

**HUMAN RIGHTS LAW LLM  
UNIVERSITY OF CAPE TOWN**



**IMPROVING THE  
INTERNATIONAL AND  
REGIONAL, LEGAL AND  
POLICY FRAMEWORK IN THE  
PREVENTION OF SEXUAL  
EXPLOITATION AND ABUSE  
OF WOMEN AND CHILDREN  
BY INTERNATIONAL AND  
REGIONAL PEACKEEPERS**

by

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**Research dissertation presented for approval of Senate in fulfilment of part of the requirements for the LLM in Human Rights Law in approved courses and a minor dissertation. The other part of the requirement for this qualification was the completion of a programme of courses.**

**I hereby declare that I have read and understood the regulations governing the submission of LLM dissertations, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.**

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**Dissertation supervisor: Professor Rashida Manjoo**

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## **Abstract**

This dissertation will examine how an international and regional, legal and policy framework can be used to prevent continuing sexual exploitation and abuse by international and regional peacekeepers. It will examine what the different laws and policies contained within the framework currently articulate about sexual exploitation and abuse of women and children in peacekeeping settings, and evaluate their effectiveness at preventing this kind of misconduct. This dissertation will conclude by exploring how the effectiveness of the overall framework could be further improved.

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## **Chapter 1.**

### **Introduction**

Sexual exploitation and abuse of women and children in conflict settings has long been recognised as a widespread and extremely serious problem. Despite the diversity in reasons, consequences, and relationships between the people involved, sexual exploitation and abuse has consistently occurred across the world, both during and after conflict.

The involvement of international and regional peacekeepers in the perpetration of sexual exploitation and abuse has been particularly disturbing. Research has demonstrated the involvement of international and regional peacekeepers in the exploitation and abuse of the very women and children that they have been assigned to protect.

International and regional, legal and policy frameworks have developed in response to the problem. However, as events in the Central African Republic have highlighted, these frameworks have not succeeded in eliminating sexual exploitation and abuse of women and children by peacekeepers, nor in holding the people involved accountable.

This dissertation therefore intends to focus on why the international and regional response to the sexual exploitation and abuse of women and children by peacekeepers has so far not managed to eliminate the problem. In order to do this, this dissertation will examine the current international and regional laws and policies that the UN and regional organisations rely on.

It will examine the effectiveness of these laws and policies, as part of a singular framework, and explore how the framework can be improved.

This introductory chapter aims to provide a general overview of the topic and a guide as to how this dissertation will address it. It will first give a brief historical context for the sexual exploitation and abuse of women and children by peacekeepers, in order to develop a preliminary understanding of the successes and failures of attempts to eliminate exploitation and abuse. It will examine what the relevant literature has addressed, and the subsequent contribution that this dissertation could make to current debate. The aims and objectives will be identified, followed by an explanation of the research methodology, and an outline of further chapters.

### **1.1. Historical Context**

The international community has been aware of sexual exploitation and abuse in peacekeeping settings, to a certain extent, since 1996, when a UN report claimed that:

'In [six] out of 12 country studies on sexual exploitation of children in situations of armed conflict prepared for the present report, the arrival of peacekeeping troops has been associated with a rapid rise in child prostitution.'<sup>1</sup>

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<sup>1</sup> G. Machel, 'The Impact of Armed Conflict on Children' (1996) available at [http://www.unicef.org/graca/a51-306\\_en.pdf](http://www.unicef.org/graca/a51-306_en.pdf), accessed on 10 March 2016

However, it was the sex scandal exposed by United Nations Police officer, Kathryn Bolkovac, in 1999 that really caught the media's attention. Bolkovac revealed that UN police were taking part in the trafficking of young women from Eastern Europe to work as 'sex slaves'. When Bolkovac was dismissed from her job, she went to the media and the courts, where she claimed compensation for unfair dismissal.<sup>2</sup>

Despite a relatively large amount of media coverage, there was limited development in international and regional laws and policies to combat sexual exploitation and abuse of women and children by peacekeepers at the time.

In 2002, a report by consultants, commissioned by the United Nations Refugee Agency ('the UNHCR') and Save the Children, revealed widespread sexual exploitation and abuse of refugees in Guinea, Liberia, and Sierra Leone.<sup>3</sup> The report was leaked to the public. In response to the report, the UN Office of Internal Oversight Services ('OIOS') investigated the allegations, confirming the exploitation and abuse by

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<sup>2</sup> K. Bolkovac & C. Lynn *The Whistleblower: Sex Trafficking, Military Contractors, and One Woman's Fight for Justice* (2011)

<sup>3</sup> Save the Children International and United Nations Refugee Agency, 'Note for implementing and operational partners on Sexual Violence and Exploitation: The Experience of Refugee Children in Guinea, Liberia and Sierra Leone based on Initial Findings and Recommendations from Assessment Mission 22 October – 30 November 2001' (2002) Save the Children International, available at <http://www.unhcr.org/3c7cf89a4.html>, accessed on 13 March 2016

UN and non-governmental organisation staff and peacekeepers.<sup>4</sup>

By 2003, the UN Secretary-General had produced a bulletin on Special Measures for Protection from Sexual Exploitation and Abuse,<sup>5</sup> which included a broader definition of 'Sexual Exploitation and Abuse' than ever used before by the UN, and which explicitly prohibited sexual misconduct by peacekeepers.

However, in 2004, there was a fresh media scandal that revealed numerous cases of alleged abuse and exploitation by peacekeepers in the UN Mission in the Democratic Republic of Congo ('the DRC'). Again, the OIOS investigated these allegations and confirmed seven of the 72 reported incidents from the Save the Children report.<sup>6</sup>

Prince Zeid Ra'ad Al-Hussein, the Secretary-General's Adviser on Sexual Exploitation and Abuse by UN Peacekeeping Personnel, issued a report in March 2005, providing the first comprehensive analysis by the

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<sup>4</sup> United Nations Office of Internal Oversight Services. 'Report of the Office of Internal Oversight Services on the investigation into sexual exploitation of refugees by aid workers in West Africa'. New York: United Nations, 2002

<sup>5</sup> United Nations Secretary-General Bulletin. 'Special Measures for Protection from Sexual Exploitation and Sexual Abuse.' ST/SGB/2003/13. New York: United Nations, 9 October 2003

<sup>6</sup> 'Save the Children (UK), 'Statement and recommendations for protection from gender-based violence in armed conflict,' (2005) available at <http://resourcecentre.savethechildren.se/sites/default/files/documents/2979.pdf>, accessed on 13 March 2016

UN of sexual exploitation and abuse of women and children by peacekeepers.<sup>7</sup> The report exposed the widespread culture of acceptance and subsequent impunity that surrounded the abuse. Prince Zeid included many recommendations in his report, including the promotion of the 2003 Bulletin,<sup>8</sup> the establishment of a permanent investigative mechanism to investigate complex cases of serious misconduct,<sup>9</sup> modifications to the general memorandum of understanding signed between States and the UN,<sup>10</sup> an on site court martial<sup>11</sup> and the creation of a group of experts to research into the possibility of a new convention that could hold UN personnel criminally accountable.<sup>12</sup>

In May of the same year, the Security Council held an open briefing and issued a statement on sexual exploitation and abuse in peacekeeping.<sup>13</sup> By November, the Department of Peacekeeping Operations had established conduct and discipline teams in field missions. The Conduct and Discipline

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<sup>7</sup> United Nations Secretary-General Report. 'A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations' [Zeid Report]. A/59/710. New York: United Nations, 24 March 2005

<sup>8</sup> Ibid at 4

<sup>9</sup> Ibid at 15

<sup>10</sup> Ibid at 4

<sup>11</sup> Ibid at 16

<sup>12</sup> Ibid at 6

<sup>13</sup> United Nations Security Council Statement. S/PRST/2005/21. New York: United Nations, 31 May 2005

Unit was formed two years later and formally established in the Department of Field Support.

Another scandal emerged in 2006, accusing peacekeepers in Haiti and Liberia of sexual abuse and exploitation.<sup>14</sup> In August 2006 the Group of Legal Experts, established by the Security Council, on recommendation by Prince Zeid in his report, produced a draft convention on criminal accountability of UN officials that they presented to the General Assembly.<sup>15</sup> However, the draft convention has still to be adopted.

Prince Zeid's recommendation concerning the model memorandum of understanding was established in June 2007 when the model memorandum between troop contributing countries and the UN was revised to include specific provisions on sexual exploitation and abuse.<sup>16</sup>

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<sup>14</sup> Joe Sandler Clarke, 'Sex abuse poses 'significant risk' to UN peacekeeping, says leaked report' *The Guardian Online* 24 March 2015, available at <http://www.theguardian.com/global-development-professionals-network/2015/mar/24/sex-abuse-un-peacekeeping-leaked-report>, 13 March 2016

<sup>15</sup> United Nations General Assembly Report. 'Report of the Group of Legal Experts on Ensuring Accountability of United Nations Staff and Experts on Mission with Respect to Criminal Acts Committed in Peacekeeping Operations'. A/60/980. New York: United Nations, 16 August 2006.

<sup>16</sup> United Nations General Assembly. 'Report of the Special Committee on Peacekeeping Operations and its Working Group on the 2007 Resumed session'. A/61/19 (part III). New York: United Nations. 12 June 2007

However, reports of exploitation and abuse continued to arise, and in 2008 UN peacekeepers in Côte d'Ivoire, Southern Sudan, and Haiti were accused of sexually abusing children.<sup>17</sup>

On the other hand, there have been positive developments in holding peacekeepers that have been accused of sexual exploitation and abuse of women and children accountable. In Haiti in 2012, a Pakistani military court found Pakistani peacekeepers stationed in Haiti guilty of exploitation and abuse, and ordered their repatriation.<sup>18</sup> Similarly, peacekeepers from Uruguay were charged in September 2012 for sexual abuse of Haitians.<sup>19</sup> Some commentators have claimed that the sanctions imposed were inadequate. For instance, the Pakistani troops were sentenced to one year in jail and their military trial was conducted in virtual secrecy, which Amnesty International claimed was a 'travesty of justice'.<sup>20</sup> These two examples highlight how rare it was

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<sup>17</sup> C.Csáky, 'No One to Turn To, the under-reporting of child sexual exploitation and abuse by aid workers and peacekeepers' (2008) *Save the Children*, available at

<http://www.alnap.org/resource/20082>, accessed on 13 March 2016

<sup>18</sup> Joseph Guylor Delva, 'Pakistani U.N. peacekeepers sentenced in Haiti rape case' *Reuters Online* 12 March 2012, available at <http://www.reuters.com/article/2012/03/13/us-haiti-un-idUSBRE82C06C20120313>, accessed on 13 March 2016

<sup>19</sup> 'Uruguay marines charged over Haiti abuse' *BBC News Online* 24 September 2012, available at <http://www.bbc.co.uk/news/world-latin-america-19708878>, accessed on 13 March 2016

<sup>20</sup> Amnesty International Press Release, 'Convictions against UN peacekeepers in Haiti do not serve justice' 15 March 2012, available at <https://www.amnesty.org/en/press-releases/2012/03/convictions->

to see troop contributing countries take any sort of action.

In November 2013, an independent team of experts, appointed by the Secretary-General in January 2012, produced their report on the sexual exploitation and abuse of women and children in Haiti, DRC, Liberia, and South Sudan.<sup>21</sup> It was highly critical of the UN's progress. The Secretary-General highlighted the team of experts' work in February 2015<sup>22</sup> yet the report remained internal until it was leaked by the non-governmental organisation, AIDS-Free World in March 2015.<sup>23</sup>

In April 2015, interviews detailing the sexual abuse of young boys by French, Chadian and Equatorial Guinean peacekeepers in the Central African

*against-un-peacekeepers-haiti-do-not-serve-justice/* accessed on 13 March 2016

<sup>21</sup> T. Awori, C. Lutz & General P. J. Thapa, 'Final report on the expert mission to evaluate risks to SEA prevention efforts in MINUSTAH, UNMIL, MONUSCO, and UNMISS', 3 November 2013, available at <http://www.aidsfreeworld.org/Newsroom/Press-Releases/2015/~media/Files/Peacekeeping/2013%20Expert%20Team%20Report%20FINAL.pdf>, accessed on 13 March 2016

<sup>22</sup> United Nations General Assembly. 'Report of the Secretary General on Special Measures for protection from sexual exploitation and sexual abuse.' A/69/779. New York: United Nations. 13 February 2015

<sup>23</sup> AIDS-Free World, Open Letter concerning the UN experts' unseen peacekeeping report, 16 March 2015, available at <http://www.aidsfreeworld.org/Newsroom/Press-Releases/2015/Open-Letter-to-UN-Missions.aspx>, accessed on 13 March 2016

Republic were revealed by The Guardian newspaper.<sup>24</sup> The article also revealed how Anders Kompass, a UN employee, had leaked the details of the abuse to the French authorities following a perceived failure by the UN to take appropriate action. Mr Kompass faced dismissal but has since been reinstated.

In response to the media scandal concerning peacekeepers in the Central African Republic, the Secretary General authorised an External Independent Review Panel to investigate the allegations. The report, published in late 2015,<sup>25</sup> made many recommendations to improve the perceived systemic failures in the UN's response to sexual exploitation and abuse by peacekeepers.

This brief chronology of events has aimed to highlight the high frequency of sex scandals in peacekeeping settings, the key actions that the UN has taken to respond to sexual exploitation and abuse, and

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<sup>24</sup> S. Laville, 'UN aid worker suspended for leaking report on child abuse by French troops' *The Guardian online* 29 April 2015, available at <http://www.theguardian.com/world/2015/apr/29/un-aid-worker-suspended-leaking-report-child-abuse-french-troops-car>, accessed on 13 March 2016

<sup>25</sup> M. Deschamps, H.B. Jallow & Y. Sooka, 'Taking Action on Sexual Exploitation and Abuse by Peacekeepers: Report of an Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic' (2015), available at <http://www.un.org/News/dh/infocus/cenafricrepub/Independent-Review-Report.pdf>, accessed on 13 March 2016

the continuation of both abuse and impunity up to the present day.

## **1.2. Literature Review**

The sexual exploitation and abuse of women and children by peacekeepers has been a frequently researched area in recent years. Many NGO's such as Save the Children and Refugees International, as well as UN agencies and bodies such as the UNHCR have produced reports providing details on the specific abuse, and a rich academic discussion on the various aspects of the topic has developed.

The role of international and regional laws and policies in the elimination of exploitation and abuse has been heavily emphasised, and many writers have concerned themselves with the effectiveness of these laws and policies and how best they can be improved.

When discussing the effectiveness of the framework concerning sexual exploitation and abuse of women and children, many writers have tended to focus on two main areas. The first area is the problem of accountability of States, the UN, and regional organisations; and the second is the underlying cultures, in particular, the cultural discrimination against women that pervades peacekeeping missions.

### **1.2.1. The Accountability Problem**

Reports have consistently demonstrated that the sexual exploitation and abuse of women and children by peacekeepers is often associated with impunity, and many writers have highlighted the lack of accountability

as a core obstacle to the success of the laws and policies concerning the elimination of sexual exploitation and abuse of women and children by peacekeepers.<sup>26</sup>

There are many aspects to the accountability problem. Many writers have focussed on State accountability and the State's responsibility for their own peacekeepers. Burke<sup>27</sup> has argued that there needs to be more of a focus on holding States responsible for failing to punish their own individual peacekeepers, and in order to do so, has explored the scope of State obligations. Ferstman<sup>28</sup> has also agreed that the UN needs to do more to ensure that States punish individual perpetrators, and according to Defeis,<sup>29</sup> the position that the UN is powerless to intervene with the jurisdiction of troop contributing countries is no longer acceptable.

