SEXUAL VIOLENCE IN THE U.S. MILITARY

Committee against Torture Submission

United States

October 2014

Submitted by
American Civil Liberties Union (ACLU)
Avon Global Center for Women and Justice at Cornell Law School
Equality Now
Global Gender Justice Clinic at Cornell Law School
Military Rape Crisis Center (MRCC)
Service Women's Action Network (SWAN)

The **American Civil Liberties Union (ACLU)** is a national, nonpartisan public interest organization of more than 500,000 members, committed to the principles of liberty and equality under the law, including the human right to live free from violence and discrimination. The **Avon Global Center for Women and Justice at Cornell Law School** works with judges, legal professionals, governmental and non-governmental organizations to improve access to justice in an effort to eliminate violence against women and girls. **Equality Now** is a legal advocacy organization that promotes and protects the human rights of women and girls around the world. The **Global Gender Justice Clinic**, a clinical course at Cornell Law School, works on human rights cases and projects that contribute to local, global, and transnational efforts to combat gender violence and discrimination. The **Military Rape Crisis Center (MRCC)** strives to unite agencies engaged in the elimination of sexual violence in the United States Armed Forces. The **Service Women's Action Network (SWAN)** supports, defends, and empowers servicewomen and women veterans through advocacy initiatives and community programs.

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I. ISSUE SUMMARY

1. Sexual violence and rape in the United States military is perpetrated at alarming rates and violates service members' right to be free of torture and cruel, inhuman or degrading treatment.[1] In its 2013 Annual Report on Sexual Assault in the Military, the U.S. Department of Defense (DoD) stated that there were 5,061 reports of sexual assault in the military between 2013 and 2014, a nearly fifty percent increase across all services over the same period a year earlier.[2] The actual number of sexual assaults in the military is impossible to determine, however, as most incidents are never reported.[3] The number of men and women who experience sexual violence in the military is disproportionate relative to the civilian population, and female service members are disproportionately targeted compared to males.[4]

2. Although a widespread problem, the DoD has been slow to respond to the issue of sexual violence and rape in the United States military. While the DoD has attempted to institute prevention strategies against military sexual assault, it lacks a comprehensive framework to oversee compliance and ensure effective implementation of those strategies.[5] By failing to adequately prevent and address incidents of sexual violence in the U.S. military, the DoD fosters a culture of impunity[6] and violates Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).[7] The hierarchic and command-driven structure[8] has tolerated sexual violence and harassment for decades, such that perpetrators of violence know they can act with impunity.

3. The military justice system is an exceptionally closed system with complete discretion to investigate, prosecute and punish any criminal allegations by and against its members. Survivors have the option to report incidents of rape and sexual violence to either their unit leadership or, more recently, to certain individuals outside of their unit. Reports are processed through either the restricted reporting system, which ensures confidentiality but does not provide a judicial remedy, or through the unrestricted reporting system which

allows for investigation and possible prosecution. Although unrestricted reports are referred outside the unit to military law enforcement for investigation, it is the accused's unit supervisor, known as the commander, who ultimately decides how a case is resolved.[9]

4. When a service member reports an incident through the unrestricted reporting system, the military justice system provides that a commander in the accused's chain of command possesses the power to determine whether a case will be referred to the military judicial system for prosecution.[10] Under recent changes to DoD policy, a commander with a rank of grade O-6 (colonel or Navy captain) or higher is authorized to decide initial disposition action, and has the power to administratively dispose of the case.[11] However, commanders are not impartial. They may have close working and personal relationships with the accused, and in some cases they may supervise both the accused and the survivor.[12] Additionally, commanders are evaluated according to how successfully they are carrying out the mission – not on providing justice to those who experience violence. When the accused is otherwise an effective service member, a commander faces the conflict of losing him if a complaint is pursued and prosecuted. This conflict of interest prevents the survivor from receiving impartial and unbiased treatment from the chain of command and violates his or her rights to due process and prompt and impartial investigation.[13] The inevitable partiality of the chain of command thus compromises the military's ability to afford meaningful redress to survivors of sexual violence.

