

# **Maze of Injustice**

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

### ***Acknowledgements***

Amnesty International is indebted to all the survivors of sexual violence who courageously came forward to share their stories and to those who provided support to survivors before and after they spoke with Amnesty International. This report seeks to represent the voices of survivors of sexual violence and is underpinned by a conviction that their perspectives must inform all actions taken to end violence against Indigenous women.

Amnesty International is grateful to Native American and Alaska Native organizations, experts and individuals who provided advice and guidance on research methodology for this report and on the report itself, and who have generously shared information. This report cannot provide a full picture of the important and innovative work Indigenous women are carrying out to end sexual violence. However, we hope that it reflects how Indigenous women all over the USA are working with determination and hope for a future where their dignity and security are respected.

Amnesty International hopes that this report can contribute to and support the work of the many Native American and Alaska Native women's organizations and activists who have been at the forefront of efforts to protect and serve women. In 2005 these efforts resulted in Congress passing the Violence Against Women Act (2005) which for the first time contains a specific Tribal Title that seeks to improve safety and justice for Native American and Alaska Native women (see page 82). By supporting initiatives developed and directed by Indigenous women, Amnesty International seeks to provide an additional platform for discussion about sexual violence against Indigenous women.

### ***Preface***

#### **This study**

This report is based on research carried out during 2005 and 2006 by Amnesty International USA (AIUSA) in consultation with Native American and Alaska Native organizations and individuals. The research draws on Amnesty International's interviews with survivors of sexual violence and their families, activists, support workers, service providers and health workers. A number of women spoke to Amnesty International on condition that their anonymity was guaranteed. Some have asked that certain details not be made public. In order to respect their wishes, details of names and locations on file with Amnesty International have been withheld.

Amnesty International also interviewed officials across the USA, including tribal, state and federal law enforcement officials and prosecutors, as well as tribal judges. Amnesty International met representatives from the federal agencies which share responsibility with tribal authorities for addressing or responding to crimes in Indian Country (defined as reservations, trust land, and communities) 1. Amnesty International sent questionnaires to the 93 individual US Attorneys, who prosecute crimes within Indian Country at federal level, seeking information on prosecution rates for crimes of sexual violence committed against Indigenous women. Amnesty International was informed by the Executive Office of US Attorneys that individual US attorneys would not be permitted to participate in the survey.

Amnesty International conducted a review of existing government and non-governmental reports, including studies conducted by the US Department of Justice, law review articles and media reports of sexual violence against Native American and Alaska Native women. It also reviewed federal and state case law and legislation.

Amnesty International conducted detailed research in three locations with different policing and judicial arrangements (see Chapter 4: Issues of jurisdiction): the Standing Rock Sioux Reservation in North and South Dakota, the State of Oklahoma and the State of Alaska. Each location was selected for its specific jurisdictional characteristics. The Standing Rock Sioux Reservation illustrates the challenges involved in policing a vast, rural reservation where tribal and federal authorities have jurisdiction. Oklahoma presents a very different situation, composed for the most part of parcels of tribal lands intersected by state land where tribal, state or federal authorities may have jurisdiction. In Alaska, federal authorities have transferred their jurisdiction to state authorities so that only tribal and state authorities have jurisdiction.

Amnesty International has focused its research on response to crimes of sexual violence on tribal lands and in neighbouring areas. The experiences of Indigenous women living far from tribal lands or in urban settings, therefore, are not reflected extensively in this report. According to the 2000 US Census, 56 per cent of Native American and Alaska Native people live outside Indian Country.<sup>2</sup> Just under 10 per cent of Native Americans live in large urban centres.<sup>3</sup> The available information points to high rates of sexual violence and a lack of culturally appropriate services in towns and cities. This is of sufficient concern to merit urgent further research.

### **A note on terminology**

Amnesty International strives to use terminology which respects the wishes of the peoples concerned. It recognizes that this report cannot portray the experiences and diversity of Indigenous peoples in the USA.

There are more than 550 federally recognized American Indian and Alaska Native tribes in the USA. However, not all Indigenous peoples within the USA and its overseas territories have been accorded this status, including, for example, the Indigenous peoples

of Hawaii. Some peoples are recognized by states but not by the federal government.<sup>4</sup> Individuals may identify as Indigenous even if they are not recognized as tribal members by federal or state authorities.

It is important to note that no single term is universally accepted by all Indigenous peoples in the USA. Various terms are used throughout the report where they seem most suited to the context. However, these choices are in no way intended to minimize or ignore the great diversity of Indigenous cultures, languages and nationalities that exist within the USA, nor to generalize their experiences. The decisions on terminology in this report have been guided by a number of factors, including the need to ensure that the report is as accessible as possible to diverse audiences both within the USA and around the world. Amnesty International has been advised that by alternating the terms used, readers will better understand the diversity of Indigenous peoples and cultures in the USA.

The terms American Indian, Native American and Alaska Native are widely used within the USA itself, as are the terms tribe, tribal, tribal nation and Alaska Native village. These have been retained in this report to refer to Indigenous peoples and institutions. Certain terms such as Indian, Indian Country and tribal member are used in legal and other discourses in the USA and have been retained in this report where this seems most appropriate in sections dealing with US legislation and court decisions. The term Indian should be read as referring to American Indian and Alaska Native unless the legal context or parameters of a particular study indicate otherwise. While some terms may have specific legal meanings it must also be acknowledged that many may be used in a broader political or cultural context.

The term Indigenous is increasingly used in international human rights standards and in the commentary of UN and regional human rights bodies. It is also the term most frequently used by Indigenous peoples' organizations when they represent themselves internationally, and by specialized non-governmental organizations working in the field.

### **List of terms/abbreviations**

**BIA** The Bureau of Indian Affairs, a federal government agency charged with supporting tribal police forces, courts and governments

**District Attorney** A state prosecutor

**FBI** Federal Bureau of Investigation

**Indian Country** Federal law defines Indian Country as: "All land within the limits of any Indian reservation", "all dependent Indian communities within the borders of the United States" and "all Indian allotments, the titles to which have not been extinguished."

**IHS** Indian Health Service, part of the US Department of Health and Human Services, operates health facilities for American Indian and Alaska Native peoples

**ILO Convention** 1989 International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries

**Public Law 280** transferred legal authority (jurisdiction) from the federal government to certain state governments.

**SANE** Sexual assault nurse examiner

**SRPD** Standing Rock Police Department

**State land** is used in this report to denote land outside Indian Country.

**State police** is used to include state, city and local law enforcement agencies.

**US Attorney** A federal prosecutor

**VPO** Alaska Village Police Officers

**VPSO** Alaska Village Public Safety Officers

[Quotes]

"I don't know what to do anymore. I don't get any answers."

Relative of a young woman who was raped nine months earlier

[End of quotes]

### ***Chapter 1: Introduction***

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 Amnesty International that the woman had bruises all over her body and was so traumatized that she was talking very quickly. She said that, although the woman was not drunk, the Sexual Assault Response Team nevertheless "treated her like a drunk Native woman first and a rape victim second". 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 also assumed that she was drunk: "This is why Native women don't report. It's creating a breeding ground for sexual predators." Interview with Alaska Native support worker (identity withheld), July 2006 Violence against women is one of the most pervasive human rights abuses. It is also one of the most hidden. It takes place in intimate relationships, within the family and at the hands of strangers and it affects women in every country in the world.

This report focuses on sexual violence against Indigenous women in the USA. 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 American Indian and Alaska Native women are directly linked to the authority and capacity of their nations to address such violence.

Indigenous peoples in the USA face deeply entrenched marginalization – the result of a long history of systemic and pervasive abuse and persecution. Sexual violence against Indigenous women today is informed and conditioned by this legacy of widespread and egregious human rights abuses. It has been compounded by the federal government's steady erosion of tribal government authority and its chronic under-resourcing of those law enforcement agencies and service providers which should protect Indigenous women from sexual violence. It is against this backdrop that American Indian and Alaska Native women continue to experience high levels of sexual violence, a systemic failure to punish those responsible and official indifference to their rights to dignity, security and justice.

"Violence against Indian women occurs as a gauntlet in the lives of Indian women: at one end verbal abuse and at the other murder. Most Indian women do not report such crimes because of the belief that nothing will be done."

Juana Majel, National Congress of American Indians, and Karen Artchoker, Cangleska, Inc.-Sacred Circle<sup>6</sup>

Over the past decade, federal government studies have consistently shown that American Indian and Alaska Native women experience much higher levels of sexual violence than other women in the USA. Data gathered by the US Department of Justice indicates that Native American and Alaska Native women<sup>7</sup> are more than 2.5 times more likely to be raped or sexually assaulted than women in the USA in general.<sup>8</sup> A US Department of Justice study on violence against women concluded that 34.1 per cent of American Indian and Alaska Native women – or more than one in three – will be raped during their lifetime; the comparable figure for the USA as a whole is less than one in five.<sup>9</sup> Shocking though these statistics are, it is widely believed that they do not accurately portray the extent of sexual violence against Native American and Alaska Native women.<sup>10</sup>

"Most women who are beaten or raped don't report to the police. They just shower and go to the clinic [for treatment]."

Native American survivor of sexual violence (identity withheld), February 2006

Amnesty International's interviews with survivors, activists and support workers across the USA suggest that available statistics greatly underestimate the severity of the problem. In the Standing Rock Sioux Reservation, for example, many of the women who agreed to be interviewed could not think of any Native women within their community who had not been subjected to sexual violence.

"Women don't report because it doesn't make a difference. Why report when you are just going to be revictimized?"

Pauline Musgrove, Executive Director of the Spirits of Hope Coalition, October 2005

Amnesty International has documented many incidents of sexual violence against American Indian and Alaska Native women but the great majority of stories remain untold.

Violence against women is characteristically under-reported. Barriers to reporting include fear of breaches in confidentiality, fear of retaliation and a lack of confidence that reports will be taken seriously and result in perpetrators being brought to justice. For Native American and Alaska Native women, historical relations with federal and state government agencies also affect the level of reporting of sexual violence.

"Indigenous women or women from racially or ethnically marginalized groups may fear State authority, if the police have traditionally used coercive and violent means of criminal enforcement in their communities."

Radhika Coomaraswamy, then UN Special Rapporteur on violence against women, July 2001<sup>12</sup>

In addition to underestimating the scale of sexual violence against Indigenous women, the limited data available does not give a comprehensive picture. For example, no

statistics exist specifically on sexual violence in Indian Country and available data is more likely to represent urban than rural areas.<sup>13</sup> Native American activists point to the importance of understanding the continuum of violence committed against Indigenous women in order to develop a strategic response to it.<sup>14</sup> There is an urgent need for the US government to start collecting such data to inform planning and programmes to end sexual violence against Indigenous women.

While the available data does not accurately portray the extent of sexual violence against Native American and Alaska Native women, it does indicate that Native American and Alaska Native women are particularly at risk of sexual violence. According to the US Department of Justice, in at least 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. The Department's data on sexual violence against non-Native women, in contrast, shows that for non-Indigenous victims, sexual violence is usually committed within an individual's own race. For example, in 2004, perpetrators in 65.1 per cent of rapes of white victims were white, and 89.8 per cent of perpetrators in rapes of African American victims were African American.<sup>15</sup>

Some of the data made available to Amnesty International in the three locations studied also suggests that a high number of perpetrators of sexual violence against American Indian and Alaska Native women are non-Indian. In Oklahoma, one support worker for Native American survivors of sexual violence told Amnesty International that 58 per cent of the cases she had worked on in the preceding 18 months involved non-Native perpetrators. In Anchorage, Alaska, a statistical study found that 57.7 per cent of Alaska Native victims of sexual violence reported that their attackers had been non-Native men.<sup>17</sup> Amnesty International documented individual cases involving both Native and non-Native perpetrators. While overall the data available appears to indicate that a significant number of perpetrators are non-Indian, there is a lack of quantitative data on the ethnic origin or Indigenous status of perpetrators of sexual violence against American Indian and Alaska Native women. More data is urgently needed in order to establish the prevalence of violence against Indigenous women and identify appropriate culturally specific indicators, based on both individual and collective rights, that can accurately and comprehensively reflect the prevalence of sexual violence against Indigenous women. Such information would also enable the impact of jurisdictional issues on the effectiveness of federal, state and tribal responses to crimes of sexual violence against Indigenous women to be evaluated and assist in identifying strategies to prevent, investigate and punish crimes of sexual violence against Indigenous women.

It appears that Indigenous women in the USA may be targeted for acts of violence and denied access to justice on the basis of their gender and Indigenous identity. However, the root causes of discrimination and violence are often complex and invariably interconnected. Other factors which can also have a significant impact include the poverty and socioeconomic marginalization which many Indigenous women experience. Indigenous women described to Amnesty International how they experience contemporary sexual violence as a legacy of impunity for past atrocities.

Rape is always an act of violence, but there is evidence to suggest that sexual violence against American Indian and Alaska Native women involves a higher level of additional physical violence. Fifty per cent of American Indian and Alaska Native women reported that they suffered physical injuries in addition to the rape; the comparable figure for women in general in the USA is 30 per cent.<sup>18</sup>

Della Brown, a 33-year-old Alaska Native woman, was raped, mutilated and murdered. Her body was discovered in an abandoned shed in Anchorage in September 2000. Her skull was so pulverized the coroner compared her head to a "bag of ice". Police believe a number of people walked through the shed, lighting matches in order to view her battered remains, but did not report the murder to the Anchorage police. To date, no one has been brought to justice for the rape and murder of Della Brown.<sup>19</sup>

Like women in every country and community, Indigenous women frequently experience sexual violence at the hands of their male acquaintances, boyfriends or husbands. According to US Department of Justice figures, in around a quarter of reports of sexual violence against American Indian or Alaska Native women the alleged perpetrator is an intimate partner. Intimate partners who commit sexual violence often do so with impunity, in part because of a lack of recognition — by women themselves, by responding authorities and by society in general — that such violence constitutes a crime. Many women do not report domestic violence. The response of the police and courts to those that do is often grossly inadequate.

Rhea, a Native American woman from the Standing Rock Sioux Reservation (North and South Dakota) told Amnesty International about the experience of her friend, a 21-year-old Native American woman, who was raped and severely beaten by four men in February 2003. She said her friend was initially brought to the Indian Health Service hospital in Fort Yates but was transferred to a hospital in Bismarck, North Dakota, in a critical condition, having taken an overdose of anti-diabetic medication that she found in the house where she had been raped with the apparent intention of committing suicide. Rhea said: "she just lay there all beat up, with big black eyes." According to Rhea, a Standing Rock Police Department (SRPD) officer came to the hospital and questioned her friend while she could still talk. She died two weeks after the rape. Rhea says she spoke to the police officer a year later; he told her the rape case was closed. "The perpetrators are still walking around," she told Amnesty International, "I don't know why." The Chief of Police of SRPD told Amnesty International that they have been unable to find any record of the case.

Interview with Rhea, 2006 (details withheld)

For crimes of sexual violence committed on tribal land, whether the alleged perpetrator is Indigenous or not is important because it determines which police force deals with the crime and which judicial system is responsible for ensuring the perpetrator is brought to justice. Consequently, survivors of sexual violence receive a different response depending on the location where the crime took place and the Indigenous status of the perpetrator, resulting in uneven and inconsistent access to justice and accountability.

"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

In order to achieve justice, survivors of sexual violence frequently have to navigate a maze of tribal, state and federal law. The US federal government has created a complex interrelation between these three jurisdictions that undermines equality before the law and often allows perpetrators to evade justice. In some cases this has created areas of effective lawlessness which encourages violence. Action by US Congress is required to eliminate the possibility that complex jurisdictional rules and legislation in practice may deny survivors of sexual violence access to justice.

Sometimes the confusion and the length of time it takes to decide whether tribal, state or federal authorities have jurisdiction over a particular crime result in inadequate investigations or in a failure to respond at all. Whenever law enforcement officials are required to make on-the-spot decisions about whether a suspect is Indian or non-Indian, public safety on tribal lands is compromised. Amnesty International's research indicates that understaffing and lack of appropriate training in the relevant police forces are also undermining survivors' right to justice.