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<sup>26</sup> For example, RS Burke *Sexual Exploitation and Abuse by UN Military Contingents: Moving Beyond the Current Status Quo and Responsibility under International Law*, (2014) Martinus Nijhoff Publishers; C. Ferstman, 'Criminalising Sexual Exploitation and Abuse by Peacekeepers' (2013) *United States Institute for Peace*, available at <http://www.usip.org/sites/default/files/SR335-Criminalizing%20Sexual%20Exploitation%20and%20Abuse%20by%20Peacekeepers.pdf>, accessed on 13 March 2016; E.E. Defeis, 'UN Peacekeepers and sexual abuse and exploitation: an end to impunity' (2008) 7 *Washington University Global Studies Law Review* 185

<sup>27</sup> RS Burke (2014) op. cit. note 26

<sup>28</sup> C. Ferstman, (2013) op. cit. note 26

<sup>29</sup> E.E. Defeis, (2008) op. cit. note 26

On the other hand, there has also more recently been developing discussions on the accountability of the UN itself. The Yale Law School focussed considerably on the responsibility of the UN in the outbreak of cholera in Haiti, and analysed the UN's existing international humanitarian and human rights obligations.<sup>30</sup> The concept of UN responsibility has also spread to discussions on the sexual exploitation and abuse of women and children in peacekeeping contexts. Defeis<sup>31</sup> has discussed the problem of UN immunity for UN personnel, which combined with the exclusive jurisdiction exercised by troop contributing countries over their own military personnel, contributes to an uneven, even sometimes non-existent, discipline of offenders.<sup>32</sup>

Despite research into the accountability of UN and military personnel in the field, there is limited research into the accountability of higher-level management. It does appear, however, that higher-level accountability is beginning to change. A report released by the External Independent Review Panel last year, following allegations of abuse in the Central African Republic, explicitly outlined the failures of UN

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<sup>30</sup> Transnational Development Clinic, Jerome N. Frank Legal Services Operation 'Peacekeeping without accountability, the UN's responsibility for the Haitian Cholera Epidemic' (2013) *Yale Law School*

<sup>31</sup> E.E. Defeis (2008), op. cit. note 26

<sup>32</sup> *Ibid.* at 192

agencies and staff to respond appropriately to allegations.<sup>33</sup>

Furthermore, the involvement of whistleblowers in many of the scandals that have emerged has produced a considerable amount of literature on the treatment of whistleblowers by the UN. For instance, the Government Accountability Project ('GAP'), an American NGO, produced a report in 2012,<sup>34</sup> indicating that many UN staff are concerned about the lack of accountability in the UN hierarchy. Many believed that not enough was being done to hold senior officials and managers or the administration accountable.<sup>35</sup> The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression also released a report on whistleblowing in October 2015, highlighting the UN's failure to protect whistleblowers.<sup>36</sup>

There is also some research into the accountability of regional organisations. Human Rights

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<sup>33</sup> M. Deschamps, H.B. Jallow & Y. Sooka (2015), op. cit. note 25 at i

<sup>34</sup> S. Walden & B. Edwards, 'Tipping the Scales: Is the United Nations Justice System Promoting Accountability in the Peacekeeping Missions or Undermining It?' (2012) Government Accountability Project, available at <http://gaproject.nonprofitsoapbox.com/storage/documents/FinalFinalTippingTheScales.pdf>, accessed on 13 March 2016

<sup>35</sup> Ibid. at 51

<sup>36</sup> United Nations General Assembly. 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.' A/70/361. New York: United Nations. 8 September 2015, at 20, para. 53

Watch published a report in 2014 on the sexual exploitation and abuse of women and children by African Union peacekeepers in Somalia. The report documented high levels of sexual and gender-based violence against Somali women and girls.<sup>37</sup> The report also suggested a need to follow the UN and introduce a 'zero tolerance policy', which would ensure the introduction of explicit accountability mechanisms for the sexual exploitation and abuse of women and children by peacekeepers. In comparison, Bastick, Grimm and Kunz have examined the European Union ('the EU')'s policies concerning sexual exploitation and abuse in its mission to the Democratic Republic of Congo, and have suggested that the EU operation was extremely successful in avoiding sexual exploitation and abuse. The operation resulted in no reported cases, and the techniques used on the EU operation could prove as a useful example for other regional peacekeeping missions.<sup>38</sup>

However, the relationship between regional and international peacekeeping forces is still a fairly under-developed area of research in the context of the

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<sup>37</sup> L. Bader & S. Muscati, ' "The Power These Men Have Over Us" Sexual Exploitation and Abuse by African Union Forces in Somalia' (2014) Human Rights Watch, available at <https://www.hrw.org/report/2014/09/08/power-these-men-have-over-us/sexual-exploitation-and-abuse-african-union-forces>, accessed on 13 March 2016

<sup>38</sup> M. Bastick, K. Grimm, & R. Kunz, *Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector* (2007) Geneva Centre for the Democratic Control of Armed Forces at 176

effectiveness of laws and policies in the elimination of sexual exploitation and abuse of women and children by peacekeepers. The relationship is also particularly significant as there is evidence to suggest that regional operations could become more and more frequent.<sup>39</sup>

### 1.2.2. The Cultural Context of Peacekeeping

Many writers have also highlighted the importance of the root causes for the perpetration of sexual exploitation and abuse by peacekeepers. The culture that has developed in the peacekeeping context has been noted as extremely detrimental to the elimination of sexual exploitation and abuse of women and children<sup>40</sup>. Writers have identified a culture of impunity, as examined in the above accountability section, but also a culture of discrimination against women. Martin has emphasised the hyper-masculine culture that tends to pervade peacekeeping troops and how this has led to a “boys will be boys” attitude,<sup>41</sup> which combines a culture of acceptance and impunity.

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<sup>39</sup> H. Yamashita, 'Peacekeeping cooperation between the United Nations and regional organisations.' (2012) *Review of International Studies*, 38, at 165: 'There has been a steady increase in the number of regional peacekeeping missions organized by regional and sub-regional organisations, with European and African organisations the most active,'

<sup>40</sup> S. Martin, 'Must Boys Be Boys? Ending sexual exploitation and abuse in UN peacekeeping missions' (2005) Refugees International, available at [http://www.childtrafficking.com/Docs/refugees\\_int\\_05\\_boys\\_0708.pdf](http://www.childtrafficking.com/Docs/refugees_int_05_boys_0708.pdf), accessed on 13 March 2016

<sup>41</sup> *Ibid.*

Defeis has agreed, and claimed that ‘this masculine culture allows for a “wall of silence” ‘.<sup>42</sup>

Violence against women in peacekeeping contexts has also been seen from a broader perspective, as a symptom of global gender inequality. The Committee on the Elimination of All Forms of Discrimination against Women (‘the CEDAW Committee’) has produced general recommendation no. 30 to reaffirm the CEDAW committee’s links with the Security Council’s agenda for women, peace and security.<sup>43</sup> Furthermore, Martin has suggested that many peacekeepers bring their cultural attitudes and beliefs about women from their home countries,<sup>44</sup> therefore it is the home cultures that must be addressed.

### **1.2.3. Recommendations for improvement**

There is also a vast collection of literature that provides recommendations on how best to improve the international and regional laws and policies concerning the sexual exploitation and abuse of women and children by peacekeepers. This section highlights some of the most debated recommendations to date.

The first recommendation, as highlighted by the literature, has been the introduction of a new

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<sup>42</sup> E.E.Defeis (2008) op. cit note 26 at 192

<sup>43</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW), CEDAW Recommendation No. 30: women in conflict prevention, conflict and post-conflict situations

<sup>44</sup> S. Martin (2005) op. cit. note 40 at 6

Convention on the criminal accountability of UN personnel. The Secretary-General authorised a Group of Legal Experts to produce a draft convention,<sup>45</sup> yet despite a lot of discussion,<sup>46</sup> including support from the Secretariat,<sup>47</sup> no convention as of yet has been adopted. As Ferstman has claimed<sup>48</sup>, a convention would signify the importance of such crimes, it would ensure greater consistency in the criminalisation of conduct, and it would allow for the exchange of information and evidence between States and the UN.

On the other hand, Defeis has presented various reasons why the draft convention is problematic.<sup>49</sup> Sex in return for food has not been included in the convention despite its inclusion in the 2003 Bulletin. The question of whether the draft convention should cover more than just sexual crimes, but also crimes such as theft and fraud, has also been raised. Furthermore, the convention has asked States to limit

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<sup>45</sup> UN General Assembly. 'Ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations.' A/60/980. Annex III. New York: United Nations. 16 August 2006

<sup>46</sup> United Nations General Assembly, Ad Hoc. Committee on Criminal Accountability of United Nations Officials and Experts on Mission, 'Report of the Ad Hoc Committee on Criminal Accountability of UN Officials and Experts on Mission'. A/62/54. New York: United Nations. 19 April 2007.

<sup>47</sup> United Nations General Assembly. 'Criminal Accountability of United Nations Officials and Experts on Mission'. A/62/329. New York: United Nations, 11 September 2007

<sup>48</sup> C.Ferstman (2013) op. cit note 26 at 10

<sup>49</sup> E.E.Defeis (2008) op. cit note 26 at 202

their exclusive jurisdiction and UN immunity to a certain extent, which is a considerable request.

Another recommendation in the literature has been to focus on putting more pressure on States to comply with their obligations to punish individual perpetrators. Ferstman has heavily emphasised the need for the UN to 'name and shame' those States that fail to investigate and prosecute credible cases, and that the UN could even refrain from accepting troops from those States that consistently fail to comply with their investigation and prosecution obligations<sup>50</sup>. However, the success of 'naming and shaming' depends on the will of member States and the UN, as expressed by Defeis<sup>51</sup>.

Another recommendation has been the continued development of gender mainstreaming policies within the UN. The creation and development of gender mainstreaming programmes have consistently been on the UN agenda for years.<sup>52</sup> However there have been various suggestions concerning how to mainstream gender concerns in the peacekeeping context, such as an increase in the number of female peacekeepers and an increase in the number of men who work as gender advisers<sup>53</sup>.

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<sup>50</sup> C. Ferstman (2013) op. cit. note 26 at 12

<sup>51</sup> E.E.Defeis (2008), op. cit. note 26 at 214

<sup>52</sup> Zeid report (2005) op. cit. note 7

<sup>53</sup> S.Martin (2005) op. cit note 40 at 9

#### **1.2.4. Summary of literature review**

In conclusion, there is much literature on the international and regional laws and policies concerning the sexual exploitation and abuse of women and children in the peacekeeping context. The main problems with these laws and policies can be grouped into two main themes, namely, the problem of accountability and the pervading culture of discrimination against women in peacekeeping operations. The literature has also highlighted and discussed several main options for improvement, such as the development of gender mainstreaming policies, and the introduction of a new convention.

By identifying these key problems and recommendations suggested by the core literature, the literature review has also highlighted areas of study that could benefit from further research and analysis. Some examples in the current literature, which this dissertation aims to contribute to the discussion on are: the accountability of the UN, including the accountability of specific UN higher officials, and the role that whistleblowers could play in UN accountability; the accountability of regional organisations for regional peacekeepers; the role of international gender equality institutions in the problem of sexual exploitation and abuse by peacekeepers; and the development of a new convention on the criminal accountability of UN personnel.

#### **1.3. Aims and Objectives**

Considering the above review, the aim of this dissertation is therefore to expand on the current

literature and provide new insight by identifying and examining the use of an overarching international and regional, legal and policy framework in the prevention of continuing sexual exploitation and abuse of women and children.

The objectives of this dissertation are therefore as follows:

- To analyse and explain what the framework consists of.
- To analyse the effectiveness of the framework.
- To come to a conclusion on how successful the framework currently is.
- To analyse how the effectiveness of this framework could be improved.

#### **1.4. Research Methodology**

This dissertation will rely on desk-based research, which will include a review of existing research arising from other organisations' fieldwork. When conducting fieldwork, many organisations conduct interviews, focus group discussions, or meetings with international aid workers.

The primary sources for this research will include direct UN and regional legislation and literature such as conventions and UN resolutions. There is limited international jurisprudence but regional case law such

as the European Court of Human Rights '*Behrami v France*' case<sup>54</sup> will be examined, where relevant.

The secondary sources for this research will include textbooks, articles in legal journals, UN and regional organisation reports, reports by NGO's, articles from reliable newspapers, and trustworthy websites.

#### **1.4.1. Challenges and limitations**

There are many challenges and limitations associated with collecting research in this area of study.

There is very little statistical data available on the sexual exploitation and abuse of women and children. Most data tends to be anecdotal. Anecdotal evidence does not provide a clear representation of the global or even regional situation, and therefore is difficult to prove that these anecdotes are the general rule, rather than the exception.

The statistics that are available mostly come from UN sources. Many NGO's have reported that these statistics are often not completely accurate, and underrepresent the gravity of the situation<sup>55</sup>. Many NGO's have reported that there is a considerable problem with underreporting of abuse, and that the UN has failed to acknowledge the problem<sup>56</sup>.

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<sup>54</sup> *Behrami v France & Saramati v France, Germany and Norway*, (application nos. 71412/01 & 78166/01) (2007) ECHR

<sup>55</sup> SA Levin, 'Sexual Exploitation of Refugee children by UN Peacekeepers' (2003) 19 *NYL Sch. J. Hum. Rts.* 833 at 838

<sup>56</sup> C.Csáky (2008) op. cit note 17 at 10

Furthermore, as there is no single, clear UN organisation that handles data on cases of abuse reported to various UN bodies, it is difficult to gain a comprehensive analysis of all the data received by various UN bodies. It is therefore incomplete and piecemeal.

Regardless of the perceived failures of the UN to organise and collect its data appropriately, collecting data on sexual exploitation and abuse in the first place is very difficult due to the extreme reluctance of local people and UN staff to report, and the considerable language barriers. Victims of sexual exploitation and abuse are reluctant to report for various reasons. The alleged misconduct, whether consensual or not, is often illegal in the host State. For instance, commercial sex is often illegal, regardless of age. Therefore, people are reluctant to report for fear of facing retribution by the criminal systems of host States<sup>57</sup>.

Reporting can also expose the women and children involved to double persecution, as revelations of sexual exploitation and abuse may result in stigmatisation by their own communities<sup>58</sup>. In addition, many people involved in sexual exploitation and abuse are reluctant to trust the NGO's that come in to collect research, perhaps due to past bad experiences with NGO's, as there has been evidence of NGO workers

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<sup>57</sup> J Veldwijk & C. Groenendijk ' "If you can't use your hands to make a living...": Female sex workers in Juba, South Sudan' in F Bubenzer & O Stern (ed.) *Hope, Pain & Patience* (2011) at 80

<sup>58</sup> C.Csáky (2008) op. cit note 17 at 4

who have participated in sexual exploitation and abuse<sup>59</sup>.

