

## Human Rights At Home Blog

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### Ending Sexual Assault in the Military: Finding Paths Forward

By Human Rights at Home Blog

**Sital Kalantry** submits this post written by one of Liz Brundige's students following the conference "Sexual Assault in The United States Military: How Far Have We Come," hosted by the Avon Global Center, the New York City Bar Association's Sex and Law Committee, the Avon Foundation for Women, Protect Our Defenders, the ACLU, and the New York City Bar Association's Committees on Military Affairs and Lesbian, Gay, Bisexual and Transgender Rights.

**Amanda Reynoso-Palley** writes:

Last fall, I joined a project addressing sexual violence in the U.S. military as part of Cornell Law School's Global Gender Justice Clinic. My work focused on the use of international human rights legal tools to address military sexual assault. On February 19, 2015, I travelled to New York City to attend an event I had been eagerly awaiting: "Sexual Assault in The United States Military: How Far Have We Come."

Sexual violence in the military is perpetrated at alarming rates. According to one study, one in three service women experiences some form of sexual violence while serving in the military. Though the government recently implemented reforms to improve the way the military handles sexual violence in its ranks, it has not gone far enough. The decision whether to prosecute the accused still rests in the hands of the accused's commanding officers rather than an independent authority. Also, due to the longstanding judicial *Feres* Doctrine, service member victims of sexual violence are precluded from suing the military in civilian courts. If the military justice system fails victims of sexual violence, they have no other legal recourse.

After seeing how our military and civilian justice systems have failed to protect those who so bravely volunteered to protect us, the Global Gender Justice Clinic decided to pursue international remedies. I joined a team that brought the claims of 27 service member victims of sexual violence (whose cases were dismissed by federal courts) to the Inter-American Commission on Human Rights (IACHR). We submitted two petitions, one in January 2014, and another in January 2015, requesting that the IACHR hold the United States government responsible for violating survivors' human rights.

Meanwhile, last November, the Clinic, together with its partners, submitted a shadow report to the U.N. Committee Against Torture to inform its review of the United States' compliance with the Convention Against Torture. The report and related advocacy helped the Committee conclude that the United States should take further measures to ensure the prevention and prosecution of sexual violence in the U.S. military.

In a few weeks I will be travelling to Geneva, Switzerland to pursue a third international human rights strategy. This May, the U.N. Human Rights Council will review the United States' compliance with its human rights obligations as part of the Universal Periodic Review process. In anticipation of this review, the Clinic and its partners submitted a shadow report highlighting the United States' failure to adequately respond to military sexual assault. In Geneva, we will engage with representatives of U.N. Member States in the hope that the Council's report will address the United States' response to military sexual violence.

I was eager to hear the speakers at the event in New York City contribute to this discussion. While presenting the keynote address, Tracy Robinson, President of the IACHR, explained that sexual violence is a human rights violation that states have an obligation to investigate, prosecute and punish. She cited multiple cases in which the Inter-American human rights system held that sexual violence perpetrated by military members constituted human rights violations. She stressed that the United States cannot stand apart from the other OAS Member States on grounds of U.S. exceptionalism. She concluded by noting “international human rights law must become an important tool and mechanism for ending impunity not just in the United States but everywhere.”

After the keynote address, four expert panelists discussed important steps that recently have been taken to address military sexual assault and the challenges that remain. Sandra Park, senior staff attorney with the ACLU Women’s Rights Project, noted that sexual violence in the U.S. military should be seen as part of the larger issue of gender-based violence and sex discrimination in the U.S., and as part of broader concerns about the military justice system and the ways that command influence undermines the due process rights of both victims and the accused.

Elizabeth Hillman, Provost, Academic Dean, and Professor of Law at University of California Hastings College of Law, spoke about her experience as a member of the Response Systems to Adult Sexual Assault Crimes Panel that was given the congressional mandate to review the systems used to investigate, prosecute and adjudicate military sexual assault. Quoting from her separate statement to the Panel’s final report, she argued that its failure to call for the removal of prosecutorial discretion from commanders prevented the military from responding fairly and robustly to sexual assault.

Greg Jacob, Policy Director of Service Women’s Action Network and a former U.S. Marine, noted that enacting legislative change can be difficult due to lawmakers’ deference to the military. He argued that, in combatting sexual violence, we must ensure that the military records data and uses it to effect policy changes.

While acknowledging that more work needs to be done, Major General John Altenburg Jr., a retired U.S. Army officer who supported the Response Systems Panel as a subject-matter expert, highlighted the reforms the military has made to address sexual violence. These include changes to the military investigation system that ensure every allegation of sexual violence is investigated by impartial members of the Criminal Investigation Command. Major Altenburg argued that commanders’ prosecutorial discretion should not cause concern as only commanders holding the rank of Colonel or Navy Captain and above hold this discretion and these commanders are impartial by virtue of overseeing 3000 soldiers.

By the conclusion of the event, one thing seemed apparent: everyone agrees that sexual violence in the military is a problem, but each speaker had different views on how best to solve it. Despite the lack of consensus, it was inspiring to see a room filled with experts all working to combat sexual violence in their own way and sometimes in collaboration with each other. After hearing the inspiring words of Commissioner Robinson and Sandra Park, I remain convinced that we must use international fora to place pressure on the United States. However, I realize that international strategies alone may not remedy the current situation, and it was encouraging to hear the strategies being used domestically. I am hopeful that the combined work of all involved will eventually ensure that all victims of sexual violence in the military receive the justice they deserve.

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