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REPORT No. 290/22
PETITION 2340-15
REPORT ON ADMISSIBILITY

CARLA BUTCHER ET AL.
UNITED STATES OF AMERICA

Approved electronically by the Commission on November 1, 2022.

Cite as: IACHR, Report No. 290/22, Petition 2340-15. Admissibility.
Carla Butcher et al. United States of America. November 1, 2022.

I. INFORMATION ABOUT THE PETITION

Petitioners:	Carla Butcher, Erica Dorn, Christian Everage, Mariel Marmol, Nicole McCoy, Lamanda Walker, and Elle Woods
Alleged victims:	Carla Butcher, Erica Dorn, Christian Everage, Mariel Marmol, Nicole McCoy, Lamanda Walker, and Elle Woods
Respondent State:	United States of America ¹
Rights invoked:	Articles I (right to personal security), II (right to equality before law), IV (right to freedom of investigation, opinion, expression and dissemination), V (right to protection of honor, personal reputation, and private and family life), IX (right to inviolability of the home), XIV (right to work), XVII (right to juridical personality), and XVIII (right to a fair trial) of the American Declaration of the Rights and Duties of Man ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	January 18, 2015
Notification of the petition to the State:	July 10, 2020
State's first response:	February 2, 2021

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Declaration (ratification of the OAS Charter on June 19, 1951)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles I (right to personal security), II (right to equality before law), V (right to protection of honor, personal reputation, and private and family life), XIV (right to work), and XVIII (right to a fair trial) of the American Declaration.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in terms of Section VI
Timeliness of the petition:	Yes, in terms of Section VI

V. ALLEGED FACTS

1. The seven petitioners⁴ claim that they were subjected to various forms of sexual violence (including sexual assault, rape, and sexual harassment) while serving in the United States military; and that

¹ Hereafter "United States", "U.S." or "the State".

² Hereinafter "the American Declaration" or "the Declaration".

³ The observations submitted by each party were duly transmitted to the opposing party.

they were ultimately denied any redress by the State. The petitioners served in either the United States Navy (“the Navy”) or the United States Marine Corps (“the Marine Corps”).

2. According to the petition, when the petitioners reported their experiences of sexual violence, they were largely treated dismissively by their commanders and, in some cases, were forced to endure severe retaliation and harassment. The petition also indicates that in most instances, the petitioners’ claims were not investigated or, when investigated, the perpetrators received either no or minimal punishment. Further, the petition alleges that in most instances, reporting the acts of sexual violence led to the termination of petitioners’ military careers. The petitioners were also unable to take the actions that civilians may take to protect themselves from sexual predators, such as calling the police, going to a shelter, changing housing or jobs, or relocating.

3. The petition argues that the experiences of the petitioners reflect the State’s systematic failure to prevent and respond to sexual violence in all branches of the military. In this regard, the petition submits that (a) the United States Congress, the governmental authority vested with the power of creating law for the military, has repeatedly attempted to address rampant sexual violence in the military over the past twenty years. Its laws and policies, however, have not gone far enough; (b) the United States Department of Defense, which directs the United States military’s operations, has also taken important steps to address military sexual violence, but it too has failed to implement sufficiently effective measures to meaningfully prevent and respond to these pervasive human rights violations.

4. Generally, the petition alleges that the United States military justice system fails to adequately prevent and respond to sexual violence. In this regard, the petition asserts that where there is a report of rape or sexual assault, it is the chain of command of the accused that determined whether the report has any merit. The petition contends that this conflict of interest prevents the victim as well as the accused from receiving impartial and unbiased treatment. Further, the ultimate decision of whether to prosecute lies within the chain of command of the accused. The petition argues that this policy of granting commanders enormous discretion disposing of cases deters reporting by victims. The petition notes, that, in contrast, the civilian criminal justice system, independent prosecutors—usually with no connection to the accused—bring cases to trial.

5. Unlike the civilian justice system, the petition also submits that a military accused will not be tried by a jury of common citizens. Instead, the accused will be tried either in front of a military judge alone or by a members panel that is comprised of active-duty service members selected by the military chain of command. These members may personally know the accused, which may influence their determination of the accused’s guilt or innocence, as well as the sentence they impose, which can take into account the accused’s military service and character. According to the petition, these differences between civilian courts and courts-martial, which can serve to favor the accused and prejudice victims, only compound the pervasive problem of sexual violence in the U.S. military.

Petitioner Butcher

6. Petitioner Butcher served in the Navy from September 24, 2001, to June 5, 2005, and was stationed in Virginia, United States. On March 11, 2002, Petitioner Butcher was allegedly raped by an officer within her Command while her ship was docked in Malta for a two-day excursion. Shortly before this incident, Petitioner Butcher had received emails from this officer which she interpreted as an attempt by the officer to initiate a sexual encounter. On the night of the incident, Petitioner Butcher and several of her friends visited several local night clubs. Petitioner Butcher ultimately became separated from her friends. Subsequently, Petitioner Butcher was taken against her will to a hotel by the officer who had previously sent her the emails.

[... continuation]

⁴ The seven petitioners are Carla Butcher (hereafter “Petitioner Butcher”), Erica Dorn (hereafter “Petitioner Dorn”, Christian Everage (hereafter “Petitioner Everage”), Mariel Marmol (hereafter “Petitioner Marmol”), Nicole McCoy (hereafter “Petitioner McCoy”), Lamanda Walker (hereafter “Petitioner Walker”), and Elle Woods (hereafter “Petitioner Woods”).

Petitioner Butcher was intoxicated at the time, and for a while, lost consciousness. Petitioner Butcher woke up in a hotel to discover that she was being raped by the officer. The officer continued to rape her repeatedly for several hours. The following morning, Petitioner Butcher confronted the officer, telling him that she was going to file a complaint against him. The officer told her that if she filed a complaint, that “everyone would just think she was a “slut,” and that, because of his rank as a first-class petty officer, he would not get more than a “slap on the wrist.”

7. After returning to the ship, Petitioner Butcher immediately reported the rape to her chief. The Naval Criminal Investigative Service (“NCIS”) opened an investigation and interviewed her about the incident. The morning after her report, she was put on a flight back to Virginia. It was not until the third day after the report that Petitioner Butcher received a rape kit examination at a medical office of the Naval Base in Virginia. The examination showed significant vaginal tearing and trauma. Petitioner Butcher also provided investigators with her clothing and blood-stained underwear from the night of the assault. During the investigation, Petitioner Butcher learned that two weeks prior to her assault, another young woman on her ship had accused the same officer of sexually assaulting her. The accused’s commander, however, had declined to investigate and took no action on the allegations, deciding instead to remove the woman from the ship.

8. The military authorities initiated a court-martial of the officer. However, (a) the rape kit results were excluded from evidence because the prosecutors claimed they could not locate the doctor who had conducted the exam; and (b) the previous assault allegation against the officer was also excluded because the other victim, fearing retribution, was too scared to testify. During the trial, the prosecutor told Petitioner Butcher that she was partly to blame for the rape, mentioning that she had “worn heels and tight jeans.” Petitioner Butcher’s perpetrator was found not guilty of rape and fraternization by the court-martial “members panel (military jury). After the court-martial, Petitioner Butcher was given the option of reassignment and chose to be relocated to San Diego. A year later, her rapist was transferred to the same base. According to the petition, (a) Petitioner Butcher contracted a sexually transmitted disease from her rapist; and (b) following the rape, Petitioner Butcher became suicidal and was diagnosed with Post-Traumatic Stress Disorder (“PTSD”).

Petitioner Dorn

9. Petitioner Dorn joined the Navy in 1996 and served as a Hospital Corpsman specializing as a psychiatric technician. Petitioner Dorn was deployed to Iraq from February 12, 2003, to June 30, 2003. During her deployment Iraq, two senior officers—lieutenants— and a corpsman repeatedly subjected Petitioner Dorn to acts of sexual harassment. These acts of sexual harassment included (a) making sexualized and derogatory comments; (b) viewing pornographic videos and magazines in her presence and suggesting that Petitioner Dorn try some of the activities depicted in the pornography; (c) drawing pictures of Petitioner Dorn engaging in sexual acts with one of the lieutenants and circulating the drawing to other men in Petitioner Dorn’s unit. Whenever Petitioner Dorn objected to the harassment or asked the men to stop, they would escalate their abuse. Additionally, the corpsman made open threats of sexual violence to Petitioner Dorn. On one occasion, while helping Petitioner Dorn lift her pack, he stated, “If I’m going to help you with this pack, you have to give me some.” At other times he threatened her by saying, “Be careful when you are sleeping or I might jump in your bed” and, “Be careful when you go to sleep because you might wake up with a knife to your throat . . . I don’t know how much longer I can stand it.” Petitioner Dorn was so afraid of being raped by the corpsman that she began sleeping in the female chaplain’s tent.

