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## **2272+: a proposal from UNA-UK on behalf of the Mission Justice campaign**

### **Prosecuting sexual violence within UN peacekeeping missions**

UNA-UK, the founders of the Mission Justice Campaign, puts forward this proposal for developing accountability mechanisms for UN peacekeepers who are found to have committed acts of sexual violence. We call these proposals “2272+” as they build on Security Council resolution 2272.

We believe that sexual violence by UN Peacekeepers is a crime that requires a criminal justice-based response. We further believe that states who are unable or unwilling to prosecute perpetrators should not be able to contribute troops or police.

#### The issue

UNA-UK believes in the unique value of UN peacekeeping – the UN’s preeminent tool for upstream conflict prevention and the restoration of peace. Over the past 70 years, UN peacekeeping has helped to end conflicts and foster reconciliation in dozens of countries, from El Salvador to Tajikistan. Studies have found it to be more effective and substantially cheaper than unilateral operations or of inaction.<sup>1</sup>

However, UN peacekeeping has been marred by repeat allegations of sexual exploitation and abuse. In the last 10 years, according to the UN’s own figures<sup>2</sup>, there have been over 850 allegations of SEA levelled against personnel deployed in UN missions.<sup>3</sup> This figure doubtless represents the tip of an iceberg, yet there have been very few criminal prosecutions.

In addition to the suffering caused, these allegations sap the legitimacy and credibility of UN peacekeeping, undermining the trust communities place in peacekeepers that is so integral to the successful implementation of mission mandates. Multiple attempts at reform, dating back many years, have only been partly successful.

Sexual exploitation and abuse is a term that covers a wide range of unacceptable behaviour. In many instances the allegations concern acts of sexual violence. While the UN doesn’t separately track allegations of sexual violence, many of the allegations listed on the UN’s Conduct and Discipline website concern acts such as rape and sexual assault which are self-evidently examples of sexual violence.

Sexual violence exists throughout society, and particularly in fragile and conflict settings. It affects all peacekeeping, not just UN missions, and within UN peacekeeping, problems are not limited to troops and police. However, our campaign will focus upon UN police and troops because of the specific jurisdictional and political factors that relate to them, and because of the importance of these individuals, the very heart of UN peacekeeping, setting the standards of behaviour for others both within and outside the UN.

#### The response so far

The response so far has concentrated on improving reporting and investigation mechanisms, improving and increasing training, greater coordination between separate elements of the UN system, and more rapid repatriation of troops who abuse. The recent report by Secretary-General António Guterres further expanded upon these ideas, while also developing additional protocols with regards to communication, support for victims, and engaging civil society. Guterres’ new approach is commendable and necessary.

#### The gap

UNA-UK’s analysis, however, shows that what is needed is to move beyond this largely administrative and disciplinary approach, and to treat acts of sexual violence specifically as a criminal problem requiring a judicial and human rights-based approach.

<sup>1</sup> [https://rusi.org/sites/default/files/201704\\_rusi\\_newsbrief\\_carver.pdf](https://rusi.org/sites/default/files/201704_rusi_newsbrief_carver.pdf)

<sup>2</sup> Some issues with the way the UN records such data are detailed here <http://onlinelibrary.wiley.com/doi/10.1111/1468-2230.12225/abstract>

<sup>3</sup> <https://conduct.unmissions.org/sea-overview> as of September 2017

A failure to treat criminal acts in criminal terms encourages a climate of impunity which reduces the effect that wider attempts to address sexual exploitation and abuse might have.

Peacekeepers experience two kinds of immunity, structural and systemic. Structural immunity occurs when a prosecution is jurisdictionally impossible<sup>4</sup>. Systemic immunity occurs when it is technically possible to prosecute the perpetrator of sexual violence, but the absence of competence, capacity or will means that prosecution is highly unlikely.<sup>5</sup>

### The solution

UNA-UK believes decisive action is needed to end this impunity. The Security Council's and Secretary-General's initiatives will only be effective if matched by strong action by member states.

Further, we should not wait for abuse to happen before we act. Rather than the reactive process established in previous Security Council resolutions, member states should demonstrate their ability to discipline and if necessary prosecute their troops before they can be deployed on missions.

Troop Contributing Countries (TCCs) also rightly point out that Security Council and donor states frequently make decisions regarding peacekeeping and processes of accountability without properly consulting them and that they are unfairly scapegoated for failures in the investigative process which are only partly in their control. Both the UN and TCCs – and, most importantly, victims – would be well served by establishing objective and evidence-based baseline criteria for contributing troops to UN peacekeeping missions. This would take the decision out of the hands of the overstretched DPKO, thus avoiding both the political sensitivities of UN officials being seen as “evaluating” TCCs and reducing the risk of selectivity and politicisation that TCCs fear.

UNA-UK proposes:

- That member states take the lead in tackling the issue of impunity for sexual violence in UN peacekeeping
- That only countries that properly investigate acts of sexual violence should be considered fit to contribute personnel to UN peacekeeping missions
- That, to this end, the UN Security Council adopt a resolution building on resolution 2272 to prevent peacekeepers from being deployed unless they demonstrate willingness and ability to prosecute acts of sexual violence.<sup>6</sup>
- That in the interim:
  - the Secretary-General direct the Conduct and Discipline Unit (CDU) to monitor and record acts of sexual violence as a distinct category from other forms of sexual exploitation and abuse
  - the Secretary-General takes further efforts to make the process set out in Security Council resolution 2272 effective, such as by defining the terms “widespread or systemic” and “appropriate steps” and establishing a trigger mechanism so that contingents to which it applies can be repatriated
  - the UN streamline its processes for investigation, making it clear where responsibility lies for pushing the investigation forward at every stage and placing the demands of the criminal accountability process ahead of those of the administrative disciplinary process
  - Troop Contributing Countries (TCCs) sign the Secretary-General's voluntary compact and so commit to overhauling their legal frameworks to plug jurisdictional gaps which would otherwise prevent the prosecution of their personnel
  - the UN Department for Peacekeeping Operations (DPKO) take into account whether a TCC has signed the compact, and the TCC's overall record when it comes to sexual violence and prosecuting its personnel when making decisions around force generation

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<sup>4</sup> See <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/international-development-committee/sexual-exploitation-and-abuse-in-the-aid-sector/written/82025.pdf> paras 28-31 for how this can occur as a consequence of various exceptions and immunities.

<sup>5</sup> In the instance of the largest single repatriation in UN history - that of over a hundred Sri Lankan peacekeepers in Haiti in 2007 - credible allegations, primarily of child rape, were eventually found against 134 peacekeepers. Yet the Sri Lankan Government has divulged virtually no details about how these crimes were prosecuted, and it appears that the very most nine soldiers received unspecified, and seemingly non-judicial, “punishments” <http://www.itjpsl.com/assets/press/haiti-FINAL.pdf>

<sup>6</sup> See <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/international-development-committee/sexual-exploitation-and-abuse-in-the-aid-sector/written/82025.pdf> paras 44-46 for how such a resolution could work, requiring only small additions to resolution 2272 and frameworks and processes developed for resolutions 1612 and 1960