to implement these provisions. This cannot be allowed to become the latest in a long line of broken promises made by the federal government to Native American and Alaska Native peoples.

Key recommendations

- ▶ Federal and state governments should consult and co-operate with Indigenous nations, and Indigenous women in particular, to institute plans of action to stop violence against Indigenous women.
- ▶ Federal, state and tribal authorities should, in consultation with Indigenous peoples, collect and publish detailed and comprehensive data on rape and other sexual violence that show the Indigenous or other status of victims and perpetrators and the localities where such offences take place; the number of cases referred for prosecution, the number declined by prosecutors and the reasons why.

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.

