



**Senate Indian Affairs Committee
Oversight Hearing on the Prevalence of and Solutions to Stopping
Violence Against Women in Indian Country**

**Thursday, September 27, 2007
628 Dirksen Senate Office Building**

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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”. Reportedly, 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.

Introduction

Mr. Chairman and members of the Committee, thank you for inviting Amnesty International to testify on an issue that significantly impacts the human rights of American Indian and Alaska Native women. Amnesty is a worldwide human rights movement with more than 2.2 million members. Our mission is to conduct research and take action to prevent and end grave abuses of all human rights. I will focus my remarks on the findings of Amnesty’s recent report “Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA”.

Amnesty International is a worldwide human rights movement with more than 2.2 million members and supporters in more than 150 countries and territories. Amnesty International’s vision is for every person to enjoy all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. Amnesty International’s mission is to conduct research and take action to prevent and end grave abuses of all human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. The organization is funded by individual members; no funds are sought or accepted from governments for investigating and campaigning against human rights abuses.

“Maze of Injustice” Report

On April 24, 2007, Amnesty International released the findings of over 2 years of investigation into the problem of sexual violence against Native American and Alaska Native Women. The report is part of a worldwide campaign to Stop Violence Against Women launched by Amnesty International in March 2004. Since then AI has published reports on aspects of violence against women in 40 countries.

Amnesty International launched an investigation after learning that U.S. Department of Justice's own statistics indicate that Native American and Alaska Native women are more than 2.5 times more likely than other women in the US to be raped. According to Department of Justice statistics, more than 1 in 3 Native American and Alaska Native women will be raped at some point during their lives and 86% of perpetrators of these crimes are non-Native men.

Amnesty International's report examines some of the reasons why Indigenous women in the US are at such risk of sexual violence and why survivors are so frequently denied justice. The report is based on research carried out during 2005 and 2006 in consultation with Native American and Alaska Native individuals and organizations. In the course of this research, Amnesty International's interviewed survivors of sexual violence and their families, activists, support workers, service providers, and health workers. Amnesty International also interviewed officials across the US, including tribal, state and federal law enforcement officials and prosecutors, as well as tribal judges. Amnesty International also met representatives from the federal agencies which share responsibility with tribal authorities for addressing or responding to crimes in Indian Country.

Amnesty International conducted detailed research in three locations with different policing and judicial arrangements: the Standing Rock Reservation in North and South Dakota, the State of Oklahoma, and the State of Alaska. While this report presents a national overview of sexual violence against Indigenous women, it primarily presents our specific findings in these key areas of research.

Each location was selected for its specific jurisdictional characteristics. The Standing Rock Reservation illustrates the challenges involved in policing a vast, rural reservation where tribal and federal authorities have jurisdiction. Oklahoma is 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.

This report attempts to represent the stories of survivors of sexual violence as many survivors courageously came forward to share their stories. For example:

One Native American woman living on the Standing Rock Reservation told Amnesty that in 2005 her partner raped her and beat her so severely that she had to be hospitalized. An arrest warrant was issued after he failed to appear in court but he was not arrested. One morning she woke up to find him standing by her couch looking at her.

The perspectives of survivors, as well as the Native women at the forefront of efforts to protect Indigenous women must inform all actions taken to end sexual violence.

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 and to the Native American and Alaska Native organizations, experts and individuals who provided advice and guidance on research methodology and on the report itself. Amnesty International hopes that "Maze of Injustice" 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.

Amnesty International's research confirmed what Native American and Alaska Native advocates have long known: that sexual violence against women from Indian nations is at epidemic proportions and that Indian women face considerable barriers to accessing justice. Native American and Alaska Native women may never get a police response, may never have access to a sexual assault forensic examination and, even if they do, they may never see their case prosecuted. As a result of barriers, including a complex

jurisdictional maze and a chronic lack of resources for law enforcement and health services, perpetrators of sexual violence are not being brought to justice.

High Levels of Sexual Violence

Amnesty International's interviews suggest that available statistics on sexual violence greatly underestimate the severity of the problem and fail to paint a comprehensive picture of the abuses. No statistics exist specifically on sexual violence in Indian Country or Alaska Native villages; more data is urgently needed to establish the prevalence of violence against Indigenous women. 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.

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 (details withheld), May 2005

Amnesty International 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.