5. Continuing to provide commanders in the chain of command with the authority to make key decisions about investigating, prosecuting, and punishing sexual violence is also problematic because most commanders have no substantial legal training in handling sexual abuse cases.[14] Although commanders can ask military lawyers for guidance, they have ultimate authority to make disposition decisions, including ordering dispositions contrary to the advice of legal counsel.[15] Commanders' attention is also necessarily focused on the operation of their unit. As the Service Women's Action Network has noted "*[m]ission requirements, operational tempo, training, workups and deployments can create a situation where commanders are unable to devote the proper time and attention needed to rendering proper disposition decisions*."[16]

6. The requirement that survivors report their abuse to their commander, and the broad authority given to commanders, has created a climate where violence is condoned and victims are silenced, and sometimes even punished. The military judicial system prosecutes only eight percent of those alleged to have perpetrated rape or sexual assault, as compared to the civilian system, which prosecutes forty percent of those alleged to

have committed these crimes.[17] In a significant number of cases, perpetrators have received a non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ), which consists of administrative discipline without a court martial and is intended to apply only to "minor offenses."[18] In other cases, perpetrators have been tried for the lesser offence of adultery under Article 134 of the UCMJ instead of rape under Article 120.[19]

7. Furthermore, survivors do not have access to federal courts to seek redress, a right afforded to all other civilian citizens, including other civilian employees of the military,[20] and protected under CAT.[21] Survivors of sexual violence in the military are barred from bringing civil rights or personal injury claims against the military or military officials in civilian federal courts. The U.S. Supreme Court has held that courts may not provide a remedy for injuries to servicewomen and men "*where the injuries arise out of or are in the course of activity that is incident to [military] service*."[22] Lower federal courts have applied this precedent to dismiss several recent class action cases brought by service members who were subjected to sexual violence while in the military.[23] Thus, sexual assault survivors who were unable to achieve redress through the military system have found themselves, for the second time, denied a meaningful remedy.

8. Some survivors experience retaliation when they report sexual violence to their commanders.[24] Sixty-two percent of women who experienced and reported unwanted sexual conduct in 2012 indicated perceiving some form of professional retaliation, social retaliation, administrative action, and/or other punishments as a result of reporting the incident.[25] Some servicemen and women who reported sexual violence have been labelled as "*troublemakers*," downgraded in rank, denied promotions, stripped of their security clearance, or discharged (sometimes dishonorably) as a direct result.[26] In some cases where survivors were transferred, members of their commands called the survivors' new supervisors to inform them of survivors' 'misbehavior,' thereby perpetuating the harassment and stigmatization against the service member.[27] Such retaliation violates the United States' obligations under Article 13 of CAT, which ensures that "*the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given*."

9. The lack of effective remedies and the ongoing retaliation against many victims of military sexual violence deters survivors from coming forward. This not only results in ongoing trauma for the victim, but allows perpetrators to repeat the violence against the victim and others.

10. Once discharged from the military, survivors of sexual violence continue to face discrimination and governmental refusal to recognize or address the harms they have suffered. Veterans who sustain disabling conditions resulting from their service are entitled to receive disability compensation, including when they are sexually harassed or assaulted. Yet, service members who suffer from Post-Traumatic Stress Disorder based on military sexual violence experience great difficulty in obtaining benefits.[28] The evidentiary standard that is used by the U.S. Department of Veterans Affairs in evaluating these claims is higher than for Post-Traumatic Stress Disorder based on other stressors, such as fear of enemy activity. As a result, military sexual assault survivors are less likely to be approved for disability compensation when compared to other veterans suffering from Post-Traumatic Stress Disorder.

11. In short, the U.S. military justice system systematically fails to impartially and meaningfully investigate, prosecute, and punish acts of sexual violence, and bars survivors from seeking redress in federal courts when the military violates their rights. The U.S. then often discriminates against these victims a second time, by denying them disability compensation after they are discharged for mental health conditions that arise from the sexual violence. The United States should take meaningful steps to reform these systems in order to eradicate sexual violence in the military, including by providing equal access to disability compensation for those veterans who are disabled based on military sexual violence; removing from command the decision of whether to investigate, prosecute, and punish alleged perpetrators; and provide survivors with access to U.S. federal courts.

II. LEGAL FRAMEWORK

12. With regard to the issues described above, CAT specifically enshrines the absolute prohibition of torture (Article 1); obligates the State Party to take effective measures to prevent torture (Article 2); prohibits cruel, inhuman, and degrading treatment or punishment (Article 16);[29] requires prompt and impartial investigation (Article 12); establishes the right to lodge a complaint and be protected against ill-treatment or intimidation as a consequence of the complaint (Article 13); and secures the right to obtain redress and fair compensation (Article 14).

