

# THE NEVER-ENDING MAZE

CONTINUED FAILURE TO PROTECT INDIGENOUS WOMEN FROM SEXUAL VIOLENCE IN THE USA

## EXECUTIVE SUMMARY



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**“ WHILE THERE ARE OVER 560 FEDERALLY RECOGNIZED TRIBES IN THIS COUNTRY, EACH WITH A UNIQUE HISTORY, CULTURE, AND LANGUAGE, THE CONSTANT FOR ALL NATIVE PEOPLE IS THE INEVITABILITY OF RAPE. ”**

*Dr. Sarah Deer, “How do Race, Ethnicity, and Religion Intersect with Sexual Violence?”, public event held at Brandeis University, 3 November 2017*

Sexual violence against American Indian and Alaska Native (AI/AN) women is at epidemic proportions in the USA and survivors are frequently denied justice. Despite piecemeal efforts to address this, the USA is failing in its obligation to protect AI/AN women from sexual violence and is actively restricting tribal governments from doing so. The high rates of violence faced by AI/AN women have been compounded by the USA's steady erosion of tribal government authority and refusal to untangle

the complex jurisdictional maze that survivors face. Further, the federal government has exacerbated matters by chronically under-resourcing law enforcement agencies and Indigenous health service providers.

The USA's failure to fulfill its human rights obligations towards Indigenous women is informed and conditioned by a legacy of widespread and egregious human rights violations and abuses against Indigenous peoples, who face deeply entrenched marginalization as a result of a long history of systemic and pervasive abuse and persecution.

Available data shows a stark picture: more than half (56.1%) of AI/AN women have experienced sexual violence. Nearly 1 in 3 AI/AN women (29.5%) have experienced rape in their lifetime; they are over twice as likely to be raped than non-Hispanic white women in the USA. Yet rates of sexual violence are likely even higher as the USA fails to collect adequate and consistent data on violence against AI/AN women, which is intimately tied to the failed response of authorities to prevent and respond to such violence.

Amnesty International first reported on the crisis of sexual violence against AI/AN women in 2007, with the publication of a report entitled *Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA*. Nearly 15 years later, there has been no significant decrease in sexual violence against AI/AN women.

## THE JURISDICTIONAL MAZE

The USA has formed a complex interrelation between federal, state and tribal jurisdictions that undermines tribal authority and allows perpetrators of violence against AI/AN women to evade justice. Tribal governments are hampered by a complex set of laws and regulations that undermine their authority and make it difficult, if not impossible, to respond to sexual violence in an effective manner. Women who come forward to report sexual violence are caught in a jurisdictional maze that often results in significant delays while police, lawyers and courts establish if jurisdiction is tribal, state or federal, sometimes resulting in such confusion and uncertainty that no one intervenes and survivors of sexual violence are denied access to justice.

With the passage of the 2010 Tribal Law and Order Act (TLOA) and the 2013 reauthorization of the Violence Against Women Act (VAWA), certain tribal governments have been able to restore limited criminal jurisdiction and punishment authority in specific circumstances and this has resulted in some improvement in women's safety. However, the requirements to implement either TLOA or VAWA are onerous, and there are still severe limitations on tribal authority. Moreover, under the 2013 reauthorization of VAWA, tribes were not able to respond to sexual violence committed by non-Native perpetrators. These limitations have meant progress represented in this legislation has not resulted in any significant decrease in rates of sexual violence against AI/AN women. The 2022 reauthorization of VAWA, which was signed into law March 2022, addresses some of these limitations, but major barriers remain for tribes whose authority and ability to prevent and respond to sexual violence is still severely curtailed.

## **POLICING**

Police response to sexual violence against AI/AN women is inadequate and serves as a major barrier to justice for survivors. A lack of resources for tribal police, poor interagency coordination and insufficient investigative responses have all had negative impacts on police response to sexual violence against AI/AN women.

Law enforcement presence in Native communities is significantly lower than in non-Native communities; survivors in rural areas in particular are far less likely to have access to timely law enforcement response. Coordination between federal, state and tribal law enforcement remains inadequate; levels of cooperation vary and survivors of sexual violence are frequently passed off to different agencies. Many tribal law enforcement agencies, like other services for Indigenous peoples, continue to be underfunded and at the mercy of annual or other short-term funding.