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. A series of federal laws and US Supreme Court decisions over the years have increasingly restricted the authority of American Indian and Alaska Native Nations to exercise 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, and the Indian Civil Rights Act along with the case law of *Oliphant v Suquamish*.

- The Major Crimes Act (1885) granted the federal authorities jurisdiction over certain serious crimes committed by Indian perpetrators, including rape and murder, committed in Indian Country. There has been a widespread misconception that under the Act only the federal authorities have the

authority to prosecute major crimes. In fact, tribal authorities retain concurrent jurisdiction over perpetrators that are Indian. Nevertheless, the impact of the Act in practice has been that fewer major crimes have been pursued through the tribal justice systems.

- State authorities do not generally have the authority to exercise criminal jurisdiction over American Indians/Alaska Natives on tribal land. Public Law 280 (1953), however, transferred federal criminal jurisdiction over many offences involving members of federally recognized Indian tribes on designated tribal lands to state governments in some states. The US Congress gave six states – California, Minnesota, Nebraska, Oregon, Wisconsin and Alaska upon statehood-- extensive criminal and civil jurisdiction over Indian Country. Public Law 280 also permitted additional states – currently exercised in varying degrees by 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 exercises full Public Law 280 jurisdiction. 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 tribal governments 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 perception of “lawlessness” in some communities and difficult relations between tribal and state officials.
- The Indian Civil Rights Act (1968) limited the criminal sentence 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. No such limits exist for tribal civil jurisdiction. The message sent by this law is that, in practice, tribal justice systems are only equipped to handle less serious crimes. While this limitation on the custodial sentencing powers of tribes (and resource limitations) substantially limits the ability of tribal justice systems to hold offenders accountable, an increasing number of tribal courts are prosecuting sexual assault cases due to the inadequate rate of federal and state prosecutions of sexual assault cases.
- In 1978, the Supreme Court ruled that tribal courts could not exercise criminal jurisdiction over non-Indian US citizens. 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 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. Tribal police do have limited powers of arrest over non-Indian suspects in some states and 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 state or federal officials.

Each location Amnesty International selected has specific jurisdictional characteristics. Tribal and federal authorities have concurrent jurisdiction on all Standing Rock 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 Reservation. 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. Amnesty International received reports that perpetrators seek to evade law enforcement by fleeing to another jurisdiction. 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.”

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

Andrea Smith, University of Michigan, Assistant Professor of Native Studies

Amnesty International found that jurisdictional issues in Oklahoma are a constant concern since police officers responding to a crime have difficulties determining whether or not the land in question is state, tribal or federal. Oklahoma is a geographical patchwork where non-contiguous parcels of tribal land are often intersected by state land. Both Indian and non-Indian people frequently cross between different jurisdictions several times a day. One support worker told AI that, in responding to an emergency call, arguments over jurisdiction between tribal and state police are not always resolved, resulting in inadequate investigation and evidence collection.

In Alaska, the Alaska Rural Justice and Law Enforcement Commission (2006) found that “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.”

Jurisdictional authority has been the subject of considerable debate in Alaska. Upon statehood, Alaska was included as one of the original states in which Public Law 280 applied, giving the state (in place of federal authorities) concurrent criminal jurisdiction with tribes to prosecute crimes committed by and against Alaska Native peoples 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.”

The situation in Alaska is further complicated because of issues around how tribal lands are designated. A combination of federal legislation and US Supreme Court decisions about the definition and status of tribal lands has resulted in considerable confusion and debate over jurisdiction within the state. This debate arises from the unique way in which Indigenous land claims in Alaska were settled. Following the Alaska Native Claims Settlement Act (ANCSA), passed by the US Congress in 1971, there has been considerable debate about 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.” This issue is important because criminal jurisdiction normally has a territorial element.

“Federally recognized tribes have a local government presence but have disputed jurisdiction. The state has jurisdiction, but often lacks an effective local government presence. The result is a gap that leaves many villages without effective law enforcement.”

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

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. It is important to note 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.

Amnesty International is concerned that jurisdictional issues not only cause confusion and uncertainty for survivors of sexual violence, but also result in uneven and inconsistent access to justice and accountability. This leaves victims without legal protection or redress and allows impunity for the perpetrators, especially non-Indian offenders who commit crimes on tribal land.