13. In General Comment No. 2, the Committee against Torture emphasized that, under Article 2 of CAT, a State Party violates the Convention where its authorities "*know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish*" such officials or actors.[30] Such inaction constitutes

complicity, consent, or acquiescence to the torture or ill-treatment.[31] The Committee stated unequivocally that this principle applies to a State's failure to prevent and punish rape and other forms of gender-based violence.[32] Thus, the United States' failure to prevent and punish military sexual assault clearly violates its obligations under CAT.[33]

14. In General Comment No. 3, the Committee stated that Article 14 of CAT applies, without reservation or discrimination of any type, to any victim of torture or act of cruel, inhuman, or degrading treatment.[34] Under Article 14, a State Party must provide redress to victims within its legal system, allowing them to pursue their enforceable right to fair and adequate compensation.[35] In the current U.S. military justice system, the broad decision-making powers given to commanders in sexual assault cases too often prevent survivors' claims from being properly and impartially investigated and adjudicated in the military justice system. At the same time, the federal civilian courts have closed their doors to civil rights and personal injury claims based on sexual violence experienced during military service. Because of these barriers, the current U.S. military justice system does not ensure that survivors of military sexual violence have access to meaningful redress, as required by Article 14 of CAT. In addition, the disability compensation system discriminates against the many veterans who are disabled as a result of military sexual violence by subjecting them to a higher standard of evidence in order to qualify for benefits.

15. The statements of other human rights bodies and experts lend strong support to the conclusion that the United States' failure to prevent and punish sexual violence in the military violates its obligations under CAT. The Committee on the Elimination of Discrimination against Women has identified rape and sexual violence as a form of torture, as have several UN Special Rapporteurs on Torture.[36] Additionally, the UN Special Rapporteur on Violence Against Women recently expressed concern about the prevalence of sexual violence in the U.S. military and specifically highlighted the military's reporting barriers and failure to provide meaningful redress.[37] Among other recommendations, she urged the United States to implement an effective no-tolerance policy for sexual violence, including by ensuring adequate investigation of all allegations by an independent authority, and allowing survivors to seek redress when the military violates their rights.[38]

III. PREVIOUS CONCLUDING OBSERVATIONS

16. In its concluding observations during the United States' previous periodic review, the Committee against Torture recommended that the United States "*adopt clear legal provisions to implement the principle of absolute prohibition of torture in its domestic law*

without any possible derogation. (…) The State party should also ensure that perpetrators of acts of torture are prosecuted and punished appropriately. (…) The State party should promptly, thoroughly, and impartially, investigate any responsibility of senior military and civilian officials authorizing, acquiescing, or consenting, in any way, to acts of torture committed by their subordinates."[39]

17. Also related to the prevention of and responses to sexual violence in the U.S. military, the Committee noted that the U.S. "*should ensure, in accordance with the Convention, that mechanisms to obtain full redress, compensation and rehabilitation are accessible to all victims of acts of torture or abuse, including sexual violence perpetrated by its officials.*"[40] Further, the Committee noted that the U.S. "*should also ensure regular and independent monitoring of their [military personnel's] conduct*."[41]

IV. LIST OF ISSUES SUBMITTED BY THE COMMITTEE AND THE U.S. GOVERNMENT'S RESPONSE

18. In its Periodic Report of 2013,[42] the United States provided specific information on the implementation of Articles 1 to 16 of the Convention, including with regards to the previous recommendations of the Committee against Torture. Regarding an established system of redress for victims of torture generally, the United States reiterated that "*all acts of torture are offenses under criminal law in the United States*," and as such, they may be prosecuted at the federal and state levels.[43] These acts include *"… rape, sodomy, or molestation; … or a criminal violation of an individual's civil rights*."[44] Furthermore, the United States declared that U.S. law prohibits every U.S. official, regardless of location or time, from engaging in acts of torture or in cruel, inhuman, or degrading treatment or punishment.[45] This is a general statement offered without condition or exception and, as such, applies to military personnel. Additionally, the U.S. noted that most, if not all, acts of torture perpetrated by State actors can be prosecuted as deprivations of U.S. constitutional rights under 18 U.S.C. 242.[46] The U.S. believes that its existing law fully implements all its obligations, and thus also believes that its established system of redress for military sexual violence survivors is in compliance with Article 14 of CAT.[47]