Language barriers, and the reliance on interpreters can also be an issue. Even if there are interpreters available, there can be points that get 'lost in translation'. Furthermore, due to the limited numbers of interpreters available, interpreters are often male, which may make victims feel uncomfortable<sup>60</sup>.

It is important to bear these difficulties and challenges in mind when analysing research. However, these challenges do not put into doubt the credibility of the evidence that we do have, and it could be suggested that this evidence is only 'the tip of the iceberg.'

### **1.5. Dissertation Outline**

This dissertation is divided into six chapters, including this introductory chapter.

In order to explore the framework in more detail, it is important to undertake a preliminary investigation into the problem the framework is trying to address, namely, the circumstances concerning the sexual exploitation and abuse of women and children by peacekeepers. Chapter two therefore addresses the details of sexual exploitation and abuse. By collecting and organising data from across the world, chapter two identifies the key commonalities and trends that occur.

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<sup>59</sup> Ibid.

<sup>60</sup> J Veldwijk & C. Groenendijk op. cit note 57 at 80

There is a particular focus on the underlying reasons for the continuation of abuse.

Chapter three examines the international and regional laws and policies that constitute the overarching framework concerning the sexual exploitation and abuse of women and children by peacekeepers. It takes into account all relevant aspects of international human rights law, international humanitarian law, international criminal law and UN immunity, as well as the UN and regional organisation's internal frameworks. Chapter three unpacks the main aspects to the framework, including the general prohibition and the obligations of peacekeepers, States, the UN, and regional organisations to prevent sexual misconduct.

Chapter four explores the problems that have arisen out of the framework. It examines two overarching problems. First, it examines the problems with the substance of the framework, such as the failure of the framework to comprehensively and explicitly recognise sexual exploitation and abuse of women and children by peacekeepers as a significant problem that needs to be prevented, and the failure to address power imbalance, hyper-masculine cultural norms, and discrimination against women sufficiently. Chapter four also explores the problems in holding all implicated parties accountable for their involvement. Chapter four concludes by assessing the overall effectiveness of the framework, in light of the discussed problems.

Chapter five concludes this dissertation by examining the possible interventions that can be made

to further improve the effectiveness of the international and regional, legal and policy framework in the elimination of sexual exploitation and abuse of women and children by peacekeepers. By evaluating how successfully the interventions address the problems in chapters two and four, chapter five synthesises the main arguments of the dissertation, and comes to a conclusion on how the framework can be improved. Chapter five also explores how this dissertation has attempted to contribute to current debate, and recommends areas for further research.

## **1.6. Conclusion**

This chapter has aimed to provide a background context into the use of an international and regional, legal and policy framework to prevent the sexual exploitation and abuse of women and children by peacekeepers. By first providing a historical context, this chapter attempted to demonstrate the persistent nature of exploitation and abuse, and what attempts the UN and regional organisations have made so far in trying to eliminate the problem. The chronology concluded with recent events in the Central African Republic.

This chapter also explored the core literature on the sexual exploitation and abuse of women and children by peacekeepers, presenting commentators' views under three key themes: the problem of accountability, the problem of cultural discrimination against women, and the recommended improvements. The literature review also aimed to bring attention to the areas of the topic that require further research and

analysis, acting as a guide for the research and analysis to be conducted by this dissertation. For instance, the need for continued research and analysis into the accountability and responsibility of the UN under international law will be a focal point in later chapters.

The aims and objectives of this dissertation were outlined, followed by a description of the methodology that will be used, drawing attention to the challenges and difficulties, yet explaining why these do not hinder the aims and objectives. Finally, the structure of the dissertation was outlined as an analysis into the factual problem of sexual exploitation and abuse, followed by an analysis of the current legal and policy framework, and an examination of the problems with the framework, and how it can be improved.

## **Chapter 2.**

### **Sexual exploitation and abuse of women and children by peacekeepers**

Sexual exploitation and abuse of women and children by peacekeepers is an extremely complex problem for two main reasons. It is a consistently worldwide problem, and therefore involves a large number of diverse people, with vastly different cultures, beliefs and legal systems. Second, sexual exploitation and abuse occurs in conflict and post-conflict settings where there is often little economic, political, judicial or social infrastructure in place.

However, despite such complexity and diversity, there is evidence to suggest that sexual exploitation and abuse of women and children in peacekeeping settings is a global systemic issue that has many general trends and commonalities, regardless of specific location. Chapter two will provide a background understanding into the problem of sexual exploitation and abuse by identifying and assessing those general commonalities and trends that have arisen.

This chapter will first examine the nature of the exploitation and abuse, and identify the common elements within its nature. Second, it will assess the cultural norms that have surrounded sexual exploitation and abuse in peacekeeping settings.

## **2.1. The Nature of Sexual Exploitation and Abuse by peacekeepers**

The nature of sexual exploitation and abuse of women and children by peacekeepers includes several key commonalities and trends. These commonalities include the non-consensual nature of the act, the vulnerability of victims, the perpetrators of sexual exploitation and abuse, and the relationship between power imbalance and the presumption of coercion.

### **2.1.1. The non-consensual nature of the act**

NGO and UN reports have noted a wide range of acts, recognised as types of exploitation and abuse, that systematically occur in peacekeeping settings. These have included forced sex; child prostitution and pornography; the trafficking of women and children; and transactional sex, either for money or for other items such as food or medical supplies.

Despite the diversity of acts, these acts are unified by their non-consensual nature. This section will examine the lack of consent through the most common forms of sexual exploitation and abuse of women and children in peacekeeping settings.

#### *Forced sex*

One of the most common forms of sexual exploitation and abuse of women and children by peacekeepers is forced sex, namely, sex by physical

force.<sup>61</sup> Prince Zeid Ra'ad Zeid-Hussein's report, 'A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations', claimed that the Department of Peacekeeping Operations received 105 allegations of sexual exploitation and abuse by civilian police, military personnel, and civilians in 2004, of which allegations of rape comprised 13 per cent.<sup>62</sup> Almost a decade later, and forced sex is still prevalent in peacekeeping missions. One UN report has claimed that there were five allegations of non-consensual sex with persons aged 18 or older against personnel deployed in peacekeeping missions in 2014 from six UN peacekeeping missions.<sup>63</sup>

Many NGO's have also collected anecdotal data on forced sex in peacekeeping missions. A report by Human Rights Watch in 2014<sup>64</sup> documented ten incidents of sexual abuse, including rape and sexual assault in Somalia by the African Union Mission to Somalia ('AMISOM') troops. The report claimed that the girls were raped while seeking medical assistance or water on the AMISOM bases, and that some girls were given food or money afterwards to frame the assault as transactional sex, or to discourage the girls from filing a complaint.

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<sup>61</sup> A phrase coined by C.Csáky,(2008) op. cit note 17

<sup>62</sup> Zeid report (2005), Op. cit. note 7 at 9

<sup>63</sup> UN Secretary-General Report (2015) Op. cit. note 22 at 4. These UN missions included South Sudan, Haiti, DRC, Liberia, Mali, and Cote d'Ivoire.

<sup>64</sup>L. Bader & S. Muscati op. cit. note 37

Csáky has claimed that, although forced sex is not as common as other forms of sexual exploitation and abuse, 30 per cent of people interviewed in focus group discussions across South Sudan, Côte d'Ivoire, and Haiti, had been forced to have sex.<sup>65</sup> Children and adults in all fieldwork locations emphasised that forced sex was of key concern to them.<sup>66</sup>

The above evidence therefore does suggest that forced sex is a systematic problem, and occurs in many peacekeeping missions around the world. Forced sex is clearly a non-consensual act, as the women and children involved did not consent, and were physically coerced into it.

#### *Child prostitution and pornography*

The prostitution of children, where an adult pays money to have sex with a child, and child pornography, where a child is filmed or photographed performing sexual acts, have also become widely reported issues.

The Zeid report has claimed, that the majority (45 per cent) of the 105 allegations received by the Department of Peacekeeping Operations in 2004 related to sex with persons under the age of 18 years.<sup>67</sup> The UNHCR and Save the Children-UK 2002 report has also indicated that most of the exploited children in

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<sup>65</sup> C.Csáky (2008) Op. cit. note 17 at 6

<sup>66</sup> Ibid.at 5

<sup>67</sup> Zeid report (2005), Op. cit. note 7 at 9

Guinea, Liberia and Sierra Leone were between the ages of 13 and 18 years old.<sup>68</sup>

Veldwijk and Groenendijk<sup>69</sup> have claimed that child prostitution takes place in almost every brothel in Juba; the capital of South Sudan, and where the UN South Sudanese mission is based.

Furthermore, there is often a transactional element to child prostitution. For example, Csáky has noted that children as young as six trade sex with aid workers and peacekeepers in exchange for food, money, soap, and mobile phones.<sup>70</sup>

Child pornography has also been reported. There have been reports of peacekeepers using their mobile phones to film and photograph young girls<sup>71</sup> and teenage girls asked to strip naked, bathe, and pose naked in positions while peacekeepers take pictures.<sup>72</sup>

Internationally, child prostitution and pornography has clearly been recognised as non-consensual. The fact that sex with a minor is a criminal offence, and considered to be statutory rape in most countries in the world demonstrates how the international community regards sex with children to be non-consensual. Children are presumed not mature

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<sup>68</sup> Levin, op. cit. note 55 at 834

<sup>69</sup> Veldwijk & Groenendijk (2011) op. cit. note 57 at 102

<sup>70</sup> C.Csáky (2008) Op. cit. note 17 at 5

<sup>71</sup> Ibid. at 6

<sup>72</sup> Save the Children & UNHCR (2002) Op. cit. note 3 at 6

enough to give consent, and therefore, cannot voluntarily participate in sexual acts. However, it must be noted that the age of consent can vary from country to country.

#### *Trafficking by peacekeepers*

Trafficking is another form of sexual exploitation and abuse in peacekeeping missions. It is a non-consensual act in that it manipulates women and girls into doing something they would not necessarily have consented to if they had had all of the information, and which they would not necessarily continue to choose to participate in.

Sexual exploitation and abuse of women and girls by peacekeepers was noticed during the 1990's when Kathryn Bolkovac revealed that UN police officers had been involved in the trafficking of young girls across the Bosnia and Herzegovina border for the purposes of prostitution and sexual slavery.<sup>73</sup> They had often been persuaded to take jobs abroad as waitresses, cleaners, or nannies, but were subsequently sent to unknown locations, forcibly stripped, and sold.<sup>74</sup>

Klarreich's 2015 report demonstrates that sexual exploitation and abuse persists in peacekeeping

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<sup>73</sup> K. Bolkovac & C. Lynn op. cit note 2

<sup>74</sup> Nisja Lilia Diu, 'What the UN Doesn't Want You to Know' *The Telegraph Online*, available at <http://www.telegraph.co.uk/culture/film/9041974/What-the-UN-Doesnt-Want-You-to-Know.html>, accessed on 13 March 2016

missions. She noted that many Sri Lankan peacekeepers used to traffic cigarettes, drugs and sex from their UN base in Haiti.<sup>75</sup>

### *Transactional sex*

Transactional sex is where an over 18 year old consents to sex in return for money, food, or some other useful item. It appears at first glance consensual because both parties agree to a trade. Transactional sex appears to be the most frequently reported form of sexual exploitation and abuse by peacekeepers.

There is evidence of transactional sex in nearly all UN and regional peacekeeping missions. Klarreich has noted that 'transactional sex among the [Sri Lankan contingent of] peacekeepers was rampant' in Haiti.<sup>76</sup>

The Zeid report has also noted that:

'[I]n the Democratic Republic of Congo, it would appear that sexual exploitation and abuse mostly involves the exchange of sex for money (on average \$1-\$3 per encounter), for food (for immediate consumption or to barter later) or for jobs (especially affecting daily workers).'<sup>77</sup>

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<sup>75</sup> K. Klarreich, 'United Nations in Haiti: When Protectors Turn Predators' (2015) 100 reporters, available at <http://100r.org/2015/01/the-u-n-in-haiti-when-protectors-turn-predators/> accessed on 13 March 2016

<sup>76</sup> Ibid. Chapter one

<sup>77</sup> Zeid report (2005) Op. cit. note 7 at 8

Furthermore, a 2015 UN report on special measures for protection from sexual exploitation and sexual abuse recorded 32 allegations of exchange of money, employment, goods, or services for sex (adults only) by peacekeepers in 2014.<sup>78</sup>

It must also be noted that many other kinds of sexual exploitation and abuse such as forced sex, or sex with a minor, are often disguised as transactional sex by providing some sort of reward after the act.<sup>79</sup> Similarly, child prostitution often involves some sort of transaction.<sup>80</sup>

It is debatable whether transactional sex is always coercive in peacekeeping operations, and therefore whether it should always be considered a form of sexual exploitation and abuse. The Secretary-General's 2003 Bulletin on special measures for protection from sexual exploitation and abuse recognises differential power and coercive conditions within its definitions of sexual exploitation and sexual abuse.<sup>81</sup> The Secretary General's definitions are internationally accepted, and under this definition, transactional sex can be considered a form of sexual exploitation and abuse. However, it is important to note

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<sup>78</sup> UN report (2015) op. cit. note 22 at 2

<sup>79</sup> K. Klarreich (2015) op. cit. note 75 and Zeid report (2005) op. cit. note 7 at 8

<sup>80</sup> C.Csáky (2008) Op. cit. note 17 at 5

<sup>81</sup> United Nations Secretary-General Bulletin (2003), op. cit. note 5 at 1.

that several writers have questioned whether *all* transactional sex should be considered exploitative.<sup>82</sup>

### **2.1.2. Vulnerability of local women and children**

Despite the diversity amongst victims of sexual exploitation and abuse committed by peacekeepers, there is evidence to suggest that most victims are extremely vulnerable people.

Conflict, unsurprisingly, leaves local populations extremely vulnerable. Many lose their homes, their families, their communities, and their sources of income. Many people are forced to move to camps for refugees and internally displaced people. Furthermore, the presence of UN and regional peacekeeping missions, as well as other UN and NGO agencies encourages the influx of migrants looking for work. For instance, the number of Ugandan, Kenyan and Congolese women looking for work in Juba, South Sudan, increased considerably following the 2005 Sudanese peace agreement and the subsequent arrival of embassies, consulates and development agencies.<sup>83</sup>

There are many factors to take into account when considering the vulnerability of local people. Naik

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<sup>82</sup> D. Otto, 'Making sense of zero tolerance policies in peacekeeping sexual economies' in V. Munro & C. Stychin (ed.), *Sexuality and the Law: Feminist Engagements* (2007) 259-282; and O Simic *Regulation of sexual conduct in peacekeeping operations* (2012) Springer Science & Business Media

<sup>83</sup> Veldwijk & Groenendijk (2011) op. cit. note 57 at 93

has noted that women and girls are the most impoverished group of refugees lacking food, educational facilities, healthcare, employment opportunities, farming land, and other means of subsistence.<sup>84</sup> Poverty can often mean a reliance on humanitarian assistance to survive, which creates a dependence upon peacekeepers and humanitarian organisations.<sup>85</sup>

Young people are also an extremely vulnerable group in peacekeeping settings. The younger a person is, the more vulnerable they are to sexual exploitation and abuse. The Save the Children and UNHCR report<sup>86</sup> on sexual violence and exploitation of refugee children in Guinea, Liberia, and Sierra Leone noted that many men believed that younger girls were more desirable as sexual partners. There was also the belief amongst some interviewed men that sex with a virgin could cleanse a man of sexually transmitted infections.<sup>87</sup>

Another factor that influences the vulnerability of local women and children is a lack of familial or community support. Conflict has been shown to destroy communities and leave people without their natural support systems. For instance, the Save the Children/UNHCR report noted that:

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<sup>84</sup> A. Naik 'Protecting Children from the protectors: lessons from West Africa' (2002) 15 *Forced Migration Review* 16 at 17

<sup>85</sup> Save the Children & UNHCR (2002) *Op. cit.* note 3 at 9

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.* at 4

'[C]hildren most vulnerable to sexual exploitation were those without the care of their parents, children in child headed households, orphaned children, children in foster care, children living with extended family members, and children living with just one parent.'<sup>88</sup>

Klarreich, amongst other writers, has examined the role of race in peacekeeping missions. The four main missions where sexual exploitation and abuse is most common are in countries where the majority of the population is black. The executive director of the Institute for Justice and Democracy in Haiti has claimed that it is difficult to explain anything about the relationship between Haiti and the rest of the world without discussing racism, and he suspects this is true of the three other main peacekeeping operations.<sup>89</sup> An expert report, commissioned by the UN, has suggested that peacekeepers may come into operations with ideas concerning race superiority, and conclude that local women are 'loose'.<sup>90</sup>

It is also important to note that, globally women and girls are more vulnerable to sexual exploitation and abuse. Violence against women has been internationally recognised as a human rights violation

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<sup>88</sup> Ibid.