Inter-agency Co-operation

“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, December 21, 2005

Some tribal, state and federal law enforcement agencies address the jurisdictional complexities by entering into cooperation 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. A second form of agreement addresses extradition in situations in which a perpetrator seeks to escape prosecution by fleeing to another jurisdiction. Across the US, experiences of such inter-agency cooperation agreements vary greatly. Where they are entered into on the basis of mutual respect, cooperation agreements can have the potential to smooth jurisdictional uncertainties and allow improved access to justice for victims of sexual violence.

Problems of Policing

Amnesty International found that police response to sexual violence against American Indian and Alaska Native women at all levels is inadequate. Although jurisdictional issues present some of the biggest problems in law enforcement response, other factors also have a significant impact including lack of resources.

Lack of Resources: Delays and failure to respond

In an Alaska Native village in 2005, an Alaska Native man became violent, beating his wife with a shotgun and attempting to fire it at her; he then barricaded himself in a house with four children. As the village had no law enforcement presence, residents called State Troopers 150 miles away. It took the troopers more than four hours to reach the village and, in that time period, the man had raped a 13-year-old Alaska Native girl on a bed, with an infant crying beside her, as her five-year-old brother and seven-year-old cousin watched helplessly.

Law enforcement in Indian Country and Alaska Native villages is chronically underfunded. The U.S. Departments of Justice and Interior have both confirmed that there is inadequate law enforcement in Indian Country and identified underfunding as a central cause. According to the U.S. Department of Justice, tribes only have between 55 and 75 percent of the law enforcement resources available to comparable non-Native rural communities. AI also found that a very small number of officers usually cover large territories and face difficult decisions about how to prioritize their initial responses.

The Standing Rock Police Department in February 2006 consisted of six or seven patrol officers to patrol 2.3 million acres of land, with only two officers usually on duty during the day. Amnesty International documented lengthy delays in responding to reports of sexual violence against Indigenous women. Women on the reservation who report sexual violence often have to wait for hours or even days before receiving a response from the police department, if they receive a response at all.

“It feels as though the reservation has become lawless”

Roundtable interview, Standing Rock Reservation (name withheld) February 22, 2006

Sometimes suspects are not arrested for weeks or months after an arrest warrant has been issued. Amnesty International was told that on the Standing Rock 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.

In Alaska the low numbers of officers in rural outposts, combined with the vast expanses and the harsh weather, present major barriers to prompt responses by police to reports of sexual violence. Law enforcement services in Alaska range from the larger, municipal police departments found in cities such as Anchorage, to the State Troopers (state police officers), who police the outlying rural areas, to Village Public Safety Officers (VPSO) and Village Police Officers (VPO), which often consist of one or two individuals working in smaller villages. Neither VPSOs nor VPOs are “certified” by the Alaska Police Standard Council because they do not meet training and qualification requirements. Over 80 per cent of those in Alaska who are not afforded trained and certified law enforcement protection are Alaska Native. At least one-third of all Alaska Native villages that are not accessible by road have no law enforcement presence at all.

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. 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. 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 harbor 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.

“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].”

Complaint for Declaratory and Injunctive Relief, Alaska Inter-Tribal Council, et al., v State, et al, 25th October 1999.

Amnesty International found that in cases where both tribal and federal authorities have jurisdiction, FBI involvement in investigations of reports of sexual violence against Indigenous women is rare and even in those cases that are pursued by the FBI, there can be lengthy delays before investigations start.

Amnesty International’s research also 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.

Detention in Indian Country

Another issue that must be considered is the detention needs in Indian Country. The Department of Interior Inspector General found in its 2004 report, “Neither Safe nor Secure” that there has been a failure to provide safe and secure detention facilities throughout Indian Country. Funding for detention in Indian Country has been inconsistent and inadequate. For example, the Department of Justice Office of Justice Programs provided \$44 million for incarceration on tribal lands in 2002 and only \$14 million in 2006.

Training

AI is concerned that federal, state and tribal training programs for law enforcement officials are not equipping officers to respond adequately and appropriately to crimes of rape and other forms of sexual violence against Indigenous women. Basic training of law enforcement officers varies from agency to agency. For example, an officer in the Standing Rock Police Department 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 Standing Rock Police Department cannot provide them all with training opportunities.

Officers need training on cultural norms and practices to enable them to respond appropriately, taking into account differences between tribes. This may have implications for how police approach and speak to victims, witnesses and suspects, including, for example, greater awareness of potential language barriers.