10. On her return to the United States, Petitioner Dorn reported the harassment to her master chief, but the master chief told her that “this happens all the time,” that she was overreacting, and that she should think about the consequences of reporting the sexual harassment. The master chief referred Petitioner Dorn to a female commander who simply endorsed what the master chief had previously said to Petitioner Dorn.

11. Petitioner Dorn also filed a formal complaint of sexual harassment with the Navy Equal Opportunity Office. After filing the complaint, Petitioner Dorn requested that she not be forced to work

alongside the perpetrators. As a result, she was re-assigned to a less prestigious and notoriously difficult position in pediatrics. The perpetrators were not removed from their assignments, and despite Petitioner Dorn's reassignment, she still frequently came into contact with the perpetrators in her new position. This experience led Petitioner Dorn to feel as though she was being punished for reporting the harassment. Petitioner Dorn never received an adequate response to her complaint, and this ultimately led to her departure from the Navy in 2003. The petition states that Petitioner Dorn suffers from PTSD as a result of her experience.

Petitioner Everage

12. Petitioner Everage joined the United States Navy as a seaman in 2002 and served actively for more than nine years. During this time, she attained the rank of engineman second class. In 2010, Petitioner Everage began a one-year assignment aboard the USS Jason Dunham Destroyer Ship, in Virginia, United States. On January 6, 2011, Petitioner Everage was sexually assaulted by a chief petty officer in her engineering department. A few days prior to the assault, the chief petty officer intentionally touched Petitioner Everage's buttocks. While the incident upset Petitioner Everage, she said nothing about it and tried her best to avoid the chief petty officer.

13. On the night of the assault, Petitioner Everage entered the Central Control Station where the chief petty officer was waiting for her. He asked her if she was angry at him for touching her buttocks. He apologized and asked if she would accept his apology with a hug. Petitioner Everage told him she accepted the apology but did not want to hug him. The chief petty officer responded violently, putting Petitioner Everage in a chokehold, and then shoving his hand up her shirt and fondling her breasts. He continued assaulting her and tried to unzip her pants, stating, "Let me touch it." Petitioner Everage was eventually able to break free from the chief petty officer's hold. Later that night, Petitioner Everage confided in a peer about the incident. Soon after the incident she developed serious anxiety and had trouble sleeping. The chief petty officer started loitering around Petitioner Everage while she was working, making it difficult for her to work. Eventually the stress of her abuser's constant presence led Petitioner Everage to have an emotional breakdown.

14. On February 2, 2011, Petitioner Everage filed a report of the sexual assault with the Naval Criminal Investigative Service (NCIS). She requested to be transferred off the ship. However, NCIS acted contrary to protocol and refused to take any action because Petitioner Everage did not reveal the chief petty officer's identity in her initial complaint. Subsequently, when Petitioner Everage did reveal the chief petty officer's identity, the accused's commander removed the chief petty officer from the ship, but Petitioner Everage's superiors continued to disregard her requests to be transferred. Despite being told that her report would remain confidential, everyone on the ship knew that Petitioner Everage had filed a report. Petitioner Everage was blamed and harassed by shipmates, superiors, and the chief petty officer's brother, who was also on the ship. Petitioner Everage continued to face retaliation by her Command for reporting her assault. The highest-ranking officers on the ship (the commanding officer, the executive officer, and the command master chief) verbally attacked her, and accused her of lying about the assault. After complaining to the Sexual Assault Response Coordinator⁵ about the continued harassment, Petitioner Everage was allowed to transfer off the ship. Petitioner Everage tried to follow up with NCIS about the status of the case against the chief petty officer but later learned that the NCIS closed the investigation after concluding that there were no witnesses.

15. After complaining about the sexual assault, Petitioner Everage received poor performance evaluations, even though many of her superiors had previously told her that her substantive work was very good. The petition states that the evaluation board that issued the poor performance evaluations was comprised of the same commanding officers who had previously accused Petitioner Everage of lying about the assault. Due to the poor evaluation, Petitioner Everage was discharged from the Navy and prevented from reenlisting. Petitioner Everage now suffers from diagnosed anxiety, depression, and PTSD.

⁵ According to the petition the role of the Sexual Assault Response Coordinator (in the Navy) is to assist survivors of sexual assault and coordinate sexual assault survivor care.

Petitioner Marmol

16. Petitioner Marmol served in the Navy from 2004 to 2011. In February 2007, she reports that she was raped by her direct supervisor at the Naval Air Station in Florida, United States. Petitioner Marmol was in her barracks room when her supervisor approached her and said that he wanted to “hang out.” Believing that she could trust her supervisor, Petitioner Marmol allowed him into her room. The supervisor then raped Petitioner Marmol. Petitioner Marmol did not immediately file a complaint because she was afraid that she would not be believed since the perpetrator was her direct supervisor and was respected in the unit. She was also concerned about professional repercussions because she knew that retaliation was a common response when women reported rape and sexual assault. However, Petitioner Marmol decided to file a complaint with the NCIS after learning that both another service member and a civilian had filed complaints against the same perpetrator for sexual assault.

17. Petitioner Marmol’s commanders subsequently learned of her complaint to the NCIS, following which mistakenly issued mutual restraining orders against Petitioner Marmol and a person she did not know. When Petitioner Marmol asked why a restraining order had been issued between her and someone she did not know, her commanders pressured her into revealing the identity of the actual perpetrator. Once her superior officers knew the identity of the perpetrator, they issued mutual restraining orders against Petitioner Marmol and the perpetrator. This restraining order prevented Petitioner Marmol from testifying as a corroborating witness at the court-martial for the other service member’s complaint against the perpetrator.

18. The petition indicates that the NCIS subsequently told Petitioner Marmol that her case had been transferred to the Navy Legal Department. The Navy Legal Department informed her that they were closing her case for lack of evidence but said that they would re-open her case and contact her if the other case against the perpetrator was successful. Despite the perpetrator being convicted and sentenced to eight years of confinement for the rape of the other service member, the Navy Legal Department never prosecuted him for the rape of Petitioner Marmol and refused to provide Petitioner Marmol with information about why her case was not re-opened. Petitioner Marmol suffered negative personal and professional consequences because of being raped and reporting it. Navy coworkers ostracized her, accused her of lying and having an “attitude,” and subjected her to unwanted touching. During the NCIS investigation, Petitioner Marmol’s superior claimed that she was unable to perform her duties while the investigation was underway and downgraded her to working as a store clerk.

19. Petitioner Marmol left active duty in the Navy in July 2011, because it was evident that reporting the rape had permanent career repercussions. She continues to serve in the Navy Reserve and has faced ongoing harassment and discrimination during her service, including verbal abuse and social ostracization, being forced not to eat lunch or to eat alone, and being marked as absent when she was present. She suffers from PTSD and anxiety because of the rape and retaliation.

Petitioner McCoy

20. Petitioner McCoy joined the Marine Corps in January 2008. On April 2, 2010, Petitioner McCoy was sexually assaulted by her platoon leader, a sergeant, at the Marine Corps Logistics Base in Georgia, United States. One the day of the assault, the sergeant asked Petitioner McCoy to come to his barracks room to discuss a trip she would be taking. When she arrived, he made sexual advances and became forceful when she resisted. The sergeant began to grope and kiss her, then held her down on the bed while she struggled to get away. She eventually managed to break free and escape the barracks room, but he remarked to her that they would later “pick up where [they] left off.

21. In the days immediately following the assault, Petitioner McCoy told several supervising sergeants in her Command about the assault. They responded by tipping off the perpetrator in advance that Petitioner McCoy would be filing a report about the attack. The sergeants then joined the attacker in trying to obstruct the investigation and harassing Petitioner McCoy. Petitioner McCoy then filed a formal report with the Marines Corps Criminal Investigative Division (“CID”). During CID’s investigation, Petitioner McCoy’s

perpetrator attempted to change the layout of the furniture in his room to undercut her allegations. A CID investigator told Petitioner McCoy that it was very obvious that the furniture and decorations in the room had been recently moved.

