

SEXUAL VIOLENCE IN THE U.S. MILITARY

Shadow Report Submission to the
United Nations Human Rights Committee
For the United States Review

Submitted by:

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September 12, 2023

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Cornell Law School's Gender Justice Clinic works on cases and projects that contribute to local, national, global, and transnational efforts to address gender-based violence and discrimination.

I. ISSUE SUMMARY

1. Sexual assault within the U.S. military is a pervasive issue that affects thousands of service members each year. The United States currently lacks adequate measures to prevent military sexual violence and does not yet ensure that service members who experience such violence are protected from retaliation and have access to justice. Sexual assault and harassment continue to be perpetrated at alarmingly high rates within the U.S. military. According to the U.S. Department of Defense, an estimated 8.4% of active-duty service women and 1.5% of active-duty service men experienced unwanted sexual conduct in 2021.¹ The 2021 prevalence rate for service women was the highest rate ever measured since the U.S. started tracking prevalence in 2006.²
2. As U.S. Secretary of Defense Lloyd Austin has recognized, the Department of Defense's Fiscal Year 2021 Report on Sexual Assault in the Military (henceforth the

¹ See U.S. DEPARTMENT OF DEFENSE, ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY, FISCAL YEAR 2021 6-7 (2022), available at https://www.sapr.mil/sites/default/files/public/docs/reports/AR/DOD_Annual_Report_on_Sexual_Assault_in_the_Military_FY2021.pdf [hereinafter 2021 SAPR REPORT].

² *Id.* at 6.

2021 SAPR report) “demonstrates in stark detail that sexual assault and sexual harassment remain persistent and corrosive problems for our Service members.”³ Secretary Austin established a 90-day Independent Review Commission (IRC) to assess these problems.⁴ At the conclusion of its review period, the IRC published its findings and noted that “victims of sexual assault and harassment in the military are all too often doubly betrayed: by the service member[s] who harmed them, and by the Commanders who failed to protect them – or neglected to support them after reporting.”⁵ The IRC also noted that “a broken culture is at the root of sexual harassment and sexual assault policy failures over the past two decades.”⁶ The IRC then made recommendations to improve military culture and climate, prevent sexual assault and harassment, effectively care for victims, and hold perpetrators responsible for their actions.⁷

3. As a result, Congress enacted legislation to reform part of the military justice system, and the Biden Administration has established a phased plan to implement the IRC’s core recommendations.⁸ Notably, the legislation removes authority for investigating and prosecuting cases of sexual violence from the chain of command. For decades, the Uniform Code of Military Justice and applicable regulations gave Commanders broad authority over the prosecution of sexual assault and related crimes, including discretion to refer a complaint to trial by courts-martial, determine the charges, make decisions on the selection of juries, enter into plea agreements, grant resignations or separations in lieu of trial, and appeal decisions by a judge. This system was unable to afford adequate redress to survivors of sexual violence, given that Commanders are not positioned to be impartial, lack substantial legal training in handling sexual violence cases, and face a tension between their duty to carry out justice and their responsibility for maintaining

³ Memorandum from Secretary of Defense Lloyd J. Austin, Actions to Address and Prevent Sexual Assault and Sexual Harassment in the Military, Sep. 1, 2022, available at <https://media.defense.gov/2022/Sep/01/2003069531/-1/-1/1/ACTIONS-TO-ADDRESS-AND-PREVENT-SEXUAL-ASSAULT-AND-SEXUAL-HARASSMENT-IN-THE-MILITARY.PDF>.

⁴ Memorandum from Secretary of Defense Lloyd J. Austin, Immediate Actions to Counter Sexual Assault and Harassment and the Establishment of a 90-Day Independent Review Commission on Sexual Assault in the Military, Feb. 26, 2021, available at <https://media.defense.gov/2021/Feb/26/2002590163/-1/-1/0/APPROVAL-OF-MEMO-DIRECTING-IMMEDIATE-ACTIONS-TO-COUNTER-SEXUAL-ASSAULT-AND-HARASSMENT.PDF>.

⁵ INDEPENDENT REVIEW COMMISSION ON SEXUAL ASSAULT IN THE MILITARY, HARD TRUTHS AND THE DUTY TO CHANGE 10 (2022), available at <https://media.defense.gov/2021/Jul/02/2002755437/-1/-1/0/IRC-FULL-REPORTFINAL-1923-7-1-21.PDF/IRC-FULL-REPORT-FINAL-1923-7-1-21.PDF> [hereinafter IRC REPORT]. Explaining its language choices, IRC notes, “Those who have experienced sexual assault may refer to themselves as survivors or as victims. Some prefer ‘survivor’ to indicate that they lived through the assault, while others prefer ‘victim’ to indicate that someone harmed them. ‘Victim’ is used in the military justice systems.” *Id.* at n.2. In this report and like the IRC, we “use these terms interchangeably and always with respect for those who have been subjected to these crimes.” *Id.*

⁶ *Id.* at 21.

⁷ *Id.* at 6-7.

⁸ C. Todd Lopez, DoD Takes Phased Approach to Implementing Recommendations on Sexual Assault, Harassment, DEPARTMENT OF DEFENSE (July 21, 2021), <https://www.defense.gov/News/News-Stories/Article/Article/2702095/dod-takes-phased-approach-to-implementing-recommendations-on-sexual-assault-har/> (describing the department’s plan to review recommendations and implement them); Meghann Myers, *Military Sexual Assault Reform Is Slow Going, But That’s The Plan*, MILITARY TIMES (Sep. 21, 2022), available at <https://www.militarytimes.com/news/your-military/2022/09/21/military-sexual-assault-reform-is-slow-going-but-thats-the-plan/> (stating that the Department intends to have reforms fully implemented by 2028).

unit cohesion and combat readiness.⁹ Survivors told the IRC that they did not trust Commanders to do justice in sexual harassment or assault cases because, among other issues, they perceived Commanders as conflicted, inadequately trained, complicit, and focused more on readiness for combat and other priorities than caring for their troops.¹⁰

4. The new legislation establishes the Offices of Special Trial Counsel, which are independent offices within the military to prosecute “covered offenses.”¹¹ “Covered offenses” include, among others, rape and sexual assault, domestic violence, sexual harassment, stalking, and retaliation, and the Offices of Special Trial Counsel will have exclusive authority over these offenses.¹² This legislation is extremely important as it takes the adjudication of these offenses out of the hands of the Commanders, which will hopefully result in more survivors receiving justice. However, many reforms have not yet gone into effect, including the Offices of Special Trial Counsel which will begin operating late 2023, and it remains to be seen how effective these reforms will be.¹³
5. Moreover, further systemic reform is needed for these initiatives to effectively prevent and punish military sexual assault. The U.S. military has long fostered a toxic and misogynistic climate that gives rise to sexual harassment and violence, which in turn leads to inadequate prevention efforts. Survivors who report sexual harassment and assault continue to face retaliation, as well as a lack of adequate care and support. The military criminal legal system’s ability to afford redress to survivors is compromised by lack of expertise and specialization among legal advocates and adjudicators, as well as by other systemic problems. The United States also systematically denies survivors of military sexual assault equal access to remedies in civil and criminal civilian courts.

