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Sexual Abuse and Sexual Exploitation in Conflict Situations as a Security Risk

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MUNA NDULO, JUN 22 2015

In recent weeks the problem of sexual abuse and exploitation in United Nations Peacekeeping missions has been a major topic of discussion following reports alleging the sexual abuse of children in the Central African Republic (Cumming-Bruce and Gladstone, 2015). A six-page UN report (dated May 30, 2015) details the alleged abuse by troops from France, Chad, and Equatorial Guinea between December 2013 and June 2014 at a center for displaced people at M'Poko airport in the Central African Republic (CAR) capital, Bangui. Aids-Free World, the NGO that broke the story to the public, has criticized the United Nations for its slow response following its initial 2014 report of the allegations. The news story alleges that UN officials only began talking openly about the issue in April 2015, a month after an article on the allegations appeared in Britain's *Guardian* newspaper. However, UN investigators had heard the stories of alleged sexual abuse and exploitation from several boys back in May and June, 2014. The NGO also alleged that the UN did not move quickly to support France's inquiry into the allegations and instead devoted resources to vetting the human rights staffer who blew the whistle (Cumming-Bruce and Gladstone, 2015). In its turn, the United Nations High Commissioner for Human Rights, Zeid Ra'ad al-Hussein, accuses France of delaying investigations of allegations that French soldiers in Central African Republic sexually abused children (Sengupta 2015). These allegations and counter-allegations have focused attention on the UN process for holding peacekeepers accountable for sexual abuse occurring within the context of peacekeeping missions. It also forces us to review current approaches to see how they can be improved to more effectively address the problem. In this article I examine the challenges of preventing sexual abuse and exploitation in peacekeeping missions, then look at the current UN legal approaches to dealing with the scourge and the shortcomings in that approach. In the conclusion I argue that the Security Council should declare sexual abuse and exploitation in conflict situations a major collective security threat and take decisive steps to address the problem; further, the SC should institute robust reporting requirements and follow up procedures to ensure that host states punish perpetrators of sexual abuse and sexual exploitation.

Sexual violence against women and children in wartime presents a formidable legal, political, and social challenge (Ndulo, 2009). The problem is widespread (Ndulo, 2009, p. 141). The allegations have been extremely damaging to both peacekeeping operations and the United Nations, mainly by undermining the peacekeeping mandates and by generating a negative image of the UN in the media and in communities where they operate (Ndulo, 2009, p. 130). As the former UN Secretary-General, Kofi Annan (2002), observed,

sexual exploitation and abuse by humanitarian staff cannot be tolerated. It violates everything the United Nations stands for. Men, women, and children displaced by conflict or other disasters look to the United Nations and its humanitarian partners for shelter and protection.

In 2008 UNICEF estimated that one billion girls and boys lived in countries or territories affected by armed conflict. In January 2014, UNICEF reported that as many as 15 Million children are caught up in conflict situations around the world; 2.3 million of them are in Central African Republic. The conflict environment in which peacekeeping missions operate is typically characterized by collapsed economies, weak judicial systems, corrupt and ineffective law enforcement agencies, weak or non-existent rule of law, and significant power differentials between peacekeepers and the local populations. As observed elsewhere, these factors significantly increase the vulnerability of local

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populations to sexual abuse and exploitation (Ndulo, 2009, p.130). The devastating impacts on victims include social marginalization, unwanted pregnancies, health problems, sexually transmitted diseases, and psychological trauma. On a broader scale, widespread sexual violence itself may continue or even increase in the aftermath of conflict as a consequence of insecurity and impunity. Communities struggle with recovering from disruption of family norms and social order and with the burden of caring for survivors. Post-conflict societies are ill-equipped to provide adequate medical treatment, counselling services, economic support, or legal remedies.

United Nations Measures to Address Sexual Abuse in Missions

Allegations of peacekeepers and aid workers engaging in sexual abuse and exploitation first surfaced and grabbed the world's attention in 2001 following reports of widespread abuse in refugee communities in Guinea, Liberia, and Sierra Leone (Ndulo 2009, p.141). This led the UN General Assembly to consider the matter and subsequently adopt Resolution 57/306, entitled "Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa." In the Resolution, the General Assembly requested the Secretary-General to, inter alia, report annually on investigations into sexual abuse and exploitation by humanitarian and peacekeeping personnel in UN operations and to report on all relevant actions taken by the United Nations to address the violations.

