

ENSURING ACCOUNTABILITY FOR CRIMES COMMITTED BY UN PEACEKEEPERS

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Scandals involving allegations of sexual and other crimes by UN peacekeepers plague the UN and its efforts to restore and maintain peace and security around the world. To restore its credibility and effectiveness, the UN must restore confidence in the integrity and accountability of its peacekeepers in the hearts and minds of the peoples they are deployed to protect.

To that end, and in accordance with the UN Charter, the UN peacekeeping operations (UNPKOs) and their personnel must be held to the highest standards of integrity². Where and when they commit violations or other abuses, including but not limited to sexual exploitation and abuse, they must be held accountable both by the UN, through appropriate disciplinary measures, as well as by the relevant Member States, including through criminal investigation and prosecution.

The principle of “do no harm” requires that UN peacekeeping personnel -- whether military, police or civilian -- strive to ensure that they do not become perpetrators of human rights violations and other abuses. When UNPKOs are entrusted with a protection of civilians’ mandates, it is effectively a double tragedy when the purported protector becomes the abuser; he or she not only fails his or her mandate but actually betrays it.

UN peacekeepers are not above the law or immune from prosecution for crimes they are credibly alleged to have committed. It is imperative to dispel any notion that they are. Article 24(2) of the UN Charter provides that, in discharging its duties, even the Security Council (UNSC) itself “shall act in accordance with the Purposes and Principles of the United Nations”. As they are subsidiary organs of the UNSC, the same principle applies to UNPKOs. As such, they must adhere to international law, including international humanitarian and human rights law (IHL/IHRL), where applicable.

While the Convention on the Privileges and Immunities of the United Nations and the Status of Forces and Status of Mission Agreements confer certain functional immunities on UN officials and experts on mission and accord diplomatic status to the most senior officials of the UN missions, these immunities only apply to words spoken or written and acts performed by them in their official capacity; they do not apply to sexual or other crimes which are by nature unrelated to their official duties and outside their official capacity. Moreover, the Convention explicitly confirms that

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² Article 101(3) of the UN Charter provides that “The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity”.

these immunities are granted in the interest of the Organization and not for the personal benefit of the individuals themselves.

Even if immunity were to exist, the Convention obliges the Secretary-General to ensure that these immunities are not abused, to facilitate the proper administration of justice and to waive immunity in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. It is decidedly in the UN's interest to pursue criminal accountability for UN personnel who commit crimes betraying the very purposes and principles for which they were deployed.

Military personnel of national military contingents, however, are beyond the Secretary-General's reach. They are subject to the exclusive jurisdiction of their respective Troop Contributing Countries (TCCs) in respect of any criminal offences which may be committed by them. The MOUs concluded with the TCCs oblige them to investigate and prosecute credible allegations of crimes in a timely and effective manner.

Based on the foregoing, there is clearly no immunity and no impunity for crimes committed by UN peacekeepers. To the contrary, there should be and must be criminal accountability.

To the extent that it does not have any criminal investigative or prosecutorial jurisdiction, the UN must refer to and rely on its Member States³. They, in turn, are obliged to investigate and prosecute acts of commission⁴ by any UN personnel. Persons holding command responsibility should also be held accountable for acts of omission when they are aware, or should be aware, but fail to prevent or stop crimes by those under their command and control.

Last but not least, an effective criminal accountability framework requires the protection of victims and witnesses. While the UN has adopted a Comprehensive Strategy of Assistance and Support to Victims of Sexual Exploitation and Abuse by UN Staff and Related Personnel⁵, it needs to expand such assistance and support to victims of other crimes by UN personnel. Moreover, those who provide credible information regarding IHL/ IHRL violations or other crimes, including the acts of commission or acts of omission mentioned above, should enjoy full protection from retaliation in accordance with the applicable Secretary-General's Bulletin⁶.

In conclusion, the UN has all the necessary instruments, policies and resolutions in place. It only needs to uphold those principles, implement those policies and enforce those resolutions. For the sake of all those who serve with integrity and honour, and to ensure justice for the victims of those who don't, it is essential that the UN and its Member States make every effort to ensure that all UN personnel facing credible allegations of crimes or other serious abuses are held accountable.

³ UN policy also considers whether the justice system of the host State, nationality State or TCC concerned meets international human rights standards including with respect to the right to due process, humane treatment, and fair trial.

⁴ Act of commission include murder; unauthorized or excessive force; rape or other crimes involving sexual assault or sexual violence; and other serious IHL/IHRL violations or other serious abuses or criminal offences.

⁵ A/RES/62/214

⁶ ST/SGB/2017/2