

THE NEVER-ENDING MAZE

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

Q&A



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More than half of all American Indian and Alaska Native women have experienced sexual violence in their lifetime; one in three have experienced rape. Since Amnesty International first reported on this issue in 2007, rates of violence against Indigenous women have not significantly changed, and the US government continues to fail to adequately prevent and respond to such violence.

This report details some of the factors that contribute the high rates of sexual violence against Indigenous women, and the barriers to justice that they continue to face. A complex jurisdictional maze, under-resourcing of law enforcement and medical services, and the inadequate response of justice systems to crimes of sexual violence are the primary obstacles survivors must navigate. This epidemic of sexual violence has been exacerbated by the US government's steady erosion of tribal authority. Sexual violence against Indigenous women violates a multitude of human rights, but it is not inevitable. The voices of Indigenous advocates throughout this report send a message of courage and hope that change can and will happen.

What are the main findings of the report?

American Indian and Alaska Native (AI/AN) women face some of the highest rates of sexual violence in the country: 56.1% of AI/AN women have experienced sexual violence. Nearly 1 in 3 AI/AN women (29.5%) have experienced rape in their lifetime, and they are over twice as likely to be raped than non-Hispanic white women in the USA. The U.S. government has failed to protect Indigenous women from sexual violence by:

- Limiting tribes' ability to prosecute perpetrators of sexual violence and underfunding federal and state prosecutorial efforts.
- Creating a jurisdictional maze that hampers tribes' efforts to respond to sexual violence;
- Under-resourcing tribal law enforcement and inadequately training state law enforcement officers who work in tribal communities;
- Severely under-funding the Indian Health Service (IHS) and not providing adequate access to post-rape care for survivors; and



Why was an update needed from the 2007 Maze report?

Since the 2007 release of Maze of Injustice report, there has been no significant change in rates of sexual violence against Indigenous women in the USA. In the past 15 years the US government has passed piecemeal legislation with the intention of reducing rates of violence and increasing protections for Indigenous women. While this legislation has had limited success, it has not alleviated the epidemic of sexual violence against Indigenous women in the United States. Additionally, Amnesty International seeks to amplify the voices of Indigenous advocates working to end this epidemic of violence in Indian country; their knowledge and work have been central to the creation of this update.

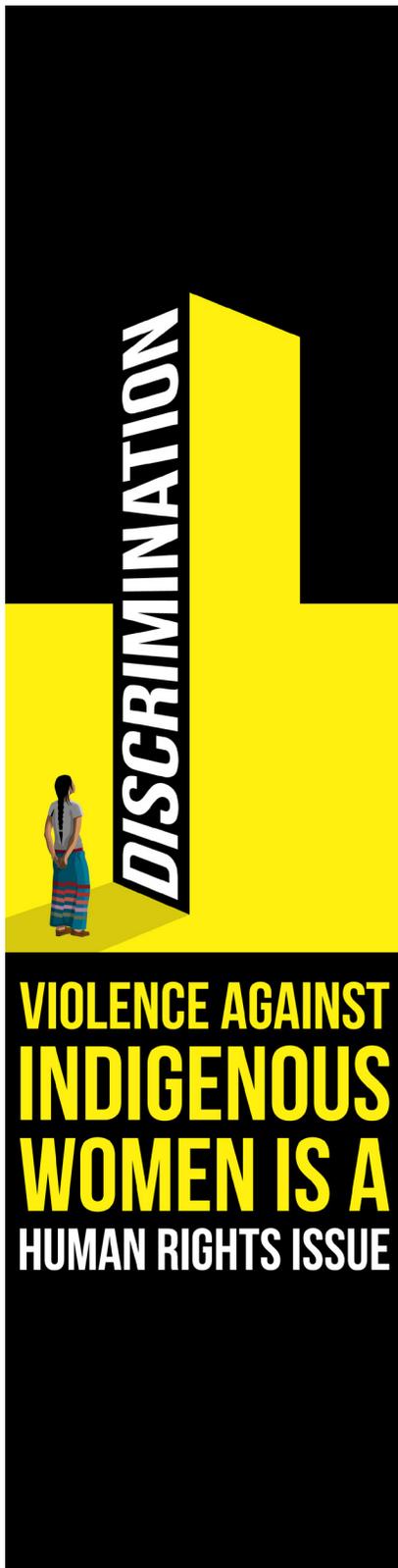


CONGRESS HAS PRODUCED CENTURIES OF CONTRADICTORY LAWS AND POLICIES THAT ARE IN DIRE NEED OF COMPLETE REFORM

Why is it so difficult to find comprehensive data on the rates of sexual violence against AI/AN women?

