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Mission: Justice

Living up to our responsibility to prosecute perpetrators of SEA within UN peacekeeping missions

UNA-UK believes that there exists a responsibility to prosecute sexual exploitation and abuse (SEA). We call upon states to live up to that responsibility by implementing a series of measures to help countries prosecute peacekeepers that fall under their jurisdiction, and to ensure the international community steps into the gap when they do not.

The issue

UNA-UK believes in the unique value of UN peacekeeping – the UN’s preeminent tool for upstream conflict prevention and the restoration of peace. Over the past 70 years, UN peacekeeping has helped to end conflicts and foster reconciliation in dozens of countries, from El Salvador to Tajikistan. Studies have found it to be more effective and substantially cheaper than comparable operations.¹

However, UN peacekeeping has been marred by repeat allegations of sexual exploitation and abuse. In the last 10 years, there have been some 850 allegations of SEA levelled against personnel deployed in UN missions.

In addition to the pain and suffering caused to victims, these allegations sap the legitimacy and credibility of UN peacekeeping, undermining the trust communities place in peacekeepers that is so integral to the successful implementation of mission mandates. Multiple attempts at reform, dating back several decades, have seemingly not led to a marked reduction in the nature or severity of allegations.

The response so far

The response so far has concentrated on improving reporting and investigation mechanisms, improving and increasing training, greater coordination between separate elements of the UN system, and more rapid repatriation of troops who abuse. The recent report by Secretary-General António Guterres further expanded upon these ideas, while also developing additional protocols with regards to communication, support for victims, and engaging civil society. Guterres’ initiative is commendable and necessary.

The gap

UNA-UK’s analysis, however, is that efforts to date can only go so far because they are constrained by the structural and systemic immunity peacekeepers currently enjoy. If peacekeepers are aware, or are given the impression, that it is not possible to prosecute them if they commit acts of sexual abuse then a climate of impunity is engendered which severely limits the impact that any other intervention can have. Peacekeepers experience two kinds of immunity, systemic and structural. Structural immunity occurs when a prosecution is jurisdictionally impossible. This can occur either when the perpetrators originate from a country which does not recognise extraterritorial jurisdiction, thus preventing prosecution (this includes 16 of the top 30 contributing countries, alone responsible for contributing some 46,000 troops),² or when the perpetrators enjoy diplomatic immunity as a UN official³.

¹ https://rusi.org/sites/default/files/201704_rusi_newsbrief_carver.pdf

² Amnesty International, Universal Jurisdiction: A Preliminary Survey of Legislation around the World—2012 Update (London: Amnesty International, 2012) <https://www.amnesty.org/en/documents/ior53/019/2012/en/> cross referenced with <http://www.un.org/en/peacekeeping/resources/statistics/contributors.shtml>

³ Under the Convention on the Privileges and Immunities of the United Nations 1946 both experts on mission and UN officials have functional immunity from national legal processes in respect of their official conduct. However, the Secretary-General can waive this immunity, and since sexual exploitation and abuse cannot amount to official conduct this immunity in any instance should not apply. Nevertheless, such immunity is frequently claimed, and this has a slowing effect on the justice process. Ref: Sex, Statistics, Peacekeepers and Power: UN Data on Sexual Exploitation and Abuse and the Quest for Legal Reform, Grady, K, 2016, Modern Law Review 79(6) pages 931–960

Systemic immunity occurs when it is technically possible to prosecute the perpetrator of sexual abuse, but the absence of competence, capacity or will means that prosecution is highly unlikely. Data collected thus far suggests that a mere 35% of peacekeepers against whom there was a substantiated allegation of abuse (as opposed to non-criminal exploitation) ended up receiving a criminal sentence.⁴ Due to underreporting of incidents in which no action was taken, the true picture may be even less hopeful. In the instance of the largest single repatriation in UN history, that of 108 peacekeepers in Haiti in 2007, charges were only brought against 23 soldiers, three of whom had died in the intervening period, three of whom received administrative sanction, and 17 of whom received unspecified “punishments”,⁵ none of which included jail.⁶

The solution

UNA-UK believes decisive action is needed to end the systemic and structural impunity covering the behaviour of peacekeepers, and so allow the Security Council's and Secretary-General's initiatives a chance to be effective. This can be achieved by maintaining that there exists in all instances a responsibility to prosecute sexual abuse. The UN's definition of sexual abuse⁷ describes acts that are universally regarded as criminal. If such acts are committed by UN peacekeepers, then there is a responsibility to bring the perpetrators to justice.

This is a shared responsibility. It falls in the first instance to the states that deploy peacekeepers to prosecute. If these states are not able to live up to their responsibility then the international community, and the UN, must help them to do so. If this too is unsuccessful, then the international community must step into the gap.

Establishing this responsibility will require action on multiple fronts. UNA-UK proposes:

- That the Secretary-General takes further efforts to remove remaining barriers within the UN system to swift and effective investigation of allegations of abuse.
- That Troop Contributing Countries (TCCs) commit to overhauling their legal frameworks and prosecuting perpetrators.
- That the General Assembly's Legal Committee pass the Draft Convention on the Criminal Accountability of United Nations Officials and Experts on Mission.
- That further international mechanisms that may be necessary to fill current gaps in accountability be explored and developed.
- That the UN Security Council adopt a resolution enhancing the Secretary-General's monitoring and reporting of SEA, and tasking him with creating an annual list of member states where a failure to prosecute sexual abuse by members of the armed forces is widespread and systemic.⁸ Under existing UN policies, such member states would then not be able to contribute UN peacekeepers.⁹

Such mechanisms would not only contribute significantly towards establishment of prosecutions as a norm, but would also have a powerful effect in driving up standards in Troop Contributing Countries, and in strengthening prosecutions of sexual abuse around the world.

⁴ <https://conduct.unmissions.org/sea-actions> The UN has only started systematically collecting data on prosecutions since 2015, so it is difficult to ascertain the true scale of this issue.

⁵ Reports submitted by Sri Lanka as a state party to the Convention against Torture, 16 October 2015, CAT/C/LKA/5 srilankabrief.org/wp-content/uploads/2016/07/GoSL-report-to-CAT-oct-2015.pdf

⁶ https://apnews.com/e6ebc331460345c5abd4f57d77f535c1?utm_campaign=SocialFlow&utm_source=Twitter&utm_medium=AP

⁷ http://reliefweb.int/sites/reliefweb.int/files/resources/un_glossary_on_sea.pdf

⁸ Such a resolution would require little additional text. It could be based closely on Resolution 2272, with additional wording modelled on the reporting mechanism used in Resolution 1612 on the use of child soldiers.

⁹ This is implicit in Security Council Res 2272, para 3 [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2272\(2016\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2272(2016)), Report of the Secretary-General on conflict-related sexual violence S/2016/361/Rev.1 Para 90(d) www.un.org/ga/search/view_doc.asp?symbol=S/2016/361/Rev.1, and Decision No. 2012/18 - Human Rights Screening of United Nations Personnel <http://dag.un.org/handle/11176/387395>