A. The United States Has Fostered a Culture that Promotes Sexual Harassment and Violence.

6. The U.S. military has historically fostered a culture that enables acts of sexual violence and harassment to occur with regularity and impunity. In its report, the IRC explained:

“Many Service members report command climates where demeaning language and sexual harassment are the norm and go unchecked by the Commander and enlisted leaders. They also report instances of retaliation and ostracism after reporting that harassment or disclosing sexual assault. [...] Concerned leaders could have created command climates where demeaning gender-based comments, sexual harassment, and sexual assault were not

⁹ IRC REPORT, *supra* note 5, at 18-19.

¹⁰ *Id.* at 18.

¹¹ National Defense Authorization Act for Fiscal Year 2022 Pub. L. 117-81, 135 Stat. 1541, Sec. 539D (Dec. 27, 2021); National Defense Authorization Act for Fiscal Year 2023 Pub. L. 117-263, Stat. 136, Sec. 531(b)-(c).

¹² Uniform Code of Military Justice, 10 U.S.C. § 801(17)

¹³ Press Release, President Biden to Sign Executive Order Implementing Bipartisan Military Justice Reforms, THE WHITE HOUSE (Jul. 28, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/28/fact-sheet-president-biden-to-sign-executive-order-implementing-bipartisan-military-justice-reforms/>.

tolerated. They had all the authority to do so, but too many leaders failed to lead. These incidents had additional corrosive effects on good order and discipline: broken trust between Service members and their leaders, and the military they volunteered to serve.”¹⁴

After hearing from hundreds of survivors about their experiences, the IRC found that “many Commanders simply do not treat sexual harassment and sexual assault with the same level of time or attention that they treat a broken vehicle.”¹⁵

7. The culture that enables misogyny in the U.S. military permeates the entire military hierarchy and reinforces the idea that sexual violence is not a serious issue. Less than half of female service members who reported sexual harassment “perceived their leaders as acting in a fully supportive manner” after they made their report.¹⁶ In a significant number of cases, Commanders are themselves harassers; nearly one quarter of service women who were sexually harassed and more than two thirds of service women and men who experienced gender discrimination identified at least one alleged offender as someone on the service member’s chain of command.¹⁷ As the United States has recognized, “leaders’ action or inactions have direct consequences that impact risk of sexual assault and unit climate.”¹⁸ The Department of Defense estimates that only 10% of active-duty men and 29% of active-duty women reported their experiences of sexual assault, demonstrating how stigma and culture may negatively affect survivors’ ability or willingness to report.¹⁹
8. As the IRC notes, “the decision to report an assault or harassment is compounded by the very real fear of retaliation, reprisal, and being ostracized from their unit/family.”²⁰ Retaliation is prevalent in the military and contributes to the military’s toxic climate. Among women who reported unwanted sexual contact in FY21, 67% perceived experiencing at least one retaliatory behavior, while about 30% experienced a behavior meeting the narrower category of retaliatory behavior prohibited by military law.²¹ Retaliation against service members who report sexual violence includes threats to safety and life, physical assault, ostracism, and harassment, as well as various forms of professional retaliation, including “lost promotions or opportunities to train, loss of

¹⁴ IRC REPORT, *supra* note 5, at 21.

¹⁵ *Id.* The United States has also acknowledged that increased rates of sexual harassment, gender discrimination, and workplace hostility – all of which are highly correlated with sexual assault – point to “an overall growth in unhealthy military climate.” 2021 SAPR REPORT, *supra* note 1, at 13.

¹⁶ 2021 SAPR REPORT, *supra* note 1, at 14.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ U.S. DEPARTMENT OF DEFENSE, ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY: FISCAL YEAR 2022 9 (2023), available at https://www.sapr.mil/sites/default/files/public/docs/reports/AR/FY22/DOD_Annual_Report_on_Sexual_Assault_in_the_Military_FY2022.pdf.

²⁰ IRC REPORT, *supra* note 5, at 10.

²¹ U.S. DEPARTMENT OF DEFENSE, ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY FISCAL YEAR 2021, App. B, Metrics and Non-Metrics 19 (2022).

awards, lost privileges, demotions, a change in job duties, disciplinary actions, mental health referrals, and administrative discharge.”²²

9. In addition, the military is plagued by “subcultures of misogyny,” as well as “harmful beliefs and attitudes on race, ethnicity, sexual orientation [and] gender identity” that continue to perpetuate sexual harassment and assault.²³ Women and transgender service members are often excluded from the shared identity on which unit cohesion is based because they do not fit into the narrow definition of “manhood” that is valued in these spaces after a history of the military discriminating against women and LGBTQ+ individuals. Transgender individuals were barred from openly serving in the military as recently as 2021, and their ability to continue serving rests on shaky ground as several presidential candidates and other politicians have stated their plans to reinstate bans on transgender military service.²⁴ By leaving transgender individuals out of crucial protective measures, such as the repeal of “Don’t Ask, Don’t Tell” which protected openly gay, lesbian, and bisexual service members, the military sends the message that transgender individuals do not belong and that their identities should be stigmatized.²⁵ A 2020 survey of transgender service members found that 93% reported experiencing at least one instance of gender-related discrimination in the military.²⁶ A culture that values traditionally masculine ideals and stigmatizes other identities places these individuals at an increased risk of sexual harassment and assault.²⁷
10. These harmful gender norms are also connected to “the perpetuation of harmful gender stereotypes, widespread cultural norms of victim blaming and rape-myth acceptance, and hostility and exclusion that extends to multiple vulnerable populations within the force.”²⁸ As explained by the IRC, these are elements of a “toxic climate that is the sole responsibility of the Commander to fix.”²⁹ High-profile cases such as the sexual harassment and murder of Army specialist Vanessa Guillén at Fort Hood in 2019³⁰

²² *EMBATTLED: Retaliation Against Sexual Assault Survivors In The U.S. Military*, HUMAN RIGHTS WATCH (2015) at 36, available at <https://www.hrw.org/report/2015/05/18/embattled/retaliation-against-sexual-assault-survivors-us-military>.