For different reasons and in different ways none of the three justice systems – federal, state and tribal — are responding adequately to Indigenous survivors of sexual violence. The US government has interfered with the ability of tribal justice systems to respond to crimes of sexual violence by under funding tribal justice systems, prohibiting tribal courts from trying non-Indian suspects and limiting the custodial sentences which tribal courts can impose for any one offence. The maximum prison sentence tribal courts can impose for crimes, including rape, is one year. The average prison sentence for rape handed down by state or federal courts is between eight years and eight months and 12 years and 10 months respectively.<sup>20</sup>

When jurisdiction falls to federal or state authorities and cases are pursued through the federal or state court system, Amnesty International's research found that Native American and Alaska Native women are often denied access to justice. The extent to which cases involving American Indian women are dropped before they even reach a federal court is difficult to quantify as the US Attorney's Office does not compile such statistics. However, the evidence gathered by Amnesty International suggests that in a considerable number of instances the authorities decide not to prosecute reported cases of sexual violence against Native women. When federal prosecutors decline to prosecute cases involving non-Native perpetrators, there is no further recourse for Indigenous survivors under criminal law within the USA.

At all levels, law enforcement and justice systems are failing to inform survivors about the progress of their cases and there is little accountability for failure to investigate or prosecute. For some survivors this can mean months or even years of fear and insecurity.

Health service providers have a key role to play both in providing survivors with any

medical attention they may need and in documenting sexual violence. Sexual assault forensic examinations can provide crucial evidence for a successful prosecution. However, Amnesty International's research suggests that the quality of provision of such basic services to American Indian and Alaska Native women varies considerably from place to place. Often this is the result of the US government's severe underfunding of the Indian Health Service (IHS). However, in some instances inadequate training on how to respond to survivors of sexual violence and how to do so in a culturally appropriate manner also means that health facilities fail to provide women with the treatment and support they need.

Overall, Amnesty International's findings indicate that many American Indian and Alaska Native victims of sexual violence find access to legal redress, adequate medical attention and reparations difficult, if not impossible. Impunity for perpetrators and indifference towards survivors contribute to a climate where sexual violence is seen as normal and inescapable rather than criminal, and where women do not seek justice because they know they will be met with inaction.

Sexual violence against women is not only a criminal or social issue, it is a human rights abuse. All women have the right to be safe and free from violence and the authorities have a responsibility to ensure that women can enjoy that right. This report shows that the US government is failing in its obligations under international law to ensure these rights.

International law is clear: governments are obliged not only to ensure that their own officials comply with human rights standards, but also to adopt effective measures to guard against acts by private individuals which result in human rights abuses. This duty – often termed due diligence — means that states must take reasonable steps to prevent human rights violations and, when they occur, use the means at their disposal to carry out effective investigations, identify and bring to justice those responsible, and ensure that the victim receives adequate reparation. Amnesty International's research shows that the USA is currently failing to act with due diligence to prevent, investigate and punish sexual violence against Native American and Alaska Native women.

The long history of abuse cannot be erased, but Indigenous women all over the USA are working with determination and hope for a future where their right to dignity and security is respected. Drawing on their work and experience, this report concludes with a series of recommendations calling on the authorities to fulfil their obligation to investigate, prosecute and punish those responsible for sexual violence and to promote the fundamental rights of Indigenous women

### **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 shows 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.
- The US Congress should recognize that tribal authorities have jurisdiction over all offenders who commit crimes on tribal land, regardless of their Indigenous or other identity and the authority to impose sentences commensurate with the crime which are consistent with international human rights standards. Federal authorities should also take additional steps, in agreement with tribal authorities, to make available the necessary funding and other resources to enable tribal authorities to develop their courts so that they have the capacity to operate effectively and in accordance with international standards.
- 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.
- Law enforcement agencies and health service providers should ensure that all Indigenous women survivors of sexual violence have access to adequate and timely sexual assault forensic examinations without charge to the survivor and at a facility within a reasonable distance.
- Prosecutors should vigorously prosecute cases of sexual violence against Indigenous women, and should be sufficiently resourced to ensure that the cases are treated with the appropriate priority and processed without undue delay. Any decision not to proceed with a case, together with the rationale for the decision, should be promptly communicated to the survivor of sexual violence and any other prosecutor with jurisdiction.
- Federal and state governments should take effective measures, in consultation and co-operation with Native American and Alaska Native peoples, to combat prejudice and eliminate stereotyping of and discrimination against Indigenous peoples.

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, having jurisdiction over their citizens and land, and maintain government to government relationships with each other and with the US federal government.<sup>5</sup>

The US federal government has a legal responsibility to ensure protection of the rights and wellbeing of American Indian and Alaska Native peoples, including a responsibility to provide social, educational and medical services. 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.<sup>11</sup>

"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

According to the 2000 US Census there are an estimated 4.1 million Native American and Alaska Native individuals living in the USA today<sup>16</sup> – around 1.5 per cent of the total population.

Tribal nations maintain separate cultures, customs and histories. More than 250 languages are spoken.

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.

The Indian Health Service which is part of the US Department of Health and Human Services, operates health facilities for American Indian and Alaska Native peoples.

[Photo captions]

Winona Flying Earth, Co-Chair of the Board of Directors of Bridges Against Domestic Violence (BADV), Mobridge, South Dakota, February 2006. The BADV's shelter serves women in the south of the Standing Rock Reservation.

Jackie Brown Otter is the founder of Pretty Bird Woman House, a domestic and sexual violence programme on the Standing Rock Sioux Reservation. The programme is named after her sister Ivy Archambault (Pretty Bird Woman), who was raped and murdered in 2001.

Poster produced by the Spirits of Hope coalition, 2004. It was developed by the coalition's sexual assault committee which is made up of Native American women from across Oklahoma.

Photo by Shan Goshorn. Poster by Jennifer Stringfellow.

Road sign in Oklahoma in Cherokee and English. Some 395,000 Native Americans live

in Oklahoma, the second highest total of any state in the USA. However, few Native American peoples lived there prior to their forced eviction and removal from their original areas of residence by the US government. The process of resettlement, which cost thousands of lives, began in the 1830s and by 1885, more than 30 culturally diverse Native American tribes had been forcibly relocated to present-day Oklahoma. The history of the state has given rise to a complex map of jurisdictions.

### ***Chapter 2: Legacy of the past***

"As the nation looked to the West for more land, this agency participated in the ethnic cleansing that befell the western tribes... it must be acknowledged that the deliberate spread of disease... 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...

"...After the devastation of tribal economies and the deliberate creation of tribal dependence on the services provided by this agency, this agency set out to destroy all things Indian. This agency forbade the speaking of Indian languages, prohibited the conduct of traditional religious activities, outlawed traditional government, and made Indian people ashamed of who they were. Worst of all, the Bureau of Indian Affairs committed these acts against the children entrusted to its boarding schools, brutalizing them emotionally, psychologically, physically, and spiritually... the legacy of these misdeeds haunts us."

Kevin Gover, then Assistant Secretary – Indian Affairs, US Department of the Interior, at the Ceremony Acknowledging the 175th Anniversary of the Establishment of the Bureau of Indian Affairs, 8 September 2000<sup>21</sup>

It is widely acknowledged that European/US colonizers forcibly relocated many Indigenous peoples from their land, committing widespread atrocities in the process. Killings on a massive scale, as well as disease and starvation, devastated the Indigenous peoples of North America.

### **Sexual violence as a tool of conquest**

"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 on traditional Native American and Alaska Native cultures have found that prior to colonization women often held esteemed positions in society. Available evidence indicates that violence against women was rare and, when it occurred, was often severely punished.<sup>22</sup> Colonization and its aftermath profoundly changed gender roles among Indigenous peoples. For example, settlers and government officials insisted on dealing only with men, while Christian missionaries exerted pressure on Indigenous peoples to assume what their churches considered proper gender roles.<sup>23</sup>

Gender-based violence against women by settlers was used in many infamous episodes, including during the Trail of Tears and the Long Walk. Such attacks were not random or individual; they were an integral part of conquest and colonization.<sup>24</sup> Many scholars take the position that these and other historical acts amount to genocide.

Historically, the US federal government has made a series of attempts to compel Native American and Alaska Native peoples to assimilate into non-Indigenous society. In the late 19th and early 20th centuries, a number of policies designed to promote assimilation contributed to the breaking up of tribal societies, damaging communal solidarity and traditional social networks. One such policy, which started in 1869, involved removing children as young as five from their families and compelling them to attend boarding schools. The Bureau of Indian Affairs (BIA) controlled 25 boarding schools and 460 additional schools were run by churches with federal funds. Reports of conditions in the schools make harrowing reading: cruel and inhuman treatment was the norm and many children experienced physical and sexual violence. Children reportedly died by the hundreds in these schools because of inadequate food or medical care, although no firm statistics exist.<sup>25</sup> One reason for the lack of statistics is that many schools sent children home when they became seriously ill, or never recorded their deaths.<sup>26</sup>

Negative and dehumanizing stereotypes of Native Americans in general, and Indigenous women in particular, are not confined to distant history. For example, a 1968 federal appellate court ruling upheld a statute under which an American Indian man who committed a rape in Indian Country received a lower penalty if the victim was a Native woman.<sup>27</sup> It has been suggested that Congress, in passing this law, may have viewed Native women as immoral and less worthy of protection.<sup>28</sup> Indigenous women have suffered under federal government sterilization programmes which violated their human rights and international law. For example, between 1972 and 1976, thousands of Indigenous women were sterilized when there was no medical necessity and without their free and informed consent.<sup>29</sup> Some women were reportedly coerced to consent to the sterilization by being told that their children would be taken away from them if they refused.<sup>30</sup>

To date, the USA has done little to acknowledge these abuses or to ensure adequate reparation for the victims.

The effects of such abuses against Indigenous peoples reverberate through US society and popular culture today. For example, a video game called "Custer's Revenge" was marketed by a private company in 1989 in which the objective was for players to manipulate the character of General Custer to have sex with a Native American woman who was bound to a post. The University of North Dakota has refused to change its mascot from "the fighting Sioux" despite strong opposition by Sioux Tribes and despite the fact that it has generated racialized and sexualized discourse. For example, students at the University wore T-shirts depicting a caricature of a Sioux Indian having sexual intercourse with a bison.

The legacy of historic abuses persists. The fact that Native American and Alaska Native

women have been dehumanized throughout US history informs present-day attitudes. It helps fuel the high rates of sexual violence perpetrated against them and the high levels of impunity enjoyed by their attackers.

The Bureau of Indian Affairs (BIA), a federal government agency, is charged with supporting tribal police forces, courts and governments.

The Trail of Tears was the name given to the forced displacement and removal of several tribal nations from the east and south coast towards Oklahoma between 1838 and 1839. The displacement resulted in the deaths of thousands of Indigenous people.

The Long Walk was the name given to the forced displacement and removal of Navajo in 1863 and 1864 from their lands in Arizona and New Mexico. More than 200 people died of cold and starvation during the 300-mile forced march; many more died after their arrival on the barren Bosque Redondo Reservation in New Mexico.[End of side bars]

[Photo caption]

"There is the attitude that we are somehow less than human."

Eleanor David (centre), former co-chair of the Alaska Native American Coalition, pictured with her daughter (left) and her aunt.

### ***Chapter 3: International human rights law***

This report addresses violence against Indigenous women as a human rights issue. The concept of human rights is based on the recognition of the inherent dignity and worth of every human being. Through ratification of binding international human rights treaties, and through the adoption of declarations by intergovernmental bodies such as the United Nations (UN) and the Organization of American States (OAS), governments have committed themselves to ensuring that all people can enjoy certain universal rights and freedoms.

Sexual violence against women results in violations of a variety of rights.<sup>31</sup> These include: the right not to be tortured or ill-treated;<sup>32</sup> the right to liberty and security of the person;<sup>33</sup> and the right to the highest attainable standard of physical and mental health.<sup>34</sup> In addition, the erosion of tribal governmental authority and resources to protect Indigenous women from crimes of sexual violence is inconsistent with international human rights standards, including international standards on the rights of Indigenous peoples.

As is explored in more detail below, sexual and gender-based violence is also a form of discrimination against women<sup>35</sup> and, in the case of Native American and Alaska Native women who are disproportionately victims of sexual violence, is a form of discrimination on the basis of Indigenous identity.<sup>36</sup> When a state fails to act with sufficient diligence in responding to sexual violence against women – by using the criminal justice system and providing reparation – this often violates women's right to equality before the law. The

USA has ratified many of the key human rights treaties that guarantee these fundamental rights, including the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the International Convention on the Elimination of All Forms of Racial Discrimination.

### **Due diligence**

International law obliges governments to use their power to protect and fulfil human rights.<sup>37</sup> This includes not only ensuring that their own officials comply with human rights standards, but also acting with "due diligence" to address abuses committed by private individuals (non-state actors). When states know, or ought to know, about violations of human rights and fail to take appropriate steps to prevent them, they, as well as the perpetrators, bear responsibility. The principle of due diligence includes obligations to prevent human rights violations, investigate and punish them when they occur, and provide compensation and support services for victims.<sup>38</sup>

It is important to emphasize that state responsibility to exercise due diligence does not in any way lessen the criminal responsibility of those who carry out acts of violence, including sexual violence, against women. The perpetrator of sexual violence is the person liable under criminal law for this act and should be brought to justice. However, the state also bears a responsibility if it fails to prevent or investigate and address the crime appropriately. This report clearly demonstrates that the US authorities are failing to exercise due diligence when it comes to sexual violence against Native American and Alaska Native women.

### **Human rights of Indigenous peoples**

Over the last two decades, international human rights law has become more responsive to the values, needs and aspirations of Indigenous peoples as distinct and often persecuted cultures. Human rights standards specific to Indigenous peoples include the 1989 International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No.169) and the UN Declaration on the Rights of Indigenous Peoples. Specific rights of Indigenous peoples have also been affirmed by the expert bodies charged with the interpretation of state obligations under key human rights treaties in the UN and OAS. These evolving norms and standards are consistent in recognizing that Indigenous peoples have the right to maintain their distinct collective identities and, towards that end, must have greater control over their own lives and futures.

The Committee on the Elimination of Racial Discrimination, which monitors states' compliance with the International Convention on the Elimination of All Forms of Racial Discrimination, has called on states to "recognize and respect indigenous peoples' distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation" and ensure that "no decisions directly relating to their rights and interests are taken without their informed consent."<sup>39</sup>

In 2001, the UN Human Rights Committee appointed a Special Rapporteur on the

situation of human rights and fundamental freedoms of indigenous people. In his first report, he identified a number of particular issues which deserve special attention. These included human rights issues for Indigenous peoples in the realm of the administration of justice; the participation of Indigenous peoples in decision-making processes, governance and policy-making; and discrimination against Indigenous peoples within a gender perspective.<sup>40</sup>

"The widespread lack of access to the formal justice system due to ingrained direct or indirect discrimination against indigenous peoples is a major feature of the human rights protection gap... Given the discrimination existing in the

national judicial systems it is not surprising that many indigenous peoples distrust it and that many ask for greater control over family, civil and criminal matters ...

"Countries that have been able to incorporate respect for customary indigenous law in their formal legal systems find that justice is handled more effectively."

Rodolfo Stavenhagen, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, report submitted to the Commission on Human Rights, 26 January 2004

The UN Declaration on the Rights of Indigenous Peoples, adopted by the UN Human Rights Council in June 2006, elaborates minimum standards for the recognition and protection of the rights of Indigenous peoples in diverse contexts around the world. Although at the time of writing final adoption by the General Assembly had been delayed for further consultation, it is important to note that the Declaration is consistent with established human rights protections and their interpretation within the international human rights system. Provisions of the Declaration include:

- Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. (Article 3)
- Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions. (Article 4)
- Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions. (Article 5)
- States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women... enjoy the full protection and guarantees against all forms of violence and discrimination. (Article 22(2))
- Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right. (Article 24(2))

The Declaration recognizes the right of Indigenous peoples "to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, where they exist, juridical systems or customs, in accordance with international human rights standards" (Article 34). Similarly, ILO Convention No. 169 calls for the recognition and maintenance of tribal justice systems "where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights."

The USA has not ratified ILO Convention No. 169, although the Committee on the Elimination of Racial Discrimination has encouraged the USA to abide by the Convention's terms. To date, it has not done so. Indeed, the USA was instrumental, together with Australia and New Zealand, in blocking adoption of the UN Declaration on the Rights of Indigenous Peoples by the UN General Assembly at its 61st session.

### **Human rights of women**

The human rights of women are an inalienable, integral and indivisible part of universal human rights. This fundamental principle was reaffirmed in the Beijing Platform for Action adopted at the Fourth UN World Conference on Women held in 1995 in Beijing, China. Delegates from 189 countries committed themselves to promoting and protecting the full enjoyment of all human rights and fundamental freedoms of all women throughout their life.

Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women... on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

The Committee on the Elimination of Discrimination against Women, which monitors implementation of the rights enshrined in the Convention, has recognized gender-based violence against women as a form of discrimination.<sup>41</sup> The USA has signed the Convention but not ratified it, meaning that it is obliged to refrain from acts that would defeat the object and purpose of this treaty.

The Beijing Platform for Action, which was unanimously reaffirmed in 2000 and 2005, explicitly recognizes that Indigenous women face particular barriers to full equality. It urges states to address the forms of violence that Indigenous women face, and calls for a holistic approach, including working with judicial, legal, medical, social and educational systems. Nevertheless, a critique of the Beijing Platform for Action by Indigenous women pointed to the Platform's overemphasis on gender discrimination to the detriment of the interplay between gender and other aspects of Indigenous women's identities.<sup>42</sup>

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) deals explicitly with the issue

of violence against women. It requires states not only to condemn, prevent and punish violence against women, but also to undertake specific measures to deal with its root causes. The Convention of Belém do Pará has been more widely ratified than any other Inter-American treaty. The USA is one of only two members of the Organization of American States which have failed to ratify it.<sup>43</sup>

### **Multiple discriminations**

Discrimination can be direct – where an individual or group receives less favourable or detrimental treatment – or indirect – when a law or practice appears neutral but impacts disproportionately on a particular group, without objective justification. The prohibition on indirect discrimination requires states to take account of relevant differences between groups in order to ensure equality in practice.

Indigenous women face multiple discriminations because of aspects of their identities. As a 2006 report on violence against Indigenous women by the International Indigenous Women's Forum (FIMI) has noted, they are discriminated against not only as women "but as Indigenous Peoples. The latter does not merely add one more element to the burden of discrimination that Indigenous women face, but interacts with and changes the nature of the discrimination they contend with."<sup>44</sup> It is therefore extremely important that freedom from violence as defined by Indigenous women themselves informs, and where necessary transforms, the human rights discourse.

### **Economic, social and cultural rights**

Economic, social and cultural rights — in particular the right to the highest attainable standard of physical and mental health, including sexual and reproductive health — are relevant both to protecting women's right to be free from violence and to responding to violence against women. These rights are found in a number of international human rights treaties and standards, most explicitly in the International Covenant on Economic, Social and Cultural Rights, which the USA has signed but not ratified.

The Committee on the Elimination of Discrimination against Women has recognized that intersecting forms of discrimination can adversely affect access to health services and it has urged that special attention be given to the health needs and rights of Indigenous women.<sup>45</sup> As this report demonstrates, Native American and Alaska Native women face numerous difficulties in accessing health services following sexual violence. Article 25 of ILO Convention No. 169 identifies as best practice that health services for Indigenous peoples be community-based wherever possible and that they are "planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines".

In his 2004 report to the UN General Assembly, Paul Hunt, the Special Rapporteur of the Commission on Human Rights on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health noted his deep concern "about the profound disparities between the health of indigenous people and that of the non-indigenous population in many countries." He noted a number of contributory factors

including "discrimination by health professionals, who lack training and awareness of the particular needs of indigenous people; a lack of health services available in indigenous languages... and violence, including sexual violence, against indigenous women."<sup>46</sup>

"The International Criminal Tribunal for the former Yugoslavia confirmed in 2002 that a key principle relating to rape in criminal law around the world is that "serious violations of sexual autonomy are to be penalised. Sexual autonomy is violated wherever the person subjected to the act has not freely agreed to it or is otherwise not a voluntary participant." Prosecutor v Kunarac, Case No. IT 96-23&23/1, Appeals Chamber, 12 June 2002

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant. International Covenant on Civil and Political Rights, Article 3

Article 2 of the Universal Declaration on Human Rights states that everyone is entitled to all the rights in the Declaration without distinction of any kind, such as "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Identical wording appears in Article 2 of the International Covenant on Civil and Political Rights.

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[Photo caption]

Staff and volunteers outside the Arctic Women in Crisis Center in Barrow, Alaska. The Center is the only safe shelter for 500 miles. The shortage of culturally appropriate support services for Alaska Native women means that the eight-bed shelter often houses as many as 20 women and girls at a time. During 2006 Arctic Women in Crisis helped over 300 women and children. The services they offer range from crisis housing to promoting Inupat values with advice for fathers to nurture non-violent sons.

"Alaska should say enough is enough... We can't be number one any more in sexual assault and rape."

Cindy Pennington, former police officer and chair of the Alaska Native Women's Sexual Assault Committee. The Committee, which was formed in 1999 and whose members include the Anchorage Police Department and Alaska Native organizations, focuses on public education and prevention. In 2001 the Committee was honoured with a Crime Victims Service Award from the US Department of Justice.

#### ***Chapter 4: Issues of jurisdiction***

Support workers told Amnesty International about the rapes of two Native American women in 2005 in Oklahoma. In both cases the women were raped by three non-Native men. Other similarities between the crimes were reported: the alleged perpetrators, who wore condoms, blindfolded the victims and made them take a bath. Because the women were

blindfolded, support workers were concerned that the women would be unable to say whether the rapes took place on federal, state or tribal land. There was concern that, because of the jurisdictional complexities in Oklahoma, uncertainty about exactly where these crimes took place might affect the ability of these women to obtain justice.

Interviews with support workers (identity withheld), May 2005

Amnesty International has received numerous reports that complicated jurisdictional issues can significantly delay and prolong the process of investigating and prosecuting crimes of sexual violence.

Three main factors determine where jurisdictional authority lies: whether the victim is a member of a federally recognized Indian tribe or not; whether the accused is a member of a federally recognized Indian tribe or not; and whether the alleged offence took place on tribal land or not. The answers to these questions are often not self-evident. However, they determine whether a crime should be investigated by tribal, federal or state police, whether it should be prosecuted by a tribal prosecutor, a state prosecutor (District Attorney) or a federal prosecutor (US Attorney) and whether it should be tried at tribal, state or federal level. Lastly, this determination dictates the body of law to be applied to the case: tribal, federal or state.

The jurisdiction of these different authorities often overlaps, resulting in confusion and uncertainty. In many areas there may be dual jurisdiction. The end result can sometimes be so confusing that no one intervenes, leaving victims without legal protection or redress and resulting in impunity for the perpetrators, especially non-Native offenders who commit crimes on tribal land.

### **Tribal authority**

Historic treaties, the US Constitution and federal law affirm a unique political and legal relationship between federally recognized tribal nations and the USA. The US federal government's policy towards Indigenous peoples has changed often and dramatically. Since the 1970s, public policy in the USA has adopted a policy of tribal self-determination.

Tribal governments exercise their political and legal sovereignty by making and enforcing their own laws on tribal land through tribal law enforcement agencies and courts. In carrying out these functions, tribal governments play an essential role in ensuring that their citizens can enjoy their human rights. They also assume a responsibility for ensuring that these rights are protected. However, the capacity of tribal governments to uphold the rights of their citizens is constrained by legal limitations on their jurisdiction imposed by federal law and, in many cases, by the fact that the funds for the services they deliver are controlled by federal agencies. The US federal government has a legal responsibility under the federal trust responsibility to ensure protection of the rights and wellbeing of American Indians and Alaska Natives and has specifically recognized that this responsibility extends to assisting tribal governments in safeguarding the lives of Indian women.<sup>47</sup> The federal government must, therefore, also be held accountable for the protection of human rights, even where tribal governments exercise

sovereignty in law and governance.

According to the Deputy Director of the BIA, around 75 per cent of law enforcement in Indian Country is carried out directly by tribal nations.<sup>48</sup> More than 170 tribal nations operate law enforcement agencies. A further 37 tribal law enforcement agencies are operated by the BIA.<sup>49</sup> More than 350 tribes maintain their own judicial systems.<sup>50</sup> These vary greatly and many incorporate aspects of customary law and traditional legal practices.

A series of federal laws and US Supreme Court decisions over the years have increasingly restricted tribal jurisdiction over crimes committed on tribal land. The undermining of tribal authority has occurred over time and in many ways. However, four laws have had a particularly significant impact: the Major Crimes Act, Public Law 280, the Indian Civil Rights Act and the case law of *Oliphant v Suquamish*.

- The **Major Crimes Act** (1885) granted the federal authorities jurisdiction over certain serious crimes, including rape and murder, committed in Indian Country.<sup>51</sup> There is a widespread misconception that under the Act only the federal authorities have the authority to prosecute major crimes.<sup>52</sup> In fact, tribal authorities retain concurrent jurisdiction over Indigenous perpetrators. Nevertheless the impact of the Act in practice has been that fewer major crimes have been pursued through the tribal justice system.
- Most state authorities do not exercise criminal jurisdiction over Native Americans in Indian Country. However, **Public Law 280** (1953) transferred federal criminal jurisdiction over all offences involving Native Americans in Indian Country to state governments in some states.<sup>53</sup> The US Congress gave these states – California, Minnesota, Nebraska, Oregon, Wisconsin and Alaska upon statehood— extensive criminal and civil jurisdiction over Indian Country. Public Law 280 also permitted certain additional states — Arizona, Florida, Idaho, Iowa, Montana, Nevada, North Dakota, South Dakota, Utah and Washington — to acquire jurisdiction if they wished, and while a number of states originally opted to do so, currently only Florida has full Public Law 280 jurisdiction.<sup>54</sup> Where Public Law 280 is applied, both tribal and state authorities have concurrent jurisdiction over crimes committed on tribal land by American Indians or Alaska Natives. Public Law 280 is seen by many Indigenous peoples as an affront to tribal sovereignty, not least because states have the option to assume and to relinquish jurisdiction, a power not extended to the Indigenous peoples affected. In addition, Congress failed to provide additional funds to Public Law 280 states to support the law enforcement activities they had assumed. The BIA, however, reduced funding to tribal authorities as a result of the shift in jurisdiction. This has led to a situation where tribal and state authorities have not received sufficient funds to assume their respective law enforcement responsibilities, resulting in a sense of "lawlessness" in some communities and difficult relations between tribal and state officials.<sup>55</sup>
- The **Indian Civil Rights Act** (1968) limits the penalty which can be imposed by tribal courts for any offence – including murder or rape — to a maximum of one

year's imprisonment and a US\$5,000 fine.<sup>57</sup> The message sent by this law is that, in practice, tribal justice systems are only equipped to handle less serious crimes. As a result of this limitation on their custodial sentencing powers, some tribal courts are less likely to prosecute serious crimes, such as sexual violence.

- In 1978, the Supreme Court ruled that tribal courts could not exercise criminal jurisdiction over non-Indian US citizens.<sup>58</sup> This ruling in the case of *Oliphant v Suquamish* effectively strips tribal authorities of the power to prosecute crimes committed by non-Indian perpetrators on tribal land. This decision raises issues of sovereignty which are beyond the scope of this report. It also denies victims of sexual violence due process and the equal protection of the law. Jurisdictional distinctions based on the race or ethnicity of the accused, such as the jurisdictional limitation here, have the effect in many cases of depriving victims of access to justice, in violation of international law and US constitutional guarantees. (Tribal courts are the most appropriate forums for adjudicating cases that arise on tribal land, and, as this report finds, state and federal authorities often do not prosecute those cases of sexual violence that arise on tribal land and fall within their exclusive jurisdiction.) This situation is of particular concern given the number of reported crimes of sexual violence against American Indian women involving non-Indian men. In such situations, either federal or state authorities have the authority to intervene. Reportedly, the apparent gap in jurisdiction or enforcement has encouraged non-Indian individuals to pursue criminal activities of various kinds in Indian Country.<sup>59</sup> Tribal police do have limited powers of arrest over non-Indian suspects in some states.<sup>60</sup> They also retain the power to detain non-Indian suspects in Indian Country in order to transfer them to either federal or state authorities, but this is not generally understood by tribal, state or federal officials.

### **Standing Rock**

The mother of a survivor of sexual violence from the Standing Rock Sioux Reservation told Amnesty International how she returned home in September 2005 to find her 16-year-old daughter lying half-naked and unconscious on the floor. She took her daughter to the hospital in Mobridge, South Dakota, where a sexual assault forensic examination was performed. She described how the suspected perpetrator fled to Rapid City, South Dakota, which is outside the jurisdiction of the Standing Rock Police Department (SRPD). He returned to the Reservation in early 2006 and was held by police for 10 days, although both mother and daughter only discovered this when they rang the SRPD to ask about the status of the case. They found out that the suspect was to go before a tribal court, but the mother told Amnesty International that to get this information, she had to go to Fort Yates and ask them in person. She told Amnesty International that she hoped that the case would be referred to the federal authorities because this would mean a lengthier sentence for the perpetrator. She said that, months after the attack, a Federal Bureau of Investigation (FBI) officer and a BIA Special Investigator arrived

unannounced. As the daughter was not home at the time, the mother told them where to find her. However, she never heard from them again. Federal prosecutors did eventually pick up the case and in December 2006 the perpetrator entered into a plea bargain and was awaiting sentencing at the time this report was written.

Interview with mother of survivor (identity withheld)

The Standing Rock Sioux Reservation (also known as the Standing Rock Lakota/Dakota Reservation) straddles the border of North and South Dakota and covers an area of 2.3 million acres (approximately 9,312km<sup>2</sup>).<sup>64</sup> Some 9,000 people live on the Reservation,<sup>65</sup> about 60 per cent of whom are Native American.<sup>66</sup> The Standing Rock Tribal Council is the tribal government and the SRPD is operated by the BIA. The Standing Rock Sioux Tribe has a tribal court, which hears civil and criminal complaints.

High levels of sexual violence on the Standing Rock Sioux Reservation take place in a context of high rates of poverty and crime. South Dakota has the highest poverty rate for Native American women in the USA with 45.3 per cent living in poverty.<sup>67</sup> The unemployment rate on the Reservation is 71 per cent.<sup>68</sup> Crime rates on the Reservation often exceed those of its surrounding areas. According to FBI figures, in 2005 South Dakota had the fourth highest rate of "forcible rapes" of women of any US state.

Interviews with survivors of sexual violence, activists and support workers on the Standing Rock Sioux Reservation indicate that rates of sexual violence are extremely high. For example, Amnesty International was told of five rapes which took place over one week in September 2005. Many survivors reported that they had experienced sexual violence several times in their lives and by different perpetrators. There were also several reports of gang rapes. One survivor and activist told Amnesty International that people have become desensitized to acts of sexual violence. A common response to such crimes is blame, but directed at the survivor rather than the perpetrator.

"There is so much stigma... People will just say 'you asked for it.'"

Former prosecutor (identity withheld), February 2006

Tribal and federal authorities have concurrent jurisdiction on all Standing Rock Sioux Reservation lands over crimes where the suspected perpetrator is American Indian. In instances in which the suspected perpetrator is non-Indian, federal officials have exclusive jurisdiction. Neither North nor South Dakota state police have jurisdiction over sexual violence against Native American women on the Standing Rock Sioux Reservation.<sup>69</sup> State police do, however, have jurisdiction over crimes of sexual violence committed on tribal land in instances where the victim and the perpetrator are both non-Indian.

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

Andrea Smith, Assistant Professor of Native Studies, University of Michigan<sup>70</sup>

## **Oklahoma**

"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

Some 395,000 Native Americans live in Oklahoma, the second highest total of any state in the USA.<sup>71</sup> There are 39 tribal governments, 38 of which are federally recognized.

FBI figures show that Oklahoma had the 12th highest incidence of "forcible rapes" of women of any US state in 2005.<sup>72</sup> Although available statistics indicate a high incidence of sexual violence against Native American women in Oklahoma, they may significantly under-represent the true scale of the problem. One support worker told Amnesty International that of her 77 active cases of sexual and domestic violence involving Native American women, only three women had reported their cases to the police.

The jurisdictional complexities of Oklahoma result from a history of forced resettlement of Native American peoples to Oklahoma and the subsequent allotment of tribal lands. Today, land originally held by tribes is owned by many entities, including tribal governments, Native American and non-Native individuals and the state and federal governments. Tribal lands are often non-contiguous and intersected by state land. There are 77 counties in Oklahoma, and more than 60 of these include Indian Country. Given the patchwork nature of the state, many people, both Native American and non-Native, cross between different jurisdictions several times in the course of one day.

Jurisdictional issues are a constant concern across the state as police officers responding to a crime must begin by ascertaining whether or not the land in question is state, tribal or federal. However, the status of land in Oklahoma is often not immediately apparent and can sometimes take a long time to determine.

"If it's a parcel of property in a rural area, it may take weeks or months to determine if it's Indian land or not; investigators usually cannot determine this, they need attorneys to do it by going through court and title records to make a determination."