While current available figures indicate some progress in monitoring sexual abuse in peacekeeping missions, serious problems remain. Quite apart from the fact that sexual abuse is often not reported by the victims—who feel powerless, frightened, and intimidated at the prospect of being confronted by investigators—many NGOs believe that there is a lot of under-reporting of known violations. Experts on sexual violence observe that the Secretary-General's focus on reporting a decrease in the number of allegations is problematic for several reasons; a decrease in numbers does not necessarily indicate that incidents have decreased. Paula Donovan, co-founder and co-director of AIDS-Free World, argues that there may be a lack of confidence in the reporting process. She argues that "when you put a program in place that actually begins to prevent and punish sexual exploitation and abuse, one indicator that your program is working is that people feel safe enough to come forward" (in Rowlands, 2015).

The reporting controversy is not a new one. The UN acknowledges that reports from outside sources indicate a greater prevalence of sexual exploitation and abuse perpetrated by UN and international community personnel than is reported in UN figures (13). According to the UN, proposals and initiatives presented to the General Assembly in A/69/779 reflect an integral approach aimed at strengthening prevention, enforcement, and remedial action to address sexual exploitation and abuse by UN personnel. The report also revisits a number of proposals set out in the seminal 2005 Secretary-General's report to the General Assembly, "A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations," prepared by a special task force led by Zeid Ra'ad Zeid Al-Husseini. The report included recommendations for holding courts martial in host countries and establishing a trust fund for victims.

No doubt the debate about the accuracy of the figures is important. However, we should not get bogged down with disputes over the accuracy of figures at the expense of finding solutions to this outrage. In his 2015 report on sexual abuse and exploitation, the Secretary-General stated that he "remains fully conscious that a single substantiated case of sexual exploitation or sexual abuse involving UN personnel is one too many." It must not be forgotten that the debate over accuracy of figures goes on at the national level as well in relation to domestic sexual abuse allegations. Besides, even using the suspect figures available from the UN, the problem is a grave one. The reports from UNICEF referenced earlier show alarming numbers of children living in conflict areas. In these situations, gross human rights violations, including sexual abuses of children, are committed on a large scale with a sense of impunity and disregard for the children's welfare. A major factor in the prevalence of sexual abuse and exploitation is the great vulnerability of local populations, many of whom live in abject poverty and conditions of extremely high unemployment (IASC, 2002). While these conditions certainly foster situations in which the likelihood of sexual abuse may increase, a contributing factor is that peacekeepers commit these violations because they believe they can get away with it. It is apparent from the numbers that peacekeepers committing these acts either do not view their behavior as wrong or do not fear any serious repercussions. Accountability is therefore at the core of addressing the problem, which is of a magnitude that requires a coordinated and focused response.

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Criminal prosecution should be seen as one of many options available in the face of massive violations. We need to increase efforts at conveying the international community's moral condemnation of this outrageous behavior. We will now look at the option of prosecution and other ways in which societal moral condemnation can be increased.

The difficulty of dealing with sexual exploitation and abuse in peacekeeping missions is compounded by the multi-category personnel structure of UN missions (Annan, 2005). Not only are these missions composed of troops from different states, so that troops remain attached to their respective armed forces rather than comprising an independent UN army with the power to implement serious disciplinary measures, but the missions are also composed of complex categories. Different categories of staff and different organizations are typically subject to different rules and regulations. Additionally, individual troop-contributing countries under the Status of Forces Agreements are solely responsible for the conduct and discipline of their own troops according to their own national laws and military regulations. Fortunately, sexual exploitation and abuse violate universally recognized international legal norms and are generally prohibited—officially, if not always in practice—in nearly all societies. The United Nations has developed comprehensive measures to deal with its own staff in cases of sexual exploitation and abuse. Under UN rules, (a) sexual exploitation and sexual abuse constitute acts of serious misconduct and are therefore grounds for disciplinary measures, including summary dismissal; and (b) sexual activity with children (persons under the age of eighteen) is prohibited regardless of the age of majority or consent locally, and mistaken belief regarding the age of the child is not a defense. Presumably, culpability would include concealing the commission of such offences; if that is not clearly understood, clarification of this issue would contribute to enforcement. The effectiveness of a threat of prosecution is largely dependent on actions of the troop-contributing country. The host country and the UN are hindered by the fact that peacekeepers have immunity from prosecution within the host country. The host state would have to seek a waiver of immunity before any prosecution could take place. Besides, the host state's judicial system is often not in a condition in which it could handle prosecutions in accordance with international standards.