²³ IRC REPORT, *supra* note 5, at 21.

²⁴ Lindsay Mahowald, *LGBTQ+ Military Members and Veterans Face Economic, Housing, and Health Insecurities*, CENTER FOR AMERICAN PROGRESS (Apr. 28, 2022), available at <https://www.americanprogress.org/article/lgbtq-military-members-and-veterans-face-economic-housing-and-health-insecurities/>; Grace Segers, *Republicans Bring Their War on Transgender Americans to the Pentagon*, THE NEW REPUBLIC (July 19, 2023), available at <https://newrepublic.com/article/174394/self-destructive-republican-war-trans-military-members>.

²⁵ Ali Rogin, *How Don’t Ask, Don’t Tell Has Affected LGBTQ Service Members, 10 Years After Appeal*, PBS (Dec. 22, 2020), <https://www.pbs.org/newshour/nation/how-dont-ask-dont-tell-has-affected-lgbtq-service-members-10-years-after-repeal>.

²⁶ Natasha A. Shvey et al., *Stigma, Health, and Psychological Functioning Among Transgender Active-Duty Service Members in the U.S. Military*, 5(2) STIGMA AND HEALTH 188 (2000).

²⁷ See IRC REPORT, *supra* note 5, at 21; Ashley C. Schuyler et al., *Experiences of Sexual Harassment, Stalking, and Sexual Assault During Military Service Among LGBT and Non-LGBT Service Members*, 33 J. TRAUMATIC STRESS 257 (2020), available at <https://onlinelibrary.wiley.com/doi/10.1002/jts.22506>.

²⁸ IRC REPORT, *supra* note 5, at 9-10.

²⁹ *Id.*

³⁰ Johnny Diaz et al., *What to Know About the Death of Vanessa Guillén*, N.Y. TIMES (Nov. 20, 2022), available at <https://www.nytimes.com/article/vanessa-guillen-fort-hood.html>.

temporarily highlighted “the insidious problem created by a culture that has tolerated deviant behaviors that lead to sexual harassment and assault,” and made clear that “leaders at all levels of command failed to create a culture of dignity and respect.”³¹ Yet, the military’s toxic culture persists, as does the sexual harassment and assault that it fosters, with devastating consequences for survivors, their communities, and the military itself.

B. The United States Has Failed to Adequately Prevent Sexual Harassment and Violence.

11. Sexual assault and harassment are rooted in misogyny and harmful ideas about gender identity, so it is unsurprising that a culture that fosters those beliefs leads to a failure to adequately prevent sexual violence. While the Department of Defense has undertaken some initiatives aimed at preventing military sexual violence, the continued high prevalence of sexual harassment and assault show that these efforts have not succeeded. A 2021 report by the RAND Corporation found that prevention activities do not utilize the documented best practices for prevention, focusing more on building awareness of these issues than developing actual skills to prevent them from occurring in the future.³² Likewise, the IRC pointed out that the military regularly conflates awareness-raising with prevention, offering activities like pancake breakfasts and golf tournaments that trivialize the seriousness of the issue and alienate survivors instead of implementing evidence-informed prevention strategies.³³
12. Additionally, there is a stark lack of capability among those responsible for prevention. The IRC highlighted the military’s “near total lack of prevention specialists,” a result of an overall military structure that deemphasizes experience and specialization.³⁴ In response to the IRC’s recommendations, the Department of Defense has undertaken to professionalize the prevention workforce by hiring civilians with specific expertise in public health and behavioral social science to serve as training experts and special-victim advocates.³⁵ While this is a promising step, tremendous resources, commitment, and openness to large-scale cultural change will be required at every level if this effort is to finally “move the needle” on preventing military sexual assault in the future.³⁶

³¹ IRC REPORT, *supra* note 5, at 36.

³² Joie D. Acosta, Matthew Chinman, Amy L. Shearer, *Countering Sexual Assault And Sexual Harassment in The U.S. Military*, RAND CORPORATION (2021) at 6-7, https://www.rand.org/pubs/research_reports/RRA1318-1.html.

³³ IRC REPORT, *supra* note 5, at 26.

³⁴ *Id.* at 5. Similarly, the RAND report found the Air Force to be the only branch of the military with personnel that specifically focuses on sexual violence prevention. Acosta et al., *supra* note 32, at 23.

³⁵ Rose L. Thayer, *Military to Hire 2,000 Civilians to Aid Sexual Assault Victims, Train Troops About Prevention*, STARS AND STRIPES (Sept. 21, 2022), available at <https://www.stripes.com/theaters/us/2022-09-21/military-sexual-assault-harassment-reforms-7421346.html>.

³⁶ See Missy Ryan and Dan Lamothe, *We Haven’t Moved the Needle on Sexual Assault in the Military, General Says*, WASH. POST, May 6, 2021 (“We the chain of command, we the generals and colonels, the captains and so on, we have lost the trust and confidence of those subordinates in our ability to deal with sexual assault. So we need to make a change. . . . We haven’t moved the needle and that is the bottom line.”) (quoting Gen. Mark A. Milley, chairman of the Joint Chiefs of Staff), available at https://www.washingtonpost.com/national-security/military-sexual-assault/2021/05/06/a8f51a7c-ae98-11eb-8109-f8ba1ea2eeab_story.html.