Assistant US Attorney (identity withheld)

Further confusion arises when a crime takes place in property owned by a tribe but located on state land. A prosecutor told Amnesty International that city police had not wanted to respond to the violation of a protection order that occurred in tribal housing located on state land saying, "it is not ours because it is on Native American land." The prosecutor noted that this is a complicated legal issue and that the city police authority should have responded, but law enforcement officials may not have known this and may not have been able to find out immediately.

## **Alaska**

Alaska is by far the largest US state. However, it is the third smallest in terms of total population.<sup>73</sup> Nearly 19 per cent of those living in Alaska identify themselves as Alaska Native or part Alaska Native. Just over 60 per cent of Alaska Native people live in rural areas,<sup>74</sup> often in small villages located far from urban centres.

According to US Department of Justice statistics, Alaska has the highest incidence of "forcible rapes" of women of any US state. Alaska Native women experience high levels of sexual violence in both urban and rural areas. For example, between 2000 and 2003, Alaska Native people in Anchorage were 9.7 times more likely to experience sexual assault than others living in the city.<sup>75</sup> A medical professional responsible for post-mortem examinations of victims of rape and murder told Amnesty International in 2005 that of the 41 confirmed cases in Alaska since 1991, 32 involved Alaska Native women.

Law enforcement agencies in the state are seriously under-resourced. Given the vast rural geography of Alaska, this means that there may not be a law enforcement official available to report a crime to, and women from isolated villages may not have the means to travel to a town where there is a police presence. The lack of law enforcement outposts means that responses to reports of sexual violence are often slow. Sometimes there is no response at all.

"There is no doubt that reduction in state/tribal conflict over jurisdictional issues, and increased cooperation, coordination and collaboration between state and tribal courts and agencies, would greatly improve life in rural Alaska and better serve all Alaskans."

Initial Report and Recommendations of the Alaska Rural Justice and Law Enforcement Commission (2006)

Jurisdictional authority in Alaska has been the subject of considerable debate within the state. Early in the 20th century elected Village Councils carried out law enforcement and peacekeeping roles in Alaska Native villages. In 1959, when Alaska became a US state, reportedly virtually every Village Council was actively engaged in law enforcement and dispute resolution. Upon statehood, Alaska was included as one of the original states in Public Law 280, which gave the state (in place of federal authorities) concurrent criminal jurisdiction with tribes to prosecute crimes committed by and against Alaska Natives on tribal land throughout much of Alaska. The State of Alaska, however, took the position that statehood had extinguished the Alaska Native village's criminal law enforcement authority and reportedly threatened Councils with criminal prosecution "should they attempt to enforce their village laws."<sup>76</sup>

The situation in Alaska is further complicated because of issues around how tribal lands are designated. A combination of federal legislation and state and US Supreme Court decisions about the definition and status of tribal lands has resulted in considerable confusion and debate over the right of Alaska Native peoples to maintain tribal police and court systems. While the State of Alaska recognizes that tribal authorities have some concurrent jurisdiction in civil cases, it has been reluctant to acknowledge that tribes have criminal jurisdiction.

The rationale given for this position is that tribes have no land base that would provide the physical limits of criminal jurisdiction. This debate arises from the unique way in which Indigenous land claims in Alaska were settled. Under the terms of the Alaska Native Claims Settlement Act (ANCSA), passed by the US Congress in 1971, Indigenous claims to much of Alaska were extinguished in exchange for Indigenous title to approximately 11 per cent of the land in Alaska as well as financial compensation. ANCSA land is not held in trust or under federal protection; it is held by Alaska Native corporations created by the Act. Following ANCSA, there has been great debate regarding whether the land to which Alaska Native title was recognized qualifies as Indian Country. In 1998 the Supreme Court ruled that ANCSA lands were not Indian Country. It is important to note that the Court also found that ANCSA did not intend to terminate tribal sovereignty, but that it left Alaska tribes "sovereigns without territorial reach."<sup>77</sup> Criminal jurisdiction normally has a territorial element.

While not specifically addressing criminal jurisdiction, recent decisions by the Alaska Supreme Court have demonstrated a trend towards state recognition of tribal jurisdiction. For example, tribal jurisdiction has been recognized in cases involving child custody disputes as deriving from federal recognition and tribal membership, rather than being territorially dependent.<sup>78</sup> The Court has also ruled that state courts should generally defer to tribal courts under the principle that courts of one jurisdiction should give effect to the laws and judicial decisions of another. In addition, in 2003 the Alaska Superior Court upheld a tribe's authority to issue a banishment order against an individual with a history of violence against tribal members and required state law enforcement officials to execute the tribal order.<sup>79</sup>

Regardless of the ongoing debate, it should be noted that it was never the intent of the federal government for Public Law 280 to extinguish tribal jurisdiction over criminal offences. Furthermore, over 200 Alaska Native entities remain federally recognized governmental bodies.<sup>80</sup> It can therefore be argued that Alaska Native tribes have jurisdictional authority to create their own law enforcement agencies and judicial systems, as do all other federally recognized tribes in the USA.

"The US Government is not protecting Alaska Native women enough.  
What is wrong with the leadership of Alaska to allow this to happen?  
Shame on them!"

Juana Majel-Dixon, Secretary of National Congress of American Indians,  
Alaska Native Women's Coalition Conference, May 2005

### **Inter-agency co-operation**

Some tribal, state and federal law enforcement agencies address these jurisdictional complexities by entering into co-operation agreements. These may take the form of cross-deputization agreements, which allow law enforcement officials to respond to crimes that would otherwise be outside their jurisdiction. For example, when tribal and state agencies enter into such agreements, certain tribal police officers may respond to crimes, including those involving non-Indian perpetrators, committed on state land and certain state police officers may respond to crimes committed by American Indian perpetrators on tribal

land. When tribal agencies enter into such agreements with the federal government, certain tribal officers can exercise federal jurisdiction over non-Indian perpetrators of crimes on tribal land.

In Standing Rock, the SRPD and state agencies have explored co-operation through cross-deputization agreements that empower SRPD officers to arrest and detain individuals for crimes committed on state land and enable state police officers to arrest individuals for crimes committed by Native Americans on tribal land. Particularly in areas where law enforcement agencies have few officers, such co-operation agreements have the potential to allow improved responses to reports of sexual violence by increasing the number of potential responding officers.

In Oklahoma, co-operation occurs primarily between tribal and state law enforcement officials. Officers indicated that cross-deputization diminished jurisdictional challenges, increasing their ability to help all victims. The degree to which agencies in Oklahoma enter into such agreements varies around the state. For example, while the Choctaw Nation has reportedly entered into 38 agreements, many tribal, federal and state agencies have not entered into any.

For those agencies wishing to enter into cross-deputization agreements, the process to date has been complicated. To address this problem, in 2006 the BIA, the Oklahoma Association of Chiefs of Police and tribal law enforcement agencies drew up an agreement that would make it substantially easier for different law enforcement agencies to enter into cross-deputization relationships. A number of cross-deputization agreements have been filed since this came into effect.

In Alaska, the Alaska Rural Justice and Law Enforcement Commission also recommended the cross-deputization of law enforcement officials. In other words, tribes could individually negotiate with state law enforcement officials an agreement to allow for co-operation and collaboration between the two law enforcement agencies.

A second form of agreement addresses situations in which a perpetrator seeks to escape prosecution by fleeing to another jurisdiction. Flights by criminals occur in both directions – away from and to tribal land. To reduce the chance of escape, tribal and state authorities may enter into extradition agreements, in which each agrees to allow the other to return fleeing perpetrators to the jurisdiction of the crime.

"It's only about a mile from town to the bridge. Once they cross the bridge [to the Standing Rock Sioux Reservation], there's not much we can do... We've had people actually stop after they've crossed and laugh at us. We couldn't do anything."

Walworth County Sheriff Duane Mohr, *The Rapid City Journal*, 21 December 2005

Amnesty International notes that co-operation agreements may not always be possible and received reports of unwillingness to co-operate and even of hostility between agencies. For example, in order to reach certain areas of tribal land, tribal officers from

the Cabazon Band of Mission Indians in Riverside, California, have to drive across sections of state land. California law enforcement officers repeatedly stopped tribal officers responding to calls in these areas because they were driving off reservation with their emergency light on. In 2004, the US Court of Appeals for the Ninth Circuit ruled that they could no longer make such stops.<sup>81</sup>

Experiences of such inter-agency co-operation agreements vary greatly and some have been criticized as effectively further eroding tribal authority. Amnesty International also received reports of unwillingness to enter into such agreements by state police departments. However, where they are entered into on the basis of mutual respect, co-operation agreements can have the potential to smooth jurisdictional uncertainties and allow improved access to justice for victims of sexual violence.

Although Public Law 280 did not exclude Native Americans in affected states from receiving funding under federal programmes for Indigenous peoples, reportedly the BIA has sometimes used Public Law 280 as an excuse for reducing or eliminating funding for a range of federal programmes in affected states. <sup>56</sup>

The FBI Uniform Crime Report defines "forcible rape" as "the carnal knowledge of a female forcibly and against her will." This definition is limited. For example, it does not include rape against the victim's will but without physical force and it only covers vaginal/penile penetration. This limited definition falls short of international standards.

In the Elements of Crimes of the International Criminal Court rape is defined as an invasion of any part of the body with a sexual organ or of the anal or genital opening of the victim with any object or any other part of the body in circumstances that were coercive.

### **Summary of jurisdictions**

The following summary highlights the current status of the criminal jurisdiction of tribal, federal and state authorities over crimes of sexual violence.

#### **Tribal police, prosecutors and courts**

Tribal police and prosecutors can investigate and prosecute all crimes committed by Indian individuals in areas including but not limited to Indian Country.

Tribal police and prosecutors have concurrent jurisdiction with federal police and prosecutors (or state police and prosecutors where Public Law 280 is applied) over major crimes by Indians on tribal land.

Tribal police and prosecutors cannot investigate<sup>61</sup> and prosecute crimes committed by non-Native perpetrators on tribal land.

Tribal authority to sentence offenders is limited to a maximum of one year's

imprisonment and a US\$5,000 fine for each offence.

### **Federal police and prosecutors**

Federal police and prosecutors have exclusive jurisdiction to investigate<sup>62</sup> and prosecute crimes committed by non-Native perpetrators in Indian Country (except where Public Law 280 is applied).

Federal police and prosecutors have concurrent jurisdiction with tribal police and prosecutors to investigate and prosecute major crimes committed by Indigenous people in Indian Country (except where Public Law 280 is applied).

### **State police and prosecutors**

Where Public Law 280 is applied, state police and prosecutors have exclusive jurisdiction to investigate<sup>63</sup> and prosecute crimes committed by non-Native perpetrators on tribal land.

Where Public Law 280 is applied, state police and prosecutors have concurrent jurisdiction with tribal police and prosecutors to investigate and prosecute crimes committed by Indigenous perpetrators on tribal land.

If a crime takes place on state land, state police and prosecutors have exclusive jurisdiction to investigate and prosecute.

[Photo caption]

At least a third of all Alaska Native villages that are not accessible by road have no law enforcement presence at all.

Standing Rock Sioux Reservation. Often a very small number of police officers have to cover large territories and face difficult decisions about how to prioritize their initial responses to reports of crime.

## ***Chapter 5: Problems of policing***

"It feels as though the reservation has become lawless."

Round-table interview, Standing Rock Sioux Reservation (identity withheld), 22 February 2006

Jurisdictional issues present some of the biggest problems in law enforcement response to crimes of sexual violence against Indigenous women. However, Amnesty International found that a number of other factors also have a significant impact on police responses to these crimes. These include a lack of resources for policing on tribal lands and inappropriate responses which indicate a lack of training of officials at federal, state and tribal level.

### **Delays and failure to respond**

In October 2005, in the village of Nunam Iqua in Alaska, an Alaska Native man became violent, beating his wife with a shotgun and

attempting to fire it at her and striking a friend in the head with the butt of another gun. He then barricaded himself in a house with four children. As the village had no law enforcement presence, residents called State Troopers (state police officers) in Bethel, 150 miles away, at 5.30am to report the violence. Troopers had to charter a plane to get to the village because their own was being serviced and arrived at approximately 10am. A Trooper reported that, in the more than four hours it took them to reach the village, the man had raped a 13-year-old Alaska Native girl on a bed with an infant crying beside her and her five-year-old brother and seven-year-old cousin watching. After raping the girl, the man fired a shotgun, reportedly missing her by inches. The man faced 19 charges, including three counts of attempted murder, first-degree sexual assault and first-degree sexual abuse of a minor. In September 2006 he was convicted and sentenced to 27 years' imprisonment, with 18 to be served and nine suspended.

"Village Man Arrested After Eight-Hour Rampage", Anchorage Daily News, 25 October 2005

Statistics indicate that federal and state governments provide significantly fewer resources for policing in Indian Country and Alaska Native villages than are provided to comparable non-Native communities. According to the US Department of Justice, available data suggests that tribes have between 55 and 75 per cent of the law enforcement resources available to comparable non-Native rural communities.<sup>82</sup> Often a very small number of officers have to cover large territories and face difficult decisions about how to prioritize their initial responses to reports of crime. Indigenous women told Amnesty International that officers do not prioritize responding to crimes of sexual violence.

The US Departments of Justice and of the Interior have both acknowledged that there is inadequate law enforcement in Indian Country and identified lack of funds as a central cause.<sup>83</sup> In recent years, Congress has increased funding for FBI agents working in Indian Country, the BIA Office of Law Enforcement Services, and tribal law enforcement agencies. However, these initiatives continue to fall short of what is needed.

Several people interviewed by Amnesty International expressed concern at the failure of the FBI to investigate crimes of sexual violence against Native American women. Amnesty International's research suggests that FBI involvement in the investigation of such crimes is rare and that even in those cases which are pursued by the federal authorities there can be lengthy delays before FBI agents start investigations. In some instances federal authorities may reportedly not pursue cases in which tribal police have begun an investigation. Officers from one tribal law enforcement agency told Amnesty International that they were reluctant to take steps to preserve evidence at a major crime scene for this reason.<sup>84</sup>

In all three locations researched by Amnesty International, there were persistent reports of lengthy delays in responding to reports of sexual violence against Indigenous women. The capacity of individual agencies greatly influences their ability to respond in a timely

manner and to dedicate the necessary resources to cases. Many tribal law enforcement agencies, like other services for Indigenous peoples, are also at the mercy of annual or other short-term funding decisions. This can and does have a negative impact on the provision of essential law enforcement services and on long-term strategic planning to address basic needs.

As of February 2006, the Standing Rock Police Department consisted of six or seven patrol officers and two investigators to patrol 2.3 million acres of land. One SRPD officer told Amnesty International that staffing levels were so low that generally only two officers were on duty during the day – one in North Dakota and one in South Dakota – and two or three officers were on duty in the evenings. However, there were times when there was only one officer on duty for the whole Reservation. Women on the Reservation who report sexual violence often have to wait for hours or even days before receiving a response from the SRPD. Sometimes they receive no response at all. The SRPD was selected, together with the law enforcement departments of 24 additional tribal nations, to receive an annual base increase in federal funding of law enforcement services. The SRPD began receiving an additional US\$250,000 per year starting in 2006. According to the Chief of Police the funds will be used primarily to fill vacancies.

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 received. 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. Other agencies responsible for responding to a report of sexual violence against Native American women on tribal land in Oklahoma — agents from the BIA or the FBI – also appear to face resource issues. A federal prosecutor told Amnesty International that the FBI was "spread really thin since 9/11."

In Alaska, there is a great disparity between the police protection afforded in urban and in rural areas. The vast expanses of Alaska, combined with the low numbers of officers in rural outposts and the harsh weather, present major barriers to timely law enforcement response to crimes, including sexual violence.

Law enforcement services in Alaska range from the larger, municipal police departments that are found in cities such as Anchorage, to the State Troopers, who police the outlying rural areas, to the Village Public Safety Officers (VPSOs)/Village Police Officers (VPOs) or tribal police forces, which often consist of one or two individuals who work in smaller villages.

Law enforcement in the city of Anchorage is provided by the Anchorage Police Department. The Department acknowledges that there is a high rate of rape and other sexual violence in Anchorage and that Alaska Native women are disproportionately affected by these crimes. Chief of Police Walter Monegan told Amnesty International that following a 2003 study which documented the high level of sexual violence against Alaska Native women, the Department took steps to improve its approach to preventing such crimes. For example, the Department established the Criminal Investigation Unit, a

team of four plain-clothes officers that focuses on areas found by the study to be particularly dangerous, including areas where Alaska Native women were most at risk. However, the continued levels of sexual violence against Alaska Native women in Anchorage indicate that a great deal remains to be done.