22. The Marine Corps issued a protective order to protect Petitioner McCoy from her perpetrator. However, it subsequently ignored the terms of the order and required Petitioner McCoy to participate in mandatory events with her perpetrator. In addition, the Marines Corps did not take away the perpetrator's master key that gave him access to all of the barracks' rooms, which led Petitioner McCoy to fear for her safety. Petitioner McCoy suffered panic attacks and PTSD because of the sexual assault. She was told by a Sexual Assault Response Coordinator that she would not be eligible for counseling unless her condition was combat-related. It was not until Petitioner McCoy moved to a different Command and was appointed a different Sexual Assault Response Coordinator that she received treatment. Generally, during the CID investigation, Petitioner McCoy's was subjected to ridicule and blame by her staff sergeant and her commander for reporting the assault to the CID and seeking help for her mental state following the assault.

23. The petition indicates that Petitioner McCoy's husband was stationed at another base. The chain of command offered her husband was offered a transfer (to Georgia) but made it clear that they expected Petitioner McCoy to drop the sexual assault charges in return. As soon as the transfer went through, the chain of command shut down the investigation.

24. Although the (second) Sexual Response Assault Coordinator had assured Petitioner McCoy that the perpetrator would be brought to justice, the chain of command kept the results of the investigation a secret, telling Petitioner McCoy that disclosing the results would violate the privacy of her perpetrator. When she forced them to disclose the findings to her under the Freedom of Information Act, Petitioner McCoy received a heavily redacted record that revealed that the CID had been primarily been investigating Petitioner McCoy's own reputation on base, rather than the allegation of sexual assault. Many of the interviewees for the investigation were people that were openly hostile to Petitioner McCoy, themselves having made advances toward her and been rebuffed. As a result of the sexual assault, Petitioner McCoy continues to suffer from PTSD and has lost faith in the military justice system.

Petitioner Walker

25. Petitioner Walker served in the Navy from 2002 to 2003. In 2002, Petitioner Walker attended the Navy A-School. The Navy A School which provides a technical training course that immediately follows a training camp for new recruits. One evening just before the Thanksgiving holiday, she and several classmates attended a party at a hotel. While she was talking to a male classmate in one of the rooms, her friends left the party without telling her. The male classmate began kissing her. He then started trying to touch her in a sexual manner. Petitioner Walker resisted the male classmate (both verbally and physically) but he ultimately forced himself on her and raped her. During the rape, Petitioner Walker began experiencing flashbacks of being molested as a child, and she blacked out from the trauma. When she regained consciousness, her perpetrator was leaving the room. Petitioner Walker then contacted a friend who picked her up. She subsequently shut herself in her barracks and kept to herself for several days, confiding in only a few close friends about the rape.

26. On return to class, Petitioner Walker reported the rape to the class leader, and the matter was referred to NCIS for investigation. When it became known that Petitioner Walker had reported the rape, the perpetrator and his friends in the unit began to harass Petitioner Walker. They called her names like "slut," "whore," "skank," and "liar." They harassed Petitioner Walker openly and obviously, but the commanders did nothing to stop the harassment. Instead, the perpetrator's commander permitted him to graduate and move on to a new duty station. Senior officers then retaliated against Petitioner Walker for reporting the rape. In this regard, they prevented Petitioner Walker from completing her coursework and barred her from graduating the Navy A-School. Petitioner Walker's own commander informed her that she had been put on "legal hold" for "falsifying legal documents and statements."

27. Petitioner Walker contacted the office of the (Navy) Judge Advocate General (“JAG”) seeking help in dealing with the acts of retaliation. A JAG officer told Petitioner Walker that if she continued to try to seek justice against the perpetrator, the prosecutor would be permitted to introduce evidence at court-martial that Petitioner Walker had shared with her psychiatrist about being sexually active after the rape. The JAG officer also advised Petitioner Walker that she had no real option but to plead guilty to the charges of falsifying legal documents, or else she would continue to be subject to the “hold” and would not be able to progress or graduate. He advised her to plead guilty so that she would be able to leave the Navy. Petitioner Walker relented and agreed to falsely plead guilty. After Petitioner Walker made her false admission of guilt at an adjudicatory hearing, the military judge turned off his microphone and apologized to Petitioner Walker for what the Navy had done to her. She was given 30 days of restriction and was docked two-thirds of her pay for one month. After this she was “processed out” for her PTSD and Major Depressive Disorder. As a result of the rape and retaliation, Petitioner Walker’s career choices have been limited, and she continues to suffer from PTSD and Major Depressive Disorder. The PTSD led to the breakdown of her first marriage, and she still struggles with the physical aspects of relationships. Her guilty plea has shown up on a background check for at least one job, and she had to explain to the employer the circumstances behind the charges, including the rape.

Petitioner Woods

28. Petitioner Woods served as an officer in the Marine Corps from June of 2004 until January 2007. In January 2005, the Marine Corps assigned Petitioner Woods to the position of Public Affairs Officer at the Marine Barracks in Washington, D.C., United States. Shortly after Petitioner Woods began her new position, one of the captains with whom she worked began to harass her. He made sexual advances, which she continually spurned; and sent her several inundated her with emails. In March 2005, two months after the harassment began, Petitioner Woods complained to the Marine Barracks Equal Opportunity Officer about the harassment and provided the officer with the emails from the captain, but the Marine Corps took no action.

29. In March 2006, Petitioner Woods’ immediate superior, a major, ordered her to attend a St. Patrick’s Day “pub-crawl.” Petitioner Woods objected to going, but the major told her it was a mandatory work event. The Marine Corps paid for the “pub-crawl,” which consisted of a group of Marine Corps officers identified by matching T-shirts going from bar to bar and taking shots of alcohol. When Petitioner Woods drank water to try and keep herself from becoming intoxicated, the major told her she had to keep pace with the larger male officers and required her to drink an extra shot as a “punishment.” Petitioner Woods became very intoxicated after being forced to consume so much alcohol. She left to find a cab, but the major followed her out and told her he needed her to go to his office to discuss a business matter. Once they reached the major’s office, he tried to kiss her. Petitioner Woods resisted, and he grabbed her. In the process, he knocked her over. She hit her head on the side of the desk and lost consciousness. When Petitioner Woods awoke, she discovered that she was lying on the floor of the major’s office, wearing the major’s shorts. She saw the major was passed out on the floor nearby, naked from the waist down.

30. Petitioner Woods immediately reported the incident to her senior officer in her command. The colonel in her chain of command and another officer came to the office and saw the major lying naked on the floor. Petitioner Woods told the colonel that she needed to go to the hospital because she needed a rape kit performed and she was worried she had a concussion. The colonel repeatedly told her that she should go to bed and the whole matter would be dealt with in the morning. The colonel also discouraged Petitioner Woods from obtaining a rape kit. Ultimately, Petitioner Woods was able to go to a hospital of her choice where she was able to obtain a rape kit and a medical examination. According to the petition, the doctor who examined Petitioner Woods said that her injuries were consistent with sexual assault.

31. The following day Petitioner Woods went to speak to the investigators with NCIS. She told them that the doctor had performed a rape kit and that she needed it to be processed and analyzed to prove she was raped. The NCIS investigator told Petitioner Woods that NCIS only processed rape kits when the victim knew for certain that she was raped, and since Petitioner Woods was unconscious during the attack there was no way to tell whether she had been raped. Petitioner Woods pointed out that she could not have consented due to being unconscious and the only way to prove the rape would be to process the rape kit, but

NCIS still refused to process it. More generally, the NCIS initially declined to investigate any aspect of Petitioner Woods' complaint (despite the medical and circumstantial evidence of rape and reports from the colonel and the other officer who had seen the major lying naked on the floor). After a lengthy delay, the NCIS conducted a brief investigation but concluded that nothing could be done since Petitioner Woods was not conscious during the assault.

32. Subsequently, Petitioner Woods complained to the major's superior officer. He admitted that the NCIS's investigation was "woefully inadequate" and removed the major from his command. The officer, however, refused to press charges or further punish the major for raping Petitioner Woods. Instead, the major was moved to a more prestigious media position, handling social functions in the White House. After her attacker was promoted, instead of receiving justice, Petitioner Woods became the subject of investigation and prosecution for the events that occurred on the night of her rape. Her superiors at the Marine Corps told her that if she did not stop complaining about the rape, they would charge her with fraternization for having sex with a superior. They told her that the situation did not look good for her since witnesses had seen her drinking throughout the night and voluntarily leaving with the major.