C. The U.S. Military Criminal Legal System Denies Survivors Access to Adequate Redress.

13. The military legal system does not afford survivors adequate redress for sexual harassment and violence. The unsupportive and stigmatizing culture discussed above contributes to low reporting numbers, with estimated reporting rates decreasing from 33% in 2018 to 20% in 2021.³⁷ For survivors who do report, prosecution and conviction rates are extremely low. In fiscal year 2022, service members made 7,958 formal reports of sexual assault.³⁸ Of these reports, only 224 involved a conviction at trial.³⁹ These figures are miniscule, particularly when considering that an estimated 35,875 service members experienced unwanted sexual contact in FY2021.⁴⁰
14. Deep structural problems within the military system, including the authority afforded to Commanders over the prosecution of sexual violence cases, have historically contributed to this denial of redress for many survivors. By moving prosecutorial authority from the chain of command to the independent Offices of Special Trial Counsel, the United States has taken a significant step towards remedying these structural problems. However, as noted above, the effectiveness of the new system remains to be seen as it moves forward. Moreover, other persistent problems within the military criminal legal system threaten to undermine the effectiveness of these reforms and continue to bar military sexual assault survivors from achieving meaningful access to justice.
15. One key issue is that military justice practitioners lack the necessary expertise and specialization to handle complex sexual assault cases. Service Judge Advocate General (JAG) Corps leadership, apart from those in the Navy, does not allow judge advocates who specialize in criminal litigation to stay in these positions for their whole careers, so there is a lack of specialization and experience.⁴¹ As the IRC has explained, “historically, regardless of occupational specialty, military Service members are subject to continuous personnel rotations which contribute to an inexperienced military justice workforce with subpar qualifications to handle special victim cases.”⁴²

³⁷ 2021 SAPR REPORT, *supra* note 1, at 6.

³⁸ U.S. DEPARTMENT OF DEFENSE, ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY FISCAL YEAR 2022 APPENDIX B 10 (2022), *available at* https://www.sapr.mil/sites/default/files/public/docs/reports/AR/FY22/Appendix_B_Statistical_Data_on_Sexual_Assault_FY2022.pdf [hereinafter FY 2022 SAPR REPORT APPENDIX B].

³⁹ *Id.* at 26. Of these 7,958 reports, 37% were made and handled confidentially through the restricted reporting system, which does not provide for investigation and a judicial remedy. *Id.* at 9. Of the reports made through the unrestricted reporting system, the military determined that it had legal authority and sufficient evidence to support some form of disciplinary action in 2,117 cases. *Id.* at 19. In 72% of these cases, disciplinary action amounted to adverse administrative action or nonjudicial punishments, which often fails to afford meaningful redress to survivors of sexual violence. *Id.*

⁴⁰ SAPR REPORT, *supra* note 1, at 6.

⁴¹ IRC REPORT, *supra* note 5, at 28.

⁴² *Id.* at 38.

16. Moreover, the number of cases going to court-martial are decreasing year after year.⁴³ This means that JAG attorneys have few opportunities to practice trial skills, let alone skills in prosecuting, defending, and adjudicating sexual offense cases. Insufficient or nonexistent in-court experience, in turn, results in a lack of competence, lower conviction rates, and decreased victim satisfaction.⁴⁴ Addressing these gaps must be a top priority if the new Offices of Special Trial Counsel are to operate effectively rather than becoming systematically impeded by lack of professionalization, specialization, and consistency among their legal staff.
17. Another challenge is that the military’s sentencing tools are much more limited than those available to civilian courts. The military criminal legal system does not provide uniform guidelines to the military judges—or court officials—responsible for sentencing, so disciplinary sentences are “wildly disparate. . . and [likely] skew significantly lighter than their civilian counterparts.”⁴⁵ Further, military judges and court officials cannot sentence convicted perpetrators to supervised release (which requires perpetrators to “refrain from criminal activity, cooperate with authorized collection of DNA samples, and submit to periodic drug testing”) or to meet rehabilitation requirements, either during confinement or post release.⁴⁶ There is also no ability to order an offender to make restitution, surrender firearms, have no contact with the victim, or complete a treatment program.⁴⁷ Thus, perpetrators of military sexual harassment and assault are not channeled into valuable rehabilitative treatment or subject to oversight or monitoring following their sentence, making it more likely that they will reoffend.
18. The military criminal legal system also fails to comprehensively address the problem of retaliation. In its 2022 legislation, Congress made the offense of retaliation (which had been created in 2014) a covered crime to be investigated and prosecuted by the Offices of the Special Trial Counsel. However, very few incidents of retaliation are reported, let alone investigated or referred for prosecution.⁴⁸ Proving retaliation is difficult, due to a high burden of proof on survivors and mismatches between survivors’ experiences of retaliation and the narrower scope of the criminalized offense. Thus, most experiences of retaliation cannot be prosecuted yet continue to harm survivors who report while deterring many others from reporting.

⁴³ *By The Numbers 2022*, NATIONAL INSTITUTE OF MILITARY JUSTICE (Jan. 17, 2023),

<https://www.nimj.org/caaflog/by-the-numbers-2022>.

⁴⁴ FY 2022 SAPR REPORT APPENDIX, *supra* note 38, at 40-42.

⁴⁵ Letter from Col. Don Christensen, President, Protect our Defenders to Martha Brashford, Chairwoman, DACIPAD (Nov. 15, 2019) (on file with author).

⁴⁶ U.S. SENT’G COMM., GUIDELINES MANUAL, § 5D1.3 (2021).

⁴⁷ Col. Don Christensen (ret.), Expert Declaration, May 3, 2023, Exhibit E in Erica Dorn et al., Case 15.124, Final Observations on the Merits of the Case, Int. Am. Comm. H.R. (May 14, 2023) (on file with author).

⁴⁸ The military received 62 reports of retaliation by service members in FY2021.⁴⁸ Only 32 of these cases were investigated, and action was taken against only one alleged retaliator – an administrative discharge for a different, nonsexual offense. No retaliation cases were referred to trial at courts-martial. U.S. DEPARTMENT OF DEFENSE, ANNUAL REPORT ON SEXUAL VIOLENCE IN THE MILITARY, FISCAL YEAR 2021, APP. A, STATISTICAL DATA ON SEXUAL ASSAULT 40-41, 44 (2022).

19. Meanwhile, Commanders retain authority to address retaliation complaints that do not involve a covered crime, as well as to make decisions about whether to take punitive action against a survivor for any minor, collateral misconduct or to exempt them from discipline under the military's new discretionary "safe to report" policy.⁴⁹ For the same reasons that Commanders are not well-placed to handle sexual assault and harassment cases, they are similarly ill-equipped to respond independently and effectively to retaliation against survivors under their command.⁵⁰ Moreover, while the military's "safe to report" policies are promising, their application is discretionary and may not afford protection against a superior in the chain of command who plans to retaliate by taking adverse action against a survivor for collateral misconduct. Moving authority to investigate and respond to all forms of retaliation and to make decisions about collateral conduct to independent, trained investigators and prosecutors would help ensure that all forms of retaliation are taken seriously.