19. The U.S. report failed to mention the lack of redress that survivors of sexual violence in the military experience because federal and state judicial systems are out of reach for them and only the military judicial process is available. In response to the Committee's request for information on the implementation and effectiveness of mechanisms for victims of acts of torture, including sexual violence, to obtain redress, compensation, and rehabilitation,[48] the United States noted that there are multiple avenues of redress

available to victims through criminal prosecution and civil remedies.[49] However, these remedies are out of reach for military service members, who are jurisdictionally barred from pursuing claims in federal or state court.[50]

20. Finally, the United States responded to the Committee's question on steps taken to prevent and punish violence and abuse of women by affirming its commitment to addressing violence against women and highlighting the third reauthorization of the Violence Against Women Act of 1994 (VAWA).[51] It also reported a decrease of incidents of sexual assault, rape, and intimate partner violence from 1994 to 2010.[52] However, the report did not provide disaggregation by population group so it is not clear whether the rates of sexual violence in the U.S. military have changed. Moreover, while the reauthorization of VAWA is an important step towards minimizing abuse against women in general, it fails to address military personnel as a population particularly vulnerable to acts of sexual violence. The continued prevalence of military sexual assault and the systemic barriers that exist to provide redress for survivors stand in sharp contrast to the United States' account of its progress in addressing violence against women in the civilian sector.

V. RECOMMENDED QUESTIONS

21. Given the widespread nature of sexual violence in the U.S. military and the U.S. Government's failure to enact and implement policies and legislation that fully address the shortcomings of the current military justice system, specifically regarding the partiality of command and barriers for survivors to seek redress:

a) How does the U.S. justify that the prosecution rate of rape/sexual assault allegations is significantly lower in the military judicial system compared to the civilian judicial system? What steps is the U.S. taking to ensure that complaints are investigated adequately, and where appropriate, prosecuted and punished as provided by law, and to ensure that every survivor receives an adequate remedy?
b) How will the U.S. ensure impartiality in its investigation, prosecution and adjudication of cases involving sexual violence in the U.S. military? What mechanisms for independent monitoring have been put in place to oversee the military's responses to sexual violence committed in its ranks?
c) What efforts is the U.S. making to prevent, prohibit and punish retaliation against service members who report sexual conduct? What steps is the U.S. taking to ensure that victims are not harassed when relocated to new commanders?
d) Why does the U.S. Department of Veterans Affairs continue to impose a different evidentiary standard for disability benefits for veterans who suffer from Post-

Traumatic Stress Disorder based on military sexual trauma, as compared to other stressors?

VI. SUGGESTED RECOMMENDATIONS

22. Therefore, the U.S. should be urged to:

i. undertake all necessary means to prevent sexual violence in the U.S. military and to ensure a safe working environment;

ii. adopt the same evidentiary standard for disability claims arising from Post-Traumatic Stress Disorder based on military sexual trauma as for other stressors;

iii. ensure impartial and effective investigation, prosecution, and redress of sexual violence allegations by removing the decision of how to dispose of complaints from the survivors' or perpetrators' chain of command; and

iv. provide access to U.S. federal courts so that survivors of sexual assault may seek remedies when the military violates their rights guaranteed under CAT.