33. Petitioner Woods refused to drop her complaint, and her superiors followed through on their threat: they prosecuted her for fraternization and found her guilty. She was removed from her position in Washington D.C. and transferred to the Quantico Marine Base in Virginia to await her discharge. In the beginning of January 2007, she received a General Discharge and was forced to leave the Marine Corps while her rapist remains a Marine in good standing. Petitioner Woods now suffers from PTSD, anxiety, and major depression because of the rape and general mistreatment suffered while in the military.

Exhaustion of domestic remedies

34. According to the petition, the petitioners were precluded from obtaining access to justice within the military justice system. The petitioners' claims were all either never investigated or never given an adequate trial in the military justice system. Further, the perpetrators received little to no punishment under the military justice system for their violent actions. Accordingly, the petitioners initiated a lawsuit in the U.S. District Court for the District of Columbia ("District Court") on March 6, 2012, against various current or former State officials⁶. The petitioners claim that various rights under the U.S. Constitution (including due process and right to equal protection) had been violated as result of the repeated patterns of sexual violence suffered by the petitioners. They contended, inter alia, that they had been subjected to a military culture that (a) allowed sexual harassment, sexual assault, and rape; (b) failed to conduct proper investigations and prosecute offenders; and (c) retaliated against service members who reported being raped, harassed, or sexually assaulted; (d) discriminated on the basis of gender. The lawsuit of the petitioners was a "Bivens claim", derived from a precedent of the U.S. Supreme Court⁷ that permits plaintiffs to recover monetary damages against federal officials for violation of constitutional rights.

35. However, on February 7, 2013, the District Court granted a motion by the Defendants to dismiss the petitioners' complaint. Although the court acknowledged "the deeply troubling nature of the allegations in [petitioners'] complaint," it found that in light of the well-established precedent of the U.S. Supreme Court, it was "compelled to conclude that a Bivens remedy is unavailable to plaintiffs. The petitioners appealed the case to the United States Court of Appeals for the District of Columbia Circuit ("Court of Appeals"), which, on July 18, 2014, affirmed the District Court's dismissal on the grounds that no Bivens remedy was available. The petition asserts that the decisions of the District Court and Court of Appeals relied on Supreme Court precedent that insulates the United States Military from Bivens actions. In this regard, the petition refers to the case of *Feres v. United States*, where the U.S. Supreme Court held that "*the Government is*

⁶ These officials included Secretary of Defense Leon Panetta; former Secretaries of Defense Donald Rumsfeld and Robert Gates as the leaders and representatives of the United States Department of Defense, and Commandant of the Marine Corps James Amos; former Commandants of the Marine Corps James Conway and Michael Hagee; Secretary of the Navy Ray Mabus; and former Secretaries of the Navy Donald Winter and Gordon England.

⁷ *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971)26

not liable under the [Federal Tort Claims Act] for injuries to servicemen where the injuries arise out of or are in the course of activity that is incident to service.”⁸

36. The petitioners submit that the ruling of the Court of Appeals signified the exhaustion of domestic remedies. The petitioners emphasize that the litigation before the federal courts resulted largely from the failure of the military justice system to adequately investigate or remedy their complaints. The petition states that while the petitioners did not seek review by the U.S. Supreme Court, the rule of exhaustion does not require this step, given that such a step represents an extraordinary remedy which need not be pursued (for the purpose of exhausting domestic remedies).

37. In the alternative, the petitioners argue that the alleged victims are entitled to an exception to the requirement of exhaustion of domestic remedies pursuant to Article 31 (2) of the Commission’s Rules of Procedure. The petitioners contend firstly, that the Commission has long held that military justice systems in general (investigations and trials) have been considered to be ineffective remedies to address human rights violations, thus those with access only to the military justice system have not necessarily been required to exhaust domestic remedies before submitting cases to the Commission.⁹

38. Secondly the petitioners submit that the Commission has previously found that an exception to the requirement of domestic remedies arises where a remedy is ineffective because of lack of prospects for success.¹⁰ In this case, the petitioners submit that based on strong Supreme Court case law cited in, (and upheld) by the decisions of both the District Court and Court of Appeals, that there was no reasonable prospect of success before the Supreme Court. The petitioners add that precedents established in the Supreme Court and other federal courts have repeatedly made clear that the federal judiciary will not adjudicate military issues, regardless of whether its citizens’ rights are being violated. Accordingly, an appeal to the Supreme Court would have been futile in this case and the petitioners have thus qualified for an exception to the requirement to exhaust domestic remedies.

39. Having regard for the foregoing, the petitioners submit that the petition has been filed in timely manner under both Articles 32(1) and 32 (1) of the Commission’s Rules of Procedure. With regard to Article 32 (1), the petitioner asserts that the date of the Court of Appeals’ decision was July 18, 2014, and the petition was filed with the IACHR on January 18, 2015. Accordingly, the petitioners conclude that the petition was filed within the six-month period prescribed by Article 32 (1) of the Commission’s Rules of Procedure. Additionally, or alternatively, the petitioners submit that the petition has been filed within a reasonable time (pursuant to Article 32 (2) having regard for a number of factors including: (a) the continuing harm to the petitioners as a consequence of the alleged human rights violations (such as mental trauma); (b) the substantive legal limitations that obstruct the petitioners from obtaining redress; and (c) the relatively recent recourse of the petitioners to the federal courts.

State’s position

40. The State rejects the petition as inadmissible. The State contends that (a) there has been a failure to exhaust domestic remedies (pursuant to Article 31 of the Commission’s Rules of Procedure; (b) the petition’s claims fail to state facts that tend to establish a violation of the rights (pursuant to Article 34 (a) of the Commission’s Rules of Procedure; and (c) the petition is manifestly groundless pursuant to Article 34 (b) of the Commission’s Rules of Procedure. The State also submits that review of the petition is barred by the Commission’s fourth instance doctrine.

⁸ *Feres v. United States*, 340 U.S. 135, 146 (1950).

⁹ In this regard, the petitioners cite IACHR Report N° 72/08 Petition 1342-04 Márcio Lapoente Da Silveira Admissibility, Brazil October 16, 2008, para. 64.

¹⁰ In this regard, the petitioners cite IACHR Report No. 18/12, Petition 161-06 Juvenile Offenders Sentenced to Life Imprisonment Without Parole, Admissibility, United States, March 20, 2012, para.47.

Background/context

41. As part of its response to the petition, the State sets out a legal and policy context with respect to the United States military justice system that, in some respects, controverts the narrative presented by the petitioners.

42. The State submits that the United States military has never tolerated or condoned sexual assaults or sexual harassment by or against its members. According to the State at all times covered by the petition, the United States military operated professional, efficient criminal investigation and criminal justice systems and provided effective services to assist service members who were the victims of sexual assault and sexual harassment. Moreover, since the date of the last incident alleged by the petition, the U.S. sexual assault prevention and response system has further evolved as a victim-protective criminal investigation and justice system.

43. According to the State, a service member has the right to make either a restricted or unrestricted report of sexual assault. Providing that choice to a service member who has been sexually assaulted provides her or him with a measure of control over how the case proceeds.¹¹

44. The State indicates that in the case of the Department of the Navy, that military criminal investigative organization is the Naval Criminal Investigative Service (NCIS), a highly regarded civilian-led law enforcement agency. Military commanders must refer every unrestricted report of a sexual assault to a military criminal investigative organization. Even if a military commander considers an allegation unsupported, untrue, or even prima facie irrational, that commander must refer the unrestricted report to a military criminal investigative organization for investigation.

45. The State indicates that a federal statute enacted in 2011 required the establishment of the Department of Defense Sexual Assault Prevention and Response Office, which oversees implementation of the Department of Defense's comprehensive policy for sexual assault prevention and response. This institution serves as the single point of authority, accountability, and oversight for the sexual assault prevention and response program; and provides oversight to ensure the Military Departments comply with the sexual assault prevention and response program. Another statute enacted later in 2011 significantly updated the Uniform Code of Military Justice's sexual assault provisions. Five years later, another statute again revised the relevant sexual assault provisions, thus ensuring the military's criminal code continues to reflect the best practices among civilian jurisdictions.