<sup>89</sup> Brian Concannon Jr. in Klarreich (2015) op. cit. note 75, Chapter two

<sup>90</sup> T. Awori, C. Lutz, & General P. Thapa, op. cit. note 21 at 6

and a form of discrimination,<sup>91</sup> and furthermore, the international community has increasingly recognised the heightened risk of violence against women in conflict settings.<sup>92</sup>

There is also evidence to suggest that once a child has participated in some kind of transactional sex, they are more likely to turn to prostitution<sup>93</sup> and women who have had children as a result of sexual abuse during conflict are likely to require extra aid to support their babies.<sup>94</sup>

The above discussion indicates that the women and children involved in sexual exploitation and abuse by peacekeepers tend to be extremely vulnerable, due to a variety of factors such as poverty, age, lack of familial or community support, and gender. Race has also been suggested as a possible factor.

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<sup>91</sup> United Nations General Assembly. 'Declaration on the Elimination of Violence Against Women.' A/RES/48/104. New York: United Nations. 20 December 1993.

<sup>92</sup> UN Women website, 'Women and armed conflict' available at [http://www.un.org/womenwatch/directory/women\\_and\\_armed\\_conflict\\_3005.htm](http://www.un.org/womenwatch/directory/women_and_armed_conflict_3005.htm), accessed on 13 March 2016

<sup>93</sup> Veldwijk & Groenendijk (2011) op. cit. note 57 at 103

<sup>94</sup> S.Martin (2005) op. cit. note 40 at 4:

'[Haitian] girls and women had been raped by the warring factions and left with children to support. With no husbands to assist them and facing stigmatization from their families, they turned to the Uruguayan and Moroccan peacekeepers stationed directly across from the camp.'

### **2.1.3. Perpetrators of sexual exploitation and abuse**

Before examining the commonalities amongst peacekeepers that have sexually exploited and abused women and children, it is necessary to identify what is meant by the term 'peacekeeper'. This dissertation takes a broad, inclusive approach to peacekeepers and therefore recognises uniformed personnel such as military troops, police, and military observers; civilian personnel, both international and local; and UN volunteers as peacekeepers. This understanding therefore includes those employed by UN and regional agencies that assist in peacekeeping operations yet are not employed directly by the peacekeeping operation itself.

One key trend amongst perpetrators is that the majority of allegations are made against male peacekeepers. The literature does not highlight any statistical data that delineates between men and women peacekeepers; however, almost all of the anecdotal evidence in reports refers to male peacekeepers as perpetrators. There have been some reports of female military troops sexually abusing prisoners<sup>95</sup> and Csáky has noted one case of a female peacekeeper sexually abusing a 13-year-old boy in Côte d'Ivoire,<sup>96</sup> however these cases were particularly noted because they are so rare.

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<sup>95</sup> S.Martin (2005) op. cit. note 40 at 8

<sup>96</sup> C.Csáky (2008) op. cit note 17 at 9

Another key commonality amongst perpetrators is the possession of power and authority over the women and children that they exploit and abuse.<sup>97</sup> Many peacekeepers are armed and provide much-needed security, but they also provide aid, such as food, which gives them other means of bargaining power. Naik has noted the existence of a power imbalance between the local women and children, and peacekeepers.<sup>98</sup>

Although the majority of evidence concerning sexual exploitation and abuse of women and children by peacekeepers involves UN peacekeepers, there is some evidence of sexual exploitation and abuse by regional peacekeepers too. For instance, Bader and Muscati have noted cases of African Union Forces and local women in the African Union Mission in Somalia ('AMISOM').<sup>99</sup>

Another important point to note concerning the perpetrators of sexual exploitation and abuse in peacekeeping contexts is that there is a common misconception that military personnel make up the majority of perpetrators. The recently launched 'Code Blue Campaign', organised by the NGO AIDS-Free World, has noted that the majority of alleged UN

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<sup>97</sup> A. Naik (2002) op. cit. note 84 at 16, 'the exploiters in West Africa were men in the community with power' and C. Csáky (2008) op. cit. note 17 at 8 'Peacekeepers are capable of exerting particular influence over the communities in which they serve'

<sup>98</sup> Naik (2002) op. cit. note. 84 at 17

<sup>99</sup> L. Bader & S. Muscati (2014) op. cit. note 37

perpetrators are non-military personnel, which includes UN agency staff. The campaign has suggested that 35 per cent of all allegations of sexual exploitation and abuse perpetrated by peacekeeping personnel pointed to UN agency staff, and 34 per cent of perpetrators as non-military staff.<sup>100</sup>

In sum, research indicates that perpetrators tend to be male, hold a position of power over the women and children that they exploit or abuse, and can be UN or regional operation peacekeepers. Furthermore, perpetrators are military and non-military peacekeepers.

#### **2.1.4. Power imbalance and presumption of coercion**

The power imbalance between peacekeepers and local women and children can lead to the presumption that transactional sex between peacekeepers and local adults in peacekeeping settings always contains some element of coercion, and therefore is non-consensual.

However, there have been cases of peacekeepers and local adults who claimed to have had relationships based on genuine respect and

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<sup>100</sup> 'Fact Sheet: Sexual Exploitation and Abuse by UN Peacekeeping Personnel', 'Code Blue Campaign' website, available at <http://www.codebluecampaign.com/fact-sheets-materials/2015/5/13/sexual-exploitation-and-abuse>, accessed on 13 March 2016

affection.<sup>101</sup> Therefore, despite the trend that sexual exploitation and abuse of women and children by peacekeepers often involves power imbalance, power imbalance does not necessarily lead to sexual exploitation and abuse.

## **2.2 Societal norms surrounding sexual exploitation and abuse in peacekeeping contexts**

It is also possible to identify broad social contexts in peacekeeping operations that have heavily influenced the occurrence of sexual exploitation and abuse of women and children by peacekeepers across the world. This section will explore these societal norms, namely, the development of hyper-masculine cultures and discrimination against women; and a culture of impunity, both in peacekeeping settings and within the UN.

### **2.2.1. Culture of hyper-masculinity and discrimination against women**

Martin argues that a culture of hyper-masculinity is often present in peacekeeping operations.<sup>102</sup> As the majority of peacekeeping personnel, whether military or civilian, are men,<sup>103</sup> Martin has argued that it is not surprising that an emphasis on physical strength, aggression, and sexuality develops in peacekeeping operations. Martin has claimed that:

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<sup>101</sup> O.Simic (2012) op. cit. note 82 at 4

<sup>102</sup> S. Martin (2005) op. cit. note 40 at 5

<sup>103</sup> Ibid.

‘The masculine culture of UN peacekeeping missions has produced a tolerance for extreme behaviours such as sexual exploitation and abuse.’<sup>104</sup>

Furthermore, violence against women has been internationally recognised as a systematic manifestation of discrimination against women.<sup>105</sup> Therefore, it could be argued that the high level of sexual exploitation and abuse by peacekeepers in peacekeeping operations is evidence of pervasive discriminatory attitudes against women amongst peacekeepers.

Hence, there is evidence to suggest that cultures of hyper-masculinity and discrimination against women are common in peacekeeping settings, and these cultures have had a detrimental impact on the prevalence of sexual exploitation and abuse of women and children by peacekeepers.

### **2.2.2. Social norm of impunity in peacekeeping settings**

Another social norm, common in peacekeeping settings, is a lack of accountability of peacekeepers, and UN staff in general.

There is evidence of a general reluctance amongst local communities to report cases of sexual exploitation and abuse. Victims and their families are often reluctant to report for fear of stigmatisation by their own society, fear of retaliation from their abusers,

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<sup>104</sup> Ibid. at 6

<sup>105</sup> UN Women website, op. cit. note 92

and lack of trust in the system to protect them and bring about punishment.<sup>106</sup>

Peacekeepers and agency staff in the field have also been reluctant to report for fear of facing recrimination, becoming incriminated themselves or losing their jobs.<sup>107</sup> There has been scepticism that the case will be successfully followed through, or result in the punishment of the perpetrators.<sup>108</sup>

Furthermore, cases of successful punishment for sexual exploitation and abuse have been rare and many commentators have considered the sanctions to not reflect the gravity of the crime. For example, the repatriation of Sri Lankan peacekeepers for the sexual exploitation and abuse of Haitian girls, in which there was no trial, and in which no compensation was provided to the victims, has been considered an inadequate punishment by many.<sup>109</sup>

The culture of impunity also impacts the power imbalance in the relationships between perpetrators and local communities. A perpetrator's ability to exercise their position of power is exacerbated when

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<sup>106</sup> C.Csáky (2008) op. cit. note 17 at 13

<sup>107</sup> K. Klarreich (2015) op. cit note 75

<sup>108</sup> C.Csáky (2008) op. cit. note 17 at 14

<sup>109</sup> 'Haitain lawyers condemn impunity for Sri Lankan soldiers' *Tamil Guardian online*, 11 September 2011, available at <http://www.tamilguardian.com/article.asp?articleid=3476>, accessed on 13 March 2016

there are few restrictions, or consequences to their behaviour.

### 2.2.3. Social norm of impunity in the UN

Another factor that has influenced the development of a culture of impunity is the reluctance of the UN hierarchy to address and deal with cases of sexual exploitation and abuse openly. The case of French peacekeepers in the Central African Republic highlighted the failure of the High Commissioner for Human Rights to acknowledge and respond appropriately to reports conducted by her own staff. The NGO AIDS-Free World released several internal UN documents, memos and email correspondence<sup>110</sup> that 'expose[d] the UN's inaction'.<sup>111</sup>

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression recently published a report<sup>112</sup> that indicated that the UN has a particularly bad record when it comes to the investigation of complaints by whistleblowers,

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<sup>110</sup> These internal documents are available at <http://www.codebluecampaign.com/undocuments>, accessed on 13 March 2016.

<sup>111</sup> 'The UN's dirty secret: the untold story of Anders Kompass and peacekeeper sex abuse in the Central African Republic' Code blue campaign website, available at <http://www.codebluecampaign.com/carstatement/>, accessed on 13 March 2016

<sup>112</sup> United Nations General Assembly. 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.' A/70/361. New York: United Nations. 8 September 2015, at 20

and that this sends ‘a message to employees that the reporting system will not provide effective protection or redress.’<sup>113</sup>

### **2.3. Conclusion**

Despite the variance in individual cases of sexual exploitation and abuse of women and children by peacekeepers, there are several key commonalities that systematically pervade most peacekeeping missions.

The nature of the actual exploitation and abuse is non-consensual and involves a power imbalance between local people, who are often extremely vulnerable, and peacekeepers in positions of power, who are often male. Furthermore, there is evidence to suggest that the social norms of hyper-masculinity, discrimination against women, and impunity in peacekeeping settings have had a detrimental impact on the prevalence of sexual exploitation and abuse by peacekeepers.

Chapter two has therefore highlighted the key problems within the larger problem that an international and regional, legal and policy framework must address in order to eliminate sexual exploitation and abuse of women and children by peacekeepers.

1. The problem of power imbalance between peacekeepers and locals.

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<sup>113</sup> Ibid. at para. 53

2. Perpetrators are both UN and regional peacekeepers.
3. The prevalence of hyper-masculine cultures in peacekeeping operations.
4. The problem of discrimination against women in peacekeeping operations.
5. The problem of impunity in peacekeeping operations and in international organisations.
  - a. The reluctance to report, and respond to allegations and reports.
  - b. The cover-ups of failures by international and regional staff to respond appropriately to allegations and reports.

## **Chapter 3.**

### **The International and Regional, Legal and Policy Framework**

As explored in chapter two, the problem of sexual exploitation and abuse of women and children by peacekeepers is broader than the misconduct itself. The problem also includes issues of impunity, hyper-masculine culture, and discrimination against women, as well as the power imbalance between locals and peacekeepers. An overarching legal and policy framework for the prevention of sexual exploitation and abuse of women and children by peacekeepers must therefore not only prohibit sexual misconduct, but also respond to the broader factors that influence its high prevalence.

A broad range of international and regional laws and policies are relevant to the problem of sexual exploitation and abuse of women and children by peacekeepers. International human rights law, humanitarian law, and customary law, as well as UN and regional operation internal policies are all inextricably linked. The framework for the prevention of sexual exploitation and abuse of women and children by peacekeepers, as identified and used in this dissertation, can therefore be defined as the collection of laws and policies that play a role in the prevention of misconduct, both directly and indirectly.

Chapter three aims to explain how the framework works towards the prevention of sexual exploitation and abuse of women and children by

peacekeepers. It will examine five main aspects to the framework. First, it will examine how the framework prohibits sexual exploitation and abuse of women and children by peacekeepers. Second, it will examine how the framework imposes more positive obligations on the relevant parties to prevent misconduct. Third, it will examine how the framework addresses the problems of hyper-masculinity and discrimination against women through its commitment to the concept of gender mainstreaming, and by recognising discrimination against women as a human rights violation. Fourth, chapter three will explore how the framework addresses the problem of impunity by implementing accountability procedures when implicated parties fail to comply with their initial obligations. Fifth, the chapter will examine how the framework addresses the issue of power imbalance.

### **3.1. Sexual exploitation and abuse of women and children by peacekeepers as prohibited under the current framework**

The framework for the prevention of sexual exploitation and abuse of women and children by peacekeepers addresses the problem of sexual exploitation and abuse directly by imposing a prohibition on sexual exploitation and abuse of women and children by peacekeepers. Sexual exploitation and abuse by peacekeepers is a violation of human rights and international humanitarian law. It is also explicitly prohibited under the UN's internal policies, and more implicitly prohibited under several regional systems.

### 3.1.1. Violation of international human rights

Sexual exploitation and abuse of women and children is a violation of several different human rights, as recognised under international and regional human rights law.

