

## SEXUAL EXPLOITATION AND ABUSE – A SUMMARY OF THE LATEST POLICY RECOMMENDATIONS

### UN WOMEN POLICY BRIEF FEBRUARY 2015

On January 26<sup>th</sup>, 2015, the Secretary General chaired a meeting of principals to discuss the report of a working group set up by DPKO-DFS to strengthen the UN's response to sexual exploitation and abuse (SEA).<sup>1</sup> This report builds on more than a decade of work on SEA<sup>2</sup> that has resulted in a lower number of allegations, greater responsiveness and communication by the member states of the individuals accused of abuses, and a significant number of tools that range from training materials to guidelines and compilations of good practice. However, the number of yearly allegations is still significant and represents a small fraction of the total number of violations; the number of actual disciplinary or criminal action undertaken against alleged perpetrators is very small; and the assistance provided by victims continues to be inadequate or non-existent. This **new report contains 48 recommendations** (some of them are reiterations of previous ones) and those that are agreed on by consensus will be forwarded on to the General Assembly. Here is a **sample** of the most important ones (particularly the ones that UN can take action on, rather than merely encouraging member states to act):

- Add protocols to the model memorandum of understanding with troop contributing countries (TCCs), requiring them to certify that uniformed troops have received pre-deployment training on SEA, to include national investigations officers within contingents, to acknowledge the right of the UN to suspend payments to any individual member of a contingent or formed police unit suspected of SEA, to facilitate paternity claims, among other measures.
- Repatriate commanders and entire units without the possibility of further service in missions where there is a documented pattern of SEA within a contingent (and failure to take action or cooperate with investigations).
- Appoint a Special Representative of the Secretary-General on SEA (heading an SEA Coordination Office within DFS) and establish a UN Trust Fund for Victims of SEA.
- Withhold service medals and individual premiums (like risk premiums, mission subsistence allowances) from individuals under investigation, as well as key enabler premiums from TCCs). Staff members who are dismissed because of misconduct will lose their accumulated annual leave,

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<sup>1</sup> The term “**sexual exploitation**” means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.” The term “**sexual abuse**” means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.” (ST/SGB/2003/13). The first allegations officially recorded were against the UN mission in Cambodia in 1992, but the UN did not respond until organizations like Save the Children and UNHCR published accounts of widespread SEA in West Africa in 2000 and 2002. **UN peacekeepers have been accused of sexual assault, rape, sex trafficking, organized prostitution rings, abduction, the making of child pornography, and sex in exchange for food, medicine, employment, and protection.**

<sup>2</sup> This includes the UN Secretary-General's Bulletin on Special Measures for Protection from Sexual Exploitation and Abuse in 2003, the Zeid Report in 2005, the establishment of Conduct and Discipline Units in 2006, the 2007 amendments to the MOU with TCCs, the work –mainly on tools and guidelines- of the humanitarian entities in the task force on PSEA within the Inter-Agency Standing Committee, the recommendations of the group of legal experts to the Sixth Committee, and the assessments conducted in 2013 in four missions with the highest number of allegations.

and the savings will be channeled to the UN Trust Fund for Victims (along with the revenue from fines).

- Establish an SEA Immediate Response Team in each mission and/or region for preliminary investigations and to be available to support the investigations led by TCCs and host countries when requested. UN investigations should be completed within 6 months.
- Create a full-time position for a Focal Point for SEA directly under the Resident Coordinator's office to coordinate an inter-agency task force and local NGOs who can provide medical, legal, psychological, and social support.
- Establish a working group to share confidential information across the UN system on UN personnel involved in SEA or other misconduct, covering all staff categories.
- Mandatory e-learning on SEA for all field staff, with different modules per staff category.
- Develop a UN-wide communications strategy on SEA to increase awareness and clarity, particularly of complaints reception mechanisms, which should be adaptable to the local context of each duty station.

These recommendations are **still being discussed** by the principals from the entities involved in the working group. Most of them are reflected in protocols that are proposed to be added to the MOUs with troop contributing countries, and are **dependent on member states' agreement**. Many are also included in the draft of an international convention, recommended by a group of legal experts on the basis of the Zeid report. This draft **convention** has stayed under consideration in the Sixth Committee for years, as it **does not enjoy the support of some key member states**, including permanent members of the Security Council and major troop contributing countries.

There is great **consensus within the broader literature**<sup>3</sup> on sexual exploitation and abuse and previous recommendations of groups of experts on the nature of the problem and its complexities. **Major points of agreement** include: a) that this issue does not only concern military personnel, and often not even mainly military personnel; b) that the UN has made progress in the last decade, as demonstrated by the steady decline in allegations and the increased responsiveness of member states to following up on those allegations; c) that the number of allegations –a few dozen a year- nevertheless represents a small percentage of actual violations; d) that most of its victims are women and girls, but it affects also men and boys, and the overwhelming majority do not feel safe to report or obtain redress; e) that many allegations are not properly investigated by member states, are considered unsubstantiated, or are resolved with very lenient disciplinary measures or criminal sentences; f) and finally, that although there is a widespread perception that SEA is mainly about field staff taking advantage of the easy availability of transactional or survival sex in violation of the UN's zero tolerance policy,<sup>4</sup> almost half of all allegations are egregious crimes ranging from rape to sex with minors.