The US government fails to consistently collect such data. Data on sexual violence against AI/AN women is scattered across reports created by different government agencies, if it is collected at all, which makes it incredibly difficult to determine the severity of this issue and thus fully address the problem. The Department of Justice itself notes that “crime data in Indian country remains unreliable and incomplete”.¹ Non-governmental organizations and researchers have attempted to fill the gaps left by the government, but they face significant barriers when it comes to collecting comprehensive data.

¹ US Department of Justice, Review of the Department’s Tribal Law Enforcement Efforts Pursuant to the Tribal Law and Order Act of 2010, December 2017, available at <https://oig.justice.gov/reports/2017/e1801.pdf>



What human rights are violated in the US government's failure to prevent and respond to sexual violence against Indigenous women?

A variety of human rights are at stake when the US fails to adequately prevent and respond to this epidemic of violence:

- the right to live free from violence
- the right to equality and non-discrimination
- the right to be free from discrimination on the basis of Indigenous status
- the right not to be subjected to torture or other ill-treatment
- the right to liberty and security of person
- the right to the highest attainable standard of physical and mental health
- the right to obtain adequate reparation or satisfaction for damages suffered

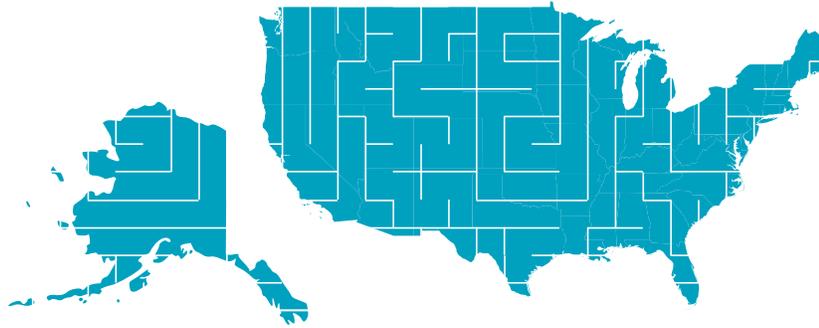
Indigenous peoples also have specific rights, these include:

- the right to autonomy or self-government in matters relating to their internal and local affairs
- maintain and strengthen their distinct political, legal, economic, social and cultural institutions
- self-determination
- the right not to be subjected to forced assimilation or destruction of their culture
- the right to participate in decision-making in matters which would affect their rights
- the right to promote, develop and maintain their institutional structures and juridical systems or customs, in accordance with international human rights standards

The United States' failure to respect, protect and fulfill the rights of Indigenous peoples in the USA has exacerbated the crisis of sexual violence against Indigenous women.

Why does the report use terms like “Indigenous”, “American Indian”, “Native American”, and “Alaska Native”?

The report uses a variety of terms that Indigenous peoples in the United States use to self-identify, and these terms are used to fit the context of what is being discussed. The terms American Indian, Native American and Alaska Native are widely used within the United States. The terms Native and Indian should be read as referring to American Indian and Alaska Native unless the legal context or parameters of a particular study indicate otherwise. The term Indian is often specific to US legal context, and the terms American Indian and Alaska Native (AI/AN) is most commonly used for data collection. The term Indigenous is increasingly used in international human rights standards and in the commentary of UN and regional human rights bodies.



What exactly is the “jurisdictional maze”, where did it come from, and why does it still exist?

The “jurisdictional maze” is the complicated interrelation of the federal, state and tribal jurisdictions that victims face after they have survived sexual violence. Due to centuries of law laws and Supreme Court decisions that fail to respect federal policies on tribal self-governance, the determination of jurisdictional authority for crimes of sexual violence against Indigenous women depends upon a variety of factors, such as:

- whether the victim is recognized as an Indian under federal law or not
- whether the accused is recognized as an Indian under federal law or not
- and whether the alleged offense took place on tribal land or not

All of these factors help to determine whether a crime should be prosecuted by a tribal, state or federal prosecutor, and whether the crime should be tried at the tribal, state or federal level. This “maze” exists because the US government refuses to overhaul harmful legislation that contributes to the plight of sexual violence in Indian country. Indigenous women have to enter this jurisdictional maze after surviving sexual assault, which often delays or denies justice. What’s more, many perpetrators know they will face no justice because of this jurisdictional maze, contributing to continued impunity and high rates of assault by non-Native perpetrators.

What do Indigenous women do if they need to seek medical assistance or services after an assault? What problems do they face when seeking these services?