The right to be free from torture has long been recognised as a universal human right,<sup>114</sup> and rape and sexual abuse have subsequently been recognised as forms of torture. The Committee against Torture has held in various decisions that rape and sexual abuse can be violations of one's right to dignity and may constitute torture or cruel inhuman and degrading treatment.<sup>115</sup>

The Convention on the Elimination of Discrimination Against Women declares discrimination against women to be a violation of human rights.<sup>116</sup> The

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<sup>114</sup> International Covenant on Civil and Political Rights (ICCPR) 1966, article 7: 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984; Universal Declaration of Human Rights (UDHR) 1948, article 5; African Charter on Human and Peoples' Rights (the Banjul Charter) 1981, Article 5; European Convention on Human Rights (ECHR) 1959, article 3; American convention on human rights 1969, article 5

<sup>115</sup> *Pauline Muzonzo Paku Kisoki v Sweden*, CAT/C/16/D/41/1996, UN Committee Against Torture (CAT) 12 February 1996. *VL v Switzerland*, CAT/C/D/262/2005, UN Committee Against Torture (CAT), 22 January 2007,

<sup>116</sup> Convention on the Elimination of Discrimination Against Women ('CEDAW') 1979, introduction, para. 3

Committee on the Elimination of Discrimination Against Women has recognised sexual violence as a form of discrimination in its general recommendation 19,<sup>117</sup> and violence against women has recently been recognised as a human rights violation in itself.<sup>118</sup> The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ('the Maputo Protocol') explicitly prohibits all exploitation, cruel inhuman or degrading punishment and treatment.<sup>119</sup>

The right to be free from slavery<sup>120</sup> includes sexual exploitation and abuse of women and children. The International Criminal Tribunal for the former

<sup>117</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW Recommendation No. 19: Violence against women, 1992,

<sup>118</sup> United Nations General Assembly. 'Vienna Declaration and Programme of Action', A/CONF. 157/23. New York: United Nations, 12 July 1993. Part 1, paragraph 18 [2]:

'Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated.'

The establishment of the Special Rapporteur on Violence against Women in 1994 (E/CN.4/RES/1994/45) also reinforced the UN Human Rights Commission's commitment to violence against women as a human rights violation, as did the adoption of the Declaration on the Elimination of Violence Against Women (DEVAW) in 1993, *op. cit.* note 91.

<sup>119</sup> Protocol to the African Charter on human and peoples' rights on the rights of women in Africa, 11 July 2003, article 4

<sup>120</sup> ICCPR 1966, *op. cit.* note 114, article 8; UDHR 1948, article 4; Slavery Convention 1926

Yugoslavia held in the case of *Kunarać*<sup>121</sup> that repeated rape, trafficking or enforced prostitution could constitute slavery, and trafficking has been recognised as a specific human rights violation in itself under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime (the Palermo Convention) 2000, and the Council of Europe Convention on Action against Trafficking in Human Beings 2005.

The Convention on the Rights of the Child (CRC) specifically prohibits sexual abuse, exploitation and trafficking of children.<sup>122</sup> The Optional Protocol to the CRC on the sale of children, child prostitution and child pornography explicitly requires States to ban child prostitution, and pornography that occurs both domestically and transnationally.<sup>123</sup> The American Convention on Human Rights also recognises the specific rights of the child to be free from all forms of

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<sup>121</sup> *Prosecutor v. Kunarać*, (judgment) IT-96-23-T (22 February 2001) Page 192

<sup>122</sup> Convention on the Rights of the Child (CRC) 1989, article 34: 'State parties shall undertake to protect the child from all forms of sexual exploitation and sexual abuse.' Article 35: 'States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.'

<sup>123</sup> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2000, article 3

physical and mental violence<sup>124</sup> and the EU has issued Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography.<sup>125</sup>

Therefore, sexual exploitation and abuse can be recognised as a violation of the rights to be free from torture, discrimination, and slavery. It can also be considered as a form of violence against women and trafficking, and a violation of the internationally and regionally recognised rights of children.

### **3.1.2. Violation of international humanitarian law**

The Fourth Geneva Convention in international humanitarian law regulates the protection of civilians during armed conflict and in occupied territories.<sup>126</sup> Under the Fourth Geneva Convention, article three states that persons taking no active part in the hostilities shall in all circumstances be treated humanely without any adverse distinction, such as sex, and that violence to life and person, in particular cruel

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<sup>124</sup> American Convention on Human Rights 1969, Article 19: 'Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.'

<sup>125</sup> European Parliament and Council of the European Union, Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, 13 December 2011

<sup>126</sup> Geneva Convention relative to the protection of Civilian Persons in Time of War (Fourth Geneva Convention) 1949

treatment and torture, and outrages upon personal dignity, in particular humiliating and degrading treatment, are prohibited.<sup>127</sup>

The Fourth Geneva Convention applies to all cases of declared war, any armed conflict between two high contracting parties, and partial or total occupation of the territory of a high contracting party.<sup>128</sup> The Secretary General's 1999 bulletin on the observance of United Nations forces of international humanitarian law indicates that UN peacekeeping operations do fall under these circumstances.<sup>129</sup>

Sexual exploitation and abuse of women and children can be considered a violation of article three. First, women and children who have been exploited and abused in peacekeeping contexts have not generally taken an active part in the hostilities.<sup>130</sup> Second, sexual exploitation and abuse has clearly been accepted as a form of violence, a discriminatory act, and cruel, humiliating and degrading treatment under international human rights law, which provides a strong indication that international humanitarian law would similarly

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<sup>127</sup> Ibid. Article 3 (1)

<sup>128</sup> Ibid. Article 2

<sup>129</sup> United Nations Secretary-General Bulletin. 'Observance by United Nations forces of international humanitarian law.' ST/SGB/1999/13. New York: United Nations, 6 August 1999, section 1

<sup>130</sup> However, women and children can. Child soldiers are common in many conflicts, and some women also take active roles in the conflict.

recognise sexual exploitation and abuse of women and children by peacekeepers.

Therefore, there is a strong argument that the Fourth Geneva Convention prohibits sexual exploitation and abuse of women and children by peacekeepers.

### **3.1.3. Violation of international customary law**

Some norms and standards of international human rights and humanitarian law have attained the status of international customary law. The prohibition of sexual exploitation and abuse of women and children by peacekeepers can arguably be recognised as a norm that has attained this status.

Sexual exploitation and abuse of women and children by peacekeepers could be considered a violation of certain jus cogens norms. Jus cogens norms are inviolable norms of international law, and therefore part of international customary law. Many human rights have been recognised as jus cogens norms, such as the right to be free from torture<sup>131</sup> and the right to be free from slavery.<sup>132</sup> Sexual exploitation and abuse of women and children therefore arguably fall within jus cogens norms, and therefore international customary law, albeit not explicitly.

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<sup>131</sup> *Prosecutor v. Anto Furundzija (Trial Judgment)*, IT-95-17/1-T (10 December 1998), paragraph 144

<sup>132</sup> United Nations General Assembly. 'Report of the International Law Commission – Fifty-third session' A/56/10. New York: United Nations. United Nations General Assembly, commentary to Draft Article 26, paragraph 5

The norms of the Fourth Geneva Convention have arguably become universally applicable, as the Convention provisions have been internationally recognised as international customary law.<sup>133</sup>

Therefore, as sexual exploitation and abuse of women and children by peacekeepers can be recognised as a violation of the Fourth Geneva Convention, it can be considered a violation of universally recognised international customary law.

#### **3.1.4. Explicit prohibition under the UN internal system**

Since the sex abuse scandal in western Africa in 2002,<sup>134</sup> the UN has worked towards the development of a 'zero tolerance policy' against the sexual exploitation and abuse of women and children by peacekeepers. The UN Secretary-General published the bulletin on special measures for protection from sexual exploitation and abuse in 2003.<sup>135</sup> The bulletin prohibited the exchange of money, goods and other assistance for sex, prohibited UN personnel having sexual relations with persons under the age of 18, and strongly discouraged sexual relationships between UN personnel and adult beneficiaries of assistance.<sup>136</sup> The bulletin also stated that sexual exploitation and abuse

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<sup>133</sup> J. Henckaerts & L. Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules* (2009) Cambridge University Press, p. xxxvi

<sup>134</sup> Save the Children & UNHCR (2002) op. cit. note 3

<sup>135</sup> Secretary-General Bulletin (2003) op. cit. note 5

<sup>136</sup> Ibid. at 2

was prohibited under the UN staff regulations and rules.<sup>137</sup>

The Secretary-General's bulletin also defined 'sexual exploitation' as:

'any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.'<sup>138</sup>

and 'sexual abuse' as:

'the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.'<sup>139</sup>

These definitions are particularly important in that they recognise the role of power imbalance in sexual exploitation and abuse in peacekeeping settings, as highlighted in chapter two.

The standards of the bulletin have also been incorporated into draft conditions of service for UN volunteers, the undertakings for experts on mission (such as UN police and military observers) and individual and corporate contracts,<sup>140</sup> which indicates

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<sup>137</sup> Ibid. at 3.1

<sup>138</sup> Ibid. at 1

<sup>139</sup> Ibid.

<sup>140</sup> United Nations General Assembly, Special Commission on Peacekeeping Operations. 'Report of the Special Committee on

that these standards have become the authoritative UN source on sexual exploitation and abuse of women and children by peacekeepers.

Sexual exploitation and abuse is also explicitly prohibited in the UN's code of conduct.<sup>141</sup> Issued as pocket cards to military personnel, peacekeepers are not allowed to 'become involved in sexual liaisons which could affect [their] impartiality, or the well-being of others',<sup>142</sup> nor are they allowed to 'indulge in immoral acts of sexual, physical or psychological abuse or exploitation of the local population... especially women and children.'<sup>143</sup> Sexual exploitation and abuse has also been recognised as a form of serious misconduct in the UN's staff rules and regulations, and counts as a ground for dismissal.<sup>144</sup>

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Peacekeeping Operations and its Working Group at the 2006 Substantive Session'. A/60/19. New York: United Nations, 2006. at 13

<sup>141</sup> There are two core pieces of literature that make up the UN's code of conduct in peacekeeping; UN Department of Peacekeeping Operations, 'Ten Rules: Code of Personal Conduct for Blue Helmets', available at [http://www.un.org/en/peacekeeping/documents/ten\\_in.pdf](http://www.un.org/en/peacekeeping/documents/ten_in.pdf), accessed on 13 March 2016; and UN department of peacekeeping operations, 'We are United Nations Peacekeepers', available at [http://www.un.org/en/peacekeeping/documents/un\\_in.pdf](http://www.un.org/en/peacekeeping/documents/un_in.pdf), accessed on 13 March 2016

<sup>142</sup> 'We are United Nations Peacekeepers', *ibid.*

<sup>143</sup> 'Ten Rules' *op. cit.* note 141

<sup>144</sup> United Nations Secretary-General Bulletin. 'Staff rules and regulations of the United Nations' ST/SG/2014/1. New York: United

In sum, the UN's internal policy clearly explicitly prohibits UN peacekeepers from the sexual exploitation and abuse of women and children by peacekeepers.

### **3.1.5. Prohibition under regional systems**

Despite the great diversity between regional organisations, and how inaccurate it can be to represent regional organisations as a homogenous group, certain commonalities between regional organisations can still be identified.

One significant commonality amongst regional organisations in their prevention of sexual exploitation and abuse of women and children by peacekeepers is that no regional organisations appear to have as direct and explicit a policy as the UN's 'zero tolerance approach'. Furthermore, there is limited media and academic research into sexual exploitation and abuse of women and children by regional peacekeepers, which indicates that there has been less concern with regional peacekeepers than with UN peacekeepers in the past, whether justifiably or not.

On the other hand, some regional organisations have taken steps to prevent sexual exploitation and abuse by peacekeepers. The African Union ('the AU') has developed a draft policy on prevention and response to sexual exploitation and abuse, and begun to put structures in place to follow up on allegations.<sup>145</sup>

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Nations, 1 January 2014, article X disciplinary measures, regulation 10.1, (b) & 10.2

<sup>145</sup> L. Bader & S. Muscati (2014) op. cit. note 37

The North Atlantic Treaty Organisation ('NATO') has also initiated its own zero tolerance policy for peacekeepers concerning human trafficking.<sup>146</sup> These developments demonstrate regional organisations' increasing commitment to explicit policies to combat sexual exploitation and abuse by their peacekeepers.

Furthermore, some regional operations have included sexual exploitation and abuse by peacekeepers within their staff rules and regulations. For instance, the EU has produced a model 'generic standards of behaviour for peacekeepers' that explicitly recognises sexual exploitation and abuse as prohibited.<sup>147</sup> In addition, the code of conduct concerning sexual exploitation and abuse for EU troops sent to the Democratic Republic of Congo ('the DRC') in 2006 in support of the United Nations Organisation Stabilisation Mission in the DRC, were made extremely clear through the issuing to soldiers of cards that contained the guidelines.<sup>148</sup> The strong awareness of the code of conduct has been credited with why there were no allegations of exploitation and abuse on the EU's mission to the DRC.<sup>149</sup>

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<sup>146</sup> Laura Hebert, 'Analysing UN and NATO responses to sexual misconduct in peacekeeping operations' in A. Kronsell & E. Svedberg, *Making Gender, Making War: Violence, Military and Peacekeeping Practices*, (2011) Routledge, page 112

<sup>147</sup> Council of the European Union, 'Generic Standards of Behaviour for ESDP operations', 8373/3/05 REV 3, 18 May 2005, article 5 (a), at 8

<sup>148</sup> M. Bastick, K.Grimm & R. Kunz (2007) op. cit. note 38 at 176

<sup>149</sup> Ibid.

Therefore, despite the great deal of diversity between regional organisations, many have prohibited sexual exploitation and abuse of women and children by peacekeepers under their regional internal policies, albeit not as comprehensively and not as explicitly as articulated in UN policy documents.

### **3.2. The obligation to prevent sexual exploitation and abuse of women and children by peacekeepers**

The framework for the prevention of sexual exploitation and abuse of women and children not only prohibits sexual misconduct, but also imposes more positive and proactive obligations to prevent. The overarching obligation to prevent manifests itself in different ways through the various areas of law and policy.

#### **3.2.1. The obligation to prevent under international law**

There is evidence to suggest that an obligation to prevent sexual exploitation and abuse of women and children under international law exists. For instance, the Convention Against Torture demands 'States take effective legislative, administrative, judicial or other measures to prevent torture.'<sup>150</sup> The Convention on the Elimination of Discrimination Against Women requires States to 'pursue a policy of eliminating discrimination

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<sup>150</sup> Convention against Torture 1984, op. cit. note 114, article 2

against women'.<sup>151</sup> The Convention on the Rights of the Child demands, 'States Parties shall take measures to combat the illicit transfer and non-return of children.'<sup>152</sup>

However, the explicit recognition of a specific obligation to prevent sexual exploitation and abuse of women and children by peacekeepers has not been established as of yet. Furthermore, as demonstrated earlier, the obligation manifests itself in various ways according to the area of international law, and relevant literature. The obligation to prevent sexual exploitation and abuse by peacekeepers across the entire framework is therefore neither uniform nor consistent.

A further concern is the applicability of international law to international organisations. International law does not tend to explicitly impose obligations on organisations, such as the UN, or the African Union, yet there is evidence to indicate that international organisations can be bound by international law in certain circumstances.

