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Major Clarence Anderson III
PO Box 452136
San Diego, CA 92145-2136

Inter-American Commission on Human Rights
1889 F Street, N.W.
Washington, D.C. 20006

Subject: Supporting Documentation for Human Rights Complaint

Similar to the proposed ban of transgenders serving in the United States Armed Forces that was ruled unconstitutional by a Federal District Court, the United States, specifically the Department of Defense, in the past few years has implemented patterns and practices for investigating and prosecuting allegations of sexual assault misconduct, that violate the human rights for members of its Armed Forces (almost exclusively men) accused of sexual assault misconduct. These patterns and practices violate Article 7 paragraphs 3 and 6, Article 8 paragraphs 1 and 2, and Article 24 of the American Convention on Human Rights (“the American Convention”). The United States Secretary of Defense (SecDef) has published two reports from the Defense Department's Subcommittee of the Judicial Proceedings Panel (JPP) titled, “Report on Sexual Assault Investigations in the Military” (February 2017) (see Attachment #1) and “Report on Barriers to the Fair Administration of Military Justice in Sexual Assault Cases” (May 2017) (see Attachment #2). Both reports substantiate the United States is violating Article 7 paragraphs 3 and 6, Article 8 paragraphs 1 and 2, and Article 24 of the American Convention on Human Rights (“the American Convention”) for members of its Armed Forces accused of sexual assault misconduct.

The report titled “Report on Sexual Assault Investigations in the Military” (at Attachment #1), discloses if a Sexual Assault Response Coordinator (SARC) receives a complaint of an allegation and then reports the allegation to an investigator, the investigator must treat the allegation as a sexual assault, even if the facts do not meet all the elements of the crime (e.g. what occurred was actually simply assault or no crime at all). (see page #2 “Report on Sexual Assault Investigations in the Military”). The report highlights there is no such thing as an “alleged” victim; all accusations substantiate an assault actually occurred and investigators are taught not to probe too deeply into the details of a sexual assault victim's account. (see page #8 “Report on Sexual Assault Investigations in the Military”). Investigators are discouraged from asking alleged victims questions that might be seen as confrontational and investigators expressed a concern that they are no longer interviewing the alleged victim in a manner that is best suited to elicit all the facts and circumstances necessary to discover what occurred. (*Id*). In addition investigators are discouraged from “confronting” a complaining witness with aspects of his or her account that do not make logical sense or that conflict with other evidence, including the victim's own inconsistent statements. (see page #9 “Report on Sexual Assault Investigations in the Military”).

These patterns and practices from the Department of Defense, give investigator's the guidance they have to accept the complainant's account at face value, without thoroughly exploring discrepancies or seeking more detail in the complainant's account. (*Id*). One investigator described being trained to investigate the sexual assault “that did happen” and not the possibility that it did not happen. (*Id*). This approach is problematic, the agent implied, because the training leads them to overlook important facts and evidence, obscuring the reality of what occurred. (*Id*). The findings from this report state the

imposition of bureaucratic obstacles from the Department of Defense on interviewing an alleged victim, was widely viewed as a deterrent to conduct investigations properly and thoroughly. (*Id.*)

In addition, the report indicates investigator's claim that Special Victim's Counsel (SVCs), who attend the investigative interviews, sometimes object to certain necessary or relevant questions or advise the complainant not to answer them. (*Id.*) (please note; *SVCs are government provided counsel for alleged victims of sexual assault who work independently from the government legal counsel at trial; the Department of Defense does not assign SVCs to victims of other alleged crimes e.g. victimization due to one's race, ethnicity or religion are not assigned SVCs*). Other investigators reported that the mere presence of the SVC dissuades them from asking probing questions "out of fear" that they will be accused of being inappropriate or being too hard on the victim. (*Id.*) At one site visit, a SVC objected every time an agent asked the victim what sort of resolution of the case he or she wanted, even though training had taught the agent that this was an important and routine question to ask. (*Id.*) The SVCs position was that the clients answer could be later exploited by a defense attorney on cross-examination. (*Id.*) The Subcommittee acknowledged this is not a reason to curtail appropriate questioning of a victim. (*Id.*)