D. The United States Denies Survivors Meaningful Access to Remedies in Civilian Courts.

20. The military criminal legal system remains a very closed one, and in practice, many survivors lack meaningful access to redress from civilian courts. Since 2015, the military has been required to consult with victims of sexual assault regarding their preference of whether their perpetrator is prosecuted by a civilian or criminal court.⁵¹ However, there is no requirement that the military take into account the preference of the victim when deciding where the prosecution will occur, and many victims are not informed that a civilian criminal court is an option.⁵² After a 2019 Department of Defense audit revealed that 94% of cases reviewed had no record of the victim's preferences, Congress enacted a requirement that the military document and maintain records of victims' preferences.⁵³ It remains to be seen how this requirement will be implemented. Moreover, there are no requirements that the consultation into victims' preferences will be meaningful, that they will be fully informed of the advantages and disadvantages of either legal system, or that the military will follow or even take seriously victims' preferences. Additionally, nothing prevents the military from talking the victim out of pursuing civil prosecution. Consequently, military sexual assault survivors are effectively denied the access to civilian criminal courts that is afforded to non-military survivors of violence.

⁴⁹ Christensen, *supra* note 47.

⁵⁰ *See id.*

⁵¹ National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, § 534(b)(1)-(2), 128 Stat. 3292, 3367 (2014).

⁵² *See* Tom Vanden Brook, *Military Fails to Advise Victims of Sexual Assault of Civilian Court Option, Advocates Say*, USA TODAY (June 10, 2018), available at <https://www.usatoday.com/story/news/politics/2018/06/10/military-sex-assault-victims-not-told-right-civilian-trial/686503002/>.

⁵³ INSPECTOR GENERAL, U.S. DEPARTMENT OF DEFENSE, REPORT NO. DODIG-2019-064, AUDIT OF DoD EFFORTS TO CONSULT WITH VICTIMS OF SEXUAL ASSAULT COMMITTED BY MIL. PERSONNEL IN THE U.S. REGARDING THE VICTIM'S PREFERENCE FOR PROSECUTION 8-9 (2019), available at <https://media.defense.gov/2019/Mar/22/2002104649/-1/-1/1/DODIG-2019-064.PDF>; National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, § 538(b), 113 Stat. 1198, 1363-64 (2019).

21. The United States also denies service members who experience sexual violence access to the civil remedies that are available to civilian survivors.⁵⁴ In particular, a legal doctrine established by the United States Supreme Court in its decision in *Feres v. United States* (known as the “Feres doctrine”) provides that military service members may not pursue a tort action against the United States for injuries or civil rights violations “where the injuries arise out of or are in the course of activity that is incident to [military] service.”⁵⁵ This doctrine has blocked service members from suing the military in civil courts for a wide range of injuries, including sexual misconduct. Most federal appeals courts that have considered the application of *Feres* to military sexual assault cases have found that sexual assault or misconduct that happens during a servicemember’s time in the military is “incident to military service” and that, as a result, survivors have no access to a civil remedy.⁵⁶
22. These barriers to civilian courts coupled with low prosecution rates and the multiple systemic problems with the military legal system that are discussed above mean that many survivors of sexual violence are left without avenues to seek justice and are denied access to a meaningful remedy.

E. The United States Denies Survivors Access to Adequate Care and Support.

23. After experiencing acts of sexual violence or harassment or going through the military legal system, survivors often denied much-needed care and support. There is a limited availability of providers and advocates for survivors of military sexual assault. For example, one Sexual Assault Prevention and Response Victim Advocate explained that she was the only full-time Victim Advocate for 18,000 individuals.⁵⁷ While building trust is crucial for survivors of sexual assault, the IRC reported that multiple survivors of sexual violence had their Victim Advocate transferred mid-case, or noted that their advocate was too busy with their full-time position to dedicate the time necessary to be an effective advocate.⁵⁸ This is because many of the sexual assault responders often fill those roles as “collateral duty,” which means that they serve in this response role in addition to their main job in the military, and therefore do not have enough time nor resources to fulfil both duties.⁵⁹ Furthermore, for the few advocates available, many are

⁵⁴ Dwight Stirling, *Ending Sexual Assault Requires Civil Action*, CENTER FOR LAW AND MILITARY POLICY (March 26, 2019), <https://centerforlaw.org/sound-off/f/ending-mst-requires-a-civil-solution-by-dwight-stirling>.

⁵⁵ *Feres v. United States*, 340 U.S. 135, 146 (1950).

⁵⁶ See *Doe v. United States*, 815 Fed. Appx. 592, 595 (2d Cir. 2000); *Doe v. Hagenbeck*, 870 F.3d 36, 45 (2d Cir. 2017), cert. denied, 141 S. Ct. 1498 (2021); *Klay v. Panetta*, No. 13-5081 (D.C. Cir. 2014); *Cioca v. Rumsfeld*, 720 F. 3d 505 (4th Cir. 2013). *But see* *Spletstoser v. Hyten*, 33 F.4th 938, 958 (9th.Cir. 2022) (rejecting government’s argument that case alleging military sexual assault and retaliation should be dismissed under *Feres* and finding it implausible for sexual assault to be considered “incident to military service”).

⁵⁷ IRC REPORT, *supra* note 5, at 26.

⁵⁸ *Id.* at 27-28.