After surviving sexual assault, many survivors seek out support services. The US Department of Justice has reported that support services based on Western cultural practices are often ineffective for AI/AN survivors; the availability of Native-led resources is crucial for Indigenous survivors. However, the lack of funding and complex grant application process make access to Native-led services extremely limited.

Basic post-rape care includes a medical-forensic examination, most commonly referred to as a “rape kit”. This involves an examination and treatment of injury and disease, and the collection of evidence from a victim of sexual violence, which is crucial if a survivor wants to pursue a criminal case against her perpetrator. However, there is still an unacceptable number of victims that lack access to a forensic exam after being assaulted. Due to the geographic isolation of many Indigenous communities, healthcare facilities are often too far away when a survivor needs a forensic exam. Even if a woman can reach a facility, there may not be a rape kit available or medical personnel who are trained to carry out such exams.



**ONLY 30.7%
OF NATIVE LANDS
ARE WITHIN A
60-MINUTE
DRIVING DISTANCE OF
SEXUAL ASSAULT
EXAMINATION SERVICES**

What obstacles do Indigenous women face in the legal process following their assault?

Immediately after an Indigenous woman survives sexual violence, she must determine if she wants to report her assault to police. Advocates have stated that there is a general distrust of law enforcement in many Indigenous communities, and Indigenous survivors are often concerned that police will not treat their case seriously.

If a survivor wishes to pursue criminal justice, she must first make her way through the jurisdictional maze and figure out where exactly their case should be tried in the first place. Then she must navigate the process of prosecuting her assailant, which comes with its own long list of obstacles, including high rates of cases being declined by state or federal prosecutors.

**NATIVE
WOMEN ARE
2.2 TIMES
MORE LIKELY
TO BE RAPED
THAN NON-HISPANIC
WHITE WOMEN**

How were Indigenous people involved in the creation of this report?

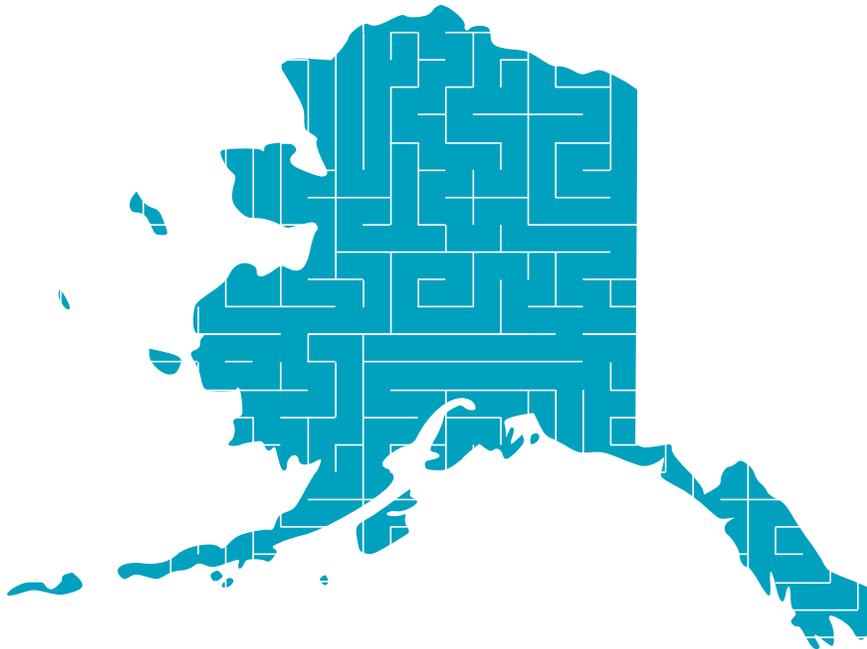
Since the original Maze report, itself written in consultation with Indigenous people, Amnesty has worked alongside Indigenous women's rights advocates to advance the work to end violence against Indigenous women. The need and focus of this report came from the lack of progress Indigenous women advocates reported and that Amnesty itself witnessed alongside these advocates. Amnesty's interviewed 57 different Indigenous rights experts, Indigenous service providers, and Indigenous women's advocates throughout the creation of the report and worked in consultation with Indigenous advocates throughout the process of this report.



Why does Alaska specifically get its own sections in the report?

Several factors make Alaska unique, and therefore deserving of separate explanation. The rates of violence against Alaska Native women are even higher than the national average: Alaska Native women are 3.2 times more likely to experience sexual violence than non-Native women in Alaska. The state of Alaska is also excluded from most federal policymaking focused on ending violence against Indigenous women.

