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**ADVOCACY BRIEFING PAPER**

## Sexual Violence in the U.S. Military

### Universal Periodic Review of the United States

Sexual violence in the U.S. military is perpetrated at alarming rates, with one in three service women experiencing sexual assault. Service members who report sexual violence are denied redress and are often subjected to retaliation, stigma, and harassment. A culture of impunity silences survivors, preventing them from reporting their abuse and from joining national momentum against sexual assault. By failing to adequately prevent and respond to these injustices, as it was urged to do at its 2015 UPR, the United States continues to violate service members' rights under international human rights law.

#### **CULTURE OF IMPUNITY:**

Claims of sexual violence are often not investigated, and when they are, perpetrators often receive minimal or no punishment, or they are tried for minor offenses. This contributes to a culture of impunity that fosters sexual violence and denies survivors access to justice.

#### **CHAIN OF COMMAND:**

The accused's chain of command makes key decisions about responding to sexual violence claims, including the decision to prosecute. Commanders' close working relationships with the accused, lack of legal training, and need to ensure the military success of their mission compromise their ability to handle cases impartially and afford redress to survivors.

#### **DISCRIMINATION IN OBTAINING BENEFITS:**

Once discharged from the military, survivors often face discrimination in obtaining disability benefits for the ongoing mental health effects of military sexual trauma, due to high evidentiary standards, challenges in documenting sexual assault, and mishandling of claims.

#### **RETALIATION:**

When reporting unwanted sexual conduct, survivors frequently face retaliation, which may include threats, assault, ostracism, harassment, lost promotions, disciplinary actions, and termination of their military careers.

#### **LACK OF ACCESS TO COURTS:**

Military sexual assault survivors are effectively restricted to seeking redress within the biased military justice system. Most are not informed of their right to voice a preference for prosecution in civilian court, and their preference is not binding. Survivors are subsequently denied access to federal courts to seek redress for the government's failure to prevent and respond to sexual assault, a right afforded to civilians.

#### **SEXUAL VIOLENCE AND DISCRIMINATION AGAINST LGBTQ+ SERVICE MEMBERS:**

LGBTQ+ service members face a heightened risk of sexual harassment and violence, which is fostered by the military's hypermasculine culture and discriminatory policies, including its ban on transgender service members.

**FOR MORE INFORMATION ON THESE ISSUES:** Read our [full UPR Submission](http://www.lawschool.cornell.edu/Clinical-Programs/global-gender-justice/upload/UPR-Submission-September-2019.pdf) at [www.lawschool.cornell.edu/Clinical-Programs/global-gender-justice/upload/UPR-Submission-September-2019.pdf](http://www.lawschool.cornell.edu/Clinical-Programs/global-gender-justice/upload/UPR-Submission-September-2019.pdf).

## SEXUAL VIOLENCE IN THE U.S. MILITARY • ADVOCACY BRIEFING PAPER

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At the 2015 UPR of the United States, two States called upon the United States to take action to address the problem of military sexual violence. Slovenia recommended that the United States “redouble its efforts to prevent sexual violence in the military and ensure effective prosecution of offenders and redress for victims.”<sup>1</sup> Denmark recommended that the United States “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.”<sup>2</sup>

Other U.N. human rights bodies and experts, including the Committee Against Torture, the Human Rights Committee, and the Special Rapporteur on Violence Against Women, have similarly recognized that sexual violence in the U.S. military violates international human rights law and urged the United States to take meaningful action to prevent and respond to this injustice.<sup>3</sup>

### SUGGESTED QUESTIONS:

1. How does the United States reconcile the military’s policy that “promotes the chain of command as the primary and preferred channel for identifying and correcting sexually harassing behaviors” with the fact that 73% of retaliation reports are against superiors in the reporters’ chain of command and that retaliation is identified as a “persistent barrier” to reporting sexual assault?<sup>4</sup>
2. How does the United States justify that for substantiated formal sexual harassment complaints in the military, 95% of offenders were only given non-judicial, non-putative, or administrative disciplinary actions, and that only 13% of repeat offenders received judicial punishments?<sup>5</sup>
3. How does the United States ensure justice for victims of military sexual violence when military investigations and prosecutions fail, given that victims are currently unable to access civil or constitutional remedies in civilian courts and veterans’ benefits, if available, are no-fault systems?

### SUGGESTED RECOMMENDATIONS:

1. Take all necessary measures to prevent sexual violence in the U.S. military and ensure a safe working environment for service members.
2. Ensure impartial and effective investigation, prosecution, and redress of sexual violence allegations by removing authority over case dispositions, adjudication, and punishments from the chain of command.
3. Ensure meaningful access to U.S. civilian courts so that survivors of sexual assault may seek effective remedies when the military violates their rights.
4. Effectively implement the prohibition of retaliation against service members who report unwanted sexual conduct and hold violators accountable.
5. Ensure that survivors who experience PTSD related to military sexual violence have meaningful access to treatment and support. This includes ensuring that survivors are not denied benefits because of unreasonable evidentiary burdens or institutional problems.
6. Address the disproportionate impact of military sexual misconduct on LGBTQ+ service members, including by tracking impact and removing discriminatory policies that perpetuate a hostile culture, such as the ban on transgender service members.

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<sup>1</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: United States of America*, ¶¶ 176.258, 176.289, U.N. Doc. A/HRC/30/12 (July 20, 2015).

<sup>2</sup> *Id.* ¶ 176.289.

<sup>3</sup> See Human Rights Comm., *List of Issues Prior to Submission of the Fifth Periodic Report of the United States of America*, ¶ 10, U.N. Doc. CCPR/C/USA/QPR/5 (Apr. 18, 2019); Comm. Against Torture, *Concluding Observations on the Third to Fifth Periodic Reports of the United States of America*, ¶ 30, U.N. Doc. CAT/C/USA/CO/3-5 (Dec. 19, 2014); 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*, ¶ 27, U.N. Doc. A/HRC/17/26/Add.5 (June 6, 2011).

<sup>4</sup> DEP’T OF DEF., DEPARTMENT OF DEFENSE ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY: FISCAL YEAR 2019, 12, 16, app. B at 38 (2020).

<sup>5</sup> *Id.* at app. F at 8–9.