

I. General comments on the UN response to SEA:

- a) There is no 'one size fits all' analysis on SEA in the UN context as different categories of personnel are deployed on peacekeeping operations and have different forms of legal status and relationships with the UN. As a result, response/enforcement procedures vary according to the category of personnel involved as well as the nature of the allegations (e.g. see ICAI report published September 2020).
- b) Under international law, the UN '*has no clear legal obligations to prevent or respond to allegations*' of SEA.¹ As a result, the UN has no real legal incentive to address/investigate allegations of misconduct, including SEA. In other words, the UN's reaction following the exposure of SEA cases is often motivated by reputational concerns rather than clear and strong positive legal obligations, i.e. limits imposed by an internal (UN rules and regulations), or external, framework (international law).
- c) Reputational risk is a very light constraint on the UN (as opposed to legal obligations). The Organisation dedicates a lot of financial and human resources to the issue of SEA with little critical thinking on the shortcomings of its response/prevention efforts. However, in the absence of clear legal obligations binding upon the UN, one could argue that external authorities and the public should play a bigger part in exposing SEA and other misconduct by UN personnel. As illustrated by a recent case of sexual exploitation in the Middle East (United Nations Truce Supervision Organization (UNTSO)),² or the recent investigation conducted by *The New Humanitarian* in the Democratic Republic of Congo,³ the UN does not feel compelled to act on obvious concerns if it is not subjected to independent scrutiny.

¹ Daugirdas K, 'Reputation as a Disciplinarian of International Organizations' (2019) 113 *American Journal of International Law* 224.

² See e.g., BBC online, 'UN staff in Israel sex-act video suspended without pay' <<https://www.bbc.co.uk/news/world-middle-east-53273151>> accessed 20 October 2020.

³ The New Humanitarian, 'More than 50 women accuse aid workers of sex abuse in Congo Ebola crisis' <<https://www.thenewhumanitarian.org/2020/09/29/exclusive-more-50-women-accuse-aid-workers-sex-abuse-congo-ebola-crisis>> accessed 20 October 2020.

II. Accountability

d) Policy implementation: It could be argued that too many UN actors are involved in the prevention/response to SEA. For instance, at Headquarters level, a non-exhaustive list of those dealing with SEA includes the Under-Secretary-General for Management Strategy, Policy and Compliance (through the Conduct and Discipline Service), the Special Coordinator on improving the United Nations response to sexual exploitation and the Victims' Rights Advocate. This leads to a diffusion of responsibility where 'everyone is responsible, but no one is ultimately accountable'.

e) Financial accountability: One aspect that is often neglected in the analysis of the SEA issue is the UN's budget for what is an inadequate response. Against this background, the Committee may wish to ask the FCDO to secure from the UN a detailed structure (with associated costs) of Offices/Teams involved in the SEA response at a field level. For instance, this would allow the Committee to get a better understanding of the overall cost of Conduct and Discipline Teams (CDTs) and of the recently designated 'Field Victims' Rights advocate'/'Senior Victims' Rights Officers'. As a result, the Committee would get a better view of the sometimes-inflated structures of Offices/Teams involved in the SEA response and of the necessity to advocate for the creation of more 'operational' positions as well as for the adoption of a more robust performance management system.

f) Managerial accountability in peacekeeping operations: At this stage, because of a diffusion of responsibility and the lack of robust performance evaluation of managers involved in the SEA response, there is too much passivity in addressing SEA and other violations of UN standards of conduct. This passivity is illustrated by the UN's failure to address obvious concerns (see paragraph on prevention below).