In rural Alaska there is a great disparity between the police protection afforded in villages accessible by road, and that afforded in villages that are not, which are predominantly Alaska Native villages. While the State has sought to limit the exercise of tribal authority and traditional justice methods for keeping the peace in villages, it has at the same time failed to provide state law enforcement services. The result is that many villages have been left without law enforcement protection.

"Those who stay in their villages after reporting a crime must wait for Alaska State Troopers to catch a plane or helicopter from the nearest large community, a trip that can take hours or even days in blizzards and fog. The lengthy response times often result in victims recanting their calls for help. Delays can also allow tell-tale wounds to heal or perpetrators to destroy crucial evidence."

Jeannette J Lee, "Fleeing Violence Can be Difficult in Bush", Associated Press, November 2005

Those living in rural villages that do not have local or city police departments may receive law enforcement services from the state's 240 State Troopers. A limited number of State Troopers serve villages throughout the state, 64 per cent of which are accessible only by airplane, boat or snowmobile.<sup>85</sup> In more inaccessible communities, State Troopers tend to respond only to more serious crimes. It can take State Troopers from one day to six weeks to respond to crimes including sexual violence in villages, if they respond at all.

Decisions about which crimes to respond to and how, appear to be left largely to the discretion of responding officers. Reports indicate that investigations by State Troopers into reports of sexual violence are often minimal and are sometimes conducted over the telephone.

"[State Troopers] value moose more than Alaska Native women."

Eleanor David, former co-chair of the Alaska Native Women's Coalition, May

2005

Alaska Native service providers contrasted the response of State Troopers to a report in 2004 of out-of-season moose hunting — where three Troopers were sent to a village in north-west Alaska to investigate — to the response to a report of rape from a 15-year-old Alaska Native girl in 2003. State Troopers contacted the girl's aunt but reportedly decided not to fly out to the village to investigate.

"Most [VPOs and VPSOs] are ill-equipped. Many have to use their home for office space as well as a holding facility for detainees, and must walk or run to

the scene of a crime because they lack essential transportation such as snow-machines, four-wheelers and boats, as well as essential equipment such as rape kits [for evidence collection]." 86

Because of delays in response by State Troopers, VPSOs and VPOs are often the first to respond to reports of crimes, including crimes of sexual violence. VPSOs are relatively few in number and have additional responsibilities outside of law enforcement; for example they may act as harbour masters. Although they may be the first or only officers to respond, VPSOs cannot serve arrest warrants or investigate serious crimes such as rape without the approval of State Troopers. Neither VPSOs nor VPOs are "certified" by the Alaska Police Standard Council because they do not meet training and qualification requirements. Both VPSOs and VPOs receive considerably less training than State Troopers.<sup>87</sup> Officials acknowledged that VPOs and VPSOs have a lower level of training on sexual violence as dealing with such crimes is not within their area of responsibility.<sup>88</sup>

Over 80 per cent of those in Alaska who are not afforded trained and certified law enforcement protection are Alaska Native.<sup>89</sup> As a result, the VPSO programme has been criticized as a separate, unequal and insufficient form of law enforcement.<sup>90</sup> A complaint lodged in 1999 by the Alaska Inter-Tribal Council stated that the "lack of law enforcement training severely limits the authority they are able or willing to exercise, including the making of arrests, filing of complaints, and investigation of crimes, all with same effect — lack of adequate police protection in the outlying villages."<sup>91</sup>

The Alaska Rural Justice Commission, set up by Congress in 2004 to review federal, state, local and tribal jurisdiction over civil and criminal matters in Alaska, made a number of recommendations in 2006 including that the State of Alaska should adequately fund, train and staff the VPSO programme and that federal funding be obtained for tribal law enforcement.<sup>92</sup> Because of their status as federally recognized entities, Alaska Native villages can access sources of funding not available to the state to finance tribal law enforcement and justice mechanisms. However, Amnesty International notes with concern attempts by state officials to try and restrict tribes from accessing federal funds for law enforcement services, thereby diminishing their ability to protect their citizens. For example, in 2004 a bill was put forward that would have redirected funds currently supporting tribal law enforcement and justice systems in Alaska from the US Department of Justice to the State of Alaska, effectively depriving tribes of funding for tribal police and courts.<sup>93</sup>

### **Inadequate and inappropriate policing**

Amnesty International received a number of reports of inappropriate police responses to complaints of sexual violence.

A gender-sensitive response from police officers is an important factor in encouraging women survivors of sexual violence to report crime. As far as possible, victims should have access to a female officer. However, in the three locations studied by Amnesty International, there were few or no women officers working for tribal, state or federal law

enforcement agencies.

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

Support worker for Native American survivors of sexual violence (identity withheld), May 2005

Of particular concern are reports of discriminatory treatment of survivors who are suspected of drinking alcohol before they were attacked. This is particularly worrying because of the prevalent negative stereotypes which link Indigenous women with excessive drinking. A number of the cases brought to Amnesty International's attention indicated that police often automatically assume that Indigenous women had been drinking when they were targeted for sexual violence. One Alaska Native survivor of rape told Amnesty International that if a woman is suspected of drinking and reports that she has been the victim of sexual violence, "the police will not respond unless she is either hospitalized or dead."

Amnesty International's research revealed a worrying lack of communication by all levels of law enforcement with survivors. In a number of cases survivors were not informed about the status of investigations, the results of sexual assault forensic examinations, the arrest or failure to arrest the suspect, or the status of the case before tribal, federal or state courts.

State and tribal prosecutors told Amnesty International that they frequently receive inadequate case reports from state and tribal law enforcement officials. Poorly prepared reports can result in cases not being prosecuted. One tribal prosecutor told Amnesty International that BIA police officers often submit reports which do not contain even the most basic information, such as the name or address of the victim or witnesses.

Sometimes suspects are not arrested for weeks or months after an arrest warrant has been issued. Scarcity of resources and lack of co-operation between jurisdictions often exacerbate this problem. Amnesty International was told that on the Standing Rock Sioux Reservation there are on average 600-700 outstanding tribal court warrants for arrest of individuals charged with criminal offences. Failure to apprehend suspects in cases of sexual violence can put survivors at risk, especially where the alleged perpetrator is an acquaintance or intimate partner and there is a threat of retaliation.

A Native American woman living on the Standing Rock Sioux Reservation told Amnesty International that in September 2005 her partner raped her and beat her so severely that she had to be hospitalized. He was released on bond and an arrest warrant was issued after he failed to appear in court. However, SRPD officers did not arrest him. One morning she woke up to find him standing by her couch looking at her.

Interview (identity withheld), February 2006

Protection orders requiring an individual who has been violent to stay away from his victim can be an important tool for women seeking to escape violence. Under the terms

of the federal Violence Against Women Act, all US jurisdictions must give "full faith and credit" to protection orders issued by other US jurisdictions. This means that an order issued by a tribal court must be enforced by state police and vice versa. Since survivors of sexual violence may cross jurisdiction lines frequently in the course of daily life, this law seeks to ensure their protection in all areas. However, Amnesty International received numerous reports that state law enforcement agencies have refused to act on protection orders issued by tribal courts.

Activists, support workers and survivors of sexual violence told Amnesty International that state and tribal police officers sometimes failed to act impartially when responding to crimes of sexual violence.

Confidentiality is of prime importance because of the stigma that surrounds sexual violence and because of the dangers of further violence, especially if the abuser remains at large after the crime has been reported. However, Amnesty International received reports that the privacy of survivors of sexual violence was sometimes compromised. Many people on the Standing Rock Sioux Reservation apparently listen to the police radio frequency. Amnesty International was told that nevertheless SRPD officers sometimes did not use codes when speaking over the radio and mentioned victims' names.

### **Training**

"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 would require standards on cultural sensitivity training."

Support worker for Native American survivors of sexual violence (identity withheld), May 2005

Most federal, tribal and state law enforcement officers receive basic training on crime scene investigation and general techniques for interviewing victims, witnesses and suspects. FBI agents and law enforcement officers assigned to Indian Country reportedly attend a 22-week basic training course.<sup>94</sup> The BIA provides a 16-week basic training programme, designed for BIA and tribal law enforcement officers. Most tribal law enforcement officers are trained at the BIA Indian Police Academy, but tribal officers may also attend basic training provided by a state or by a tribal nation. Basic training of state law enforcement officers varies from state to state. Although federal, tribal and state officers may have the opportunity to attend continuing training on how to respond to crimes of sexual violence, such courses are generally not mandatory.

Amnesty International is concerned that federal, state and tribal training programmes for law enforcement officials may not include adequate or sufficiently in-depth components on responding to rape and other forms of sexual violence, on issues surrounding jurisdiction and on knowledge of cultural norms and practices. As a result officers often do not respond effectively and are not equipped with the necessary skills to deal with

crimes of sexual violence. For example, Amnesty International received reports of insensitive and inappropriate questioning. One BIA special agent told Amnesty International that he questions women reporting sexual violence about their sexual background, including "how many men has she slept with." The officer stated that this was intended to help the survivor prepare for the potential challenges of trial. Amnesty International is concerned that such questioning could deter survivors from pressing charges.

Law enforcement officials in Oklahoma face a jurisdictional maze of different tribal, federal and state areas of authority. Although there are considerable difficulties in establishing jurisdiction, state police training by the Council on Law Enforcement Education and Training reportedly provides "just a passing glance" on jurisdiction.<sup>95</sup>

Lack of training in cultural competence can also be an obstacle to officers communicating effectively and appropriately with Indigenous peoples. There is a need for all officers to receive training that enables them to ensure that their responses take into account differences between tribes, which may have implications for how police approach and speak to victims, witnesses and suspects. This may include, for example, greater awareness of potential language barriers.

Amnesty International received reports that small law enforcement agencies with few resources have considerable difficulty freeing up officers to attend training courses. An officer in the SRPD reported that training on interviewing survivors of sexual violence is not available unless it is hosted or paid for by another organization. He noted that, given the limited number of officers on the force, the SRPD cannot provide them all with training opportunities.<sup>96</sup>

At least a third of all Alaska Native villages that are not accessible by road have no law enforcement presence at all.

[Photo captions]

Lieutenant Michael White, Police Department, Bureau of Indian Affairs, Standing Rock Sioux Reservation. As of February 2006, the Standing Rock Police Department consisted of six or seven patrol officers and two investigators. Usually only two officers are on duty during the day and two or three in the evenings.

Barrow, Alaska. The vast expanses of Alaska combined with the low numbers of police officers in rural outposts and harsh weather present a major barrier to timely responses by law enforcement officials to reports of sexual assault.

Louisa Kakianaq Riley, a support worker with Arctic Women in Crisis, pictured with a family member. There is a severe shortage of sexual assault nurse examiners (SANEs) at hospitals and clinics throughout Alaska.

## **Chapter 6: Forensic examinations**

A support worker told Amnesty International how in 2004 she was called to the hospital to assist a Native American woman who had been beaten and raped by more than one perpetrator. She told Amnesty International "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."

Interview (identity withheld), 22 February 2006

An important part of any police investigation of sexual violence involves the collection of forensic evidence. Such evidence can be crucial for a successful prosecution. The evidence is gathered through a sexual assault forensic examination, sometimes using tools known as a "sexual assault evidence kit" or a "rape kit". The examination is performed by a health professional and involves the collection of physical evidence from a victim of sexual violence and an examination of any injuries that may have been sustained. Samples collected in the evidence kit include vaginal, anal and oral swabs, finger-nail clippings, clothing and hair.

"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."

National Protocol for Sexual Assault Medical Forensic Examinations<sup>97</sup>

All victims of sexual violence should be offered a forensic examination, regardless of whether or not they have decided to report the case to the police. In its National Protocol for Sexual Assault Medical Forensic Examinations, the US Department of Justice recommends that victims should be allowed to undergo the examination whether or not they formally report the crime. US Congress has previously sought to address the problem of victims of sexual violence being charged for forensic examinations by stipulating that in order to receive federal funds, states must certify victims will not be responsible for these costs and must designate an entity to pay.

Current practices need to be changed so that forensic examinations can be conducted in facilities on reservations or nearby instead of requiring women to travel hundreds of miles to a very unfamiliar facility where culturally appropriate support may not be available.

### **Law enforcement officials**

Law enforcement officers have a key role to play in ensuring that women who report sexual violence have prompt access to a sexual assault forensic examination.

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. A 2005 survey of IHS facilities found that in areas served by facilities that do not provide emergency services for rape victims, women can face a round trip of up to 150 miles in order to reach a facility where the forensic examination can be performed. Amnesty International received reports of confusion and disagreements over who should pay for the examination or transport costs – the IHS, other medical providers, law enforcement agencies or the survivors themselves.

Jami Rozell, a Cherokee woman living in Tahlequah, Oklahoma, told Amnesty International that she decided to seek prosecution five months after she was raped on state land in 2003. After attending a preliminary hearing, it was revealed that her sexual assault forensic examination — including 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 the evidence had been destroyed as a routine part of cleaning their evidence storage room because she had initially declined to press charges. Because the evidence had been destroyed, the District Attorney advised her to drop the complaint.

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. Amnesty International received several reports of mistakes made at this stage of the process, including improper storage and loss and destruction of the evidence before forensic analysis had been carried out. Undergoing a rape examination in the days following sexual violence is often a very difficult experience for women. Improper handling, loss or destruction of evidence, particularly evidence that may have been highly emotionally and physically challenging to provide, is unacceptable.

### **Health service providers**

An Alaska Native girl told Amnesty International 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.

Interview (identity withheld), 24 May 2005

It is essential that health service facilities have the staff, resources and expertise to ensure the accurate, sensitive and confidential collection of evidence in cases of sexual violence and the secure storage of this evidence until it is handed over to law enforcement officials. Health professionals also have a key role to play in providing survivors of sexual violence with any additional medical attention they may need, including treatment for any injuries and for sexually transmitted infections as well as access to emergency contraception.

The IHS is the principal and, in some areas sole, provider of health services for American Indian and Alaska Native peoples. Reports to Amnesty International indicate that many

IHS facilities lack clear protocols for treating victims of sexual violence and do not consistently provide survivors with a forensic sexual assault examination. IHS officials told Amnesty International that the agency had posted detailed protocols online.<sup>98</sup> However, these protocols are not mandatory and a 2005 survey of facilities found that 30 per cent of responding facilities did not have a protocol in place for emergency services in cases of sexual violence. Of the facilities that reported having a protocol, 56 per cent indicated that the protocol was posted and accessible to staff members.<sup>99</sup>

The online Indian Health Service Manual states that it is IHS policy to perform "only medically related care and treatment" in cases of rape.<sup>100</sup> This raises concerns that survivors of sexual violence will not have access to a full sexual assault forensic examination if evidence collection is not deemed "medically related".

IHS facilities are severely underfunded and lack resources and staffing.<sup>101</sup> This affects women's ability to obtain a properly and sensitively administered sexual assault forensic examination. A survey of IHS facilities found that 44 per cent lacked personnel trained to provide emergency services in the event of sexual violence.<sup>102</sup>

IHS facilities on the Standing Rock Sioux Reservation, including the hospital in Fort Yates, are reportedly under-resourced and staff face significant challenges in meeting the demand for services. Women who have been raped on the Standing Rock Sioux Reservation may need to travel for over an hour to get to the IHS hospital in Fort Yates. Once there, they may discover that there is no one on staff who is able to conduct a sexual assault forensic examination. In 2006 the hospital employed one woman doctor who undertook most of the examinations. According to a Fort Yates IHS health professional, "most male doctors don't feel trained and don't want to go to court. So they will send rape cases to Bismarck for examination there." According to the practitioner, only one-third of the women referred from Fort Yates on Standing Rock to the medical facility 80 miles away in Bismarck actually receive an examination. According to a support worker, some women do not make the journey to Bismarck and those that do may face lengthy delays and leave without an examination.

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 throughout its facilities.

Amnesty International's research suggests that there are no SANE programmes at IHS facilities in Oklahoma. Alaska faces a critical shortage of SANEs in hospitals and clinics and a high turnover of health professionals in IHS hospitals. One activist described the situation as a "revolving door of nurses and doctors" and noted that while local activists and service providers offer training to medical staff on issues surrounding sexual violence and Alaska Native culture, they were constantly called upon to train new doctors and nurses.<sup>103</sup>

The person who carries out the sexual assault forensic examination may later be called upon to testify in court during a prosecution. A high turnover of staff, many of whom are on short-term contracts, means that it may be difficult to locate the person who performed the examination when they are needed to provide testimony. One nurse told Amnesty International that the requirement to provide testimony in a potentially hostile court setting is one of the reasons why SANE nurses decide to leave this profession.