ENDNOTES

[1] UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) Dec. 10, 1984, Arts. 1, 2, 16.
[2] Department of Defense, SAPRO, *Fiscal Year 2013 Annual Report on Sexual Assault in the Military,* 2 (2014), *available at* http://sapr.mil/public/docs/reports/FY13_DoD_SAPRO_Annual_Report_on_Sexual_Assault.pdf.
[3] *See* UN Human Rights Council*, Report Of The Special Rapporteur On Violence Against Women, Its Causes And Consequences,* Ms. Rashida Manjoo*,* Addendum, Mission to the United States of America (June 1, 2011), UN Doc. A/HRC/17/26/Add.5, ¶ 24.
[4] *See* Department Of Defense, SAPRO, *Fiscal Year 2013 Annual Report On Sexual Assault In The Military* 46 (2014), *available at* http://sapr.mil/public/docs/reports/FY13_DoD_SAPRO_Annual_Report_on_Sexual_Assault.pdf; Defense Manpower Data Center, *2012 Workplace And Gender Relations Survey Of Active Duty Members: Statistical Methodology Report*, 2 (2012); Joachim Hagopian, *Sexual Assault against Women in the U.S. Armed Forces*, Global Research (Mar. 23, 2014), *available at* http://www.globalresearch.ca/sexual-assault-against-women-in-the-us-armed-forces/5374784.
[5] *See* United States Government Accountability Office, *Testimony Before the Subcommittee on National Security and Foreign Affairs, Committee on Oversight and Government Reform, House of Representatives: Military Personnel: Preliminary Observations on DoD's and the Coast Guard's Sexual Assault Prevention and Response Programs*, (2008), *available at* http://www.gao.gov/assets/130/120948.html.
[6] *See id*.
[7] Article 2 of CAT requires each State Party to "*take effective legislative, administrative, judicial or other means to prevent acts of torture in any territory under its jurisdiction*."
[8] *See* UN Human Rights Council, *Report Of The Special Rapporteur On Violence Against Women, Its Causes And Consequences,* Ms. Rashida Manjoo, Addendum, Mission To The United States Of America (June 1, 2011), UN Doc. A/HRC/17/26/Add.5, at ¶ 27.
[9] 32 C.F.R. § 635.28.
[10] Department Of Defense: Victim And Witness Assistance Program, Military Justice Overview, *available at* http://vwac.defense.gov/military.aspx.
[11] Department of Defense, Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases (Apr. 20, 2012), *available at* http://www.dod.gov/dodgc/images/withhold_authority.pdf.
[12] *See* Service Women's Action Network, *Briefing Paper: Department of Defense (DoD) Annual Report on Sexual Assault in the Military, Fiscal Year 2011*, 2-3 (2012), *available at* http://servicewomen.org/wp-content/uploads/2012/04/SAPRO-briefing-report-4_17_12.pdf.
[13] As protected under Articles 12 and 13 of CAT. The accused's Command is also in charge of deciding whether or not the accused will face pre-trial detention. This poses similar problems; Command often does not detain the offender, who may thus commit additional offenses while awaiting trial. Instead, this determination should be left to a judicial officer who is more equipped to make this determination.
[14] *See* Service Women's Action Network, *Briefing Paper: Department of Defense (DoD) Annual Report on Sexual Assault in the Military, Fiscal Year 2011*, 2–3 (2012), *available at* http://servicewomen.org/wp-content/uploads/2012/04/SAPRO-briefing-report-4_17_12.pdf.
[15] *See id.*
[16] *Id.*
[17] *See* American Association of University Women, *STOP Act Aims to End Sexual Assault in the Military*, April 24, 2013, *available at* http://www.aauw.org/article/stop-act-aims-to-end-sexual-assault-in-the-military/; Bill Briggs, *Civil Rights Commission urged to order audit of military sex-assault cases*, NBC NEWS, Jan. 11, 2013, *available at* http://usnews.nbcnews.com/_news/2013/01/11/16469177-civil-rights-commission-urged-to-order-audit-of-military-sex-assault-cases?lite.
[18] Part V § 1(e), MCM 2012, p. V1.

[19] For example, after graduating with honors from the U.S. Naval Academy, Lt. Ariana Klay joined the Marine Corps as an officer. After experiencing multiple instances of sexual harassment, Lt. Klay was gang-raped at her private residence one block away from the base on August 28, 2010. Lt. Klay reported the rapes, and the ensuing harassment and retaliation she endured from her Command led to such severe distress that she attempted to commit suicide. The Marine Corps did court-martial one of Lt. Klay's rapists, but failed to convict him of rape. Instead, as is a repeated pattern within military rape prosecutions, the rapist was convicted only of adultery and indecent language. *See* Amen. Compl., Klay v. Panetta, No. 13-5081 (D.C. Cir. 2014), ¶ 21, *available at* http://servicewomen.org/wp-content/uploads/2012/03/KlayComplaint.pdf.

[20] *Chappell v. Wallace*, 462 U.S. 296, 301 (1983).

[21] CAT, Art. 14.

[22] *Feres v. United States*, 340 U.S. 135, 146 (1950); *United States v. Stanley*, 483 U.S. 669, 693 (1987).