46. The State also submits that every sexual assault committed by a service member in the United States is subject to potential prosecution not only by court-martial, but also in United States district court and/or a state, district, or territorial court, depending on the jurisdictional status of the location where the crime occurred. Alleged victims have the right to express their preference as to whether the incident is prosecuted by military or civilian authorities. While not binding, the alleged victim's preference will be considered by the relevant military authority.

47. The State also affirms that among many other measures implemented in recent years, Congress has also enacted provisions that: (1) expand sexual trauma counseling and treatment for affected members of the U.S. military's Reserve Components;(2) require discharge review boards to give "liberal consideration" to former service members for whom "military sexual trauma" may have contributed to post-traumatic stress disorder or traumatic brain injury; (3) require establishment of a confidential process by

¹¹ In this regard, the State indicates that with limited exceptions to protect others from danger, a restricted report will not result in a law enforcement investigation. A restricted report also provides the victim with a means to seek services—including medical services—and to have a rape kit prepared and maintained to preserve evidence that may be important if the victim decides to convert the restricted report to an unrestricted report. The U.S. military's policy prefers unrestricted reports because such reports provide an opportunity to hold alleged offenders appropriately accountable. Nevertheless, the U.S. military provides the restricted reporting option to assist victims, including those who would not report at all without this option. Those who make restricted reports may convert them to unrestricted reports at any time, thereby triggering an investigation by one of the Department of Defense's highly professional and well-trained military criminal investigative organizations

which an individual who was the victim of a sex-related offense during service in the armed forces may challenge the terms or characterization of his or her discharge before a board of correction of military/naval records; (4) broaden the definition of “sexual harassment” in a military context; and (5) establish standards to ensure the armed forces’ sexual assault forensic examiners are appropriately qualified.

48. According to the State, collectively, these measures demonstrate that both the United States Congress and Executive Branch are deeply committed to eradicating the scourge of sexual assault from the United States military, ensuring effective criminal investigative and justice systems are in place to deal with alleged offenses, and providing compassionate care for victims of sexual assault. Congress and the Executive Branch continue to develop and implement innovative means to further those goals.

Lack of exhaustion of domestic remedies

49. The State contends that the alleged victims have failed to pursue and exhaust a variety of domestic remedies. Firstly, the State argues that the petitioners failed to pursue their claim before the U.S. Supreme Court (after it had been dismissed by the District Court and Court of Appeals). In this respect, the State contends that the petitioners failed to seek relief from the only U.S. court that was empowered to grant the relief it sought. The State also argues that seeking relief from the U.S. Supreme Court is not an “extraordinary remedy”, and that failure to invoke this remedy renders the petition inadmissible.

50. Secondly, the State contends that another remedy open to the petitioners was to sue their attackers directly. According to the State, this is an alternative remedy that the petitioners could have, but did not, pursue or exhaust. The State further submits that this remedy is particularly relevant in light of the alleged abuses, which the State argues were private in character and therefore not attributable to the United States as a matter of international law.

51. Thirdly, the State further contends that the petitioners failed to pursue alternative domestic remedies available such as injunctive or declarative relief. According to the State, the United States Court of Appeals for the District of Columbia Circuit has held that the Supreme Court case law barring monetary damages claims against the government arising from military service does not bar all forms of equitable relief (such as injunctive or declaratory relief)¹². The State argues that the petitioners could have pursued this avenue of relief in U.S. courts but failed to do so. The State also argues that the alleged victims also failed to seek relief from the U.S. Veterans Benefits Program. In this regard the State maintains that U.S. courts have expressly held that service members who suffer injuries during military service have “a general alternative” to the kind of tort relief that was sought by the alleged victims. The State concludes that it was open to the alleged victims to pursue and exhaust this remedy, but that they failed to do so.

Petition is manifestly groundless/ fails to state colorable claims

52. The State contends that the petition is manifestly groundless and fails to set out any facts that amount to colorable claims under the American Declaration. In this regard, the State argues that the petition contains several incorrect statements and inaccuracies. The State provides general submissions as well as specific rebuttals to allegations made by some of the alleged victims. Some of the general submissions are set out as hereafter. Firstly, the State denies that any of the petitioners were downgraded in rank, denied promotions, or discharged from the military for reporting that other military members had violated their human rights by sexually assaulting them. Secondly, the State denies that the petitioners were unable to take the actions that civilians may take to protect themselves from sexual predators, such as calling the police. In this regard the State asserts that not only may a rape or sexual assault victim in the military call the police, at least two of the petitioners directly reported their allegations to the police¹³. The State submits, every alleged

¹² The State cites the following decisions as examples: *Brannum v. Lake*, 311 F.3d 1127 (D.C. Cir. 2002); *Piersall v. Winter*, 435 F.3d 319 (D.C. Cir. 2003). See also *Singh v. Carter*, 168 F. Supp. 3d 216, 225-26 (D.D.C. 2016); *Doe # 1 v. Rumsfeld*, 297 F. Supp. 2d 119 (D.D.C. 2003).

¹³ In this regard the State refers to a complaint by Petitioner Woods to the Metropolitan Police Department of Washington, DC and also a complaint by Petitioner McKoy to the Marine Corps Criminal Investigation Division.

sexual assault committed by a service member in the United States can be tried not only by the military justice system, but also by the federal civilian criminal justice system, a state criminal justice system, or—depending on the jurisdictional status of the location of the alleged offense—both. Thirdly, the State denies that military commanders decide whether to investigate sexual assault allegations and control sexual assault investigations. The State asserts that at the time the petition was filed, a Department of Defense regulation requires that all investigations of sexual assault allegations, penetrative and non-penetrative alike, be conducted by one of the military criminal investigative organizations—highly professional law enforcement agencies.

53. The State challenges or rebuts allegations made by some of the alleged victims. The State also indicates that in some cases, the accounts of some of the petitioners omit relevant information or otherwise contain inaccuracies or omit relevant information. The State provides some illustrative examples, emphasizing that it does not concede the accuracy of any allegation in the petition concerning individual petitioners merely because it is not expressly refuted. The State also indicates that in some instances it has provided documentation to demonstrate the inaccuracy of some of the claims contained in the petition. However, the State indicates that some of this documentation has been redacted or omitted in compliance with the State's Privacy Act. The illustrative examples provided by the State are set out in the following paragraphs.

Petitioner Butcher

54. The State acknowledges that a court-martial took place in respect of Petitioner Butcher's rape allegations. However, the State asserts that the accused was not an officer but an enlisted member of the Navy. The State rejects Petitioner Butcher's claim that the rape kit results were excluded during the court-martial, stating that the results of a sexual assault forensic examination were admitted into evidence as Prosecution Exhibit 1. The State submits that the United States held a judicial proceeding that resolved the allegations; and that this is sufficient to dispose of Petitioner Butcher's allegations. The State further submits that Petitioner Butcher is attempting to relitigate the trial's results before Commission (in violation of the Commission's fourth instance doctrine).

55. Ultimately, the State concludes that the petition's allegations concerning Petitioner Butcher fail to state facts that tend to establish a violation of the American Declaration and are manifestly groundless.

Petitioner Dorn

56. The State submits that Petitioner Dorn provides no information on the outcome of her complaint to the Naval Equal Opportunity Office regarding the allegations of sexual harassment. In this regard, the State asserts that the Petition fails to either reveal the outcome of that complaint or provide sufficient information for the United States to establish whether any records exist of adverse action against the alleged perpetrators.

57. The State further submits that there were long delays between her complaint and the litigation initiated in 2012, as well as the filing of the petition to the Commission in 2015. The State indicates that given the extensive passage of time, as well as the sparseness of information contained in the lawsuit (of 2012), the State has been unable to locate records shedding further light on the allegations. In this regard, the State also asserts that Petitioner Dorn's delays also render her complaint inadmissible under Article 32 of the Commission's Rules of Procedure.

58. The State denies that Petitioner Dorn was demoted after making her complaint. The State indicates Petitioner Dorn was in the grade of E-4 when the alleged events occurred, and she remained in that grade when she was honorably discharged from the Navy. The State notes that the Navy acceded to the request of Petitioner Dorn to be separated from her alleged harassers. The State rejects Petitioner Dorn's claims that she was transferred to an assignment that was less prestigious or that such a transfer constitutes a *prima facie* violation of the American Declaration. Ultimately, the State submits that the Petitioner Dorn's

allegations fail to state facts that tend to establish a violation of the American Declaration and are manifestly groundless.