This suggests there is a need for the IHS to assess how to better support staff responsible for performing this important function.

### **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.

Although IHS services are free, if an American Indian or Alaska Native woman has to go to a non-IHS hospital for an examination, she may be charged by that facility. The IHS has a reimbursement policy, but it is complex and survivors may not be aware of it. In some cases the IHS has reportedly failed or refused to pay for forensic examinations at outside facilities. This can be a significant obstacle. Survivors of sexual violence in the southern portion of the Standing Rock Sioux Reservation are much closer to Moberly Regional Hospital than Fort Yates, but because the former is not part of the IHS it may require payment. 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.

In Alaska, Indigenous women living in rural areas may need to travel by plane to reach the hospital or clinic, which is expensive. While State Troopers and local police are responsible for covering these costs, they may not have the funding to do so. According to a forensic nurse examiner, one police department with just two officers has an annual budget that does not allow for them to send even one victim to Anchorage for a forensic examination. Activists and support workers reported that some women in rural Alaska have had to pay for their own transport. In addition to travel costs, there are also concerns about who pays for the actual examination. Although the law enforcement agency – either the local city police or State Troopers — is responsible for paying for the examinations, activists for Alaska Native survivors of sexual violence reported that law enforcement agencies frequently do not pay for forensic examinations for rape victims in rural Alaska and in some cases survivors from rural villages were required to pay between US\$700 and US\$800 for an examination.

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. In Oklahoma women must report the crime within 72 hours to be eligible for the Crime Victims Compensation Program. Sexual assault examinations are paid for by the Crime Victims Compensation Board upon application by the victim and approval by a District Attorney or Assistant District Attorney. In addition, the Oklahoma Administrative Code requires victims of crime to sign, prior to the examination, the Official Sexual Assault Examination Application provided by the Board.

Amnesty International 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.

There are no national figures on how many IHS hospitals have SANE programmes. However, officials indicated to Amnesty International that fewer than 10 had implemented such programmes.

[Photo cations]

J was told by the police department that her sexual assault forensic examination had been destroyed. Because of the lack of evidence available, the District Attorney advised her to drop the complaint after the preliminary hearing.

C's rape case was dismissed when she did not appear at a preliminary hearing; reportedly she was waiting outside the courtroom to be called. Attempts by tribal support workers to have the case reinstated have so far been denied by the District Attorney.

### ***Chapter 7: Barriers to prosecution***

"To a sexual predator, the failure to prosecute sex crimes against American Indian women is an invitation to prey with impunity."  
Dr David Lisak, Associate Professor of Psychology, University of Massachusetts, 29 September 2003

Sexual violence against Native American or Alaska Native women can be prosecuted by tribal, federal or state authorities, or a combination of these. The deciding factors are the location where the attack took place and whether the alleged perpetrator is American Indian or Alaska Native or not. The confusion which surrounds jurisdiction often causes delays in prosecuting suspected abuses. Sometimes it means that those responsible for sexual violence against Indigenous women escape justice altogether.

The lack of comprehensive and centralized data collection by tribal, state and federal agencies renders it impossible to obtain accurate information about prosecution rates.

However, survivors of sexual abuse, activists, support workers and officials reported that prosecutions for crimes of sexual violence against Indigenous women are rare in federal, state and tribal courts. For example, a health official told Amnesty International that she is not contacted again by police or prosecutors in approximately 90 per cent of the sexual assault forensic examinations that she performs, although she is available as an expert witness for trials. According to a state prosecutor in South Dakota, the confusing and complicated jurisdiction over crime on and around reservations in South Dakota means that some crimes just "fall through the cracks."<sup>104</sup>

"In Oklahoma, prosecution of sexual assault is last, least and left behind."  
Jennifer McLaughlin, Sexual Assault Specialist, Oklahoma Coalition  
Against Domestic Violence and Sexual Assault, September 2005

In Oklahoma, confusion around jurisdictional boundaries means it is not always immediately clear whether a case should be prosecuted by a tribal prosecutor, a federal prosecutor or a state prosecutor. Federal trials for crimes occurring on tribal land reportedly often begin with a mini-trial on jurisdiction. To further confuse and delay matters, courts may take years to determine whether the land in question is tribal or not.

### **Tribal courts**

"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<sup>105</sup>

Tribal courts face a number of limitations imposed at federal level that interfere with their ability to provide justice for Native American and Alaska Native survivors of sexual violence. For example, federal law prevents tribal courts from prosecuting non-Indian or non-Alaska Native offenders or imposing a custodial sentence of more than one year for each offence. The US Congress should recognize the concurrent jurisdiction of tribal authorities (meaning that tribal courts, and/or the state or federal courts, could try suspects) regardless of the Indigenous or other identity of the accused. Congress should also amend the Indian Civil Rights Act to recognize the authority of tribal courts to impose penalties proportionate to the offences they try.

Federal funding of tribal courts is inadequate. The US Commission on Civil Rights stated in 2003 that tribal courts have been underfunded for decades. Inadequate funding affects many aspects of the functioning of tribal courts, including the ability to proceed with prosecutions in a timely manner and the recruitment of victim witness co-ordinators.

Many tribes have criminal codes and statutes, but some do not cover all crimes of sexual violence or, like the FBI, do not define them in a manner which is consistent with international human rights law. For example, some may not clearly prohibit marital rape

or they may require victims to demonstrate that physical force was used in order to prove a lack of consent. Such laws were often modelled on state laws of the early to mid-1900s and do not necessarily reflect tribal attitudes and cultures. Today, while some tribal codes have been amended to cover all forms of sexual violence, and therefore to reflect women's human rights and the requirements of international human rights law, others have not. In some cases tribal authorities may lack the resources to revise their codes. In others they may not have revised their laws on sexual violence because of the perception that federal law precluded tribal courts from exercising jurisdiction over major crimes, including rape.

Tribal prosecutors reportedly sometimes decline to prosecute crimes of sexual violence because they expect that federal prosecutors will do so. However, Amnesty International's findings indicate that federal prosecutors frequently decline to pursue cases of sexual violence against Native American women. Although some tribal prosecutors may later choose to take up a case if it is declined for federal prosecution, this can result in delays of up to a year or more. Often the net result is that perpetrators are not prosecuted at either level.

For example, the tribal court and court of appeals of the Standing Rock Sioux Tribe, which adjudicate criminal and civil cases, are reportedly seriously underfunded. Sexual violence cases are tried under Standing Rock's rape statute. There are some aspects of the statute that are inconsistent with human rights standards. For example, it has a restrictive definition of rape that does not include penetration by fingers or objects and limits the custodial sentence for rape to six months. However, the statute does include what is commonly known as a rape shield law, which helps to ensure that a victim's prior sexual conduct cannot be used by the defence in rape trials.

In spite of federally imposed limitations, prosecutions for sexual violence do occur in tribal courts. For example, the Navajo Nation Department of Public Safety officers investigated 99 rape cases in 2002, resulting in 58 charges.<sup>106</sup> And although tribal courts are currently unable to impose more than a one-year sentence for each offence, some prosecuting authorities may charge suspected perpetrators with multiple offences, providing the possibility of imposing consecutive sentences in the event of conviction. Some tribal courts also work with criminal sanctions other than imprisonment, which can include restitution, community service and probation. Some also issue protection orders on behalf of survivors of domestic or sexual violence.

#### **Federal level**

In May 2004, a man raped a 16-year-old Native American girl in Grand Forks, North Dakota. Her mother told Amnesty International that, although there was a warrant for the suspect's arrest and although he had been in and out of jail on different charges, he was not arrested for the rape. She said that after the suspect called her daughter in spring 2006, she repeatedly called the state prosecutor, seeking action on her daughter's case. After numerous calls to the police by the mother, the perpetrator was eventually arrested in late 2006 and, following a plea bargain with prosecutors, received a five-year prison sentence, with three years

suspended, followed by five years' parole. The mother told Amnesty International of her concerns 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 FBI in Great Falls, about 125 miles away. She said that although FBI agents met with her daughter several times, she felt they were not serious about pursuing the case; they never brought the suspect in for questioning and did not search his home for evidence for over a month. When she questioned the FBI about the case, she was told: "This case isn't on the top of our list."

Amnesty International interview (identity withheld), 2006. Amnesty International's research suggests that there is a failure at federal level to pursue cases of sexual violence against Indigenous women. From 1 October 2002 to 30 September 2003, federal prosecutors declined to prosecute 60.3 per cent of the sexual violence cases filed. Only 27 of the 475 cases they declined were prosecuted in other courts.<sup>107</sup> Because data on sexual violence specifically from Indian Country is not compiled, this statistic includes all cases involving Indigenous and non-Native victims. However, these numbers provide some indication of the extent to which these crimes go unpunished. Significantly, between 2000 and 2003, the BIA was consistently among the investigating agencies with the highest percentage of cases declined by federal prosecutors.<sup>108</sup> It is not possible to establish how many of these cases submitted by the BIA involved sexual violence.

The Executive Office of US Attorneys provided Amnesty International with a list of some of the cases of sexual violence arising in Indian Country that had been prosecuted in recent years. Of the 84 cases provided, only 20 involved adult women. The remaining cases mostly involved children.<sup>109</sup> In the cases listed, prosecutions for sexual violence against adult Native American women took place in only eight of the 93 districts, and only Arizona and South Dakota saw more than two. No cases of adult sexual violence were prosecuted at federal level in Standing Rock or Oklahoma.

It appears that US prosecutors may be applying overly stringent criteria for selecting cases for prosecution. According to the Executive Office for US Attorneys, the rate of conviction in criminal cases filed by US Attorneys has been over 90 per cent since 2000.<sup>110</sup> While prosecutors should select cases based on their merit, Amnesty International is concerned that the Executive Office of US Attorneys may have created a climate in which prosecutors are not encouraged to pursue more challenging cases.

Prosecutors have broad discretion in deciding which cases to prosecute, and decisions not to prosecute are rarely reviewed. Some tribal nations have sought to specifically address decisions by federal authorities not to prosecute. For example, the Paiute Shoshone Tribe has indicated in its criminal code its intent to remedy the lack of federal prosecutions through its own prosecutions.<sup>111</sup> Federal government statistics show that there are few federal prosecutions of crimes in Indian Country,<sup>112</sup> and the Department of the Interior has recognized that this is a problem.<sup>113</sup>

At federal level, crimes on the Standing Rock Sioux Reservation may be prosecuted by

US Attorneys located in Aberdeen or Bismarck. One SRPD officer told Amnesty International that the vast majority of cases are referred to the federal authorities. However, as noted above, research suggests that US Attorneys decline to prosecute many sexual violence cases. A tribal official in Oklahoma commented that "a crime has to reach a certain level" before it will be prosecuted federally. According to an Assistant US Attorney, decisions not to prosecute are rare in cases of sexual violence, and are most likely to occur where there is a lack of physical evidence. However, a widespread perception exists among those working on sexual violence and other issues affecting Native Americans in Oklahoma that cases are frequently declined for prosecution and that federal prosecutors are unlikely to take a case unless a conviction is virtually guaranteed.

### **State level**

An Indigenous woman told Amnesty International how in 2001 she was beaten and raped by a former boyfriend. Her attacker went to the police and confessed that he had raped her three times and forced her to perform oral sex. As she was under 18 at the time of the rape, the crime constituted statutory rape under the law of the state where it took place. However, he was allowed to plead guilty to reduced charges and was sentenced to three years' imprisonment of which he reportedly served a year and three months. After the rape, the young woman reportedly engaged in increasingly self-destructive behaviour. Her mother told Amnesty International that she begged the state authorities to provide her with a counsellor, but to no avail. She said her daughter served a longer sentence for stealing and destroying a relative's car than her attacker had for rape.

Amnesty International interview (details withheld), 2005

In Alaska, state rather than federal prosecutors have jurisdiction to prosecute perpetrators of rape and sexual assault against Alaska Native women. Some prosecutors have specialized training in handling prosecutions of crimes of sexual violence. The Department of Law, which prosecutes cases of rape and sexual assault, does not keep statistics on how many cases of sexual violence are declined for prosecution.<sup>114</sup> However, it was reported to Amnesty International that in approximately 90 per cent of cases where women undergo a sexual assault forensic examination in Anchorage there is no prosecution.<sup>115</sup>

Generally, cases are prosecuted in state courts far away from the villages. For Alaska Native survivors of rape or sexual assault the distance to state courts presents challenges to a survivor's ability to communicate with prosecutors. Reports to Amnesty International also indicate that state courts may not always be adequately equipped to handle cases involving sexual violence against Alaska Native women because of language barriers as well as issues of cultural competency.

At state level, sexual violence crimes carried out in areas bordering the Standing Rock Sioux Reservation may be prosecuted by state attorneys in neighbouring counties in North or South Dakota. Many Native Americans from the Standing Rock Sioux

Reservation felt that cases in general involving Native American victims and non-Native perpetrators are not prosecuted vigorously by state courts in North and South Dakota. A District Attorney in a bordering county told Amnesty International that, in South Dakota, insufficient funds can affect the number of cases prosecuted. It would also appear that state attorneys receive little or no training on prosecuting sexual violence and on cultural competency.

### **Discrimination in federal and state prosecutions**

A Native American woman told Amnesty International that she was raped by a white man and woman on state land in August 2004. After having a non-alcoholic drink with the couple, she began to feel "funny," developed a headache and was very drowsy. She was taken to a motel room, where she passed out. When she came to, she was naked and the room was darkened. She said that over the next hour, the woman held her down while the man raped her vaginally and anally, and the man held her while the woman inserted a beer bottle into her vagina. Both suspects were charged with rape and the case was referred to a county prosecuting attorney. The victim/witness co-ordinator noted that the survivor was "very sensitive," and that it was "necessary to reassure her repeatedly that what happened was not her fault." However, the co-ordinator went on to note "I did not get the feeling that her reluctance was due to fear or trauma as in some cases I have worked in the past," concluding that she "may have been intoxicated." The survivor told Amnesty International that she does not drink but that her English is not fluent, which may have contributed to communication difficulties.

At a preliminary hearing, the case was dismissed. According to the prosecuting office, the survivor did not appear for the court hearing. However, the survivor told Amnesty International that she was at the court waiting in the corridor. When the judge asked whether the prosecutor wanted a continuance (adjournment) because the victim was not present, the prosecutor declined, reportedly following a discussion with the victim/witness co-ordinator who again noted that the survivor was, in her opinion, "intoxicated" when she spoke to her on the phone. The prosecuting attorney's office has strongly denied that they were aware of the survivor's Native American identity or that negative stereotyping could have influenced the decision not to pursue the case. However, the police report indicates that both suspects referred to the survivor as having a "dark" complexion and her forensic medical examination report lists her as Native American.

Attempts by tribal support workers to have the case reinstated have been denied by the District Attorney. The survivor said that after the case was dismissed her calls to the victim co-ordinator were not answered: "All I want is justice."

Amnesty International's research suggests that Indigenous survivors of sexual violence face prejudice and discrimination at all stages and levels of federal and state investigation

and prosecution. Amnesty International is concerned that this can influence decisions about whether to prosecute cases, how prosecutors present survivors during trials, how juries are selected and how they formulate their decisions. Another factor which can affect a victim's access to justice is Native American and Alaska Native representation on juries. Reportedly, jury pool selection at federal level does not include adequate representation of Native Americans.<sup>116</sup> Several law suits have been filed in both North and South Dakota challenging unequal jury selection.

In Alaska, Amnesty International was told that if a victim of sexual violence has been drinking alcohol, this can have a significant effect on trials, with juries often showing greater understanding for offenders who used alcohol than for victims who had been drinking.

Amnesty International learned of the case of a Native American woman who in 2003 accepted a ride home from two white men who raped and beat her and then threw her off a bridge. She sustained serious injuries, but survived. A support worker for victims of sexual violence described how, "People said she was asking for it because she was hitchhiking late at night." The case went to trial in a state court but the jurors were unable to agree on whether the suspects were guilty. A juror who was asked why replied: "She was just another drunk Indian." Because the jury failed to reach a verdict, the case was retried. The second trial resulted in a 60-year sentence for the primary perpetrator, who had reportedly previously raped at least four other women, and a 10-year sentence for the second perpetrator.<sup>117</sup>

### **Lack of communication**

"One [Native American] woman I work with told me that she reported her sexual assault two years ago and that she didn't know if the case had been investigated or prosecuted. I researched the case and discovered it had been declined, but no one had told the woman."