⁵⁹ GOV’T ACCOUNTABILITY OFF.; GAO-17-217, BETTER RESOURCE MANAGEMENT NEEDED TO IMPROVE PREVENTION AND RESPONSE IN THE ARMY NATIONAL GUARD AND ARMY RESERVE 18 (2017), available at <https://www.gao.gov/assets/690/683537.pdf>.

underqualified and inadequately prepared to handle the needs of survivors of sexual trauma.⁶⁰

24. Further, victims of sexual violence experience higher rates of mental illness. Studies have shown moderate to strong associations between reported experiences of sexual assault or harassment and incidence of PTSD, depression, and substance use disorder.⁶¹ This connection demonstrates the necessity of adequate mental health services. However, many survivors elect not to report their assaults and do not seek treatment out of fear of losing medical benefits or being declared unfit for duty.⁶² Other survivors elect not to seek treatment out of distrust in the military, with fear that the Department of Veterans Affairs, as a civilian branch of the military, will not truly help them.⁶³
25. Military sexual assault survivors may also elect to forego mental health treatment due a loss of privacy. The military justice system does not recognize a robust “psychotherapist-patient privilege,” which forces service members to choose between pursuing their case and seeking comprehensive, confidential mental health care.⁶⁴ In *United States v. Mellette*, the U.S. Court of Appeals for the Armed Forces found that mental health diagnoses and treatments within medical records are not privileged meaning that during the adjudicatory process, opposing counsel can access a victim’s patient treatment and diagnoses based on conversations with mental health providers.⁶⁵ This is particularly detrimental to servicemembers who report sexual misconduct because military sexual trauma (“MST”) is closely linked to “long-term . . . post-traumatic stress disorder (“PTSD”), depression, generalized anxiety disorder, substance use disorders, eating disorders and suicidality.”⁶⁶ Out of fear that their private medical records may be accessed by strangers and perhaps even scrutinized, sexual assault survivors may choose to either forego treatment in order to obtain a favorable disposition in the military justice system, or forego their legal case in order to obtain treatment.

⁶⁰ INDEPENDENT REVIEW COMMISSION ON SEXUAL ASSAULT IN THE MILITARY, HONORING OUR DUTY TO SURVIVORS OF MILITARY SEXUAL ASSAULT: RECOMMENDATIONS FOR VICTIM CARE AND SUPPORT 11 (2021), available at <https://media.defense.gov/2021/Jul/02/2002755437/-1/-1/0/IRC-FULL-REPORT-FINAL-1923-7-1-21.PDF/IRC-FULL-REPORT-FINAL-1923-7-1-21.PDF>.

⁶¹ Julia Rollison et al., *Sexual Harassment and Sexual Assault in Military Settings: A Review of Associated Mental Health Conditions, Treatments, and Access to Care*, RAND CORPORATION (2021), available at https://www.rand.org/pubs/research_briefs/RBA668-1.html.

⁶² IRC REPORT, *supra* note 5, at 40.

⁶³ Lindsey L. Monteith et al., *Military Sexual Trauma Survivors’ Perceptions of Veterans Health Administration Care: A Qualitative Examination*, 17 PSYCH. SERV. 178 (2020).

⁶⁴ *POD Files Amicus Brief on Mental Health Privilege as RAND Report Highlights Barriers to Mental Health Care Faced by Military Sexual Assault Survivors*, PROTECT OUR DEFENDERS (Jan. 11, 2023), available at <https://www.protectourdefenders.com/pod-files-amicus-brief-on-mental-health-privilege-as-rand-report-highlights-barriers-to-mental-health-care-faced-by-military-sexual-assault-survivors>.

⁶⁵ *United States v. Mellette*, No. 21-0312 (C.A.A.F. 2022), available at <https://www.armfor.uscourts.gov/opinions/2021OctTerm/210312.pdf>.

⁶⁶ Jennifer A. Sumner et al., *Military Sexual Trauma and Adverse Mental and Physical Health and Clinical Comorbidity in Women Veterans*, 31 WOMEN’S HEALTH ISSUES 586 (2021).

II. LEGAL FRAMEWORK

26. The United States' systematic failure to adequately prevent and respond to military sexual assault violates numerous provisions of the International Covenant on Civil and Political Rights (ICCPR).
27. In its 2019 List of Issues Prior to Review, the Human Rights Committee recognized that military sexual violence implicates the rights to non-discrimination and equality of men and women under articles 2, 3, and 26 of the ICCPR.⁶⁷ Specifically, these articles require States to respect and ensure all Covenant rights without distinction based on sex (article 2.1), take necessary steps to adopt laws or other measures to give effect to these rights (article 2.2), ensure that individuals whose rights are violated have an effective remedy (article 2.3), protect the equal rights of men and women to the enjoyment of all Covenant rights (article 3), and ensure the right to equality before the law, equal protection of the law, and protection from discrimination on any ground, including sex (article 26).⁶⁸
28. The Committee has affirmed that States are responsible both for protecting individuals against violations of Covenant rights by State agents and for “taking appropriate measures or exercising due diligence to prevent, punish, investigate, or redress the harm caused by acts committed by private persons.”⁶⁹ In the case of military sexual assault, the United States is responsible both for rights violations committed by its agents and for its failure to exercise due diligence to prevent and respond to violations. By fostering a climate of misogyny and harassment that gives rise to military sexual violence, engaging in retaliation against survivors, and failing to take adequate actions to prevent, punish, investigate, and redress the harm caused by this violence, the United States violated service members' rights to nondiscrimination and equality and to an effective remedy under articles 2, 3, and 26 of the Covenant.
29. The United States' failure to adequately prevent and respond to military sexual violence further violated its obligation to ensure the rights of everyone to life (article 6), freedom from torture or cruel, inhuman, or degrading treatment or punishment (article 7), and security of person (article 9). The Committee has explained that the right to life (article 6) requires States to take “special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or

⁶⁷ U.N. International Covenant on Civil and Political Rights, Human Rights Committee, List of issues prior to submission of the fifth periodic report of the United States of America, 18 April 2019, United Nations, Treaty Series, ¶ 10.

⁶⁸ *See also* Human Rights Committee, General Comment No. 28, ¶ 4 (affirming that articles 2 and 3 of the Covenant require States parties to “take all steps necessary . . . to put an end to discriminatory actions, both in the private and public sectors, which impair the enjoyment of equal rights”); Human Rights Committee, General Comment No. 38, ¶ 31 (noting that the right to equality before the law and freedom from discrimination under article 26 similarly requires States “to act against discrimination by public and private agencies in all fields”).

⁶⁹ Human Rights Committee, General Comment No. 31, ¶ 8.

pre-existing patterns of violence,” including victims of gender-based violence.⁷⁰ It has also recognized that the right to be free from torture and cruel, inhuman or degrading treatment (article 7) calls for laws and practices that meaningfully prevent gender-based violence and provide victims with an effective remedy, including by ensuring that “complaints [are] investigated promptly and impartially by competent authorities.”⁷¹ It has further noted that to realize the right to security of person (article 9), States must protect individuals from and respond appropriately to patterns of violence against categories of victims, including violence against women and against persons based on their gender identity or sexual orientation.⁷² The United States’ failure to protect service members from military sexual violence; respond appropriately when it occurs; ensure prompt, impartial and effective investigation of complaints; and afford an effective remedy to victims violates its obligations to ensure service members’ rights to life, freedom from torture and cruel, inhuman, or degrading treatment, and security of person under articles 6, 7, and 9 of the Covenant.