Due to geographic isolation, many women in rural Alaskan villages are unable to quickly access forensic exams because they may need to take a plane to reach the nearest health care facility. Further, in rural areas there is a great disparity between police protection in villages that are accessible by road and those that are not. In the villages that Alaska State Troopers cannot consistently access, there are other forms of paraprofessional officers who can assist in law enforcement duties; however, these personnel have limited law enforcement abilities, lack adequate support, and funding for such positions can be inconsistent or quickly expended.



Hasn't the US government passed legislation to specifically protect Indigenous women?

Since the publication of the original Maze report, several pieces of legislation have been passed with the intention of protecting Indigenous survivors of sexual violence, such as the **Tribal Law and Order Act** (TLOA) passed in 2010. One of TLOA's major contributions is the enhancement of tribal sentencing authority. However, it can be very costly to implement enhanced sentencing authority, the sentencing enhancements themselves are extremely limited (tribes can only impose sentences of up to 3 years), and many tribes simply do not have the resources to support it.

The Violence Against Women Act (VAWA) was reauthorized in 2013 and included a program wherein certain tribal courts can exercise Special Domestic Violence Criminal Jurisdiction (SDVCJ) over cases involving non-Indian perpetrators who commit acts of domestic violence within Indian country. SDVCJ does not apply to crimes like sexual assault by a stranger or sex trafficking and it explicitly excludes tribes in Alaska and Maine. The 2022 reauthorization of VAWA, signed into law March 2022, will allow for tribes participating in "special Tribal criminal jurisdiction" to prosecute non-Indian offenders for sexual violence against Native women, a major improvement from the 2013 reauthorization. VAWA 2022 also included Maine tribes and a pilot program of up to 5 Alaskan tribes a year to participate. But tribes will still have major sentencing restrictions, and barriers like cost of implementation and the cumbersome requirements of this program remain a barrier to meaningful change.

What does long-lasting change for Indigenous women look like following this update?

Long-lasting, positive change will not come from the passage of one piece of legislation or minor funding initiatives. The United States must carry out all of the following actions to ensure lasting change and justice for Indigenous survivors of sexual violence in the United States:

- Fully restore tribal jurisdiction over crimes committed in Indian country
- Increase federal funding to ensure that prosecution and judicial practices deliver justice
- Ensure that all law enforcement officers working in tribal communities have the adequate funding and training to respond effectively to crimes of sexual violence
- Ensure that the Indian Health Service and tribal health facilities have the staff, resources, and expertise to collect forensic evidence in cases of sexual violence, and that these services are accessible to all American Indian and Alaska Native Women
- Provide resources to Indigenous organizations and tribal communities to fund regular data collection, research, and analysis on sexual violence against American Indian and Alaska Native women

IN 2019, IHS HEALTH CARE EXPENDITURES WERE US\$4,078 PER PERSON COMPARED TO US\$11,582 FOR FEDERAL HEALTHCARE NATIONWIDE

What is Amnesty International's role in Indigenous rights activism as a non-Indigenous organization?

Amnesty International's role in fighting for Indigenous rights is to amplify the voices of Indigenous advocates and organizations, provide high quality research that can be used to support arguments for greater protection of Indigenous peoples and to apply added pressure to the US government to respect the human rights of Indigenous peoples.

Are Indigenous women in other countries facing similar problems? Are there any examples of countries that have been more proactive in tackling these issues?

Indigenous women in many different countries face disproportionate rates of violence based on their identities. Examples of violence in the context of colonization, conflict and discrimination on the basis of Indigenous status can be found in a number of countries. For example, from 1980 and 2012, Indigenous Canadian women were murdered at 4.5 times the rate of non-Indigenous women. ² During the 1990s, 200,000 Peruvian women- mostly Indigenous, low-income women- were forcibly sterilized . ³ In some Australian states, the rates of sexual assault against Indigenous people are two times higher than the rates for non-Indigenous people. ⁴ Yet in the face of these challenges, Indigenous women across the global continue to lead the fight for their right to live free from violence and for Indigenous rights.

² Amnesty International Canada, "Missing and murdered Indigenous women and girls: Understanding the numbers", 29 January 2021, available at <https://www.amnesty.ca/blog/missing-and-murdered-indigenous-women-and-girls-understanding-the-numbers/>

³ Amnesty International, "Peru: Thousands of indigenous women forcibly sterilized may be denied justice", 29 January 2014, <https://www.amnesty.org/es/documents/amr46/002/2014/en/>