[23] *See, e.g., Cioca v. Rumsfeld*, 11-CV-00151 (E.D. Va. Dec. 9, 2011); *Cioca v. Rumsfeld*, 720 F.3d 505 (4th Cir. 2013); *Klay v. Panetta*, 924 F. Supp. 2d 8 (D.D.C. 2013); *Klay v. Panetta*, No. 13-5081 (D.C. Cir. 2014).

[24] For example, after U.S. Marine Stephanie Schroeder reported to her Command that she had been raped, her Command accused her of lying and punished her for "Conduct Unbecoming." She had to forfeit her pay and allowance, was put on restriction for two weeks, could not be promoted, and experienced verbal and sexual harassment. *See* First Amen. Compl., *Cioca v. Rumsfeld*, 11-CV-00151 (E.D. Va. Sep. 6, 2011), ¶¶ 164–65, *available at* http://www.scribd.com/doc/109560203/First-Amended-Complaint-Cioca-v-Rumsfeld. When she was later assaulted by another fellow Marine, she did not report the incident for fear that she would again face retaliation. *Id*. at ¶¶ 172–173.

[25] *See* Department of Defense Sexual Assault Prevention and Response Program, Response Systems Panel Briefing, 17 (June 27, 2013), *available at* http://www.sapr.mil/public/docs/speeches/DoD_SAPRO_ResponseSystemsPanel_Briefing_27Jun13_Online.pdf.

[26] For example, after reporting the rape, survivor Janet Galla faced retaliation from her chain of command. She was not allowed to work in enclosed spaces with male colleagues, a restriction her superiors claimed was for her own protection. This limitation not only made it difficult for her to do her job, but left her feeling ostracized from her shipmates. Galla began to receive negative performance evaluations and was eventually told by her commander that it would be best for "morale" if she left the ship. She transferred to a duty station on land, but the retaliation continued when her new chain of command learned about the rape and the ongoing investigation. Suffering from post-traumatic stress disorder, Galla was singled out for drug and alcohol tests and was accused of using her rape as an excuse for poor job performance. One member of her new command told her that the rape was only "five minutes of her life" and she needed to "get over it already." In the face of such harassment and ostracism, Galla accepted her superiors' offer of immediate separation from the Navy in 2005. *See Klay v. Panetta*, No. 13-5081 (D.C. Cir. 2014), p. 3, *available at* http://www.cadc.uscourts.gov/internet/opinions.nsf/67264765DD69534285257D19004FB04A/$file/13-5081-1503369.pdf. *See also* First Amen. Compl., *Cioca v. Rumsfeld*, 11-CV-00151 (E.D. Va. Sep. 6, 2011), ¶¶ 165, 167, *available at* http://www.scribd.com/doc/109560203/First-Amended-Complaint-Cioca-v-Rumsfeld.

[27] For example, in September of 2002, Marine Corpsman Andrew Schmidt was reassigned after he reported frequent incidents of sexual abuse to his Command, but his former Command told his new location that he was "a snitch." This led to continued physical and verbal abuse. *See* First Amen. Compl., *Cioca v. Rumsfeld*, 11-CV-00151 (E.D. Va. Sep. 6, 2011), ¶ 111, *available at* http://www.scribd.com/doc/109560203/First-Amended-Complaint-Cioca-v-Rumsfeld.

[28] *See* American Civil Liberties Union et al., *Battle For Benefits: VA Discrimination Against Survivors of Military Sexual Trauma* (2013), *available at* https://www.aclu.org/womens-rights/battle-benefits-va-discrimination-against-survivors-military-sexual-trauma.

[29] Upon ratifying CAT, the United States made some reservations and understandings. One of the reservations is that the U.S. agrees to be bound by Article 16's obligation to prevent "cruel, inhuman, or degrading treatment or punishment," only as it corresponds to the U.S. Constitution's definition of cruel, unusual and inhumane treatment and punishment under the Fifth, Eighth, and/or Fourteenth Amendments. This reservation is contrary to the object and purpose of CAT and therefore should be held to be invalid. Moreover, even if this reservation were valid, military sexual assault violates both the U.S. Constitution and the United States' treaty obligations under CAT. *See*

Declarations and Reservations, UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (December 10, 1984), *available at* https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en.

[30] Committee against Torture, *General Comment No. 2* (2008), UN Doc. CAT/C/GC/2 (January 24, 2008) [hereinafter *General Comment No. 2*] at ¶ 18.

[31] *Id*.; s*ee* CAT, Art. 1.