Petitioner Everage

59. The State indicates that the petition omits certain information with respect to Petitioner Everage. In this regard, the State indicates that when Petitioner was initially interviewed by NCIS agents, she completed and signed a "Victim Preference Statement". In this statement, Petitioner Everage expressly stated that after having had the opportunity to consult with a victim advocate, counselor, or other person of her choosing, she decided "not to provide additional information or participate in the investigation and in the prosecution of the suspect." She further stated, "I understand that the investigation may be closed. If the investigation continues, the chances that the suspect will be brought to justice are greatly reduced without my assistance." The State indicates that despite the statement by Petitioner Everage, that the NCIS proceeded to investigate her allegations thoroughly. In this regard, the suspected assailant was interrogated but denied the allegations. Further, the State asserts that at least nine individuals were questioned, which yielded no information corroborating Petitioner Everage's allegations.

60. The State also submits that Petitioner Everage made a sworn statement to the NCIS (in May 2011) which contradicted earlier statements to the NCIS. In this regard, the State indicates firstly, that, contrary to the petition, Petitioner Everage's sworn statement did not allege that the chief petty officer placed her in a chokehold. Secondly, Petitioner Everage's sworn statement indicated that the chief petty officer "ran his hand up under my uniform but over my t-shirt"; however, on the other hand, the petition states that the chief petty officer "shov[ed] his hand up her shirt and fondl[ed] her breasts.

61. The State indicates that the Commanding Officer of the USS Jason Dunham was advised about the further developments in the investigation. He then consulted with the same Navy lawyer from the Naval Surface Forces Atlantic headquarters who had previously been briefed on the case. After that consultation, the commanding officer declined to refer charges to a court-martial. The State contends that the decision not to refer the case for trial was eminently reasonable, as there was no reasonable likelihood of a conviction. Further, the State submits that this decision did not constitute a violation of the American Declaration.

62. The State also rejects the allegation that Petitioner Everage received a poor performance evaluation following her complaint. The State indicates that Petitioner Everage received a performance evaluation in May 2011, which, among other things, described her as "an outstanding sailor". The State denies that Petitioner Everage suffered any reprisals because of her complaint. Ultimately, the State submits that the claims of Petitioner Everage are manifestly groundless.

Petitioner Marmol

63. The State generally contends that there are factual errors and key omissions with respect to the allegations raised in the petition concerning Petitioner Marmol.

64. By way of background, the State indicates that according to a sworn statement¹⁴ by Petitioner Marmol, she met her alleged assailant (referred to by the State as "AD2 Fairley) in October 2006. According to the State, this sworn statement also indicates that Petitioner Marmol and AD2 Fairley developed a friendly relationship which led to a non-coital physical relationship up to the night of the alleged rape in February 2007. On the night of the alleged rape, the State indicates that Petitioner Marmol willingly let AD2 Fairley into her room, let him get in bed with her, and engage in non-coital intimate activity prior to having sexual intercourse. The State indicates that according to Petitioner Marmol's sworn statement, she entered subsequently into a two-and-a-half-month relationship with AD2 Fairley during which they engaged in consensual sex in her barracks room. After AD2 Fairley returned from a deployment, she learned that he was

¹⁴ This sworn statement is dated March 5, 2008 and is appended to the State's response as part of "Attachment 12".

having sex with another woman. When she asked him about it, he stopped having contact with her. Soon thereafter, in early March 2008, she reported that he had sexually assaulted her.

65. The State submits that the NCIS conducted a thorough investigation of Petitioner Marmol's allegation. Following that investigation, the Region Legal Service Office Detachment, Naval Air Station, Jacksonville, Florida— recommended that AD2 Fairley not be charged with committing any offenses against Petitioner Marmol. The investigators/prosecutors concluded that based on the facts of the case, there was no reasonable likelihood of obtaining a conviction. However, AD2 Farley was prosecuted for committing sexual offences against another woman. The State indicates he pleaded guilty and received a sentence that included confinement for nine years and a dishonorable discharge.

66. The State submits that the decision not to prosecute AD2 Fairley for allegedly sexually assaulting Petitioner Marmol was a reasonable exercise of prosecutorial discretion; and that it was not a violation of the American Declaration.

Petitioner McCoy

67. The State submits that Petitioner McCoy's complaint (regarding a sexual assault by sergeant was investigated by the Marine Corps Criminal Investigation Division ("CID") over a 20-day period. This investigation included the interrogation of the sergeant (who denied the allegations). Following this investigation, the CID concluded its investigation, finding that "sufficient evidence to support the criminal allegation of indecent assault was not obtained". The State further indicates that pursuant to the Uniform Code of Military Justice it was open to Petitioner McCoy to complain about the actions or inactions of their commanding officers, but that there is no evidence that she took this step. Further the State asserts that the Petitioner McCoy herself had the authority to prefer charges against the sergeant, but that there is no indication that she did so. The State also contends that the Petitioner McCoy's allegations were prosecutable before a federal district court, but that there is no indication that Petition McCoy asked federal law enforcement or prosecutorial authorities to investigate her allegations or bring charges.

68. Ultimately, the State argues that the claims of Petitioner McCoy do not establish any violations of the American Declaration.

Petitioner Walker

69. The State notes that the petition mentions only a rape complaint made by Petitioner Walker by a service member (referred to by the State as "ITSR P"). However, the State indicates that Petitioner has also complained of a separate incident of sexual assault by another service member. (referred to by the State as "ITSA I") Both incidents occurred in November 2002. The State indicates that the NCIS opened an investigation into both sets of allegations.

70. Regarding the rape complaint against ITSR P, the State submits that during the course of the investigation numerous witnesses were interviewed (including ITSR P) who largely contradicted Petitioner Walker's allegations. Based on this information, Petitioner Walker was accused of making a False Official Statement and read her rights (not to incriminate herself) pursuant to Article 31 (b) of the Uniform Code of Military Justice According to the State, Petitioner Walker then provided a new sworn statement wherein she admitted she had not been raped.

71. The State denies that the Petitioner Walker was coerced into pleading guilty at court-martial proceedings brought against her¹⁵. According to the State Petitioner Walker had an absolute right to decline to be tried by a summary court-martial. She elected to be tried in that forum. The State adds that Petitioner

¹⁵ The State implies that the court martial proceedings were about the False Official Statement allegedly made by Petitioner Walker

Walker chose to plead guilty. Ultimately, the State submits that the claims of Petitioner Walker do not amount to violations of the American Declaration.

Petitioner Woods

72. The State contends that Petitioner Woods's allegations contain both omissions and falsehoods. Firstly, the State indicates that Petitioner Woods omitted to mention that she made a complaint to Washington, D.C.'s civilian Metropolitan Police Department and that the Sex Offense and Domestic Violence Section of the Office of the United States Attorney for the District of Columbia declined to bring a prosecution.

73. The State rejects the Petitioner's claim that her refusal to drop her rape complaint resulted in a (retaliatory) charge of, and prosecution for fraternization (having sex with the alleged rapist). The State submits that Petitioner Woods was disciplined for fraternization with an enlisted Marine (and not for fraternization with the alleged rapist). The State indicates that Petitioner Woods pleaded guilty to fraternization during non-judicial punishment proceedings. The punishment imposed was forfeiture of \$1,000 pay per month for two months, which was suspended, and a letter of censure.

74. Generally, the State contends that Petitioner Woods' allegations were investigated by the NCIS. The State indicates that there was no reasonable prospect that the major (the alleged rapist) could be convicted of sexually assaulting Petitioner Woods, given that (a) Petitioner Woods had no memory of being sexually assaulted during the incident in question—in which she lost consciousness in the major's office after drinking heavily; (b) She later discovered that her underwear was missing and that she was wearing the major's shorts. She had no recollection of how her underwear and her own pants were removed; (c) Petitioner Woods told NCIS that she did not believe that she and the major engaged in sexual intercourse but believed that he indecently assaulted her.

75. The State also affirms that sexual assault kits were taken from both Petitioner Woods and the major. In this regard, the State indicates that testing performed by the U.S. Army Criminal Investigation Laboratory (USACIL) found that no semen was detected on Petitioner Woods' underwear or on vaginal, rectal, or oral swabs taken from her during a forensic examination at a military medical facility. The State further asserts that when an NCIS agent informed Petitioner Woods of those results, she responded, that "she never thought that she had been raped and did not think that [the major] was capable of raping her [...] due to his level of intoxication."

76. Ultimately, the State submits that the claims of Petitioner Woods do not amount to violations of the American Declaration.