It is accepted that the UN has a legal personality, and therefore a capacity to bear international rights and obligations,<sup>153</sup> yet which obligations entail the

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<sup>151</sup> CEDAW 1979, op. cit. note 116 article 7

<sup>152</sup> Convention on the rights of the child 1989, op. cit. note 122, article 11

<sup>153</sup> The International Court of Justice acknowledged that types of international legal personality other than States could exist in *Reparations for Injuries suffered in the service of the Nations*, advisory opinion, (1949) ICJ Rep 174

responsibility of an international organisation are still unclear.<sup>154</sup>

Many authors have suggested that international human rights law obligations can be attributed to international organisations, insofar as that particular obligation has become international customary law.<sup>155</sup>

The UN has similarly attributed international humanitarian law obligations to international organisations through the Secretary General's 1999 Bulletin on the observance of international humanitarian law by the UN.<sup>156</sup>

The nature of the obligation also depends upon the nature of the specific international organisation. International organisations do not have the same access to resources, their own territories with their own citizens, their own direct police or military forces, or their own independent judiciary. The limitations of international organisations therefore must have a

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<sup>154</sup> C. Leck, 'International Responsibility in United Nations Peacekeeping operations: command and control arrangements and the attribution of conduct' (2009) *10 Melbourne Journal of International Law* 346 at 350

<sup>155</sup> RS Burke (2014) op. cit. note 26; F. Mégret and F. Hoffman, 'The UN as a Human Rights Violator? Some reflections on the United Nations Changing Human Rights Responsibilities' (2003) *Human Rights Quarterly* 25 at 314; G. Porretto & S. Vité, 'The applicability of international humanitarian law and human rights law to international organisations.' (2006) University Centre for International Humanitarian Law, research paper series 1

<sup>156</sup> 1999 bulletin, op. cit. note 129

considerable influence on the applicability of international law to international organisations.

Another concern regarding the obligation to prevent sexual exploitation and abuse of women and children by peacekeepers under international law is the concept of jurisdiction under international law. The most accepted test for extra-territorial jurisdiction in international and regional human rights law is the 'effective control' test.<sup>157</sup> The test states that parties are bound by their human rights obligations when they have effective control over a geographical area. The International Law Commission has also confirmed the use of 'effective control' in the attribution of conduct to international organisations.<sup>158</sup>

The effective control test therefore suggests that the UN or regional organisation has jurisdiction in peacekeeping operations, rather than the State. Peacekeepers come from various nations, but the UN,

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<sup>157</sup> T. Dannenbaum, 'Translating the standard of effective control into a system of effective accountability: how liability should be apportioned for violations of human rights by member State troop contingents serving as United Nations peacekeepers.' (2010) 51 *Harv. Int'l L. J.* at 113.

This test has also been recognized in the European Court of Human Rights in the cases of *Loizidou v Turkey*, (application no. 15318/89), (1995) ECHR 10, and *Banković, & Others v Belgium & Others* (application no. 52207/99), (2001) ECHR 890, as well as in the ICJ case, *Armed Activities on the Territory of the Congo (Democratic Republic of Congo v Uganda)*, Judgment, ICJ Reports 2005, p. 168 at 214

<sup>158</sup> Leck (2009) op. cit. note. 154 at 346

or regional peacekeeping mission employs them, either directly or indirectly and the UN claims that all UN peacekeepers are under the effective authority of the UN.<sup>159</sup> The effective control test has also been supported by regional and national case law. For example, in *Mothers of Srebrenica et al v. State of The Netherlands and the United Nations* the Dutch court attributed exclusive responsibility to the United Nations.<sup>160</sup> Therefore, States do not have the jurisdiction to exercise their international legal obligations in peacekeeping contexts.

Despite uncertainty over the allowance of multiple jurisdictions in international human rights law, there has been some jurisprudence from the European Court of Human Rights to suggest that States cannot retain and therefore have concurrent jurisdiction in peacekeeping operations.<sup>161</sup>

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<sup>159</sup> For instance, United Nations Department of Peacekeeping Operations & Department of Field Support, 'United Nations Peacekeeping Operations: Principles and Guidelines' New York: United Nations. (2008), available at [http://www.un.org/en/peacekeeping/documents/capstone\\_eng.pdf](http://www.un.org/en/peacekeeping/documents/capstone_eng.pdf), accessed on 13 March 2016, at 68:

'in the field, the Head of Mission(HOM) exercises operational authority over the United Nations peacekeeping operation's activities, including military, police and civilian resources.'

<sup>160</sup> *Mothers of Srebrenica et al v. State of The Netherlands and the United Nations* (application no. 65542/12) (2013) ECHR

<sup>161</sup> *Behrami v France & Saramati v France, Germany and Norway*(2007) op. cit. note 54, where the European Court of Human Rights held that unless troops followed their own State's explicit

The 'effective control' test also determines under whose jurisdiction peacekeepers fall in international humanitarian law,<sup>162</sup> and therefore which State or international organisation has obligations under the Fourth Geneva Convention in the peacekeeping context.

In sum, there is evidence to suggest that an obligation to prevent sexual exploitation and abuse of women and children by peacekeepers is implicitly recognised under international law. However, the precise requirements for the fulfilment of the obligation are not consistent across the framework, nor do they explicitly refer to peacekeeping operations. Furthermore, the obligation to prevent only applies to international organisations in certain circumstances; and troop-contributing States do not often have effective control over their troops, and therefore the jurisdiction to exercise the outlined obligations.

### **3.2.2. The obligation to prevent under the UN's internal policies**

The UN's internal policies provide a more detailed and explicit obligation to prevent the sexual exploitation and abuse of women and children by peacekeepers. The main sources for the obligation are

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directives to disobey orders received from UN command, wrongs of peacekeepers are attributed to the UN exclusively.

<sup>162</sup> ILC draft articles on international responsibility (2004), op. cit. note 132, article 5

the UN staff regulations and rules,<sup>163</sup> and agreements made between the UN and States. The UN internal system therefore imposes an obligation to prevent on its own staff and on States.

UN staff are obliged to create and maintain an environment that prevents sexual exploitation and abuse.<sup>164</sup> The obligation to prevent under the UN internal system has also developed to include investigative obligations. The Department of Peacekeeping Operations has created the Conduct and Discipline Unit, whose role is to collect and record allegations of misconduct.<sup>165</sup> Sexual exploitation and abuse is recognized as a form of 'serious misconduct' under the UN staff regulations and rules,<sup>166</sup> and UN staff are obliged to report misconduct by fellow UN staff to the conduct and discipline unit within a peacekeeping operation.<sup>167</sup>

The obligation to prevent under the UN's internal system has developed to include not only general preventative requirements but also investigative and

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<sup>163</sup> United Nations Staff Rules and Regulations (2014) op. cit. note 144, at 12

<sup>164</sup> Ibid. Chapter I: Duties, obligations and privileges, rule 1.2 (c)

<sup>165</sup> United Nations Conduct and Discipline Unit website, available at <https://cdu.unlb.org>, accessed on 13 March 2016

<sup>166</sup> UN staff rules and regulations (2014), op. cit. note. 154

<sup>167</sup> Ibid. at Rule 1.2. (c) 'Staff members have the duty to report any breach of the Organisation's regulations and rules to the officials whose responsibility it is to take appropriate action and to cooperate with duly authorised audits and investigations. '

accountability requirements on both the UN and States, which will be assessed under the later 'accountability mechanisms' section of chapter three.

### **3.2.3. The obligation to prevent under regional human rights systems**

There is also evidence of an implicit obligation to prevent sexual exploitation and abuse of women and children by peacekeepers within regional internal systems.

For instance, the African Union Status of Mission agreement with Somalia demands that the African Union shall remain impartial, respect all local laws and customs, and shall ensure that the mission conducts its operation in Somalia with full respect for the principles and rules of international Conventions, including the Geneva Conventions.<sup>168</sup>

The European Union's generic standards of behaviour for European Union peacekeeping missions<sup>169</sup> recognises sexual exploitation and abuse as a universally recognised violation of international legal norms, which constitutes grounds for disciplinary

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<sup>168</sup> 'Status of Mission Agreement between the Transitional Government of the Somali Republic, and the African Union on the African Union Mission in Somalia', article VI, available at [http://www.nuhanovicfoundation.org/user/file/2007\\_status\\_of\\_mission\\_agreement\\_between\\_somalia\\_and\\_african\\_unioun.pdf\\_-\\_to\\_be\\_placed.pdf](http://www.nuhanovicfoundation.org/user/file/2007_status_of_mission_agreement_between_somalia_and_african_unioun.pdf_-_to_be_placed.pdf), accessed on 13 March 2016

<sup>169</sup> EU generic standards of conduct (2003) op. cit. note 147 at 5(a), page 8

measures, and could be interpreted as imposing a positive obligation on EU personnel to discipline perpetrators of exploitation and abuse.

However, the specific obligation to prevent sexual exploitation and abuse of women and children by peacekeepers has not been addressed directly within regional internal systems.

### **3.3. The prevention of underlying discriminatory and hyper-masculine practices**

As explained in the introduction to chapter three, a framework for the prevention of sexual exploitation and abuse of women and children by peacekeepers must not only address the specific problem, but also the broader problems of hyper-masculine cultures and discrimination against women on peacekeeping missions. The framework, as identified by this dissertation, addresses these broader problems in two main ways: through a commitment to the concept of gender mainstreaming; and through the recognition of discrimination against women as a violation of international human rights law.

Gender mainstreaming is a concept in which the different implications for men and women are considered when assessing new policies. Since the Beijing Platform of Action in 1995,<sup>170</sup> gender mainstreaming has been recognised as a 'major global

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<sup>170</sup> United Nations Fourth Conference on Women, 'Report of the Fourth World Conference of Women.' A/CONF.177/20/Rev.1. New York: United Nations. 4-15 September 1995

strategy for the promotion of gender equality'.<sup>171</sup> The UN has implemented many Security Council resolutions that recognise the need for female participation in conflict settings. Resolution 1325 called for UN peacekeeping mission commanders to take into account the differential impact of their actions on men and women, and has urged member States to increase support for gender-oriented training.<sup>172</sup> Resolution 1820 reaffirmed the Security Council's commitment to ending sexual violence as a weapon of war and a means to terrorise the population.<sup>173</sup>

The UN has implemented these resolutions in peacekeeping operations by setting targets to increase the numbers of female peacekeepers in missions<sup>174</sup> and by introducing gender advisors into missions.<sup>175</sup> As of March 2016, nine of 16 UN peacekeeping operations

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<sup>171</sup> Office of the Special Adviser on Gender Issues and Advancement of Women, 'Gender Mainstreaming: An overview' (2002) New York: United Nations.

<sup>172</sup> United Nations Security Council. Resolution 1325 (2000)

<sup>173</sup> United Nations Security Council Resolution 1820 (2008)

<sup>174</sup> United Nations Department of Peacekeeping operations, 'Policy dialogue to review strategies for enhancing gender balance among uniformed personnel in peacekeeping missions' New York: United Nations. 28-29 March 2006. Available at [http://www.un.org/womenwatch/ianwge/taskforces/wps/Final%20Report%20TCC%20PCC%20Policy%20Dialogue%20\\_English\\_.pdf](http://www.un.org/womenwatch/ianwge/taskforces/wps/Final%20Report%20TCC%20PCC%20Policy%20Dialogue%20_English_.pdf), accessed on 13 March 2016

<sup>175</sup> For the list of gender advisers in various UN peacekeeping missions, see the UN peacekeeping website, available at <http://www.un.org/en/peacekeeping/issues/women/recentwork.shtml>, accessed on 13 March 2016

had a full-time gender advisor.<sup>176</sup> Training on gender has been introduced, and the Department of Peacekeeping Operations has focussed on gender training as a key approach in their 'Gender Forward Looking Strategy 2014-2018',<sup>177</sup>

Some regional organisations have taken their lead from the UN, and have shown their commitment to resolution 1325 and also to the concept of gender mainstreaming.<sup>178</sup>

The second way in which the international and regional, legal and policy framework addresses the problem of discrimination against women and hyper-

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<sup>176</sup> United Nations Peacekeeping website, available at <http://www.un.org/en/peacekeeping/issues/women/recentwork.shtml>, accessed on 13 March 2016

<sup>177</sup> UN department of Peacekeeping Operations and Department of Field Support, 'Gender Forward Looking Strategy' (2014) New York: United Nations. Available at <https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwik1pa0kqXKAhXLsxQKHS-BAeUQFgggMAA&url=http%3A%2F%2Fwww.un.org%2Fen%2Fpeacekeeping%2Fdocuments%2FDPKO-DFS-Gender-Strategy.pdf&usq=AFQjCNHGb9agtD6veNAa5Z5NVoi-jJBNQ&sig2=5JlxweOw-2W2fA0Axf026w>, accessed on 13 March 2016, page 9

<sup>178</sup> For example, European Union Presidency Statement on Security Council Resolution 1325: Women, Peace and Security, 27 October 2005, available at [http://europa.europa.eu/articles/en/article\\_5204\\_en.htm](http://europa.europa.eu/articles/en/article_5204_en.htm), accessed on 13 March 2016; 'UN and NATO explore ways to enhance gender awareness, cooperation', available at [http://www.nato.int/cps/en/natohq/news\\_107784.htm](http://www.nato.int/cps/en/natohq/news_107784.htm), accessed on 13 March 2016

masculine cultures in peacekeeping operations is through the explicit prohibition of discrimination against women. As explained earlier, discrimination against women is internationally and regionally recognised as a violation of the human right to be free from discrimination.<sup>179</sup> Therefore, discriminatory attitudes and behaviour on peacekeeping operations can be considered a violation of international and regional human rights law.

In sum, the framework for the prevention of sexual exploitation and abuse by peacekeepers attempts to reduce the underlying discriminatory and hyper-masculine cultures present in peacekeeping operations by mainstreaming gender into peacekeeping operations, and by recognising discrimination against women as a violation of human rights.

### **3.4. Accountability mechanisms within the framework**

Many accountability mechanisms exist within the international and regional, legal and policy framework for the prevention of sexual exploitation and abuse of women and children by peacekeepers. This section will explore the main accountability mechanisms available under international and regional law, UN internal policy, and regional internal policies.

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<sup>179</sup> CEDAW 1979, op. cit. note 116, article 2; European Convention of Human Rights 1959, op. cit. note 121, article 14; ICCPR 1966, op. cit. note 114, article 26

### 3.4.1. International and regional judicial and quasi-judicial bodies

One available accountability mechanism within the international and regional, legal and policy framework for the prevention of sexual exploitation and abuse of women and children by peacekeepers is the judicial and quasi-judicial bodies that adjudicate on issues of international and regional human rights, humanitarian, and customary law. These bodies have traditionally held States accountable for violations of international law.

Human rights treaty bodies such as the Human Rights Committee, and the Committee for the Elimination of Discrimination Against Women have made recommendations on whether States have complied with their international legal obligations, and have recommended that States should pay compensation in some circumstances.<sup>180</sup>

Many regional human rights organisations have also established judicial institutions to make recommendations, such as the European Court of

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<sup>180</sup> For examples of jurisprudence from the Human Rights Committee, see the Human Rights Committee's jurisprudence database, available at <http://juris.ohchr.org/en/search/results?Bodies=8&sortOrder=Date> accessed on 13 March 2016 ; CEDAW Committee made the recommendation that Bulgaria pay the applicant 'adequate compensation to the author commensurate with the gravity of the violations of her rights' in *VK v Bulgaria*, CEDAW/C/49/D/20/2008, CEDAW Committee, 27 September 2011

Human Rights, and the African Court of Human and Peoples' Rights.