30. The United States’ actions and inactions have also violated service members’ right to equality before the courts and tribunals and to a fair trial (article 14). The Committee has noted that “[a] situation where an individual’s attempts to access the competent courts or tribunals are systematically frustrated de jure or de facto” or where “certain persons are barred from bringing suit against any other persons” based on their sex or any other status violates article 14’s protection of the right to equality before the courts and tribunals.⁷³ Service members who have experienced military sexual assault have been systematically denied access to meaningful redress through the military criminal legal system and have been barred from seeking remedies in U.S. civilian courts, in violation of article 14.

III. OTHER HUMAN RIGHTS BODY RECOMMENDATIONS

31. Many other human rights bodies and experts, including the U.N. Special Rapporteur on Violence Against Women, the U.N. Committee Against Torture, U.N. Human Rights Council, and Inter-American Commission on Human Rights, have recognized that sexual assault in the U.S. military is a human rights problem and recommended measures to improve the United States’ response to and prevention of sexual violence.
32. In 2011, the U.N. Special Rapporteur on Violence Against Women found that sexual violence in the U.S. military had become a “pervasive form of violence against women

⁷⁰ Human Rights Committee, General Comment No. 36, ¶ 23. The Committee also noted that the right to life requires States to engage in “campaigns for raising awareness of gender-based violence.” *Id.* ¶ 26.

⁷¹ Human Rights Committee, General Comment No. 20, ¶ 8 (“It is not sufficient for the implementation of article 7 to prohibit such treatment or punishment or to make it a crime. States parties should inform the Committee of the legislative, administrative, judicial, or other measures they take to prevent and punish acts of torture and cruel, inhuman, and degrading treatment in any territory under their jurisdiction.”); ¶ 14 (noting that victims must be provided with an effective remedy, including by ensuring that “complaints [are] investigated promptly and impartially by competent authorities”).

⁷² Human Rights Committee, General Comment No. 35, ¶ 9.

⁷³ Human Rights Committee, General Comment No. 32, ¶ 9.

in the United States.”⁷⁴ She noted that such violence was caused “by numerous factors, ranging from a very hierarchic and command-driven structure to a culture that prompts masculine traits of power and control, and a pattern of underreporting and impunity.”⁷⁵ Among other recommendations, her report urged the United States to improve the efficacy of a no-tolerance policy for rape, sexual assault, and sexual harassments; strengthen staff training; guarantee adequate investigations for all allegations; facilitate access to benefits for Veterans with military-sexual-trauma-related PTSD, and allow service members to bring civil legal claims against the military.⁷⁶

33. In 2014, in its periodic review of the United States’ compliance with its obligations under the U.N. Convention Against Torture, the U.N. Committee Against Torture expressed concern “about the high prevalence of sexual violence, including rape, and the alleged failure of DoD to adequately prevent and address military sexual assaults of both men and women serving in the armed forces (arts. 2, 12, 13, and 16).”⁷⁷ The Committee recommended that the United States improve the efficacy of investigations of all allegations of sexual violence, protect complaints and witnesses from any acts of retaliation, and guarantee equal access to disability compensation to veterans who are military sexual assault survivors.⁷⁸
34. At the U.N. Human Rights Council’s 2015 Universal Periodic Review (UPR) of the United States, two states recommended that the United States increase its efforts to prevent and prosecute sexual violence in the U.S. military. Slovenia recommended that the U.S. “redouble efforts to prevent sexual violence in the military and ensure effective prosecution of offenders and redress for victims.”⁷⁹ Denmark recommended that the U.S. “improve access to justice, including due process and redress, for victims of sexual violence in the military; this would include removing from the chain of command the decision about whether to prosecute cases of alleged assault.”⁸⁰ More recently, at the U.N. Human Rights Council’s 2020 UPR of the United States, Israel recommended that the U.S. address further the issue of sexual violence in the military.⁸¹
35. In 2022, the Inter-American Commission on Human Rights (IACHR) found admissible two petitions filed against the United States by survivors of military sexual assault.⁸² In

⁷⁴ U.N. Human Rights Council, Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Addendum, Mission to the United States of America, ¶ 22.

⁷⁵ *Id.* ¶ 27.

⁷⁶ *Id.* ¶ 115.

⁷⁷ Committee Against Torture, Concluding observations on the third to fifth periodic reports of the United States of America, ¶ 30, UN Doc. CAT/C/USA/CO/3-5 (Dec. 19, 2014).

⁷⁸ *Id.*

⁷⁹ U.N. Human Rights Council, Report of the Working Groups on the Universal Periodic Review, 20 July 2015, ¶ 176.258, p. 29

⁸⁰ *Id.* ¶ 176.289.

⁸¹ U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review, 15 December 2020, ¶ 26.240, p. 19.

⁸² IACHR, Report No. 238/22, Petition 106-14. Admissibility. Amber Anderson et al. United States of America. September 9, 2022. IACHR, Report No. 290/22, Petition 2340-15. Admissibility. Carla Butcher et al. United States of America. November 1, 2022.

its admissibility reports, the IACHR rejected the United States' argument that it could not be responsible for human rights violations because the sexual violence and harassment alleged constituted private conduct.⁸³ It emphasized that whether or not the perpetrators acted in an individual or official capacity, the United States had an obligation under the American Declaration to "provide for an effective remedy to any person who claims that their rights have been violated."⁸⁴ It explained that the U.S. also could be found responsible for human rights violations if it tolerated or failed to prevent military sexual assault.⁸⁵ Noting that military jurisdiction is inadequate to address allegations of serious human rights issues like sexual assault,⁸⁶ the Commission found that the petitioners were exempted from exhausting domestic remedies⁸⁷ and held that they had established a colorable claim such that the cases could proceed to be analyzed on their merits.⁸⁸

IV. U.S. GOVERNMENT RESPONSE

36. In its 2019 List of Issues Prior to Reporting, the Human Rights Committee asked the United States to "Please explain measures adopted by the State party to combat physical and sexual violence against women . . . in the United States Armed Forces."⁸⁹ The Committee also asked the United States to "provide information on the mechanisms available to transgender individuals to protect them from discrimination . . . in the United States Armed Forces."⁹⁰
37. In its 2021 Fifth Periodic Report to the Committee, the United States acknowledged that an estimated 20,500 service members, including 13,000 women and 7,500 men, had experienced sexual assault or unwanted sexual contact in 2018, a significant increase from the estimated 14,900 in 2016.⁹¹ It observed that estimated reporting rates increased fourfold over the past decade, and added that "[s]ince 2005, DoD [the Department of Defense] has fielded a comprehensive suite of recovery and consultative

⁸³ IACHR, Report No. 238/22, ¶ 49; IACHR, Report No. 290/22, ¶ 87.