Support worker for Native American survivors of sexual violence (identity withheld), January 2006

Amnesty International received a number of reports that prosecutors at all levels fail to provide information consistently to victims of sexual violence about the progress of their cases. Survivors are frequently not informed whether their cases will proceed to trial or not. For example, one woman who was the victim of domestic violence and rape told Amnesty International that her abuser was imprisoned following a tribal prosecution, but she did not know what he was convicted of or the length of his sentence. She said she only found out he was in detention because a friend at the courthouse called her: "the [rape] case may go to federal court, but no one has let me know."

The impact on victims of not being informed of the status of their case adds to the anguish and pain they experience. Communication between federal and tribal prosecutors and law enforcement officials is important, particularly when federal prosecutors decline to prosecute a case. In 1996 the US Department of Justice acknowledged that

communications between federal prosecutors and Native American and Alaska Native peoples had been problematic and tribal officers had reported that a major concern was that tribal authorities were not informed of prosecutorial decisions.<sup>118</sup>

Possible prosecuting authorities for sexual violence against American Indian and Alaska Native women

Location	Suspect	Prosecutor
Indian Country	Non-Indian country or non-Alaska Native	Federal
Indian Country	American Indian or Alaska Native	Tribal and/ or Federal
Indian Country where Public Law 280 is applied or Alaska Native villages	Non-Indian or non-Alaska Native	State
Indian Country where Public Law 280 is applied or Alaska Native villages	American Indian or Alaska Native	Tribal and/or State
State land	Non-Indian or non-Alaska Native	State
State land	American Indian or Alaska Native	State

### **Sexual Assault Response Teams**

Sexual Assault Response Teams (SARTs) consist of law enforcement officers, sexual assault nurse examiners (SANEs), support workers and prosecutors. Their overall aim is to increase reporting of and convictions for sexual violence, as well as to support survivors through informed and appropriate responses. In a recent survey of SARTs across the USA, the National Sexual Violence Resource Center found that 17 of 258 respondents served tribal communities.<sup>119</sup> There are currently no SARTs working on or around the Standing Rock Sioux Reservation. While there were reports that relations and co-ordination between service providers and police have improved in some areas, Amnesty International's findings suggest that coordination between agencies and communication with survivors is inadequate. The extent to which SARTs operate in Oklahoma is unclear. However, none of the police departments Amnesty International interviewed in Oklahoma had formal policies regarding their relationships with those who could provide services on behalf of victims. Alaska has a statewide protocol for SARTs and there are currently nine SART programmes.<sup>120</sup> One of the main problems reported to Amnesty International is recruiting and retaining qualified staff for these positions.

[Photo captions]

"You don't know this, but today is your last day because I am going to kill you."

X endured years of escalating physical and sexual violence. Her former husband was charged in a state court with maiming and attempted murder, but the case never reached trial. He entered into a plea agreement with prosecution authorities and received approximately five years' probation and a restraining order for life.

"Sexual assault is very low on the priority list for law enforcement. Women's issues all around are low. It is hard to get them to pick up rape kits [forensic sexual assault examinations], let alone process and prosecute."

Mary Jo Cole, Help in Crisis, which provides support services and runs a shelter in Oklahoma for women who have been victims of sexual violence

"I asked our grand-mother spirits what I could do to get all 39 tribes on board to fight sexual assault in Oklahoma Indian Country, the vision of using the logos came to me in a dream..."

Pauline K Musgrove, Executive Director of Spirits of Hope

Georgia Little Shield, Executive Director of Pretty Bird Woman House, Standing Rock Sioux Reservation. The programme does not yet have a shelter facility or funding for direct services for its clients, but helps women to access services off the Reservation.

[End of photo captions]

### ***Chapter 8: Support services for survivors***

"She was terrified, grabbing my hand. She was so humiliated. She was clinging to me like she was drowning."

Support worker (identity withheld) on the experience of sitting through a rape examination with a Native American woman at a state hospital, February 2006

Sexual violence can have a profound impact on women's health, particularly their sexual and reproductive health, and on the wellbeing and security of their families and communities. Survivors have the right to the highest attainable standard of health and this goes beyond addressing immediate physical suffering.

Ongoing care, including culturally appropriate support services such as access to traditional healers, support groups or peer support and counselling, are essential in alleviating the trauma which survivors may experience. Such longer-term support can also be crucial in enabling survivors to navigate the justice system.

#### **Access to health services**

Amnesty International's research suggests that services for survivors of sexual violence — such as testing and prophylaxis for sexually transmitted infections including HIV, pregnancy testing, emergency contraception and culturally appropriate support services

— are inadequate. For example, emergency contraception is often overlooked by health service providers in general; the US Department of Justice's National Protocol for Sexual Assault Forensic Examinations does not explicitly mention the need to provide emergency contraception. IHS policy does provide for emergency contraception and abortions in cases of rape and incest, in keeping with federal law. However, the Native American Women's Health Resource Center has documented failures in IHS provision of emergency contraception to rape survivors as well as failures to comply with IHS official abortion policy.

"[The USA's] lengthy history of failing to keep its promises to Native Americans includes the failure of Congress to provide the resources necessary to create and maintain an effective health care system for Native Americans."

US Commission on Civil Rights, *Broken Promises: Evaluating the Native American Health Care System*, September 2004

A report by the US Commission on Civil Rights in 2003 found federal spending on health services for Indigenous people via the IHS was far below spending on all other groups. It reported that national per capita health expenditure for the average person in the USA for that year would be US\$5,775, while the IHS would spend a projected average of US\$1,900 per person for all medical care. The study noted:

"This disparity in spending is amplified by the poorer health conditions of many in the Native American community and represents a direct affront to the legal and moral obligation the nation has to improve Indian health status."

US Commission on Civil Rights, *A Quiet Crisis: Federal Funding and Unmet*

*Needs in Indian Country*, July 2003

Significant problems in accessing IHS services have been documented by the General Accounting Office and the US Commission on Civil Rights. These include inadequate levels of service, understaffing, high turnover of staff and unfilled vacancies.<sup>121</sup> The average IHS facility is 40 years old and facilities are often cramped and out of date. Survivors of sexual violence also reported a lack of accessible and culturally appropriate crisis advocacy services.

There were reports that health workers did not respond appropriately both in terms of cultural and gender requirements when dealing with Indigenous survivors of sexual violence. This can discourage some women from seeking medical care and cause additional discomfort or distress to those women who do. According to the US Commission on Civil Rights, "there is a concern that health care providers' cultural insensitivity and the lack of acceptance of traditional healing practices and traditional medicine may create barriers to receiving care."<sup>122</sup>

More than 50 per cent of Native American and Alaska Native peoples in the USA live in urban areas. According to a study by the Seattle Indian Health Board's Urban Indian Health Institute, those living in urban areas suffer from poorer health than the general US population.<sup>123</sup> Most urban-based Indigenous women living far from reservations do not

have access to IHS facilities. The IHS helps to pay for selected health services provided at non-IHS facilities and some cities have benefited from the small percentage of IHS services allocated to urban areas. While there are also concerns about the quality and sensitivity of care available at IHS facilities, state and local facilities are still less likely to be culturally appropriate and familiar with traditional forms of care.

### **Indigenous support initiatives**

Amnesty International received a number of reports of shelters which failed to provide the culturally appropriate supportive environment needed. For example, Amnesty International was told a shelter located between several reservations requires a signed statement from the IHS that Native American women and their children have been checked for lice and are "clean" upon arriving at the shelter. One Native American survivor reported that she had been required to undergo a lice check with the IHS before being admitted to the shelter, but that the shelter had not required this of non-Native residents. Some 70 per cent of women using this shelter are Native American. A support worker told Amnesty International that women she had referred to the shelter were upset by the way they felt they were treated: "Women would reach out one time and then never come back."

Programmes run by Native American and Alaska Native women are vital in ensuring the protection and long-term support of Indigenous women who have experienced sexual violence. However, lack of funding is a widespread problem. Programmes run by Indigenous women often operate with a mix of federal, state and tribal funds, as well as private donations. However, such funding is often limited. For example, the Emmonak Women's Shelter in the Lower Yukon Delta of Alaska is a long-standing shelter and the only Alaska Native run provision in a village setting. In 2005, the state of Alaska cut its funding for the shelter.

An important achievement in the provision of culturally appropriate support services to Native American and Alaska Native women has been the formation of 16 tribal coalitions working against domestic and sexual violence across the USA. The specific activities of the coalitions vary, but often include the provision of training to tribal governments, law enforcement officials, prosecutors, health professionals, support workers and activists. At national level, organizations such as Sacred Circle and Clan Star provide national leadership and policy guidance for Native women's organizations and shelters.

In 2005, the non-governmental organization South Dakota Coalition against Domestic Violence and Sexual Assault contributed to the founding of Pretty Bird Woman House, a domestic violence programme on the Standing Rock Sioux Reservation. The programme, which is named after Ivy Archambault (Pretty Bird Woman), a Standing Rock woman who was raped and murdered in 2001, does not yet have a shelter facility or funding for direct services for its clients, but helps women to access services off the Reservation.

Given the rates of violence against women on the Standing Rock Sioux Reservation, it is imperative that the Reservation has its own shelter. For women in or near the southern part of the Reservation, there are two shelters available: the Sacred Heart Shelter on the

Cheyenne River Reservation and Bridges Against Domestic Violence (BADV), which is located in Mobridge, South Dakota. Up to 85 per cent of women using these shelters are Native American and mainly come from the Standing Rock Sioux Reservation. In March 2005, BADV held a conference entitled "Decide to End Sexual Violence." There were reports that following the conference, women on the Reservation showed increased confidence in reporting. Amnesty International believes that public outreach and education such as that undertaken by BADV is an important element in creating an environment in which survivors feel able to report sexual violence.

"In this woman's culture touching was not done freely. I watched as a counselor patted this woman continually on the back and the woman grew more tense and uncomfortable."

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

In Oklahoma access to support services for Native American women varies throughout the state. There do not appear to be any tribally based services exclusively devoted to assisting survivors of sexual violence. However, a number of tribes operate domestic or family violence programmes which may provide services for survivors of sexual violence. Most programmes are small and do not have the capacity to pursue outreach and prevention initiatives. Lack of funding is a serious concern. For example, a programme based in northern Oklahoma which served approximately 150 Native American women each year, was reportedly shut down after the federal authorities failed to renew its grant.

In 1999, in response to the lack of services for Native American women, activists and support workers formed the Oklahoma Native American Domestic Violence Coalition, now known as the Spirits of Hope Coalition. This federally funded Coalition works with tribal services and trains activists and support workers across the state, working also with individual tribes to improve their services. The Coalition undertakes outreach and education on addressing sexual violence to law enforcement officials, health professionals and officials working in the justice system. Many non-Native service providers have reportedly requested training on cultural appropriateness.

"Here in Alaska, we're so distant from each other. We're off the road system and our highway is the river. It is really important to have programs like this in the villages because a lot of our Native people don't like to leave their homes."

Lenora Hootch, Director, Emmonak Women's Shelter, Office for Victims of Crime, US Department of Justice, Promising Practices in Indian Country, 2004

In Alaska, the availability of support services and shelters for Alaska Native women varies throughout the state and is particularly lacking in rural villages. Culturally appropriate services are often difficult to access. A number of organizations reported that they faced problems maintaining their services as a result of funding cuts. In addition, the process for obtaining federal funding is complex. Although the Violence Against Women Act (2005) should increase funding and streamline the process for seeking funds, it is too

early to assess its impact.

In 2005, more than 200 US medical organizations, religious leaders, women's health activists and service providers asked the US Department of Justice to correct its guidelines for treating people who have been raped because they fail to mention emergency contraception.

British Medical Journal, 15 January 2005 [www.bmj.com/cgi/content/full/330/7483/112](http://www.bmj.com/cgi/content/full/330/7483/112)

"Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines."

Article 25(2) ILO Convention No. 169

The Sixteen Coalitions: Alaska Native Women's Coalition; American Indians Against Abuse; Arizona Native American Coalition Against Family Violence; Coalition to Stop Violence Against Native Women; Community Resource Alliance; Great Basin Native Women's Coalition Against Domestic Violence; Indian Country Coalition Against Domestic Violence and Sexual Assault; Kene Mewu Family Healing Center, Inc.; Minnesota Indian Women's Sexual Assault Coalition; Niwongwh xw E:na:wh Stop the Violence Coalition; Oklahoma Native American Domestic Violence Coalition; Sicangu Coalition Against Sexual Violence; Southwest Indigenous Women's Coalition; Strong Hearted Women's Coalition; We, Asdzani Coalition; Yupik Women's Coalition.

[Photo captions]

Poster produced by the Spirits of Hope coalition. Spirits of Hope provides training to tribal and non-tribal programmes on domestic violence, sexual assault and stalking in Oklahoma Indian Country. The coalition also provides resources and referral services. Mother and child by Huzo Paddlety, Kiowa Artist

### **Violence Against Women Act**

Campaigning by tribal governments and Native American and Alaska Native activists and organizations – including Sacred Circle, Clan Star, National Congress of American Indians Task Force on Violence Against Women, and Mending the Sacred Hoop – has encouraged the federal government to take important steps to address sexual violence against Native American and Alaska Native women. Perhaps the most significant federal initiative to date is the 2005 reauthorization of the Violence Against Women Act. The Act, first passed by Congress in 1994, is a collection of funding programmes, initiatives and actions designed to improve criminal justice and community-based responses to violence against women, including sexual violence, in the USA.<sup>124</sup> The expanded and reauthorized 2005 version of the Act contains, for the first time, a specific Tribal Title (Title IX), which seeks to improve safety and justice for Native American and Alaska Native women. The Tribal Title includes provisions for annual consultation sessions

between the US Department of Justice and tribal governments regarding distribution of tribal funds;<sup>125</sup> authorization for Indian law enforcement agencies to access national criminal information databases; and the creation of a national tribal sex offender registry and a national registry containing protection orders issued by Indian tribes. It also 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 Department of Health and Human Services is also directed to conduct a study on the number of cases involving violence against Native American and Alaska Native women and the cost of providing related health services. The reauthorized Violence Against Women Act mandates that 10 per cent of funds allocated by the STOP (Services, Training, Officers and Prosecutors) grant programme be set aside for tribal programmes. An additional 10 per cent of funding for direct services for victims of sexual violence is set aside for state, territorial and tribal coalitions.<sup>126</sup> The method by which tribal nations apply for funding is to be streamlined. In addition, the 2005 reauthorization of the Act allows for increased punishment through federal prosecutions for repeat domestic violence offenders who have at least two tribal convictions. While these measures are welcome, as of January 2007, President George W Bush had not requested any funding for new provisions of the reauthorized Violence Against Women Act. Inadequate funding, therefore, threatens to detract substantially from its effectiveness. Such an outcome would be emblematic of federal efforts to address sexual violence against Native American and Alaska Native women, which has tended to be inconsistent in their funding levels and lacking in comprehensive and uniform solutions.

### ***Chapter 9: Recommendations***

This report highlights how the high rate of sexual violence against Indigenous women in the USA is directly linked to the failure of the authorities to bring those responsible for these crimes to justice. The report details some of the causes of this impunity and sets out steps which need to be taken to ensure justice for survivors.

The legal relationship that exists between the US federal government and tribes (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. 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.

Addressing sexual violence against Native American and Alaska Native women requires a holistic and integrated approach. It involves challenging discrimination on the grounds of gender and Indigenous identity in society at large and in the institutions charged with upholding and delivering justice.

Amnesty International calls on the authorities to fulfil their obligation to investigate, prosecute and punish these abuses and to promote the fundamental human rights of

Indigenous women. In doing so it draws on the legacy of groundbreaking work by American Indian and Alaska Native women in demanding justice and respect.

**Develop comprehensive plans of action to stop violence against Indigenous women**

1 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.

2 Tribal, state and federal authorities should, in consultation with Indigenous peoples, develop the necessary methodologies to obtain comprehensive and accurate data on sexual violence against Indigenous women. Such data should include the Indigenous or other status of victims and perpetrators and the localities where offences take place; the number of cases referred for prosecution; and the number declined by prosecutors and the reasons why.

3 All appropriate agencies – health service providers, law enforcement agencies, prosecutors and support services assisting survivors of sexual violence – should participate in the formation and implementation of Sexual Assault Response Teams.

4 Prosecutors should vigorously prosecute cases of sexual violence against Indigenous women, and should be sufficiently resourced to ensure that the cases are treated with the appropriate priority and processed without undue delay. Any decision not to proceed with a case, together with the rationale for the decision, should be promptly communicated to the survivor of sexual violence and any other prosecutor with jurisdiction.