Service members accused of sexual assault misconduct, human rights are further violated as the report shows investigators indicated that if inconsistencies in the victim's statement arise during the course of the investigation, they must ask the SVC to speak with the client to clarify the points because the SVC do not permit investigators to speak directly to the victim even in follow-up interviews. (*Id.*) Indeed, investigators also pointed out that follow-up interviews are the norm in the private sector during sexual assault investigations. (see page #10 "Report on Sexual Assault Investigations in the Military"). On the advice of SVCs, victims limit their participation and fail to provide investigators with evidence relevant to the investigation. (*Id.*) Denying follow-up interviews therefore prevents investigators from fully exploring and understanding what could potentially become very important issues in a case.

The human rights for service members are even more violated as the report substantiates both trial counsel and investigators recounted cases in which victims, on advice from their SVC, declined to turn over evidence to investigators. (*Id.*) SVCs openly admit that they advise clients to obstruct justice and not to turn over their cell phones to investigators, even when it is likely to contain critical information. (*Id.*) The subcommittee notes in the report that investigators need to have credible information establishing probable cause to believe an item such as a cell phone contains evidence that corroborates a victim's statement or bears on the guilt or innocence of the accused. (*Id.*) Another alarming note to prove the unlawful patterns and practices that violate the human rights of service members, counsel at one installation said they will sometimes charge an accused just to hasten the receipt of digital or DNA evidence from the lab, even when the sum total of existing evidence may not support a successful prosecution. (see page #11 "Report on Sexual Assault Investigations in the Military").

The report on sexual assault investigations conclude when a victim either declines subsequent investigative interviews, or refuses to turn over relevant evidence such as photographs, text messages, or social media information contained on the victim's cell phone, investigators and prosecutors make decisions about investigating and charging without possessing all available evidence. (see page #15 "Report on Sexual Assault Investigations in the Military"). These unlawful patterns and practices from the Department of Defense, as outlined in the American Convention on Human Rights that violate the human rights of service members, force investigators and prosecutors to press forward without a victim's full cooperation, an approach that the subcommittee raises concerns about not just the fairness

of the investigation, but also the overall fairness of a prosecution that ultimately erode away the human rights for members of the Armed Forces accused of sexual assault misconduct. (*Id.*)

Additional evidence on the patterns and practices that violate the human rights for service members accused of sexual assault misconduct, is found in the second report from the Subcommittee of the Judicial Proceedings Panel titled, "Report on Barriers to the Fair Administration of Military Justice in Sexual Assault Cases" (May 2017) (see Attachment #2). The title of the report alone is self incriminating as it references "Barriers" (a word which could be easily replaced with another self incriminating word i.e. "Obstructions"), which suggests members of the Armed Forces accused of sexual assault misconduct do not receive the fair administration of justice. This report substantiates the United States, specifically the Department of Defense, manufacture and secure convictions by mandating its members of the Armed Forces train on knowingly fraudulent and victim-centric material, as those members later serve as fact-finders at trial. (see page #19 "Barriers to the Fair Administration of Military Justice in Sexual Assault Cases"). Findings from the report substantiate members of the Armed Forces receive knowingly false and victim-centric training, that instructs them improperly on consent. (*Id.*) The report indicates because members of the Armed Forces are inculcated with military training and predisposed to believe victims, the vior dire at jury selection does not completely expose the biases of potential panel members. (*Id.*)

Furthermore, the report substantiates that often the Department of Defense does not require probable cause for members of the Armed Forces when moving a case forward to trial and instead relies on non-attorney "Convening Authorities" who are able to arbitrarily decide who goes to trial. (see page #14 "Barriers to the Fair Administration of Military Justice in Sexual Assault Cases"). Additionally the report shows many military attorney's are forced to violate their state bar ethics when taking many sexual assault cases to trial, in which they feel the charges are not supported by probable cause. (*Id.*) The findings also conclude military courts are pressured to prosecute all sexual assault allegations because Convening Authorities are under immense pressure from the United States Congress to prosecute any allegation, even those without merit, for fear members of Congress will make them an example and not promote them unless they prosecute all allegations. (see page #12-#14 "Barriers to the Fair Administration of Military Justice in Sexual Assault Cases").

