

29 July 2019

The Challenges of Winning Justice for Victims of Sexual Abuse in War and Peacekeeping.



On April 23rd 2019, the United Nations Security Council (UNSC) adopted [resolution 2467](#) on women, peace and security stating its concern over the slow progress in addressing and eliminating sexual violence in armed conflicts. Sexual violence in conflict as a topic has been gaining momentum over the last years, which led to two women's rights advocates, Nadia Murad and Dr. Denis Mukwege, winning the Nobel Peace Prize in 2018. The UN has used this momentum to push governments to adopt national action plans to fight conflict-related sexual violence (CRSV). However, as of April 2019, only 79 out of 193 UN member states have produced such a national action plan.

The UNSC is to be commended for continuing to place pressure on member states to deal with this important issue. However, this latest resolution raises two important issues that remain insufficiently addressed: victims' access to justice and the separation of sexual abuse by UN staff from CRSV.

While resolution 2467 contains strong language condemning CRSV, the issue of sexual exploitation and abuse (SEA) by peacekeepers is not addressed. Nor it is acknowledged in the resolution as being a form of sexual violence in conflict even though since 2010, no less than 188 allegations of SEA by peacekeepers have been reported to the UN.

At the core of both CRSV and SEA is sexual abuse by people in positions of power. One of the main differences between the two concepts lies in who is perpetrating the violence: state and non-state actors or UN peacekeepers. As such, there is a question as to why the UN should distinguish between these two acts. The rationale for this distinction is mostly legal: perpetrators of CRSV can be referred to the International Criminal Court and perpetrators of SEA fall under national jurisdiction, which means that SEA perpetrators can only be prosecuted by the contributing nation state, and political:

the UN is often held accountable by the media for SEA. This explains why the UN prefers to discuss SEA as a separate topic because this issue relates to the credibility of the institution as a whole.

Furthermore, while the UNSC recognizes the need for a survivor-centred approach to preventing and responding to the issue of CRSV, in reality, [as reiterated many times by the International Federation for Human Rights](#), survivors often do not receive justice after because of impunity and the lack of an efficient legal mechanism. My recent research, conducted as part of my M.A. in International Relations and Diplomacy, on sexual exploitation and abuse (SEA) by peacekeeping personnel in UN missions, has found that there is often no process of restitution for survivors of sexual misconduct by peacekeepers. This is because a gap exists between the policies created by the UN and their practical implementation.

Since 2003, the UN committed itself to a zero-tolerance policy on sexual exploitation and abuse but there has not been a significant decline in the number of cases. One of the main impediments to the implementation of the UN's policy to combat sexual exploitation and abuse is the absence of a legal authority on behalf of the UN. The organization is simply not able to execute a criminal investigation or a criminal prosecution of alleged peacekeeping personnel. Military and police personnel within a peacekeeping mission fall under the exclusive jurisdiction of the sending state which means that only the sending state itself can prosecute alleged perpetrators.

The UN does not have the mandate, nor the jurisdiction to start a legal case against a peacekeeper accused of sexual exploitation and/or abuse. Rather, once a case is reported, it is the UN Office of Internal Oversight Services that investigates the case. Only if there is substantial evidence, will these findings then be referred to the state that sent the alleged perpetrator. Referral to member states can take up to 9 months. After that, the member state can initiate a criminal investigation and decide if they want to prosecute the alleged perpetrator.

The length of this process is an issue. When the member state decides to initiate a criminal investigation after the UN has concluded its investigation, it will be more difficult to gather evidence and find witnesses, especially in regions shaken by armed conflict. The process could be accelerated if the investigation was executed by investigators from the sending state directly after the assault instead of after the UN has concluded its own investigation.

The UN is an intergovernmental political body that was never intended to serve as a legal organization. Therefore, it appears to be undesirable that an organization with no legal nature is partially responsible for the legal process related to serious criminal crimes such as sexual exploitation and sexual abuse. As legal prosecution is neither the mandate nor the expertise of the UN as an organization, it is no surprise that the legal process is not working as it should. There is an urgent need for an independent legal body with the mandate to receive allegations, investigate, follow up, and potentially prosecute perpetrators guilty of sexual exploitation and abuse.

Survivors of sexual violence in conflict deserve justice. It is a shared responsibility of the international community and UN member states to provide it.

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