[32] *General Comment No. 2*, at ¶ 18.

[33] The United States has declared that "with reference to article 1 of the Convention, the United States understands that the term 'acquiescence' requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his legal responsibility to intervene to prevent such activity." *U.S. Reservations to CAT,* II(1)(d). This interpretation – which overlooks the State's duty to investigate, prosecute, and punish torture and ill-treatment after it has occurred – is invalid insofar as it contravenes the object and purpose of CAT. At the same time, its recognized obligation to prevent known torture and ill-treatment itself squarely applies to incidents of sexual violence in the military.

[34] Committee against Torture, *General Comment No. 3* (2012), UN Doc. CAT/C/GC/3 (December 13, 2012) [hereinafter *General Comment No. 3*], at ¶ 1.

[35] CAT, Art. 14.

[36] CEDAW Committee, General Recommendation No. 19 at ¶ 7; Commission on Human Rights (1986), 'Report by the Special Rapporteur, Mr. P. Kooijmans,' UN Doc. E/CN.4/1986/15, 19 February 1986, at 26; Commission on Human Rights (1992), 'Forty-Eighth Session, Summary Record of the 21st Meeting (Oral Statement of Special Rapporteur Kooijmans),' UN Doc. E/CN.4/1992/SR.21, 11 February 1992, ¶ 35; UN Commission on Human Rights (1995), 'Report of the Special Rapporteur, Mr. Nigel S. Rodley, Submitted Pursuant to Commission on Human Rights Resolution 1992/32,' UN Doc. E/CN.4/1995/34, 12 January 1995, ¶¶ 15–24; UN General Assembly (2008), 'Manfred Nowak 2008 Report,' ¶¶ 26 and 34–36.

[37] S*ee* UN Human Rights Council, *Report Of The Special Rapporteur On Violence Against Women, Its Causes And Consequences,* Ms. Rashida Manjoo, Addendum, Mission to the United States of America (June 1, 2011), UN Doc. A/HRC/17/26/Add.5, at ¶¶ 22–31.

[38] *Id.* at p. 28, IV, B(a). Furthermore, in order to offer better health care to victims, Ms. Manjoo recommends a more effective implementation of training for investigators, health professionals, victim advocates, and sexual assault response coordinators (SARCs); that the military enable more female-only and in-patient Post-Traumatic Stress Disorder (PTSD) and Military Sexual Trauma (MST) facilities in order to ensure a safe space for victims to receive treatment without fear of future harassing behavior or retaliation; and that the Department of Veterans' Affairs accept victims' testimony as main proof in order to support a PTSD diagnosis.

[39] *See* Committee against Torture, Conclusions and Recommendations of the Committee against Torture – United States of America (2006), UN Doc. CAT/C/USA/CO/2 (25 July 2006), at ¶ 19.

[40] *Id*. at ¶ 28.

[41] *Id*. at ¶ 23. The U.S. did not address these different specific recommendations in its response, as the Committee did not request a reply.

[42] United Nations Committee Against Torture, Convention Against Torture, *Periodic Report of the United States of America* (August 5, 2013), *available at* http://www.state.gov/documents/organization/213267.pdf.

[43] *Id.* at ¶¶ 8-11.

[44] *Id*. at ¶ 9.

[45] *Id*. at ¶ 39.

[46] *Id*. at ¶ 9.

[47] *Id*. at ¶11.

[48] *See* Committee against Torture, List of Issues Prior to the Submission of the Fifth Periodic Report (2009), UN Doc. CAT/C/USA/Q/5 (January 20, 2010), at ¶ 27(a).

[49] United Nations Committee Against Torture, Convention Against Torture, *Periodic Report of the United States of America* (August 5, 2013), at ¶ 147, *available at* http://www.state.gov/documents/organization/213267.pdf.

[50] *Id.* at ¶¶ 147–148, 182–184. The U.S. report notes that any claims against the DoD (i.e., the military) are resolved exclusively through Military Departments. Furthermore, although the Committee requested disaggregated statistical data on the number of requests for redress made and granted to victims of torture, including sexual violence, the U.S. report does not provide such data nor does it address the efficacy of these avenues for redress for military survivors of sexual violence. The U.S. only mentions three examples in which detainees received proper redress for sexual violence by state actors.
[51] *Id.* at ¶¶ 231, 239–240.
[52] *Id.* at ¶¶ 237.