Training on jurisdiction also appears to be inadequate. For example, law enforcement officials in Oklahoma face a jurisdictional maze of different tribal, federal and state areas of authority, yet the Council on Law Enforcement Education and Training reportedly provides state police officers with almost no training on jurisdiction.

Inadequate Forensic Examinations and Related Health Services

"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."

US National Protocol for Sexual Assault Forensic Examinations

Another factor that Amnesty found significantly impacts law enforcement and access to justice is the lack of access to forensic exams – critical evidence in a prosecution – often due to the severe underfunding of the IHS. If the authorities fail to provide the examination, this can jeopardize prosecutions and result in those responsible for rape not being brought to justice.

The examination, which is performed by a health professional, involves the collection of physical evidence and an examination of any injuries. Samples collected in the evidence kit include vaginal, anal and oral swabs, finger-nail clippings, clothing and hair. Reports to AI indicate that many IHS facilities lack personnel to provide examinations, haven't prioritized development of sexual assault nurse examiner programs and lack protocols for treating victims of sexual violence.

A 2005 survey conducted by the Native American Women's Health Education Resource Centre found that 44 percent of Indian Health Service facilities lacked personnel trained to provide emergency services in the event of sexual violence. More specifically, there is generally a severe lack of available Sexual Assault Nurse Examiners (SANEs), registered nurses with advanced education and clinical preparation in forensic examination of victims of sexual violence. Amnesty International understands that there may be challenges to fully staffing all facilities with SANE personnel, but we are concerned that the IHS has not prioritized the implementation of SANE programs throughout its facilities.

Amnesty International is also concerned that IHS facilities lack clear and standardized protocols for treating victims of sexual violence. A 2005 survey conducted by the Native American Women's Health Education Resource Centre of IHS facilities found that 30 percent of responding facilities did not have a protocol in place for emergency services in cases of sexual violence. The standardized protocols are essential to help ensure adequate treatment of women who have suffered sexual assault. The National Congress of American Indians (NCAI) is the oldest and largest national organization of American Indian and Alaska Native tribal governments passed a resolution in 2005 that the NCAI "will urge the adoption

and implementation of [a] national policy and protocols on rape and sexual assault within the Indian Health Service Unit emergency rooms and Contract Health Care facilities/providers.”

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. Furthermore, Amnesty International understands that federal, tribal and state prosecutors face significant challenges in ensuring that the IHS personnel who were responsible for the collection of the forensic evidence testify in court. Amnesty International strongly encourages efforts to eliminate bureaucratic obstacles and facilitate participation by local personnel so that valuable evidence of sexual assault can be submitted successfully in court.

Jami Rozell, a Cherokee woman living in Tahlequah, Oklahoma, told AI that she decided to seek prosecution five months after she was raped in 2003. She attended a preliminary hearing, but her sexual assault forensic examination -- which had been performed immediately after the rape and included 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 as she had not pressed charges at the time, the evidence had been destroyed as a routine part of cleaning their evidence storage room. Because the evidence had been destroyed, the District Attorney advised her to drop the complaint.

Furthermore, as the first to respond to reports of sexual assault, law enforcement officials have a critical role to play in ensuring 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. AI received reports of confusion and disagreements over who should pay for examinations or transport costs – the IHS, other medical providers, law enforcement agencies or the survivors themselves. 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.

It is important to ensure that evidence collected during a forensic examination is processed. On or about June of 2000, the FBI partnered with the State of Arizona Laboratory to process evidence from Indian Country crimes, by allocating \$450,000 a year to the State laboratory. This program was the result of a realization that crimes in Indian Country needed timely evidence processing, and the FBI lab was overwhelmed. Support from the State lab was a logical and cost effective answer.

Amnesty International recently received a report from a tribal law enforcement officer/Director of Public Safety for the Tohono O'odham Nation that, in October of 2005 the FBI discontinued this vital program. The result is a delay and on occasion dismissal of cases because of the lack of evidence analysis, this is particularly critical in sexual assault crimes. This has severely impacted Tribal Police's ability to ensure the processing of forensic examination in cases of rape and sexual assault.

All survivors of sexual violence should be offered a forensic examination, without charge, regardless of whether or not they have decided to report the case to the police. Indigenous women in the USA are being effectively denied access to these examinations either because there is no facility nearby equipped to carry them out, the facility is understaffed by individuals trained in the forensic exams or because staff are not adequately trained on how to respond to survivors of sexual violence and how to do so in a culturally appropriate manner.