Troop-contributing countries are responsible for the conduct and discipline of their troops. Under a typical Status of Forces Agreement, the troop-contributing countries retain exclusive criminal jurisdiction over their troops, and the troops remain an integral part of their own national military forces. The UN is therefore limited in what it can do once a soldier engages in sexual misconduct; it may order suspension, or at worst, repatriation to the home state. Here, then, the focus should be on implementing measures to ensure that troop-contributing countries prosecute alleged offenders. However, it has to be recognized that the nature of peacekeeping operations contributes to the difficulties the home state encounters in prosecuting soldiers who commit acts of sexual misconduct in the theatre of operations. Problems such as lack of sufficient and proper evidence to pursue prosecution can prove insurmountable. Witnesses who might provide evidence are typically located far from the troop-contributing country, in the host state. Perhaps an obvious solution would be to include a provision in the Status of Forces Agreement that requires troop-contributing states to hold field court martial proceedings in peacekeeping zones. This is one of the recommendations contained in the UN High Commissioner's (Zeid Ra'ad al-Hussein's) report, discussed earlier. We should also ensure that reports of alleged misconduct are submitted to troop-contributing countries. Delay in the submission of reports by the UN is inexcusable and can only promote an atmosphere of impunity.

Prosecution and the Broader Context of Dealing with Sexual Abuse and Exploitation

Specific deterrence, achieved by prosecution of individuals alleged to have committed sexual abuse and exploitation, uses the threat of punishment to discourage individual perpetrators from committing further offences. General deterrence fulfills a broader function by discouraging all people, including potential offenders, from breaking the law. The example of punishment skews the cost/benefit analysis undertaken by the would-be offender such that the potential benefit of committing a crime is outweighed by the risk of sanctions. In the case of peacekeepers, the risk of prosecution is viewed as slight given the existence of immunity and the difficulties associated with gathering evidence admissible in the troop-contributing country.

Prosecution can therefore most effectively deter misconduct not only through the threat of punishment but also by conveying society's moral condemnation of such acts. Women and children are better served and protected through the expressive power invoked by criminalizing sexual misconduct. Expressivism is premised on the assumption that

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law has social meaning; therefore an expressivist's normative agenda includes employing law as a mechanism for altering social norms such as patriarchy, which promote conditions that serve as incubators of sexual abuse and exploitation. Prosecutions should be harnessed to strengthen international norms condemning the crimes, thereby promoting the security and reducing the vulnerability of women and children in both peacetime and wartime.

Prosecutions alone are inadequate to address the fact that wartime sexual misconduct is shaped and made possible in large measure by violence and inequality in peacetime. Sexual abuse and exploitation that is either condoned or invisible during peacetime is merely amplified amidst the chaos of conflict. In other words, ignoring misconduct during times of peace paves the way for systematic sexual brutality when the rule of law collapses as it does in conflict zones. The interests of women and children can be advanced if international legal and political institutions lead the way in pressuring states to enact domestic reforms to address sexual abuse and exploitation and promote worldwide condemnation of these egregious crimes. The UN Security Council can require states to confer criminal jurisdiction on domestic courts, enabling them to prosecute offenders who are alleged to have committed sexual misconduct outside their territorial jurisdiction. The Security Council can require that member states report on a quarterly basis what action they have taken in cases of sexual abuse and exploitation referred to them by the United Nations. It can require maintenance of a register of UN troops who have been convicted of sexual abuse and exploitation. Countries maintain such registers at a domestic level. The register would help by shaming perpetrators and promoting the moral condemnation of such conduct.

There is a precedent for the rule-making approach in Resolution 1373, which was adopted by the Security Council on September 13, 2001 with respect to terrorism following the September 11 attack on the World Trade Center in New York. Under this resolution, states are required to ensure that terrorist acts are established as serious criminal offences in the domestic laws of member states and that the seriousness of such acts is duly reflected in the sentences prescribed and served for the offences. In addition, the Security Council established a committee within the Council to monitor the implementation of the Resolution and required states to report on actions they had taken to that end not later than 90 days from the passage of the Resolution and thereafter at regular intervals as determined by the Security Council. The Security Council, in the Rwanda Tribunal and Yugoslav Tribunal legislation, required states to surrender individuals wanted by those courts, effectively legislating mandatory extradition rules binding on all states. Because of the binding nature of these resolutions, the Security Council was in effect legislating for the world (UN Charter, Article 25). If this action could be taken in the context of terrorism, there is no reason the UN cannot take similar action with respect to the sexual abuse of women and children in peacekeeping missions.

Conclusion

Children are no doubt the future of humanity and because of their vulnerability require the greatest protection. There is hardly any culture that does not value children. They are impressionistic and therefore malleable in the hands of adults. The advancement of any legal system can be measured by an examination of the protective guarantees provided to vulnerable members of the community. The widespread nature of child abuse in missions and the gravity of the damage that is caused requires appropriate response from the Security Council. Child abuse should be declared a major collective security problem to enhance the security and dignity of children globally, not just for individual victims. Such action would also help to raise global awareness of the scourge of sexual abuse and exploitation and support commitments already made by states under international instruments such as the Convention on the Rights of the Child, which states in 38 (4),

in accordance with their obligations under international humanitarian law to protect the civilian population in armed conflict states, parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

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