5 The federal government should take steps – including by providing sufficient funding – to ensure the full implementation of the 2005 reauthorization of the Violence Against Women Act, particularly Title IX (Tribal Programs).

**End discrimination on the basis of Indigenous status and gender**

6 Federal and state governments should take effective measures, in consultation and co-operation with Native American and Alaska Native peoples, to combat prejudice and eliminate stereotyping of and discrimination against Indigenous peoples.

7 All authorities should ensure that a gender perspective is fully integrated into all programmes of action to address discrimination against Indigenous peoples and that steps are taken to deal with the ways in which such discrimination impacts on Indigenous women.

8 Federal authorities should work with Indigenous women's organizations in the USA to articulate an Indigenous concept of gender-based violence and Indigenous anti-violence strategies in order to more rigorously respect, protect and fulfil the rights of Native American and Alaska Native women.

9 Federal and state authorities, in consultation and collaboration with Indigenous tribal governments, should strengthen and expand public education programmes that acknowledge and address the history of dispossession, marginalization and forced assimilation of Indigenous peoples and their unique political and legal relationship with the US government.

**Ensure accountability**

10 All law enforcement bodies, prosecutors, courts and health service providers should develop policies and protocols which are available to the public. They should maintain

systems of accountability, including transparent grievance systems, through which Indigenous women survivors of sexual violence can file complaints of inappropriate conduct. These bodies should also keep detailed statistics on complaints received, indicating the nature of complaints and the gender and Indigenous status of complainants. 11 Independent and representative bodies should be established to ensure that complaints are properly investigated. Law enforcement officials found to have failed to act on reports of sexual violence or to have carried out biased or inadequate investigations should be held accountable and appropriate disciplinary or other measures taken against them. 12 All law enforcement agencies, prosecutors and courts should maintain clear and widely published policies addressing procedures for tackling conflicts of interest.

### **Increase federal funding**

13 The federal government should ensure that procedures for obtaining federal funding are not unduly complicated and that the provision of essential services for victims of sexual violence is not adversely affected or delayed by the requirements of federal grant cycles.

14 The federal government should permanently increase funding for law enforcement coverage in Indian Country and Alaska Native villages, including in Public Law 280 states.

15 The federal government should permanently increase funding for the Indian Health Service to improve and further develop facilities and services, and increase permanent staffing in both urban and rural areas in order to ensure adequate levels of medical attention.

### **End impunity for abusers**

16 Law enforcement authorities should establish effective processes for responding to reports of sexual violence so that victims, relatives and witnesses can make reports without fear of reprisal and in full confidence that they will be taken seriously and that the authorities will act properly and impartially. Investigating and prosecuting authorities should take into account the particular difficulties faced by Indigenous women victims of alleged sexual violence in pursuing their cases.

17 Law enforcement agencies should recognize in policy and practice that all police officers have the authority to take action in response to reports of sexual violence, including rape, within their jurisdiction and to apprehend the alleged perpetrators in order to transfer them to the appropriate authorities for investigation and prosecution. In particular, where sexual violence is committed in Indian Country and in Alaska Native villages, tribal law enforcement officials must be recognized as having the authority to apprehend both Native and non-Native suspects.

18 All law enforcement agencies should co-operate with, and expect co-operation from, neighbouring law enforcement bodies on the basis of mutual respect and genuine collaboration to ensure protection of survivors and those at risk of sexual violence, including rape, and to ensure that perpetrators are brought to justice.

19 Throughout all stages of investigation, prosecution and trial, the authorities should ensure that translation and interpreting services are available for those who need them.

20 In states where criminal jurisdiction on tribal land has been transferred from federal to state authorities (including Public Law 280 states), Congress should ensure that tribal

governments, like state governments, have the option to transfer jurisdiction back from the state to the federal authorities.

### **Ensure appropriate, effective policing**

21 Federal and state authorities must take urgent steps to make available adequate resources to police forces in Indian Country and Alaska Native villages. Particular attention should be paid to improving coverage in rural areas with poor transport and communications infrastructures.

22 Federal authorities should ensure that tribal police forces have access to federal funding to enable them to recruit, train, equip and retain sufficient law enforcement officers to provide adequate law enforcement coverage which is responsive to the needs of the Indigenous peoples they serve.

23 Federal, state and tribal authorities should work to achieve adequate representation of both men and women, including Indigenous women and men, in law enforcement agencies and that as far as possible duty rosters and deployment should be arranged to ensure that female law enforcement officers are available in all areas and at most times.

24 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 abuse and that thorough investigations are undertaken.

25 All law enforcement agencies should work closely with Indigenous women's organizations to develop and implement appropriate and effective investigation protocols for dealing with cases of sexual violence, including complying with any requests from survivors of sexual violence to have their statements taken by a woman law enforcement official.

26 All law enforcement agencies should ensure that law enforcement officers complete thorough and detailed written reports of investigations and provide them to prosecuting authorities.

27 Law enforcement agencies should establish and implement clear policies and practices for timely and regular provision of information to all victims of sexual violence, including whether a case is being referred for prosecution, which prosecuting authority is undertaking the case, and an explanation of any decision not to proceed with a case.

28 Federal, state and tribal law enforcement agencies must be provided with adequate resources and clear guidance to ensure that all officials have sufficient knowledge and appreciation of local Indigenous cultures, values and histories in order to understand and establish trust with the peoples they serve. Human rights training programmes for police and other officials should include training on sexual violence against women from the perspective of Indigenous women. Towards this end, training in cultural norms and practices for police officers should be subject to independent evaluation and devised in collaboration with Indigenous peoples. Training should also include the role of policing in implementing international human rights standards in practice.

### **Ensure access to sexual assault forensic examinations**

29 All women who report to a health service provider or law enforcement official that they have been sexually assaulted should be offered an adequate and timely sexual assault forensic examination, without charge to the survivor, regardless of whether at that point they have decided they wish the case to be investigated by law enforcement bodies

and referred for prosecution.

30 Health service providers and law enforcement agencies must ensure that all women reporting sexual violence to them are provided with transport to Indian Health Service or other appropriate health facilities where they can receive a sexual assault forensic examination and any medical attention they may need. Transport should be provided at no cost to the victim.

31 Sexual assault forensic examinations should be conducted promptly by suitably trained health professionals in a manner which is sensitive to the needs and wishes of the victim. For example, requests for a woman health worker to perform the test should be complied with. Such examinations should be carried out at no cost to the victim.

32 Law enforcement agencies and health service providers should establish and implement appropriate procedures for handling and storing evidence from sexual assault forensic examinations. All such evidence must be stored in a manner preserving its integrity, regardless of whether the victim has made a decision about reporting to police.

33 Under no circumstances should such evidence be discarded before the statute of limitations expires or without the express and informed consent of the survivor.

### **Provide support services for survivors**

34 All governments should support and ensure adequate funding for support services, including shelters. All shelters and rape crisis centres should provide culturally appropriate, sensitive and non-discriminatory support to Indigenous women and ensure that their staff are trained to provide services to this standard.

35 The Indian Health Service and other health service providers need to make available to survivors of sexual violence gender-specific, culturally appropriate responses, including guaranteed access to sexual and reproductive health services and supplies, planned and administered in co-operation with Indigenous peoples, taking into account their social and cultural norms, traditional preventive care, healing practices and medicines, and their economic and geographic conditions.

36 The Indian Health Service and other health service providers should develop standardized policies and protocols, which are made publicly available and posted within health facilities in view of the public, on responding to reports of sexual violence. Such policies and protocols should require staff to provide full and comprehensive information on and access to measures such as emergency contraception, testing and treatment for sexually transmitted infections, and should emphasize the need for confidentiality.

37 The Indian Health Service and other health service providers, and specifically all nurses, doctors and support staff should be trained in sexual assault protocols, including screening for and identifying sexual violence, and in culturally appropriate skills to deal sensitively with survivors of sexual violence.

38 The Indian Health Service and other health service providers should ensure that Indigenous women who are victims of or at risk of sexual violence are given information about and have effective access to support services such as shelters and ongoing counselling or peer-based support.

39 The Indian Health Service and other health service providers should prioritize the creation of sexual assault nurse examiner (SANE) programmes and explore other ways of addressing the shortage and retention of qualified SANEs.

### **Ensure that prosecution and judicial practices deliver justice**

40 The US Congress should recognize the concurrent jurisdiction of tribal authorities over all crimes committed on tribal land, regardless of the Indigenous identity of the accused, including by legislatively overriding the US Supreme Court's decision in *Oliphant v Suquamish*.

41 The US Congress should amend the Indian Civil Rights Act to recognize the authority of tribal courts to impose penalties proportionate to the offences within the context of a trial and sentencing process that conforms to international fair trial standards.

42 The US government should, in co-operation with Indigenous legal experts, ensure that national judicial systems take account of the human rights of Indigenous peoples, and in particular of Indigenous women, and incorporate traditional Indigenous justice processes into national judicial systems when dealing with offences committed by Native Americans and Alaska Natives.

43 Federal authorities should make available the necessary funding and resources to tribal governments to develop and maintain tribal court and legal systems which comply with international human rights standards, including with regard to the right to a remedy, to non-discrimination and to fair trials, while also reflecting the cultural and social norms of their peoples.

44 Prosecutors in the different jurisdictions should vigorously prosecute cases of sexual violence against Indigenous women, and should be sufficiently resourced to ensure that the cases are treated with the appropriate priority and dealt with without undue delay.

45 Prosecutors in the different jurisdictions should establish clear policies and practices regarding timely and regular provision of information to victims of sexual violence, including whether a prosecution is being undertaken, details on any negotiations related to sentencing and on any decisions not to proceed with a case.

46 Prosecutors in the different jurisdictions should provide each other with information on the status of cases of sexual violence against Native American and Alaska Native women on a regular basis. When prosecutors decline to prosecute cases of sexual violence against Native American or Alaska Native women, other courts and prosecutors with jurisdiction should be notified promptly in writing, with reasons why this decision was made.

47 All judicial authorities, in collaboration with Indigenous women's organizations, should establish and implement training programmes to ensure that court and prosecution officials are competent to deal with sexual and domestic violence and Indigenous issues.

48 Federal and state prosecution and judicial authorities should take steps to ensure appropriate representation of Indigenous peoples, in particular women, in agencies responsible for the administration of justice in and around Indian Country and Alaska Native villages.

### **Integrate a human rights perspective**

49 The US government should ratify without delay the following international human rights treaties:

the Convention on the Elimination of All Forms of Discrimination against Women;

the International Covenant on Economic, Social and Cultural Rights;

the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará");

the ILO Convention No.169, concerning Indigenous and Tribal Peoples in Independent Countries; and

It should also implement the provisions of the UN Declaration on the Rights of Indigenous Peoples adopted in June 2006 by the UN Human Rights Council.

50 The US government should include information on the individual and collective rights of Indigenous peoples and specifically on sexual violence against Indigenous women in their reports to UN treaty bodies and should implement their recommendations.

51 Federal, state and tribal authorities should ensure that they advance public policies to eliminate all forms of discrimination against Indigenous women by endorsing and implementing international human rights standards on violence against women.

52 The federal government should invite relevant UN special procedures – in particular the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and the Special Rapporteur on violence against women, its causes and consequences – and the Inter-American Commission on Human Rights Special Rapporteur on the Rights of Women to visit the country in order to examine patterns of violence against Native American and Alaska Native women in the USA and provide detailed recommendations on how to address the issues raised.

53 Federal, state and tribal legislation and judicial systems should uphold international human rights standards at all levels, including in the definition of crimes; the response to and vigorous investigation of reports of rape or other acts of sexual violence; the prosecution of those suspected of such crimes in trials that conform to international fair trial standards; the appropriate punishment of those found guilty; and the guarantee to survivors of full reparations, including restitution, satisfaction, rehabilitation and guarantees of non-repetition.

### ***Endnotes***

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- 13 Because several studies were based on telephone interviews, it is probable that urban Native American and Alaska Native residents were over-represented in the pool of participants as they were more likely to have access to telephones than are Native American and Alaska Native people living on reservations or in rural areas.
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- 15 See for example, Steven W Perry, American Indians and Crime – A BJS Statistical Profile 1992–2002, Bureau of Justice Statistics, US Department of Justice, Office of Justice Programs, December 2004, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/aic02.pdf>, visited 30 November 2006 and Department of Justice Table 42: Percent distribution of single-offender victimizations, by type of crime and perceived race of offender, Bureau of Justice Statistics, US Department of Justice, 2004, available at: <http://www.ojp.usdoj.gov/bjs/pub/pdf/cvus/current/cv0442.pdf>.
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32 See Article 7 of the International Covenant on Civil and Political Rights, and Article 2(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

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50 Testimony of Mary T Wynne, Chief Judge, Confederated Tribes of the Colville Reservation, Nespelem, Washington before the United States Senate Committee on Indian Affairs (1998), available at: [http://indian.senate.gov/1998hrsgs/0407\\_mw.htm](http://indian.senate.gov/1998hrsgs/0407_mw.htm), visited 24 August 2006.

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excluded from the application of the statute in the first place, a number of tribes (including all tribes in New York and several in the north-east and Texas) are subject to state criminal jurisdiction as a result of special congressional acts, outside the framework of Public Law 280. (Correspondence with Carole Goldberg, Professor of Law, UCLA, 18 December 2006.) Furthermore, there are some tribes in Public Law 280 states that were excluded from application of the statute.

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62 Tribal law enforcement officers may share authority to investigate in such cases if they have been federally commissioned.

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- 115 Interview with Alaska health services providers (identities withheld), 27 May 2005.
- 116 See Kevin K Washburn, "American Indians, Crime and the Law", 104 Mich. L. Rev. 709, 752-755, 2006.
- 117 Based on interviews with Anne Lowrance and Renee Brewer, May 2005 and with a District Attorney (details withheld), and "Trial Starts in Rape Case", The Daily Oklahoman, 16 September 2004.
- 118 Department of Justice, Criminal Justice in Indian Country, Audit Report 96-16 (9/96), available at: <http://www.usdoj.gov/oig/reports/plus/a9616/index.htm>.
- 119 National Sexual Violence Resource Center, Report on the National Needs Assessment of Sexual Assault Response Teams, 1 March 2006, available at: <http://www.nsvrc.org/resources/strategies/OVC%20Approved%20Needs%20Assessment%20Report.pdf>, visited 23 June 2006.
- 120 SART programmes are located in Anchorage, Bethel, Dillingham, Fairbanks, Homer, Kenai, Kodiak, Kotzebue and Nome.
- 121 According to IHS officials, the vacancy rate is about 10 per cent for physicians and about 14 per cent for nurses.
- 122 US Commission on Civil Rights, Broken Promises: Evaluating the Native American Health Care System, 2004.
- 123 Urban Indian Health Institute, "New Report Shows Impact of Health Disparities on Urban American Indians and Alaska Natives", available at: <http://www.uihi.org/news/newsrelease.asp>, visited 27 May 2006.
- 124 For more information about the Violence Against Women Act, see the National Task Force to End Sexual Assault and Domestic Violence Against Women at <http://www.vawa2005.org>, visited 30 November 2006.
- 125 The first meeting took place on 19 September 2006 and was the first ever government to government consultation to discuss safety for Native American women. Jodi Rave, "Tribal Leaders Making Strides to Protect Women", The Missoulian, 1

October 2006.

126 The 2005 Violence Against Women Act authorizes US\$50 million per year (2007-2011) for victims' services to be distributed by the US Department of Justice. Funds from this grant programme are used to support direct services for victims of sexual assault and resources for tribal sexual assault coalitions. Violence Against Women Act, Title 2, Public Law No. 109-162 (2005).

[Map on inside back cover]

American Indians and Alaska Natives in Alaska  
Adapted from the US Census Bureau map 2000

[End of inside back cover map]

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## **MAZE OF INJUSTICE**

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

More than one in three Native American or Alaska Native women will be raped at some point in their lives. Most do not seek justice because they know they will be met with inaction or indifference. As one support worker said, "Women don't report because it doesn't make a difference. Why report when you are just going to be revictimized?" Sexual violence against women is not only a criminal or social issue, it is a human rights abuse. This report unravels some of the reasons why Indigenous women in the USA are at such risk of sexual violence and why survivors are so frequently denied justice. Chronic under-resourcing of law enforcement and health services, confusion over jurisdiction, erosion of tribal authority, discrimination in law and practice, and indifference – all these factors play a part. None of this is inevitable or irreversible. The voices of Indigenous women throughout this report send a message of courage and hope that change can and will happen.

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