

Toward the Right to Heal: Human Rights at Stake for Injured Soldiers

All human beings are born free and equal in dignity and rights... Everyone is entitled to all rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Universal Declaration of Human Rights,
Articles 1 and 2

Soldiers have human rights. They do not sign away their human rights upon enlistment in the US military, despite the military's promotion of this belief amongst its service-members.⁹¹ They retain these human rights, despite Congress, courts, and the military's drastic restriction of their rights under domestic US law and military law.⁹² As stated in the Universal Declaration of Human Rights, "[e]veryone is entitled to all rights and freedoms" protected by the Declaration, "without distinction of any kind." This is the most powerful, fundamental assertion of human rights—that everyone, as a human being, should have full and equal access to all human rights.

We discuss a range of human rights in this section—some of them formally recognized by the United States, others not. However, all are fundamental rights recognized by the Universal Declaration of Human Rights and the American Declaration on the Rights and Duties of Man, foundational documents that the United States heavily influenced and promoted. Most importantly, they are rights that are essential to human dignity, and we articulate them here because we believe that service-members, veterans, and their families deserve to be treated with humanity.

We are not attempting here to give definitive legal meaning to the right to heal—the original demand of active duty and veteran organizers in the Operation Recovery campaign. To soldiers, veterans, and their families experiencing the complex struggles of this decade of war, this phrase represents something far more than a new human right, and more than the combined achievement of the many human rights at stake for injured soldiers. Asserting their right to heal is a powerful call for justice and healing that exists independently of what any law, institution, or

state might choose to recognize. It also holds different meanings for different people. This is reflected in the testimony of Fort Hood soldiers, veterans, and their family members. When asked what they thought it would take to get service-members the care they deserve and win the right to heal, testifiers reflected on a wide range of changes they would need to see, from the circumstantial, to the systemic and cultural. Some felt that the US military would need a policy overhaul, others a cultural transformation; others believe there needs to be a cultural-political shift in the way the broader US public relates to its military, its wars, and its service-members. Some who expressed moral struggles with their participation in US wars felt that achieving the right to heal would include justice and reparations for the populations affected by US military campaigns abroad. Some felt that it would take the US stopping its war-making altogether.

Our goal here is simply to show that the demands of Operation Recovery have a foundation in human rights—to show that these demands are rooted in what people around the world have demanded for years, that service-members and veterans calling for healing and justice have a whole history and world of social movements behind them, one so strong that an international body of law and standards has evolved around them.



Under international law, the United States government is responsible for ensuring that all of its institutions and officials respect, protect, and fulfill human rights, including those of its armed forces personnel.⁹³

In this report, Fort Hood soldiers and veterans testify to complex experiences of injury and trauma that encompass violations of multiple, intersecting, and interdependent human rights, including the right to health, the right to life, the right to equality and non-discrimination, the right to humane treatment, the right to work under just and favorable conditions, and the right to justice. Although these rights can be examined individually, the full enjoyment of each also relies ultimately on the fulfillment of the others.

Some of the human rights we discuss here are absolute, meaning they can never be restricted. Others may be restricted by governments, but only for limited circumstances and reasons. Armed forces personnel should be treated as “citizens in uniform”—people whose rights should not be restricted by their military status except where it is absolutely necessary. Any such restriction to their rights must meet the following requirements: it must not illegally discriminate; it must be rationally related to military needs and not arbitrary; it must be firmly based upon law; and it must be proportionate, as in tailored specifically to address the military interest that would be compromised by the soldier’s full enjoyment of rights. Finally, the burden falls on the military to prove that the imposed restriction is in fact necessary.⁹⁴

Sexual and Gender-Based Violence

The extremely high prevalence of sexual and gender-based violence in the military is a prime example of the many simultaneous human rights at stake in soldiers’ experiences of trauma and injury.⁹⁵

Most saliently, sexual violence in the military violates the right to personal security⁹⁶ and the right to access to justice⁹⁷ of affected service-members (female and male) and of their families and communities. The US government bears responsibility both for its failure to prevent sexual violence within its military ranks, as well as for its systemic failure to adequately address the violence with proper investigation of the crimes, punishment of the assailants, and redress for those harmed. These failures lead to the fostering of a “rape culture” in the military, one that actively, even if often unofficially, promotes sexual violence and harassment, which in turn only reinforces the climate of impunity.

Rape by a service-member can constitute torture when it causes severe mental or physical suffering and when its objective includes intimidation, degradation, humiliation, punishment or control of the victim.⁹⁸ Commanding officers can also be held responsible for the torture when they are aware of the violence and fail to prevent or address it.⁹⁹ In particular, rape in the military that is perpetrated down the chain of command could well fit these conditions for torture,

especially when the rape is accompanied by other controlling, punishing, or humiliating actions against the lower-ranking service-member by a higher-ranking assailant.

Sexual violence also violates the right to equality of the women in the military who are disproportionately affected. Gender-based violence is widely recognized as “a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.”¹⁰⁰ Meanwhile, sexual violence against men, which is also prevalent and receives minimal attention from the military,¹⁰¹ may also be the product of gender discrimination when male service-members are targeted for deviance from the military’s hyper-masculine norms.