The International Court of Justice also has the power to adjudicate on issues of international humanitarian and customary law. They can issue opinions on State actions, and make recommendations for the payment of compensation.<sup>181</sup>

However, there have not been any cases of note that have held States or international organisations accountable under judicial or quasi-judicial bodies for violations of international law in the context of failing to prevent the sexual exploitation and abuse of women and children by peacekeepers.

One possible reason for an absence of case law is the difficulties in establishing the applicability of international law to international organisations. The extent to which international and regional, judicial and quasi-judicial bodies are able to hold international organisations such as the UN or the African Union accountable for their actions has been a point of tension. The refusal of the UN to accept legal responsibility for the cholera epidemic in Haiti is an indication of how difficult it is to hold international

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<sup>181</sup> International Court of Justice's jurisprudence database, available at <http://www.icj-cij.org/pcij/series-a.php?p1=9&p2=1>, accessed on 13 March 2016

organisations accountable, especially those as politically powerful as the UN.<sup>182</sup>

In sum, judicial and quasi-judicial bodies have the potential to hold States and international organisations accountable for their violations of international law, yet this potential has not been exercised in the context of sexual exploitation and abuse of women and children by peacekeepers, and the law is not explicit on the applicability of international law to international organisations.

### **3.4.2. Accountability mechanisms under the UN's internal system**

There are two main mechanisms available under the UN's internal system for holding UN staff and peacekeepers accountable for their failures to comply with their obligations to prevent, and for their failures in holding perpetrators accountable. UN personnel are either transferred over to their own State for discipline, or they face internal UN disciplinary procedures.

Under Status of Forces agreements, States have exclusive jurisdiction over their military troops in the context of discipline.<sup>183</sup> The Status of Forces agreement therefore means that States are obliged to discipline their troops, whereas the UN is exempt from an obligation to discipline military peacekeepers, once they

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<sup>182</sup> Yale Law School report, op. cit. note 30, at 2: 'The UN's refusal to establish a claims commission for the victims of the epidemic violates its contractual obligation to Haiti under international law.'

<sup>183</sup> Model Status of Forces Agreement, op.cit.note 198

have turned alleged perpetrators over to their troop-contributing State.

Although States are given exclusive jurisdiction over the discipline of their own troops, the UN does sometimes 'repatriate the individuals concerned, make recommendations to the troop contributing country, and ban the individual from future peacekeeping.'<sup>184</sup>

In addition, Ferstman has suggested that the overwhelming practice of the UN has been to turn non-military peacekeepers over to their own States.<sup>185</sup> According to the Hampson Report, '[a]llegations of minor misconduct against ... military observers or CIVPOL [UN police] are dealt with by the national contingent and senior officers of the military observers/CIVPOL.'<sup>186</sup>

There are limited accountability mechanisms available to the UN when a State fails to comply with the obligation to discipline. There are no judicial or quasi-judicial bodies available in cases of breach of internal UN or regional organisation law that apply to States. The accountability mechanisms available are political pressure, such as 'naming and shaming' a State, or forbidding the contributions of peacekeeping troops from accused States.

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<sup>184</sup> C. Ferstman,(2013) op. cit. note 26 at 4

<sup>185</sup> C. Ferstman, (2013) op. cit. note 26 at 4

<sup>186</sup> Hampson report (2005), op.cit.note 229 at para 72

The second accountability mechanism applies to non-military peacekeepers, such as UN police, or UN volunteers, and holds peacekeepers accountable under the UN's own disciplinary proceedings. When an allegation of misconduct is handled by the UN's own internal system, cases go to a dispute tribunal, which can result in dismissal, suspension or fines.<sup>187</sup>

### **3.4.3. Accountability mechanisms under regional internal systems**

Many regional peacekeeping operations have modelled themselves on the UN's accountability procedures. The two main accountability mechanisms under regional operations have therefore been the transfer of exclusive disciplinary jurisdiction of military peacekeepers to the troop contributing State, and the use of internal disciplinary measures, which do not include criminal accountability.

For example, the EU model Status of Forces agreement dictates that

'[T]he authorities of the sending State shall have the right to exercise all criminal and disciplinary jurisdiction conferred on them by the law of the sending State...'.<sup>188</sup>

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<sup>187</sup> UN staff rules and regulations (2014), op. cit. note 151, Chapter X Disciplinary measures

<sup>188</sup> Council of the European Union, 'Agreement between Member States of the European Union concerning the status of military and civilian staff seconded to the institutions of the European Union, of the headquarters and forces which may be made available to the

Furthermore, the EU's 'generic standards of behaviour for its European Security and Defence Policy ('ESDP')' document<sup>189</sup> outlines the generic disciplinary measures that should be included when ESDP missions are drafted. Staff are required to report any alleged violations by personnel of human rights or international humanitarian or international criminal law to the relevant chains of command, as established under the individual operation.<sup>190</sup>

The EU's 'generic standards of behaviour' document also distinguishes between disciplinary measures for military and for civilian personnel. Allegations against military personnel are referred to the national authorities or 'relevant authorities within EU institutions', whereas internationally contracted civilian personnel and locally contracted civilian personnel are reported to EU force commanders or EU heads of mission.

The general practice of the African Union is also to transfer jurisdiction to States to discipline military troops.<sup>191</sup> The AU staff regulations and rules outline the

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European Union in the context of the preparation and execution of the tasks referred to in Article 17(2) of the Treaty of the European Union, including exercises, and of the military and civilian staff of the Member States put at the disposal of the European Union to act in this context (EU SOFA). 2003/C 321/03. 31 December 2003

<sup>189</sup> EU generic standards of conduct (2003) p cit. note 147

<sup>190</sup> Ibid. at 9

<sup>191</sup> AU/UN hybrid operation in Darfur Status of Forces agreement (2008) op. cit. note 199, article 51(b)

establishment of a panel or a disciplinary board that examines and advises on filed grievances, and has the power to dismiss the accused staff member.<sup>192</sup> A staff member may appeal a decision, and may even appeal to the African Court of Justice and Human Rights once all internal remedies are exhausted.<sup>193</sup>

Similarly, regional organisations do not have legal power over States when States fail to discipline their troops. There is no judicial or quasi-judicial body under the regional peacekeeping operations that can hold States accountable. Therefore, regional organisation internal systems depend upon political pressure and their capacity to refuse troops from offending nations.

#### **3.4.4. Accountability mechanisms provided by troop contributing States**

National disciplinary measures normally entail criminal proceedings back in the perpetrator's home State. These proceedings and penalties therefore depend greatly on the criminal code of the home State.

However, as recommended by the Zeid report,<sup>194</sup> some troop contributing countries have started to

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<sup>192</sup> Assembly of the Union, Fifteenth Ordinary Session. 'Draft African Union Staff Regulations and Rules.' Assembly/AU/4(XV). 25-27 July 2010, available at <http://www.aucareers.org/Docs/English%20SRR.pdf>, accessed on 13 March 2016

<sup>193</sup> Ibid. at 62.3

<sup>194</sup> Zeid report (2005) op. cit. note 7 at 16

employ on-site court-martials who are able to deal with disciplinary and criminal matters more directly.<sup>195</sup>

### 3.4.5. Immunity

Another barrier to holding peacekeepers and higher officials accountable arises out of the principle of immunity. Immunity of UN forces was established in the Convention on the Privileges and Immunities of the UN,<sup>196</sup> and states that the UN is immune from any national proceedings brought against its staff whilst exercising functions in their UN capacity.<sup>197</sup> The immunity of peacekeepers is also enhanced by the inclusion of immunity clauses in Status of Forces agreements, agreed between host States and the UN.<sup>198</sup> Although the UN Convention on the Privileges and Immunities of the UN does not protect regional peacekeepers, most regional operations similarly

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<sup>195</sup> E.E. Defeis, (2008) op. cit. note 27 at 198

<sup>196</sup> Convention on the privileges and immunities of the United Nations 1946

<sup>197</sup> Ibid. Article IV, section 11 'representatives of members to the principal and subsidiary organs of the United Nations... shall, while exercising their functions... enjoy the privileges and immunities: (a) Immunity from personal arrest or detention'

<sup>198</sup> United Nations General Assembly, Secretary General Report. 'Comprehensive review of the whole question of peacekeeping operations in all their aspects. Model status-of-forces agreement for peacekeeping operations.' A/45/594. New York: United Nations. 9 October 1990, at article 47(b)

ensure immunity through their own regional conventions or in their Status of Forces agreements.<sup>199</sup>

Military peacekeepers are entitled to absolute immunity under the Status of Forces agreements,<sup>200</sup> and yet non-military peacekeepers are only entitled to the immunity provided to them under the UN Convention.<sup>201</sup> Under the Convention, military observers, and UN police are classified as 'experts on mission' and are therefore entitled to functional immunity, 'during the course of their duty.'<sup>202</sup> The functional immunity assigned to experts on mission should, in theory, not cover private acts of peacekeepers, which include criminal acts outside the scope of their duties. However, as Miller claims, the UN has in the past used a 'broad interpretation for the concept of acts undertaken in the course of official duties.'<sup>203</sup>

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<sup>199</sup> For instance, 'Agreement between the United Nations and the African Union and the government of Sudan concerning the status of the African Union/United Nations hybrid operation in Darfur', 9 February 2008, available at <http://unamid.unmissions.org/Portals/UNAMID/UNAMID%20SOFA.pdf>, accessed on 4 March 2016, article VI, para. 26; General Convention on the Privileges and Immunities of the Organisation of African Unity 1965; North Atlantic Treaty Organisation Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces 1951

<sup>200</sup> Model Status of Forces Agreement, op.cit.note 198, article 47(b)

<sup>201</sup> UN Privileges and Immunities Convention 1946, op. cit. note 196

<sup>202</sup> Ibid. at article VI

<sup>203</sup> AJ Miller, 'Legal Aspects of Stopping Sexual Exploitation and Abuse in UN Peacekeeping Operations' (2006) *Cornell International Law Journal*, Vol. 39, Issue 1, at 90

### 3.5. Power imbalance

The international and regional, legal and policy framework also addresses the problem of power imbalance between peacekeepers and local women and children. The Secretary General's 2003 bulletin includes power imbalance within its definitions of sexual exploitation and abuse,<sup>204</sup> and the UN's internal training programmes have included recognition of the heightened vulnerability of women in conflict settings.<sup>205</sup> In addition, chapter three has demonstrated how the framework has attempted to ensure accountability for sexual exploitation and abuse, thereby restricting the power of peacekeepers to exploit and abuse without consequence.

### 3.6. Conclusion

Chapter three has aimed to demonstrate how the international and regional, legal and policy framework works towards the prevention of sexual exploitation and abuse of women and children by peacekeepers. The framework has used various approaches to achieve its goal.

One approach has been to prohibit sexual exploitation and abuse as a violation of international and regional human rights, humanitarian, and

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<sup>204</sup> Secretary-General Bulletin (2003), op. cit. note 6

<sup>205</sup> For example, Gender Forward Looking Strategy 2014-2018, op. cit. note 177 at 3: 'Women are highly disadvantaged and at heightened risk of violence in times of conflict. They are also differently affected by conflict than men.'

customary law, as well as a violation of UN and regional organisation internal systems. The framework has further enhanced prohibition by imposing positive obligations on the UN, regional organisations and States to prevent exploitation and abuse.

The international and regional, legal and policy framework has also worked towards the prevention of sexual exploitation and abuse by peacekeepers by recognising the role of discrimination against women, and hyper-masculinity in the continuation of exploitation and abuse. The framework has recognised the need to respond to these cultural challenges through the use of gender mainstreaming policies, particularly within peacekeeping operations, and the explicit prohibition of discrimination against women as a human rights violation.

The framework has also worked towards the prevention of sexual exploitation and abuse of women and children by peacekeepers by imposing accountability mechanisms for when there is a failure to comply with the prohibition and obligations. The use of these accountability mechanisms also responds to the underlying culture of impunity, present in peacekeeping operations. However, the relevant immunity provisions also present an obstacle to the application of accountability mechanisms.

By recognising the significant role of power imbalance in cases of sexual exploitation and abuse, the framework has also addressed the unique nature of sexual exploitation and abuse of women and children by peacekeepers.

Therefore, the framework for the prevention of sexual exploitation and abuse of women and children by peacekeepers has worked towards this goal by:

1. Prohibiting sexual exploitation and abuse by peacekeepers;
2. Imposing positive obligations to prevent sexual exploitation and abuse by peacekeepers;
3. Imposing gender mainstreaming policies;
4. Imposing accountability mechanisms when there is a failure to comply with the prohibition and obligations; and by
5. Recognising the role of power imbalance in sexual exploitation and abuse by peacekeepers.

## **Chapter 4.**

### **Effectiveness of existing frameworks**

Despite the efforts of regional organisations, States, and the UN to create laws and policies that prevent the sexual exploitation and abuse of women and children by peacekeepers, sexual exploitation and abuse is still prevalent in peacekeeping settings. The persistent high prevalence of exploitation and abuse calls into question the effectiveness of the current framework.

This chapter aims to examine why the framework could be failing to effectively prevent the sexual exploitation and abuse of women and children by peacekeepers by highlighting and evaluating the main problems associated with the framework.

The main problems for the framework can be categorised into two main groups: the problems concerning the normative standards set by the framework, and the problems in the accountability mechanisms available under the framework. Chapter four will explore the main problems within these two categories, and conclude by evaluating the effectiveness of the international and regional, legal and policy framework in the prevention of sexual exploitation and abuse of women and children.

#### **4.1. Normative problems**

One way to test the effectiveness of an international and regional, legal and policy framework is to evaluate how successfully the framework sets clear,

explicit and comprehensive normative standards. Chapter three examined how the framework includes a prohibition as well as positive obligations to prevent sexual exploitation and abuse by peacekeepers. It also demonstrated how gender mainstreaming policies, and international women's rights legislation have set normative standards concerning the discrimination of women, and hyper-masculine behaviours present in peacekeeping operations. However, the international and regional, legal and policy framework for the prevention of sexual exploitation and abuse of women and children by peacekeepers still contains significant normative gaps, which the section below will explore.

#### **4.1.1. Overreliance on the UN's zero tolerance policy**

One significant normative problem with the international and regional, legal and policy framework is its lack of an explicit, uniform, and clear recognition of the problem of sexual exploitation and abuse of women and children by peacekeepers, which applies comprehensively across the framework.

Sexual exploitation and abuse of women and children by peacekeepers has been explicitly recognised, as a significant issue, under the UN's zero tolerance policy.<sup>206</sup> However, as demonstrated in chapter three, there is no source of international or regional law that explicitly recognises sexual exploitation and abuse of women and children *by*

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<sup>206</sup> Secretary-General Bulletin (2003), op. cit. note 6

*peacekeepers* as a problem, nor do they impose explicit obligations to prevent sexual misconduct by peacekeepers. Furthermore, not all regional organisations have imposed their own explicit policies to prevent the sexual exploitation and abuse of women and children by peacekeepers.

