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HEARING TESTIMONY OF ANU BHAGWATI, EXECUTIVE DIRECTOR, SERVICE  
WOMEN'S ACTION NETWORK, BEFORE THE MILITARY PERSONNEL  
SUBCOMMITTEE OF THE SENATE ARMED SERVICES COMMITTEE, MARCH 13, 2013

Good morning, Chairman Gillibrand, Ranking Member Graham, and members of the Subcommittee. My name is Anu Bhagwati. I am the Executive Director of Service Women's Action Network (SWAN), and a former Marine Captain.

SWAN's mission is to transform military culture by securing equal opportunity and freedom to serve without discrimination, harassment or assault; and to reform veterans' services to ensure high quality health care and benefits for women veterans and their families.

Military sexual violence is a personal issue for me. During my five years as a Marine officer, I experienced daily discrimination and sexual harassment. I was exposed to a culture rife with sexism, rape jokes, pornography, and widespread commercial sexual exploitation of women and girls in the United States and overseas.

My experiences came to a head while I was stationed at the School of Infantry at Camp LeJeune, North Carolina from 2002-2004, where I witnessed reports of rape, sexual assault and sexual harassment swept under the rug by a handful of field grade officers. Perpetrators were promoted or transferred to other units without punishment, while victims were accused of lying or exaggerating their claims in order to "ruin men's reputations."

As a Company Commander at the School of Infantry, I ultimately chose to sacrifice my military career to file an equal opportunity investigation against an offending officer. I was given a gag order by my commanding officer, got a military protection order against the officer in question, lived in fear of retaliation and violence from both the offender and my chain of command, and watched in horror as the offender was not only promoted but also given command of my Company.

Many of the women who were impacted by these incidents chose not to re-enlist. I left by the skin of my teeth. However, all of the officers who were complicit in covering up these incidents have since retired or are still serving on active duty.

I was devastated, because I loved the Marines.

I wish my experience was unique, but in the last few years of working on these issues, and in the hundreds of cases we handle each year on SWAN's Helpline, I have discovered that rape, sexual

assault and sexual harassment are pervasive throughout the military. Sexual violence occurs today in every branch of service, in both operational and non-operational environments, in combat arms as well as support units, and affects both men and women.

The Department of Defense (DOD) estimates that 19,300 sexual assaults occurred in 2010, and that while 8,600 victims were female, 10,700 were male.

This is a critical point. Military sexual violence is not a “women’s issue”. Sexual assault is widely misunderstood by military personnel, who have been over-exposed to a culture of victim-blaming and rape mythology, where victims are considered responsible for their own assaults, and perpetrators are simply naïve young service members who might have had a lapse of professional judgment, at worst.

So let’s be clear.

Rape and assault are violent, traumatic crimes, not mistakes, leadership failures or oversights in character.

Rape is about power. Control. Intimidation.

Thanks to a surge of pressure over the last few years by advocates, the media and Congress, military leadership has finally been forced to reckon with the issue of military sexual violence. Some victims protections reforms have been sensible, like the creation of Special Victims Units, mandatory transfers for victims, or in the Air Force’s case, a pilot program which assigns each victim a designated Special Victims Counsel. And yet, while these measures help a victim after an assault, they will neither prevent sexual violence, nor change a culture that condones sexual violence.

Military leadership cannot solve this problem on its own. I urge Congress to enact the following reforms going forward:

#### 1. Professionalize the Military Criminal Justice System

Congress should grant convening authority over criminal cases to trained, professional, disinterested prosecutors. Commanding officers cannot make truly impartial decisions because of their professional affiliation with the accused, and often times with the victim as well.

Last year’s reform to make Colonels the convening authorities over sexual assault cases was a step in the right direction, but it does not resolve the issue of institutional bias. Colonels and Generals may have more rank than junior officers, but their rank does not endow them with expertise in the law.

In recognition of this fact, a number of common law countries have already transferred case disposition authority from commanders to prosecutors, deeming the policy a violation of the right to a fair and impartial trial.

Recent news about an Air Force Lieutenant General reversing the conviction of a Lt Colonel—a fellow pilot—in a sexual assault case at Aviano Air Force Base emphatically underscores several points. First, senior officers are not infallible, and in fact can be complicit in criminal injustice, and second, today’s military criminal justice system is undermined by built-in bias.

There is no logical reason to let this system remain as it is. I urge you to enact legislation to authorize trained, professional prosecutors to handle criminal cases, as they do in the civilian criminal justice system.

## 2. Open Civil Courts to Military Victims

Civilian victims of workplace crimes, including civilian DOD employees, have one critical avenue for redress currently unavailable to uniformed personnel: access to civil courts.

To this day, the U.S. Supreme Court and the federal courts below it continue to maintain that service members are barred from bringing claims of negligence or intentional discrimination against the military, depriving military personnel of remedies for violations of their rights. In the face of this judicial doctrine, Congress must ensure that men and women in uniform can access the remedies available to all other aggrieved individuals under the Federal Tort Claims Act and the Civil Rights Act.

The civil system is where victims are much more likely to get justice. Civilian employers have historically improved hostile workplace climates because when victims win civil cases—which they win much more often than they win criminal cases—the courts can grant them relief that deters employers from violating the law.

Under laws like the Federal Tort Claims Act and the Civil Rights Act, employers may be held liable for failing to exercise reasonable care to prevent and correct harassment or assault, as well as for retaliating against employees who report violations. Given the prevalence of retaliation against service members who report incidents of sexual assault and harassment, the absence of these remedies for military personnel is especially shameful.

Allowing military victims to pursue civil claims will act as a real deterrent to workplace assault and harassment—a deterrent that does not exist in today’s military. The threat of civil claims and the right to pursue these claims will directly transform military culture.

## 3. Ensure Survivors’ VA Claims Get Accepted

The quickest and easiest thing the Senate can do to help survivors today is to pass The Ruth Moore Act, a bill introduced by Senator Jon Tester and Congresswoman Chellie Pingree, that fixes the broken VA claims process for survivors. Veterans often face a triple betrayal, first by their sexual predator, then by members of their own unit who fail to support them, and then finally by the VA that unfairly rejects their disability claims for post-traumatic stress or other life-threatening conditions related to in-service abuse. The Ruth Moore Act already has bi-partisan support. It can and must be passed in 2013.

I'll close by saying that today we are looking at an institution that desperately needs to be shown the next steps forward. Senators, do not let today's service members become another generation of invisible survivors.

Thank you.