Soldiers’ Right to Health and Right to Work

Although military service can be an inherently dangerous job, human rights obligations still require the military to minimize the dangers and risks associated with employment in its ranks. Armed forces personnel are entitled to safety and health protection as part of their rights to work,¹⁰² health,¹⁰³ and personal integrity. Additionally, the state has a duty to “take reasonable measures ... to ensure proper access of members of the armed forces to health care where their lives are at risk.”¹⁰⁴ This obligation derives from the service-members’ right to life and is triggered whenever authorities have knowledge of immediate and certain risk to life and fail to take actions that are within their power to prevent or minimize those risks.¹⁰⁵

Command Discretion over Medical Care

Commander discretion over medical profiles allows for widespread violations of soldiers’ human rights. At their core, these medical orders are communications by health care providers to commanders that assigning service-members to certain work activities—including, in some cases, deployment—would expose them to conditions that would pose “imminent and serious danger to [their] life or health.”¹⁰⁶ This applies equally to soldiers serving at home as well as in theater.

Over-Medication

The military's over-medication of its soldiers with psychotropic prescription drugs infringes on soldiers' right to be free from "unjustified medication."¹⁰⁷ By contrast, medication should instead "meet the best health needs of the patient," should "never be administered...for the convenience of others," and "mental health practitioners shall only administer medication of known or demonstrated efficacy," with proper documentation "in the patient's records."¹⁰⁸ Additionally, the provision of psychotropic medication as the only mental health treatment offered to soldiers disregards their long-term health care needs. Soldiers have the right to treatment that respects and enhances their personal autonomy, is the "least restrictive or intrusive treatment appropriate," and is based on a treatment plan which the soldier can actively participate in forming.¹⁰⁹

Discipline and Discharge

Service-members' right to work under just and favorable conditions also includes the "right not to be deprived of work unfairly,"¹¹⁰ which requires the government to offer recourse for unjust termination.¹¹¹ This right—along with other rights like the rights to health, justice, and social security¹¹²—are violated through the military's discriminatory discipline, punishment, and involuntary discharge of service-members for behaviors or work restrictions associated with their disabilities. International law, like US law, affords special protections to persons with disabilities.¹¹³ These apply equally to people with mental or physical health impairments, whether "temporary or permanent," and include protection from discrimination even in "times of severe resource constraints."¹¹⁴ Accordingly, the DoD's force reduction goals are no excuse for its infringement on the rights of service-members with disabilities of any kind. The violation is particularly grave where such discharges leave veterans without access to long-term health care, and when the label of Other than Honorable will continue to affect their ability to access work in the civilian sector. Such violations intimately affect all families and communities to which injured soldiers and veterans are a part.

Transparency and Justice

The Department of Defense violates the rights of service-members and veterans, their families, and the US public by keeping them in the dark. With its lack of transparency in reporting statistics on medical care and traumatic injuries, DoD fails to fulfill its duty to “ensure easy, prompt, effective and practical” access to information.¹¹⁵ Too many Fort Hood soldiers testified that they left the military without adequate medical records of their treatment, including of the medication prescribed for their traumatic injuries during the course of service.¹¹⁶ This alone amounts to a violation of service-members’ and veterans’ right to information¹¹⁷ as well as their right to health. Moreover, DoD’s refusal to provide adequate information on its use of toxic munitions and burn pits in Iraq and Afghanistan implicates not only the right to information, but also the rights to health, work, and in some cases, life of service-members, veterans, their families, and communities living in affected regions.¹¹⁸

At minimum, DoD should release data on the firing locations and amount of munitions deployed containing depleted uranium; detailed data on the location and type of materials incinerated in all burn pits; data concerning the administration of vaccines, the use of chemical and biological weapons, and other toxic materials service-members have been exposed to during the course of military service; and all relevant adverse health information in DoD’s possession related to these materials. “Access to information and communication of information about the effects and exact nature of toxic products released into the environment is essential [to the guarantee of associated rights such as the right to health and the right to life].”¹¹⁹ Failure to guarantee access to that information can aggravate health effects when it prevents affected persons from taking the “necessary measures that could mitigate those adverse effects.”¹²⁰ The fact that children are the most vulnerable population¹²¹ to the effects of environmental toxins—both the children of US veterans and those living in affected regions world-wide—only heightens the obligation on the part of the US government to provide this critical information as a first step toward environmental remediation.

Lack of Meaningful Access to Justice

Lastly, domestic legal bars and the military justice system severely restrict service-members' right to justice, which includes the right to a fair trial and the right to judicial protection. Specifically, service-members whose rights have been violated have the right to access a competent, impartial, and independent tribunal that will conduct an inquiry "to establish whether or not a violation has taken place and will set, when appropriate, adequate compensation."¹²² Judicial remedies should do more than merely exist on paper. They must be available, adequate, and effective, and granted without "unwarranted delays."¹²³ The current military justice system allows undue interference by the chain of command in what should be independent judicial processes that fulfill soldiers' right of access to justice. This is especially relevant in cases of military sexual violence, as well as cases of disorderly, dangerous, or illegal behavior used as a basis for initiating the prosecution of service-members who may be suffering traumatic injuries.