⁸⁴ IACHR, Report No. 238/22, ¶ 49; IACHR, Report No. 290/22, ¶ 87. The IACHR stressed that an effective remedy includes "the right of every individual to go to a tribunal when any of his or her rights have been violated; to obtain a judicial investigation conducted by a competent, impartial and independent tribunal that establishes whether or not a violation has taken place; and the corresponding right to obtain reparations for the harm suffered." *Id.*

⁸⁵ IACHR, Report No. 238/22, ¶ 50; IACHR, Report No. 290/22, ¶ 88.

⁸⁶ IACHR, Report No. 238/22, ¶ 41; IACHR, Report No. 290/22, ¶ 80.

⁸⁷ IACHR, Report No. 238/22, ¶ 42; IACHR, Report No. 290/22, ¶ 81.

⁸⁸ IACHR, Report No. 238/22, ¶ 58; IACHR, Report No. 290/22, ¶ 97.

⁸⁹ U.N. Human Rights Committee, List of Issues Prior to Submission of the Fifth Periodic Report of the United States of America ¶ 10 (Apr. 18, 2019), UN Doc. CCPR/C/USA/QPR/5. The question also asked the United States to explain measures to combat physical and sexual violence against women in schools and institutions of higher learning. *Id.*

⁹⁰ *Id.* ¶ 11. The Committee also asked about mechanisms available to transgender individuals to protect them from discrimination in other institutional contexts – schools, prisons, and jails. *Id.*

⁹¹ United States, Fifth Periodic Report Submitted by the United States of America Under Article 40 of the Covenant Pursuant to the Optional Reporting Procedure ¶ 25 (Nov. 11, 2021), U.N. Doc. CCPR/C/USA/5.

services to further promote reporting and empower participation in the military justice system.”⁹²

38. The United States also noted that “DoD’s response system aims to advocate for all military service members and their adult dependents by encouraging sexual assault reporting, promoting recovery, facilitating treatment, and improving military readiness.”⁹³ It referred to a Sexual Assault Advocate Certification Program that has been provided to Sexual Assault Response Coordinators and Victim Advocates and noted that representatives of the DoD Sexual Assault Prevention and Response Office educated military communities on utilizing Safe Helpline telephone and online services.⁹⁴ It described its “Catch a Serial Offender” program that allows service members making a confidential restricted report to provide information about the alleged offender that could be used to match with other reported incidents.⁹⁵ The United States also discussed its “Prevention Plan of Action,” a coordinated prevention approach that focused on work with the youngest military members and others at heightened risk of becoming sexual assault perpetrators or victims.⁹⁶
39. While these measures are commendable, as are the United States’ recent reforms to the military criminal legal process, the United States must do more to dismantle the military’s culture of misogyny and harassment, the well-founded mistrust that exists among survivors, and the power imbalances that are endemic in the military structure. It must also take sustained and effective actions, including by addressing the systemic problems discussed above, to ensure that military sexual assault survivors are guaranteed meaningful access to justice, protection from retaliation, and sufficient care and support.

V. SUGGESTED RECOMMENDATIONS

40. Despite the progress the United States has made on reforms to prevent sexual assault and harassment and provide adequate redress, there are still many gaps and challenges that remain and require urgent changes in order to render other reforms effective. Therefore, the United States should be called upon to:
 - a. Engage in a robust, dedicated, and sustained effort involving Commanders and supervisors at all levels to dismantle the misogyny, gender stereotypes and other aspects of the toxic military subcultures that allow harassment and

⁹² *Id.*

⁹³ *Id.* ¶ 26.

⁹⁴ *Id.*

⁹⁵ *Id.* In the case of a match, the restricted reporter would be given the option to change her report to an unrestricted report and participate in the military criminal legal process. *Id.*

⁹⁶ *Id.* ¶ 27. On the issue of discrimination against transgender service members, the United States cites its 2020 policy that allows transgender individuals to serve. It notes, however, that (subject to any waivers or exceptions that may be granted) that all persons are subject to the sex-specific standards, requirements, or policies associated with their biological sex, not their gender identity. *Id.* ¶ 30.

violence to thrive. Ensure that all leaders understand fostering a healthy climate as central to their responsibilities and to the military's mission.

- b. Expand and strengthen the military's prevention efforts. Implement constructive and scientifically-informed prevention strategies through training, hiring, or other measures. Ensure that staff have sufficient knowledge, resources, and capabilities to implement these strategies.
- c. Reform other aspects of the military justice system, including by expanding sentencing options to provide for offender rehabilitation and reduce recidivism. Judicially or legislatively overturn legal doctrines that exclude military victims of sexual violence from judicial remedies that are available to civilians.
- d. Ensure that the new Offices of the Special Trial Counsel have the resources, training, and independence needed to be successful. Build a professionalized military legal/judicial staff with the knowledge, specialization, and training to prosecute, defend, and adjudicate sexual offense cases effectively.
- e. Address the disproportionate impact of military sexual harassment and violence on LGBTQ+ service members, including by tracking the impact through the annual DoD reports and by removing discriminatory policies that perpetuate a hostile culture such as the ban on transgender service members.
- f. Take meaningful action to prevent retaliation against military sexual violence victims who report and to ensure accountability when retaliation occurs. Move the authority to address retaliation complaints that do not amount to a covered criminal offense and any alleged survivor misconduct from command to independent authorities.
- g. Strengthen victim agency and involvement in sexual violence responses. Ensure that survivors who experience PTSD related to military sexual violence have meaningful access to the treatment and support they need and are not denied benefits because of unreasonable evidentiary burdens or institutional problems.