Prosecutions

"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

"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

A key contributory factor identified in AI's research for the continuing high levels of violence is that all too often those responsible are able to get away with it. Survivors of sexual abuse, activists, support workers and officials told AI that prosecutions for crimes of sexual violence against Indigenous women are rare in federal, state and tribal courts. For example, a health official responsible for carrying out sexual assault forensic examinations reported that in about 90 per cent of cases, she is not contacted again by police or prosecutors about examinations she has performed, although she is available as an expert witness for trials.

Sexual violence against Native American or Alaska Native women can be prosecuted by tribal, federal or state authorities, or a combination of these. The US federal government has created a complex interrelation between these three jurisdictions that often allows perpetrators to evade justice.

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. U.S. authorities are failing to exercise due diligence when it comes to sexual violence against Native American and Alaska Native women.

Tribal courts

Tribal courts vary greatly both in the statutes and criminal codes which they enforce and their procedures. A common factor, however, is that they 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.

Federal funding of tribal courts is inadequate. The US Commission on Civil Rights stated in 2003 that tribal courts have been under funded for decades. Inadequate funding by the federal authorities affects many aspects of the functioning of tribal courts, including the ability to proceed with prosecutions promptly. Nevertheless, prosecutions for sexual violence do occur in tribal courts and some courts are able to overcome limitations on the sentences they can hand down by imposing consecutive sentences for several offences. Some tribal courts also work with sanctions other than imprisonment, including restitution, community service and probation.

Tribal prosecutors sometimes decline to prosecute crimes of sexual violence because they expect that federal prosecutors will do so. Although some tribal prosecutors may choose to take up a case if it is declined for federal prosecution, as often happens, this can result in delays of up to a year and sometimes even longer. Often the net result is that perpetrators are not prosecuted at either level.

Federal courts

There is a failure at federal level to pursue cases of sexual violence against Indigenous women. 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 AI suggests that in a considerable number of instances the authorities decide not to prosecute reported cases of sexual violence against Native women.

Federal prosecutors have broad discretion in deciding which cases to prosecute, and decisions not to prosecute are rarely reviewed. AI is concerned that the difficulties involved in prosecuting rape cases, combined with the particular jurisdictional and practical challenges of pursuing cases where the crime took place on tribal land, can deter federal prosecutors from taking the case. 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.

State courts

In some states, such as Alaska, state rather than federal prosecutors have jurisdiction. However, the same pattern of failing to pursue cases of sexual violence against Indigenous women emerged. Health workers in Alaska told AI that there is no prosecution in approximately 90 per cent of cases where Indigenous women undergo a sexual assault forensic examination in Anchorage.

In addition, Native American and Alaska Native survivors of sexual violence often face prejudice and discrimination at all stages and levels of federal and state prosecution.

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. 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 custodial sentence for both perpetrators.

Communicating with survivors

Amnesty International received a number of reports that prosecutors at all levels fail to provide information consistently to Indigenous victims of sexual violence about the progress of their cases. Survivors are frequently not informed whether their cases will proceed to trial or not.

"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 [for prosecution], but no one had told the woman."

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

Inadequate Resources for Indigenous Support Initiatives

Programs 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. Programs 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.

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 program on

the Standing Rock Reservation. The program, which is named after Ivy Archambault (Pretty Bird Woman), a Standing Rock woman who was raped and murdered in 2001, operates a shelter in a temporary location and at the time of Amnesty International's report in April 2007 did not have 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 Reservation, it is imperative that the Reservation have its own permanent shelter.

International Law

Sexual violence against women is not only a criminal or social issue; it is a human rights abuse. While the perpetrator is ultimately responsible for his crime, authorities also bear a legal responsibility to ensure protection of the rights and well-being of American Indian and Alaska Native peoples. They are responsible as well if they fail to prevent, investigate and address the crime appropriately.

The United States has ratified many of the key international human rights treaties that guarantee Indigenous women's protection against such abuses, including the right not to be tortured or ill-treated; the right to liberty and security of the person; and the right to the highest attainable standard of physical and mental health. The United States should ratify the Treaty for the Rights of Women (CEDAW) which can help end discrimination and violence against women worldwide. The next steps Congress takes must be determined in close consultation and cooperation with Indigenous leaders. All women have the right to be safe and free from violence.