There is **more disagreement** about how to resolve the competing intervening jurisdictions of the United Nations, the host countries, and the troop contributing countries, and the **legal and practical complications** that arise. One proposal that has been raised several times since the Zeid Report and within the literature is

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<sup>3</sup> The literature consists on academic studies on the nature, drivers, or scale of sexual exploitation and abuse, single case studies, monographs on the UN's efforts to curb SEA, on its impact on public health or the effectiveness and reputation of the missions, and on the avenues for legal redress, including proposals exploring the possibility of internationalized hybrid courts, or the ICC. Selected readings are including at the end of the memo.

<sup>4</sup> The **zero tolerance policy** prohibits the exchange of money, employment, goods, services, and other assistance for sex; prohibits peacekeepers from engaging in sexual relations with persons under the age of 18 in any circumstances; and strongly discourages, but does not prohibit, non-transactional sexual relationships between UN personnel and local adults on the grounds that these relationships "are based on inherently unequal power dynamics" and "undermine the credibility and integrity of the work of the United Nations." The Bulletin permits sexual relations between peacekeeping personnel and local civilians in only two situations: where the local civilian is legally married to the peacekeeper; and where, at the discretion of the Head of the Mission, it is determined that "the circumstances of the case justify an exception."

that of hosting **courts-martial** administered by the troop contributing country within the territory of the host country, although it does not seem likely that either country would accept this arrangement.<sup>5</sup> Other recommendations often raised to enhance the enforcement of SEA rules include the **collection of a DNA sample from each UN employee**,<sup>6</sup> and ensuring the complete **independence** –not just from interested member states, but also from the UN presence in the field- of the preliminary investigation team.

Instead of seeking **unlikely agreement on new legal obligations** between the UN and member states, and focusing on criminal prosecution,<sup>7</sup> there is room to focus on the UN's enforcement practice over powers it already has, regardless of member states' compliance. We do not have systematic information on whether the UN is already using its enforcement powers to the fullest extent, particularly when it comes to all other categories of peacekeeping staff beyond the personnel deployed as part of military contingents and formed police units (civilian staff, civilian police, military experts in missions, volunteers, contractors).

Most importantly, many favor focusing much more strongly on a **victims-centered approach**. On one hand, this would entail implementing the **victims' assistance mechanisms** that have hitherto failed to materialize in most contexts. On the other, though this point is much more contentious, this approach would focus on harm mitigation and empowerment interventions rather than blanket prohibitions regarding **sex work** that may create more immediate hardship for the people it is designed to protect.<sup>8</sup>

**Victims assistance mechanisms** were called for in 2008 and are meant to consist of medical care – regardless of the substantiation of the allegations-, emergency shelter, food, clothes, basic necessities, legal aid, psychological counsel, and assistance pursuing paternity claims. However, missions and country teams do not seem to set money aside to fund and implement such victims' assistance mechanisms. One of the proposals on the table is another **trust fund for victims** based in headquarters, but this approach has its **drawbacks**: given the low number of disciplinary actions against alleged perpetrators, it is unlikely that it will be sufficiently funded by fines, suspended premium payments, and accumulated annual leave, and it may compete for donor funding with several other trust funds related to gender equality or women's rights that are already under-resourced.<sup>9</sup> An alternative could be **earmarking pockets of funds at the country level**, like other country-specific pooled funds, and demand **that the employers** –the UN entities themselves- **of the individuals involved set money aside for this fund**.

The **complaints mechanisms** are neither known, understood, or deemed safe by the community.<sup>10</sup> The instances of SEA that typically come to light have mainly be reported by whistleblowers, rather than through the complaints channels. To encourage reporting, the senior management of each entity, or the

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<sup>5</sup> For example, major criminal offences, such as rape or serious assault may be reserved for trial by the civilian courts of the participating state rather than military justice; other states may be unable to exercise jurisdiction extraterritorially; and host states may object to the establishment of foreign investigations and judicial procedures in their territory. However, on-site courts martial have happened a handful of times since 2006, including in 2013 in Haiti.

<sup>6</sup> The recommendations of the working report include a proposed study on the feasibility of universal DNA collection across staff categories in the field. The DNA would be collected by a swab at the time of medical clearance and disposed of at separation, and as a pilot initiative it could be introduced as a voluntary measure instead of mandatory.

<sup>7</sup> Criminal prosecution has proven difficult even in the rare instances when there has been DNA evidence and/or video evidence.

<sup>8</sup> Reviewing the 2003 SG's Bulletin on Special Measures, which outlines the zero tolerance policy, has been proposed in the past but is unlikely to be a possibility in the near future, given the strong division among member states over sex work. Even within the feminist literature, there are many voices that claim that when these sex workers are given a voice, they demonstrate more agency than assumed. On the other hand, even consensual, transactional sex among adults risks spreading HIV and exposing sex workers to unwanted pregnancies and being ostracized or abused by their families and communities. An empowerment approach focuses on alternative livelihoods, education on safe sex practices, HIV prevention, access to medical care, improved negotiating skills and ability to refuse clients, demand the use of condoms, and organize with other sex workers.

<sup>9</sup> For example, the ICC Trust Fund for Victims, the UN Trust Fund to End Violence Against Women, UN Action Trust Fund, the Fund for Gender Equality, and prospective plans for trust funds for civil society on implementation of 1325.

<sup>10</sup> In the few instances in which complaints mechanisms have been established, there have been issues with setting up unattended complaints boxes, or making the complaints mechanism exclusively about sexual abuse, rather than all kinds of misconduct.

senior leadership of the mission or the country team, should send **periodic, organization-wide reports of all complaints and how they are being handled by the organization**, without revealing confidential information. These and other policy recommendations and parallel conversations should be taken into account by the peace operations panel in their deliberations.

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