

MAZE OF INJUSTICE – THE FAILURE TO PROTECT INDIGENOUS WOMEN FROM SEXUAL VIOLENCE IN THE USA

Amnesty International

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Introduction

The aim of Amnesty International's Report *Maze of Injustice – The Failure to Protect Indigenous Women from Sexual Violence in the USA* ('Report') is to 'represent' the experiences of sexual violence victims. The Report explains the current legal backdrop for sexual violence against Indigenous women in the United States of America (USA). Apart from commenting on legal issues, such as jurisdiction and policing, the Report also explains how health and support services affect legal issues associated with sexual violence.

The need for the Report arises from the extreme and entrenched marginalisation and abuse of Indigenous Americans in the USA, especially illustrated by the position of Indigenous women, who are victims of sexual violence, and the limited information currently available on sexual violence towards Indigenous women.

Amnesty International compiled the information in the Report by interviewing 'survivors of sexual violence and their families, activists, support workers, service providers[,] health workers ... [and] officials across the USA'; it also reviewed government and non-governmental reports relating to sexual violence towards Indigenous women.

The Report focused on three geographical areas: the Standing Rock Sioux Reservation; North Dakota/South Dakota; Oklahoma; and Alaska. These areas were chosen because they are indicative of differing methods of policing sexual violence towards Indigenous women; they delineate the jurisdictional issues involved with investigating and prosecuting sexual violence; and they demonstrate various initiatives addressing sexual violence towards Indigenous women.

The Report's Key Findings

- There have been a number of innovative initiatives by Indigenous people to address sexual violence to deal with Indigenous women. For example, there are programs which help Indigenous women access support services and Indigenous shelters. In addition, tribal coalitions have been established to counter domestic and sexual violence. This has involved the provision of training to law enforcement officials and policy guidance to Indigenous women's organisations and shelters. These initiatives are, however, constrained by poor funding.
- Indigenous women who are victims of sexual violence are constantly denied access to justice because they are female and the subjects of negative stereotypes. Such negative stereotyping has the consequence that police may not investigate complaints of sexual violence because they may assume that the victim is drunk. Similarly, nurses, doctors and workers at women's refuge centres may not properly examine or admit female Indigenous victims of sexual violence if they are hysterical and/or have difficulty in communicating because they may also assume she is drunk. As such, victims may be advised not to seek assistance from hospitals or shelters.
- Many Indigenous women do not report sexual violence, and, if they do, their cases are often not investigated properly, and they are not kept up-to-date about the status of their cases.
- It is unclear who is responsible for dealing with and prosecuting sexual violence against women, which body of law governs the crime, and which judicial

system is responsible for hearing cases of sexual violence towards Indigenous women. The reason for this lack of clarity is that, depending on the territory, crime, or race of the victim and perpetrator, federal, state and tribal agencies may operate separately or concurrently. This means that investigations and prosecutions are subject to delays as officials try to determine who is responsible, and perpetrators often escape conviction because of the gaps in the operation of federal, state and tribal laws. In addition, officials (especially police officers) are often unaware of how and when the different legal systems operate, which hampers their ability to make decisions. While co-operation agreements between agencies have sometimes been established to address this issue, they are not always possible, and sometimes agencies are unwilling to co-operate with each other.

- Police lack the necessary resources to respond to allegations of sexual violence towards women because of under-funding. This is compounded by the remote nature of many Indigenous communities, particularly in Alaska. As a result, police often cannot respond promptly to complaints, enabling further acts of sexual violence in the interim period. A tangential issue, notably in Alaska, is that police functions are occasionally delegated to tribal or 'village' police officers who work in smaller villages. These delegates often do not have the authority, for example, to arrest a perpetrator, and have inadequate training to deal with complaints. At a national level important tools, like sexual assault evidence kits, are not available and, therefore, not used to compile vital evidence.
- Health service providers and police forces are, in many instances, incapable of providing support to victims of sexual violence. This is due to a lack of resources, meaning inadequate physical examinations are conducted, and also the lack of women in the both the police forces and the medical staff of hospitals. The problem is compounded by insufficient training in sexual violence and cross-cultural communication meaning that police and medical staff are incapable of providing support to victims of sexual violence.
- As a result of the findings above, the US Government is failing to comply with its international law obligations to ensure that Indigenous women are 'safe and free from violence'.

The Report's Key Recommendations

- Federal and state governments need to communicate and co-operate with Indigenous nations to 'develop comprehensive plans of action to stop violence against Indigenous women'. This could involve establishing programs for data collection on sexual violence towards Indigenous women. Governments could also ensure that parties involved in responding to sexual violence complaints (such as police and hospital staff) participate in Sexual Assault Response Teams which aim 'to increase reporting and convictions of sexual violence[and] support survivors'.
- 'All law enforcement bodies, prosecutors, courts and health service providers should develop [public] policies and protocols', which address how they respond to complaints of sexual violence. In line with these policies, '[p]rosecutors should vigorously prosecute cases of sexual violence against Indigenous women'. In addition, 'independent and representative bodies should be established to ensure that complaints are properly investigated', as well as procedures for detailed record-keeping by law enforcement bodies.
- The US Federal Government should increase funding and resources for 'law enforcement coverage in Indian Country' and for the Indian Health Service. For example, all women 'who report that they have been sexually assaulted should be offered an adequate[, free] and timely sexual assault examination'. In addition, interpreter services should be available to Indigenous women.
- 'All governments should support and ensure adequate funding [and access] for support services, including shelters' and educating support service staff about sexual violence.
- There should be greater co-operation between law enforcement bodies to ensure that victims receive justice and perpetrators do not go unpunished. This measure is one way of addressing the problems arising from different jurisdictions operating over a crime/area/person. For example, prosecutors in different jurisdictions should regularly share information 'on the status of cases of sexual violence against [Indigenous women]'.

- Federal and state governments should ensure that the law is properly formed to ‘ensure that prosecution and judicial practices deliver justice’. Specifically, the Report states that ‘US Congress should recognise the concurrent jurisdiction of tribal authorities over all crimes committed on tribal land, regardless of the Indigenous identity of the accused’. In addition, the Federal Government should provide funds to tribal governments so that they can develop effective ‘tribal court and legal systems’.
- Federal and state governments need to ensure that officials follow human rights standards and adopt effective measures to ensure the safety and freedom of Indigenous women from violence (due diligence).

The full text of this report is available online at: <<http://web.amnesty.org/library/Index/ENGAMR510352007>>.