III. Prevention:

g) The UN should better apply the lessons arising from its long experience of operating in challenging contexts. For instance, there is a need to review recruitment practices at the local level. Considering the recent investigation conducted by *The New Humanitarian* in the Democratic Republic of Congo, the UN needs to be more diligent about reacting to 'cash for jobs' and 'sex for employment' allegations as the oversight on recruitment practices is at best weak and at worst non-existent.

h) Available technologies should be used more widely in the prevention of SEA. For instance, as illustrated by the recent public case of staff at the United Nations Truce Supervision Organization (UNTSO), UN vehicles are often used to transport unauthorized passengers (incl. sex workers).⁴ In some countries, UN agencies have equipped their vehicles with GPS trackers and sensors so their security teams can know i) how many passengers are in the vehicle at any time and ii) where the vehicle is located and, if travelling, its speed. This is important in the context of SEA prevention and relevant to investigations. However, the UN still refuses to deploy available (and affordable) technologies more widely to ensure its staff are not engaging in SEA.⁵ This is emblematic of the UN's passive stance in preventing/addressing staff misconduct. In addition, the pervasive lack of managerial accountability participates to a risk-averse work culture that favours inefficient (technological) solutions to prevent/respond to SEA.⁶

i) The UN should be encouraged to adopt standard policies on the use of local cleaners by its personnel. For instance, International civilian staff or UN Police Officers often live in private accommodation (or in UN camps where the security situation does not allow them to live in the city). In this context, they usually hire local cleaners/domestic workers (usually women). It is worth noting that hiring practices are not regulated by the UN and

⁴ In peace operations, UN vehicles are often used to i) transport prostitutes/vulnerable women and/or ii) travel to known places of prostitution.

⁵ Another non-negligible benefit includes vehicle theft prevention.

⁶ The inability to control/track the use of work-related vehicles is problematic if one wishes to seriously enforce UN internal policies.

a possible source of sexual exploitation. Some domestic workers are paid less than USD 100 per month⁷, thereby exposing them to unscrupulous UN personnel who are ready to provide an additional source of income in exchange for sexual favours.⁸

IV. Support for victims and survivors: the example of Haiti

j) The UN has not yet dealt with its SEA legacy in Haiti (MINUSTAH and MINUJUSTH) and has delivered victims' assistance in a piecemeal manner.

k) The UN has recorded around 30 cases of SEA associated with a paternity claim.⁹ It is worth noting that the earliest recorded cases date from 2009 following the systematic roll out of the UN Misconduct Tracking System (MTS).¹⁰

l) Before the designation of the Victims' Rights Advocate, the UN made minimal, if any, efforts to identify/locate SEA victims and children born of abuse. Moreover, access to support has been insufficient and inconsistent. As a result, many victims no longer trust the UN to deliver on its promises and remain without adequate forum to settle their claims.

m) Many Conduct and Discipline officers and staff involved in the SEA response lack the necessary knowledge/experience to deal with victims and their children in a sensitive and objective manner.

n) Conduct and Discipline Teams (CDTs) should no longer deal with Victims' assistance as they already cover the main aspects of case management relating to perpetrators, including complaint reviews, referral for investigation, investigations report reviews as well as recommendations on follow-up actions. In addition, in peacekeeping operations, the complaint reception process is too centralised and almost the sole preserve of the Chief

⁷ This is extremely low even by the income standards of developing countries. Moreover, cleaners usually work multiple times a week or sometimes every day.

⁸ International professional staff (P) in peacekeeping operations such as MINUSCA and MINUSMA earn over USD 100K per year (tax free and not including other benefits). This partly explains the differential power between UN personnel and members of the population they serve.

⁹ It is difficult to estimate the real scale of SEA in Haiti (issue of under-reporting) and how many children were fathered by peacekeepers. See e.g., Washington Post, 'U.N. peacekeepers fathered, then abandoned, hundreds of children in Haiti, report says' < <https://www.washingtonpost.com/world/2019/12/18/un-peacekeepers-fathered-then-abandoned-hundreds-children-haiti-report-says/> > accessed 23 October 2020.

¹⁰ The MTS is a central repository of misconduct cases.

Conduct and Discipline Team. As a result, there is little transparency throughout the complaint reception phase nor later when the complaint is formally addressed.

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