77. Overall, the State rejects the claim of the petitioners that the alleged acts of sexual violence and harassment are attributable to the State. For the State, this claim is unsupported as a matter of international law because the act of a State official or employee acting in a private capacity is not attributable to the State for purpose of State responsibility. The State submits that the allegations of sexual violence and harassment constitute private conduct. Accordingly, the State asserts that such conduct is so far removed from the scope of the official functions of the alleged perpetrators (where those perpetrators were also U.S. service members) that it should be assimilated to that of private individuals, not attributable to the State. In this regard, the State argues that there are no facts in the petition to suggest that the accused perpetrators were acting with "apparent authority" when committing alleged acts of sexual violence or harassment. Accordingly, the State submits that the alleged incidents of sexual violence and harassment cannot be attributed to the United States under international law and, as such, cannot constitute violations by the United States of its commitments under the American Declaration.

Fourth instance doctrine

78. The State argues that review of the petition is barred by the Commission's fourth instance doctrine. In this respect, the State contends that (a) the petition invites the Commission to evaluate claims that have already been adjudged by competent authorities in the United States; (b) it is not the Commission's

place to sit in judgment as another layer of appeal, second-guessing the considered decisions of a State's domestic authorities in weighing evidence and applying domestic law, nor does the Commission have the resources or requisite expertise to perform such a task. Accordingly, the State concludes that the Commission must decline the petitioners' invitation to sit as a court of fourth instance.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

79. The parties are at variance on the issue of exhaustion of domestic remedies. The petitioners argue that domestic remedies were exhausted with the decision of the United States Court of Appeals for the District of Columbia Circuit on July 18, 2014. In this regard, the petitioners submit that they were not obliged to seek review by the U.S. Supreme Court, because (a) such a remedy is an extraordinary remedy and (b) such remedy had no prospect of success. Additionally, or alternatively, the petitioners submit that the petition is exempt from the requirement of prior exhaustion of domestic remedies principally because of the ineffectiveness of military justice systems in addressing human rights violations. In this case, the petitioners submit that such a remedy is ineffective, and therefore, there is no requirement to exhaust such a remedy. On the other hand, State claims that alleged victims failed to exhaust remedies provided for in domestic law, (such as an appeal to the U.S Supreme Court and non-tort relief like injunction or declaration).

80. The Commission has long held that military jurisdiction is inadequate to address serious human rights violations (such as violations of the right to physical integrity)¹⁶. The Commission recalls that the military jurisdiction only provides adequate remedies to prosecute members of the forces for the commission of offenses and misdemeanors that, by their very nature, affect legal interests specific to the military. The Commission notes that this petition deals with allegations sexual abuse which *prima facie* would fall within the category of serious human rights violations and violations of the right to physical integrity. In this regard, the Commission has also established that the State has an international obligation to undertake criminal investigations aimed at clarifying the facts and identifying and prosecuting the persons responsible violations. The Commission emphasizes that such criminal investigations should be undertaken by the civil organs such as the criminal courts and should be conducted promptly in order to protect the interests of the victims, preserve the evidence, and also safeguard the rights of anyone deemed a suspect in the framework of the investigations. Accordingly, the Commission considers that the domestic remedies that must be taken into account for the purposes of the petition's admissibility are those related to the criminal investigation and punishment of the persons responsible for the violations alleged by the alleged victims.

81. Based on the record, it appears that for the most part, no steps were taken to undertake or complete any civil criminal investigations into the complaints made by the alleged victims. Broadly, this qualifies the petition for exemption from the requirement to exhaust domestic remedies pursuant to Article 31 (2) (b) of the Commission's Rules of Procedure¹⁷.

82. According to the State, the allegations of Petitioner Woods and Petitioner McCoy were reported to the "police" (in addition to the military authorities). In the case of Petitioner Woods, the State indicates that her complaints were reported to the Metropolitan Police Department of Washington, DC. With respect to Petitioner McCoy, the State indicates that her complaints were reported to the Marine Corps Criminal Investigation Division. However, based on the record, it does not appear that these authorities conducted or completed an investigation that served to clarify the facts or to identify or prosecute the relevant perpetrators. Further, it appears that the Marine Corps Criminal Investigation is a branch of the military and not a civil authority. In the Commission's view, these considerations would bring the complaints

¹⁶ See for example: IACHR, Report No. 154/17, Petition 239-07. Admissibility. Nicanor Alfonso Terreros Londoño and family. Colombia. November 30, 2017, para. 10 and IACHR, Report No. 78/18, Petition 1025-07. Admissibility. Gregorio Cunto Guillén and others. Peru. June 28, 2018, para. 15.

¹⁷ See IACHR, Report No. 107/17, Petition 535-07. Admissibility. Vitelio Capera Cruz. Colombia. 7 September 2017, para. 8; IACHR, Report No. 154/17, Petition 239-07. Admissibility. Nicanor Alfonso Terreros Londoño and family. Colombia. 30 November 2017, para. 10; IACHR, Report No. 157/17, Petition 286-07. Admissibility. Carlos Andrade Almeida et al. Ecuador. 30 November 2017, para. 19.

of Petitioner Woods and Petitioner McCoy within the exception prescribed by Article 31 (2) (b) and (c) of the Commission's Rules of Procedure.

83. Having found that the petition qualifies for an exception to the requirement of exhaustion of domestic remedies, the Commission must now determine whether the petition was presented within a reasonable time, in conformity with Article 32(2) of the Commission's Rules of Procedure. In this regard, the Commission considers the following: (a) the allegations (made by the alleged victims) took place between 2002 and 2011; (b) that alleged victims took legal action ("Bivens claims") that culminated in the decision of the United States Court of Appeals for the District of Columbia Circuit on July 18, 2014; (c) that this decision dismissed the claims of the alleged victims, principally on the ground that the military is legally immune from Bivens claims; (d) the petition was filed on January 18, 2015; and (e) some of the effects of the alleged facts persist to date, including the alleged absence of any or any adequate investigation by civil authorities to investigate, clarify the facts; and to punish those responsible where possible; and the alleged damage to the health of the alleged victims. Having regard for all these considerations, the Commission finds that the petition was filed within a reasonable period of time, in accordance with Article 32(2) of the Commission's Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

84. The Commission notes that this petition is principally about complaints of sexual abuse suffered by the alleged victims while they were serving the U.S. military. These complaints are made in the context of the alleged systemic failure of the State to protect the alleged victims from such abuse, or to ensure access to adequate legal redress (regarding the complaints of sexual abuse).

85. The State argues that the petition is manifestly groundless because it contains inaccurate statements on the facts; and because the alleged acts of sexual violence and harassment constituted private conduct and do not render the U.S. liable under international law. The petitioners rebutted the State's allegations over the facts; and asserted that the State is liable for the acts of the perpetrators, given (a) the official role that military leadership plays in preventing and responding to crimes committed by its service members; and (b) these service members operate in a position of power on behalf of the State, and therefore, any violations committed by them are attributable to the State.

86. Firstly, regarding the contentions over the statement of facts, the Commission considers that such claims are most appropriately dealt with at the merits stage of this procedure, for they require an assessment of the evidence submitted by both parties. Therefore, the Commission will express its views on these matters within the findings of fact at the merits stage.

87. Concerning the State's responsibility under international law for the acts of sexual violence perpetrated by military personnel on and off service, the Commission stresses that regardless of whether the perpetrators acted in an individual or official capacity, the State has an obligation under Article XVIII of the American Declaration to provide for an effective remedy to any person who claims that their rights have been violated. Indeed, Article XVIII establishes that all persons are entitled to access judicial remedies when they have suffered human rights violations, which is understood to encompass: 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.¹⁸

88. Further, the Commission notes that the petitioners assert that the U.S. Military fosters a culture of impunity, which impedes survivors of sexual violence from obtaining legal redress. They also argue that the reports of sexual violence in the Military often result in retaliations against survivors. The Commission has established that a State is responsible for human rights violations if the illicit acts have been committed with the participation, support or tolerance of State agents, or if it has been the result of lack of

¹⁸ IACHR, Report no. 80/11. Case 12.626. Merits. Jessica Lenahan (Gonzales) et al. United States. July 21, 2011, para. 172.

compliance by the State with its obligations to reasonable prevent human rights violations, and to investigate, identify and punish the people responsible, as well as to offer an adequate reparation for the damages caused to the victim or their family.¹⁹ Indeed, State's failure to properly prosecute and punish sexual violence can provide "*a form of encouragement and/or de facto permission*" of these acts.²⁰ Thus, the United States' liability in the present matter might be compromised for the toleration and lack of prevention of the acts of sexual violence within its military forces.