This report concludes, additionally, these unlawful patterns and practices are affirmed with many counsel who expressed that the merits of the case, have become less important than the victim's preference regarding disposition. One commander acknowledged that there is pressure to go to trial if the victim wants to go to trial, regardless of the case's merits. (see page #14 "Barriers to the Fair Administration of Military Justice in Sexual Assault Cases"). Ironically members of the Armed Forces, have fewer laws protecting them in a federal court room than their enemies foreign or domestic, who may also face federal charges in the United States. These unlawful command directed patterns and practices, erode the trust and faith the public has in the military justice process.

Lastly and personally, these human rights violations substantiated in both reports, have led to my unlawful prosecution and conviction. Not only was I prosecuted with no probable cause, as the government at my previous duty assignment and state attorney affirmed no crime was ever committed and declined to prosecute (see Attachment #3), but civilian law enforcement also testified at my trial that no crime was ever committed thus why an arrest was never ordered. I even testified in my own defense that I never committed the charged offenses. To make matters worse, a post-trial hearing was held after my trial, and a key civilian witness in my case was shown to have received a payment of \$100,000 in benefits from the alleged victim's mother prior to him testifying. (see Attachment #4). The alleged victim is my ex-wife who made sexual assault accusations against me (and other assault claims),

once I discovered she was having an affair, and after I was awarded custody of our minor child. (*Id.*) Her mother later paid the man she had the affair with \$100,000 in benefits prior to him testifying at trial. (*Id.*) In spite of this alarming evidence further proving my innocence, the United States Air Force broke not only the rules of the military courts, but also the federal law pursuant to 18 USCS § 1001, when it falsely reported to Congresswoman Martha Roby (R-AL) the military judge had full authority to rule on any motion from my counsel (to include a motion for a new trial), but during my hearing (and appeals) ruled the military judge was *not* granted full authority to rule on any motion because the record of trial was previously authenticated prior to my post-trial hearing. (*Id.*)

Moreover, the United States Air Force has refused to request a federal civilian investigative agency (i.e. the FBI) to investigate these matters and the United States Department of Justice has refused to intervene, even when petitioned by a United States Senator. (see Attachment #5). Obstructing my human rights even further, my appellate attorney was forbidden from allowing me to view my brief to the Air Force Court of Criminal Appeals, unless the brief was redacted. (see Attachment #6). When I submitted an Extraordinary Writ to the Court of Appeals for the Armed Forces for permission to view an unredacted version of my brief to the Air Force Courts, my request was denied. (see Attachment #7). The United States, specifically the Department of Defense, for the past few years has implemented patterns and practices for investigating and prosecuting allegations of sexual assault misconduct, that violate the human rights of members of its Armed Forces (almost exclusively men) accused of sexual assault misconduct.

I pray you help me resolve these human rights violations substantiated by the patterns and practices confirmed in the aforementioned reports from the Department of Defense, that continue to keep me incarcerated. I pray one day I may receive justice and freedoms unlawfully withheld from me and other members of the Armed Forces wrongfully prosecuted for sexual assault misconduct, guaranteed by the American Convention on Human Rights. These violations are not sanctioned by Article 1 Section 8 (14) of the United States Constitution and must end.

Signed on this 6th day of November 2017.



CLARENCE ANDERSON III, Major, USAF

7 Attachments:

- Attachment #1 ("Report on Sexual Assault Investigations in the Military") (18 pages)
- Attachment #2 ("Report on Barriers to the Fair Administration of Military Justice in Sexual Assault Cases") (29 pages)
- Attachment #3 (Letter from Previous Command Confirming Why Charges Were Not Filed) (1 page)
- Attachment #4 (Petition for a New Trial to the Judge Advocate General of the Air Force) (24 pages)
- Attachment #5 (Letter from Senator Luther Strange to Department of Justice) (1 page)
- Attachment #6 (Extraordinary Writ to Court of Appeals for the Armed Forces) (10 pages)
- Attachment #7 (Denial of Extraordinary Writ) (1 page)