## **HEALTHCARE AND SUPPORT SERVICES**

AI/AN women who survive sexual violence are not guaranteed to receive adequate and timely sexual assault forensic examinations (including a rape kit), which are vital for a successful prosecution. This failure is caused in part by the federal government's severe underfunding of the Indian Health Service (IHS), IHS understaffing, a lack of clarity within the IHS on the availability of rape kits or trained professionals who can administer the exam, and policies resulting in major geographical gaps in post-rape care.

For survivors, the nearest IHS facility may be closed when they need care, it may not have a rape kit, or it may not have a qualified staff present to administer the exam. Additionally, IHS policy on sexual assault response protocols means survivors may be forced to travel long distances. These barriers result in many survivors being overwhelmed by the emotional and logistical difficulties involved in accessing post-rape care, often giving up when faced with needing to go to a second hospital or clinic after being unable to access care at the closest IHS facility. Survivors who must seek treatment at non-Native health facilities also face non-culturally sensitive care and, at times, discriminatory treatment.

## PROSECUTIONS

The federal, state and tribal justice systems in the USA are not responding adequately to AI/AN survivors of sexual violence. US tribal justice systems are unable to effectively respond to crimes on their own as they have been underfunded and restricted in their capacity by federal limitations on tribal authority.

The restricted nature of a tribal nation's ability to prosecute a crime means there is a need for heightened response from federal and state prosecutors for crimes of sexual violence against AI/AN women. Yet, while the federal government continues to restrict tribal authority except for narrow exceptions, it simultaneously declines to prosecute a high number of cases and underfunds federal prosecutorial efforts, creating a scenario where tribes are often left so that they cannot prosecute cases, while the federal government will not prosecute them.

Since 2013, both the total funding for US Attorney's Offices in Indian country and the number of attorneys responsible for Indian country prosecutions has decreased by 40%. Additionally, the most recent available data shows US Attorney's Offices declined to prosecute 46% of sexual assaults and 67% of sexual abuse cases in Indian country. When federal prosecutors decline to prosecute cases involving non-Native perpetrators, there is often no further recourse for Indigenous survivors under criminal law within the USA, and perpetrators can continue to perpetrate crimes with impunity.

## **RECOMMENDATIONS**

The crisis of sexual violence against AI/AN women and the failure of the US government to adequately prevent or respond to this violence is not simply a public health or criminal justice issue but a serious human rights issue that the US government has an obligation to address under international human rights law and standards.

Governments have a responsibility to ensure that women are able to enjoy their right to freedom from sexual violence. As citizens of particular tribal nations, the welfare and safety of AI/AN women are directly linked to the authority and capacity of their nations to address such violence.

The US federal government has an obligation under binding international treaties and the trust responsibility between tribal nations and the federal government to ensure the rights and well-being of AI/AN peoples are protected. Amnesty International is calling on the US government to take the following steps to end sexual violence against AI/AN women.

- The US Congress should recognize the inherent concurrent jurisdiction of tribal authorities over all crimes committed on tribal land, regardless of the tribal citizenship of the accused, including by legislatively overriding the US Supreme Court's decision in *Oliphant v Suquamish*.
- All law enforcement officials should ensure that reports of sexual violence are responded to promptly, that effective steps are taken to protect survivors from further violence and that impartial and thorough investigations are undertaken.
- The IHS and other health service providers should ensure that all AI/AN survivors of sexual violence have access to adequate, timely and comprehensive sexual and reproductive health care, including sexual assault forensic examinations, without charge to the survivor and at a facility within a reasonable distance.
- Prosecutors should thoroughly and impartially prosecute cases of sexual violence against Indigenous women and should be sufficiently resourced to ensure that the cases are treated with urgency and processed without undue delay.
- Congress and federal and state authorities must make available long-term, predictable and adequate funding for tribal law enforcement and justice services, for IHS and tribes that administer their own health services and for culturally appropriate support services.
- Congress should fund data collection, analysis and research on crimes of sexual violence against AI/AN women.

**A full list of recommendations can be found with the full report. (Index: AMR 51/5484/2022)**