89. In particular, the duty of due diligence in the prevention and investigation of sexual and gender-based violence ("SGBV") arises from the provision of Article II (right to equality before the law), as the Commission and other bodies have recognized that violence against women is an extreme form of gender discrimination.²¹ And, specifically, the Committee of the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "CEDAW Committee") has acknowledged that sexual violence disproportionately affects women, and it is perpetuated on the basis of stereotypical gender roles.²² Even when committed against men and persons with diverse gender identity, sexual violence entails a gender dimension, as it is often based on the "*actual or perceived non-conformity with socially determined gender roles.*"²³

90. In this regard, the CEDAW Committee has construed the obligation to eliminate discrimination against women as the State's duty to adopt measures to "*eradicate prejudices, stereotypes and practices that are the root cause of gender-based violence against women.*"²⁴ In this way, Article II of the American Declaration requires that States address structural discrimination and eradicate gender stereotypes within its institutions. In the view of the CEDAW Committee, States

[...] must also eliminate institutional practices and individual conduct and behaviours of public officials that constitute gender-based violence against women or tolerate such violence and which provide a context for lack of or for a negligent response. These include adequate investigation and sanctions for inefficiency, complicity and negligence by public authorities responsible for registration, prevention or investigation of this violence or for providing services to victims/survivors. Appropriate measures to modify or eradicate customs and practices that constitute discrimination against women, including those that justify or promote gender-based violence against women, must also be taken at this level.

91. In the context of military forces deployed in armed conflicts and post-conflict settings, the United Nations Security Council (hereinafter "UNSC") has addressed the mainstreaming of gender perspective through its agenda on Women, Peace, and Security. In its resolution 2467 (2019) the UNSC reiterated

[...] its demand for the complete cessation with immediate effect by all parties to armed conflict of all acts of sexual violence and its call for these parties to make and implement specific time-bound commitments to combat sexual violence, which should include, inter

¹⁹ IACHR, Report No. 170/17, Case 11.227. Merits. Members and activist of the Patriotic Union. Colombia. 6 December 2017, para. 1436, citing IACHR, Report No. 65/01. Case 11.073. Merits. Juan Humberto Sánchez. Honduras. 6 March 2001, para. 88.

²⁰ U.N. Special Rapporteur on violence against women, its causes and consequences, Thematic Report on *State responsibility for eliminating violence against women*, A/HRC/23/49. 14 May 2013, para. 27, citing Committee Against Torture, General Comment No. 2: Implementation of article 2 by States parties, CAT/C/GC/2, 24 January 2008.

²¹ CEDAW, General Recommendation 35: On Gender-Based Violence Against Women, Updating General Recommendation No. 19, CEDAW/C/GC/35, 14 July 2017, para. 21; IACHR, Report no. 80/11. Case 12.626. Merits. Jessica Lenahan (Gonzales) et al. United States. July 21, 2011, para. 162; U.N. Special Rapporteur on violence against women, its causes and consequences, Thematic Report on *Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention*, A/HRC/47/26, 19 April 2021, para. 9.

²² CEDAW, General Recommendation 19: Violence Against Women, CEDAW/C/1992/L1/Add15, 1992, paras. 6 and 11 [updated by General Recommendation 35].

²³ Committee Against Torture, General Comment No. 2: Implementation of article 2 by States parties, CAT/C/GC/2, 24 January 2008, para. 22, in which the Committee states that "*Men are also subject to certain gendered violations of the Convention such as rape or sexual violence and abuse. Both men and women and boys and girls may be subject to violations of the Convention on the basis of their actual or perceived.*"

²⁴ CEDAW, General Recommendation 35: On Gender-Based Violence Against Women, Updating General Recommendation No. 19, CEDAW/C/GC/35, 14 July 2017, para. 26.

alia, issuance of clear orders through chains of command and development of codes of conduct prohibiting sexual violence and establishment of related enforcement procedures to ensure accountability for breaching these orders, commitments by individual commanders, investigation of all credible allegations [...]”²⁵

92. Consequently, whether in the context of deployment of armed forces in conflict areas or outside them, States have an obligation under Articles II and VXIII of the American Declaration to not only prosecute and punish sexual violence, but to adopt affirmative measures to prevent it through orders of chain of command and eradication of gender stereotypes in the Military.

93. In addition, the Commission observes that several UN human rights bodies have addressed the U.S. with concerns regarding the context of sexual violence in the armed forces. In 2011, the then UN Special Rapporteur on Violence Against Women concluded that sexual violence and harassment in the military has become a pervasive form of violence against women in the U.S.²⁶ She identified some its causes to be “*a very hierarchic and command driven structure, to a culture that promotes masculine traits of power and control, and a pattern of underreporting and impunity.*”²⁷ In turn, she found that the underreporting of sexual violence was due to the fact that perpetrators often outrank the victims, and reporting barriers, like lack of confidentiality, fear of retaliation.²⁸

94. For its part, the UN Committee Against Torture has also recommended the U.S. to conduct prompt, impartial and effective investigations on all acts of sexual violence reported in the military, as well to ensure that complainants and witnesses are protected from retaliation²⁹. Also, during its Universal Periodic Reviews carried in 2015 and 2020 before the UN Human Rights Council, three States recommended the U.S. to address the issue of sexual violence in the military,³⁰ to adopt measures to prevent sexual violence in the army and to grant access to justice to survivors.³¹

95. Therefore, the Commission considers that the allegations concerning retaliations for reporting acts of sexual violence within the army must be analyzed in the merits stage. Moreover, if proven that the discharges were based in the reporting of sexual violence, and that some of the discharges of the alleged victims were based on their sexual orientation; those actions could amount to a form of discrimination prohibited by Articles II, IV, v and XVI of the American Declaration.

96. With reference to the State’s contention that the fourth instance formula bars the IACHR from adjudicating this petition, the IACHR recognizes that the IACHR is not entitled to review judgments issued by domestic courts acting within their jurisdiction and in accordance with due process of law and the right to a fair trial. However, the Commission reiterates that, under its mandate, it is competent to find a petition admissible and, if applicable, decide on the merits of the case when the matter concerns domestic proceedings that may have been contrary to the rights protected by the American Declaration.

97. After examining the elements of fact and law presented by the parties, the IACHR considers that the petition is not manifestly unfounded. In this regard, the Commission considers that the allegations of sexual, violence, the lack of due diligence in the investigation of these allegations, and the alleged retaliatory acts against reporting of assaults, if proven, could constitute violations of Articles I (right to personal

²⁵ UNSC, Res. 2467 (2019), S/RES/2467 (2019), 23 April 2019, resolution no. 1.

²⁶ UN Special Rapporteur on violence against Women, its causes and consequences, Report on her Mission to the United States, A/HRC/17/26/Add.5, 6 June 2006, para. 22.

²⁷ UN Special Rapporteur on violence against Women, its causes and consequences, Report on her Mission to the United States, A/HRC/17/26/Add.5, 6 June 2006, para. 27.

²⁸ UN Special Rapporteur on violence against Women, its causes and consequences, Report on her Mission to the United States, A/HRC/17/26/Add.5, 6 June 2006, para. 28.

²⁹ CAT, Concluding observations on the combined third to fifth periodic reports of the United States of America, CAT/C/USA/CO/3-5, 19 December 2014, para. 30.

³⁰ Human Rights Council, Report of the Working Group on the Universal Periodic Review, A/HRC/46/15, 15 December 2020, recommendation no. 26.240 by Israel.

³¹ Human Rights Council, Report of the Working Group on the Universal Periodic Review, A/HRC/30/12, 27 July 2015, recommendations no. 176.258 by Slovenia and 176.289 by Denmark.

security), II (right to equality before law), V (right to protection of honor, personal reputation, and private and family life), XIV (right to work), and XVIII (right to a fair trial) of the American Declaration.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles I (right to personal security), II (right to equality before law), V (right to protection of honor, personal reputation, and private and family life), XIV (right to work), and XVIII (right to a fair trial) of the American Declaration; and

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 1st day of the month of November, 2022. (Signed:) Julissa Mantilla Falcón, President; Margarete May Macaulay, Second Vice President; Joel Hernández, and Roberta Clarke, Commissioners.