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 that 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 United States is currently failing to act with due diligence to prevent, investigate and punish sexual violence against Native American and Alaska Native women. The erosion of tribal governmental authority and resources to protect Indigenous women from crimes of sexual violence is inconsistent with international standards on the rights of Indigenous peoples.

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. Provisions of the Declaration include that 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); that 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)); and 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).

Key Recommendations

Amnesty International wants to highlight that on September 13th, 2007 the U.N. General Assembly adopted the U.N. Declaration on the Rights of Indigenous Peoples which calls on states to “consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.” (Article 19)

We respectfully refer you to “Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA” for more detailed information and recommendations, briefly however the following steps need to be taken:

Develop comprehensive plans of action to stop violence against Indigenous women

- Federal and state governments should consult and co-operate with Indigenous nations and Indigenous women to institute plans of action to stop violence against Indigenous women.

For instance, the Safety for Indian Women Demonstration Initiative is an effort by the U.S. Department of Justice Office on Violence Against Women (OVW) to enhance the response of tribal and federal agencies to the high rates of sexual assault committed against Native American women. Under the initiative, OVW awarded over \$900,000 to four tribes to achieve such goals as: enhance the response of tribal and federal agencies to sexual assault of Native American women; build upon an existing coordinated community response to sexual assault of Native American women; strengthen the capacity of tribal justice systems to respond to sexual assault of Native American women; enhance and increase advocacy and services for Native American victims of sexual assault; strengthen coordination between tribal and federal agencies responding to crimes of sexual assault against Native American women; and expand current responses to crimes of sexual assault against Native American women. Adequate and consistent funding should be provided for such initiatives. At present, AI has been unable to establish whether or not this initiative continues to be funded.

- 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.

Ensure Appropriate, Effective Policing

- Congress and federal authorities must take urgent steps to make available adequate resources to police forces in Indian and Alaska Native villages. Particular attention should be paid to improving coverage in rural areas with poor transport and communications infrastructure.
- 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.
- 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 authority to apprehend both Native and non-Native suspects.
- All law enforcement agencies should co-operate with, and expect co-operation from, neighboring 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. 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. In addition authorities.

- Extradition agreements address situations in which a perpetrator seeks to escape prosecution by fleeing to another jurisdiction. 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.
- 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.
- 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.

Ensure Access to Sexual Assault Forensic Examinations

- 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.
- Congress and 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 ensure adequate levels of medical attention.
- 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.
- The Indian Health Service and other health service providers should prioritize the creation of sexual assault nurse examiner programs and explore other ways of addressing the shortage and retention of qualified Sexual Assault Nurse Examiners.
- The Indian Health Service and other health service providers should facilitate the availability at trial of forensic evidence of sexual assault by eliminating bureaucratic obstacles and encouraging participation of appropriate medical personnel.
- Law enforcement agencies in Indian Country should receive sufficient funding to ensure the timely processing of evidence collected from sexual assault forensic examinations.

Ensure that prosecution and judicial practices deliver justice

- Congress should recognize the concurrent jurisdiction of tribal courts (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 amend the Indian Civil Rights Act to recognize the authority of tribal courts to impose penalties proportionate to the offences they try.
- 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 processes 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.

- All U.S. Attorneys should begin immediately to collect and publish publicly data on the number of cases of sexual violence of Native American and Alaska Native women referred for federal prosecution, the number declined and reasons for decline.
- 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 that are consistent with international human rights standards.
- Congress and federal authorities should make available the necessary funding and resources to tribal governments to develop and maintain tribal courts and legal systems which comply with international human rights standards, while also reflecting the cultural and social norms of their peoples.

Ensure Availability of Support Services for Survivors

- All governments should support and ensure adequate funding for support services, including shelters, for American Indian and Alaska Native survivors of sexual violence.

Additional Recommendations

- Congress should fully fund and implement the Violence Against Women Act -- and in particular Tribal Title (Title IX), the first-ever effort within VAWA to fight violence against Native American and Alaska Native women. This includes a national baseline study on sexual violence against Native women, a study on the incidence of injury from sexual violence against Native women and a Tribal Registry to track sex offenders and orders of protection.
- The Senate should ratify the Treaty for the Rights of Women, officially the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Although the United States played a key role in drafting this treaty, it remains one of eight countries yet to ratify. This treaty can help end discrimination and violence against women worldwide.
- The next steps Congress takes must be determined in close consultation and cooperation with Indigenous leaders.

Thank you for the opportunity to testify on this important human rights topic.