In addition, the approaches towards sexual exploitation and abuse of women and children in international and regional law are diverse. The concepts, procedures, and accountability mechanisms vary greatly, and the absence of an authoritative source on sexual exploitation and abuse of women and children by peacekeepers in international and regional law further enhances the lack of uniformity of approach across the framework.

A reliance on the UN's internal zero tolerance policy to explicitly and authoritatively recognise the problem of sexual exploitation and abuse by peacekeepers has therefore developed in the framework, which is problematic because the UN internal system does not apply to all peacekeeping operations, such as regional peacekeepers, and because it allows for the UN to take ownership over the framework. As will be examined in the accountability section, there are many dangers with allowing the UN to exclusively manage the framework for the prevention of sexual exploitation and abuse of women and children by peacekeepers.

#### **4.1.2. Failure to adequately address the problem of discrimination against women, and the**

### **culture of hyper-masculinity present in peacekeeping operations**

A normative problem with the framework is that it fails to adequately address the underlying discrimination against women, and hyper-masculine culture, present in peacekeeping operations. As explored in chapter two, discriminatory and hyper-masculine attitudes and behaviours in peacekeeping operations have been suggested to contribute towards the continued prevalence of sexual exploitation and abuse.<sup>207</sup> Chapter three demonstrated how the framework responds to these underlying problems through the inclusion of gender-mainstreaming policies, particularly in peacekeeping operations, and the prohibition of discrimination against women as a violation of international human rights law.

However, there are several normative gaps in the framework's approach to the underlying problem of discrimination and hyper-masculinity. One major problem is the lack of regional gender mainstreaming policies. Despite international recognition of the need to mainstream gender in peacekeeping operations,<sup>208</sup> regional organisations have tended to be less proactive. Some regional organisations have expressed their commitment to gender mainstreaming policies;<sup>209</sup> however there has been no legal assurance to comply

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<sup>207</sup> S. Martin (2005) op. cit. note 40, at 6

<sup>208</sup> For example, resolutions 1325 and 1820, op. cit. notes 172 & 173

<sup>209</sup> For example, EU Presidency Statement, op. cit. note 178

with the UN's resolutions on gender, or the adoption of explicit regional internal gender mainstreaming policies, which means that the framework does not comprehensively mainstream gender in all peacekeeping operations.

Another problem with the framework's approach to discrimination against women and hyper-masculinity within peacekeeping operations is that the UN itself has failed to achieve gender balance within its own system. The Secretary General's 2010 report into the advancement of women in the UN states that:

'a discouraging picture in the overall trends in the advancement of women in the United Nations system.'<sup>210</sup>

An unbalanced UN system is a significant problem for the prevention of discrimination against women and hyper-masculinity in peacekeeping operations because it undermines the UN's ability and commitment to achieve gender balance in peacekeeping operations. It creates the impression that gender mainstreaming is not particularly important or of immediate concern. The Office of the Special Adviser on Gender Issues and Advancement of Women noted in 2010 that:

'As a standard setting organisation, the United Nations has a particular responsibility to achieve

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<sup>210</sup> United Nations Secretary General Report. 'Improvements of the status of women in the United Nations system.' A/65/334. New York: United Nations, 9 September 2010 page 46, para 132

gender equality within its own system...The moral authority of the United Nations will be weakened if it is perceived to be communicating a message of “do as I say, but not as I do.”<sup>211</sup>

Another normative gap in the framework for the prevention of sexual exploitation and abuse by peacekeepers is the lack of an explicit recognition of sexual exploitation and abuse of women and children *by peacekeepers* as discrimination against women, and therefore, as a violation of international human and women’s rights. Despite the implicit recognition of sexual exploitation and abuse by peacekeepers as a form of discrimination against women, and as a human rights violation, as demonstrated in chapter three, explicit recognition would be considerably more persuasive. Explicit recognition of sexual exploitation and abuse by peacekeepers as a violation of international human and women’s rights would improve the legitimacy and ability of international human rights law to act as an effective tool in the prevention of sexual exploitation and abuse of women and children by peacekeepers.

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<sup>211</sup> Office of the Special Adviser on Gender Issues and the Advancement of Women/Office of the Focal Point for Women in the United Nations, ‘Achieving Gender Balance is Imperative for a Strengthened United Nations.’ New York: United Nations. February 2010. Available at <http://www.un.org/womenwatch/osagi/ianwge/Why%20Gender%20Balance%20-%20An%20Institutional%20Case.pdf>, accessed on 13 March 2016

## **4.2. Flawed accountability mechanisms**

Another essential element to an international and regional, legal and policy framework is its ability to hold relevant parties accountable for their failures to comply with the normative standards. It is therefore possible to assess the effectiveness of the framework for the prevention of sexual exploitation and abuse of women and children by peacekeepers by evaluating how effectively it holds relevant parties accountable.

As chapter three indicated, the framework includes various accountability mechanisms that function in diverse ways. However, there are many flaws in these mechanisms that prevent the framework from effectively holding the relevant parties to account. This section of chapter four will therefore explore the four main problems associated with these accountability mechanisms available under the framework.

#### 4.2.1. Reliance on States to discipline

As chapter three demonstrated, troop contributing States are exclusively responsible for the discipline of their military troops,<sup>212</sup> and non-military peacekeepers are often referred to troop contributing States when violations occur.<sup>213</sup> Therefore, the accountability of many peacekeepers depends upon their own State's ability to hold them accountable.

The reliance on States to discipline is problematic. One problem is that there is little evidence of successful convictions of perpetrators by troop contributing States. Ferstman has claimed that the 'rate of criminal prosecutions remains negligible.'<sup>214</sup>

The failure of troop contributing States to successfully discipline their troops could be attributed to the various challenges that States face in the effective investigation and conviction of perpetrators. First of all, some troop-contributing States do not include extra-territorial jurisdiction for sexual offences in their national laws, as demonstrated by the Secretary-General's request that States continue to update their laws to include nationality-based extra-territorial jurisdiction in his 2015 annual report on special measures for

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<sup>212</sup> UN Model Status of Forces Agreement, *op. cit.* note 198, article 47(b)

<sup>213</sup> C. Ferstman (2013) *op. cit.* note 26 at 4

<sup>214</sup> *Ibid.* at 3

protection from sexual exploitation and sexual abuse.<sup>215</sup> The absence of nationality-based extra-territorial jurisdiction necessarily bars troop-contributing States from holding peacekeepers criminally accountable under their own national laws.

Second, some countries do not take as inclusive an approach to sexual exploitation and abuse as the UN or international law. For instance, the 2003 bulletin includes transactional sex as a form of sexual exploitation, whereas some countries do not criminalise transactional sex in the same way. For instance, transactional sex is legal, to varying extents in Turkey,<sup>216</sup> New Zealand,<sup>217</sup> and the Netherlands.<sup>218</sup> Furthermore, some States involve procedures for obtaining evidence that make it difficult to form a case of sexual assault. For instance, the Islamic Penal Code requires the testimony of four men for every two women in some sexual offences.<sup>219</sup>

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<sup>215</sup> United Nations General Assembly. 'Special measures for protection from sexual exploitation and sexual abuse.' A/70/729. New York: United Nations. 16 February 2016

<sup>216</sup> Transactional sex is regulated under article 227 of the Turkish Penal Code 2004

<sup>217</sup> Prostitution Reform Act 2003

<sup>218</sup> The ban on brothels was lifted on 1 October 2000 when articles 250bis and 432 were removed from the Dutch Criminal Code.

<sup>219</sup> The Islamic Penal Code of 2013, Article 199: 'The standard [of proof] for testimony in all offenses shall be two male witnesses; unless in *zina*, *livat*, *tafkhez*, and *musahiqeh* which shall be proved by four male witnesses. In order to prove a *zina* punishable by the *hadd* punishment of flogging, shaving [of head] and/or banishment, testimony of two just men and four just women shall be sufficient. If

The investigation process is also extremely challenging. Investigations can be extremely complicated, as they often require the immediate dispatch of investigators to the host State, or some sort of collaboration with the UN, regional organisation or host State investigatory bodies, which can be difficult to arrange. For example, there is evidence of frustration amongst local authorities in Côte d'Ivoire, who cannot collect sufficient evidence due to a lack of cooperation and efficiency.<sup>220</sup>

Another challenge arises when perpetrators eventually come to trial. Most trials against peacekeepers for allegations of sexual exploitation and abuse are held in the troop contributing State,<sup>221</sup> which means that it can be difficult to facilitate the presence of witnesses for testimonies and questioning,<sup>222</sup> and communities will not be able to see justice being done, which is essential in order to break the culture of impunity in peacekeeping missions.

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the punishment provided is other than the above, testimony of at least three men and two women shall be required. In such cases, if two just men and four just women testify for the offense, only the *hadd* punishment of flogging shall be given. Bodily offenses punishable by diya shall also be proved by one male witness and two female witnesses.'

<sup>220</sup> C.Csáky (2008) op. cit note 17 at 16

<sup>221</sup> Although the Secretary General has called for an increase in the use of on-site court martials in his 2016 annual report, op. cit. note 215, at 27

<sup>222</sup> Troop-contributing States do not often have subpoena powers, RS Burke (2014) op.cit.note 26 at 45

The framework's reliance on States to discipline military peacekeepers is also problematic because it is very difficult to hold States accountable if they fail to overcome the various challenges described, and successfully discipline their troops. There are limited accountability mechanisms available to the UN or regional organisations if a State fails to comply with their agreements to effectively discipline their troops. The most effective mechanism is to rely on the 'naming and shaming' of troop contributing countries. The UN has been reluctant to do so, however, the Secretary-General's 2016 annual report on sexual exploitation and abuse by peacekeepers indicates a shift in position by naming several countries against which allegations have been made.<sup>223</sup>

The dependence on troop contributing States therefore allows perpetrators who are military personnel, and troop-contributing States who fail to fulfil their obligation to discipline, to escape punishment.

#### **4.2.2. Absence of criminal accountability mechanism for non-military personnel**

Another significant problem with the accountability mechanisms is the lack of criminal accountability for non-military peacekeeping personnel. As chapter three explained, non-military personnel are not always referred to the host State or troop contributing State for criminal disciplinary procedures, and therefore do not face criminal proceedings at all.

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<sup>223</sup> United Nations (2016), op. cit. note 215 at 9

Similarly, regional organisation personnel who are not military peacekeepers do not always face criminal procedures.

Criminal accountability mechanisms are an essential tool in the prevention of sexual exploitation and abuse of women and children by peacekeepers. They serve as a strong deterrent for potential perpetrators, and ensure that perpetrators receive a punishment that reflects their misconduct.

Criminal accountability mechanisms also provide a sense of justice to victims and local communities. The absence of criminal accountability mechanisms for non-military peacekeepers is therefore extremely concerning.

#### **4.2.3. Inconsistency amongst peacekeepers**

The lack of criminal accountability mechanisms for non-military peacekeepers also highlights the inconsistent accountability mechanisms available between peacekeepers. As recognised in chapters two and three, peacekeepers are a diverse and broad category of people, and there are various ways in which a peacekeeper can be employed and deployed to a peacekeeping operation. For instance, military peacekeepers are employed by their own national armies, who have in turn, entered into agreements with the UN or regional organisation, and host States.<sup>224</sup> On

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<sup>224</sup> United Nations Economic and Social Council, 'Working paper on the accountability of international personnel taking part in peace

the other hand, UN police officers are member State police officers, who are employed directly by the UN Police Division,<sup>225</sup> and UN volunteers are employed by the UN Volunteers Division.<sup>226</sup> Therefore, there are a variety of contracts and agreements that bind peacekeepers, and not all peacekeepers are bound by the same agreements, or under the same authority.

As highlighted in chapter three, the scope of immunity that various peacekeepers enjoy also depends upon the various agreements and treaties and is therefore inconsistent.

The lack of consistent authority, immunity, and obligations between various peacekeepers is problematic for the prevention of sexual exploitation and abuse of women and children by peacekeepers, because it prevents the consistent and uniform application of accountability mechanisms between peacekeepers, which can appear unfair, and confusing.

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operations submitted by Françoise Hampson’  
E/CN.4/Sub.2/2005/42. New York: United Nations. 7 July 2005 at 7

<sup>225</sup> Ibid. at 8

<sup>226</sup> UN volunteers register online directly, ‘Register to be a UN Volunteer’, available at <http://www.unv.org/en/how-to-volunteer/register-to-be-a-un-volunteer.html>, accessed on 13 March 2016

#### **4.2.4. Lack of independent accountability mechanisms for UN staff**

Another problem with the accountability mechanisms in the framework for the prevention of sexual exploitation and abuse by peacekeepers is that these mechanisms fail to hold UN higher officials accountable for their failures to respond appropriately to reports.

There is also evidence of a reluctance to investigate claims made against UN higher officials<sup>227</sup> and a lack of independence from the offices that handle the accountability of UN staff.<sup>228</sup>

The use of international and regional human rights judicial and quasi-judicial bodies to hold UN staff accountable for their failures to respond appropriately to allegations of sexual exploitation and abuse is unlikely as it is the UN or regional organisation that would be held accountable, rather than the individual UN staff, under international and regional law.<sup>229</sup>

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<sup>227</sup> '[I]t's all about protecting those in senior positions and protecting the institution against any charges of abuse of authority' S. Walden & B. Edwards (2012), op.cit. note 34 at 19; 'Several respondents noted the disparity in discipline between managers who committed misconduct and people at the lower levels', op. cit. note 34 at 20

<sup>228</sup> M. Deschamps, H.B. Jallow & Y. Sooka (2015), op. cit. note 25 at xiii

<sup>229</sup> International and regional human rights and regional law has horizontal effect, namely, it applies to individuals once it is part of their own national law.

Therefore, the only mechanisms capable of holding UN staff accountable for their failures to respond to allegations appropriately are internal UN mechanisms, which lack independence, and often do not succeed in holding UN officials accountable for their misconduct.

#### **4.2.5. Lack of independent accountability mechanism for the UN and regional organisations**

A further problem with the framework for the prevention of sexual exploitation and abuse by peacekeepers is the lack of effective independent accountability mechanisms that have the capacity to hold the UN, as a collective institution, and regional organisations accountable for their failures to prevent sexual exploitation and abuse by peacekeepers.

Despite the recognition of the applicability of international customary law to international organisations, as examined in chapter three, there have been no significant cases in international law in which the UN or regional organisations have been held accountable for their failures to prevent sexual exploitation and abuse by peacekeepers.

One possible reason for the absence of international case law is the difficulties in establishing the applicability of international law to international organisations, but it could also be argued that the political influence of the UN also protects it from the jurisdiction of international and regional judicial and quasi-judicial bodies.

The ability of the framework to hold the UN and regional organisations accountable for their failures to prevent sexual exploitation and abuse by peacekeepers is absolutely essential to the effectiveness of the framework. Considering the many failures of the UN, and its culture of impunity, it is unreasonable for the UN and regional organisations to retain ownership over their own accountability.

### **4.3. Conclusion**

The use of an international and regional, legal and policy framework in the prevention of sexual exploitation and abuse of women and children by international and regional peacekeepers has been problematic in many respects. The current framework depends upon the UN's internal system to explicitly recognise sexual exploitation and abuse by peacekeepers, and it does not sufficiently address discrimination against women and hyper-masculine cultures, present in peacekeeping operations. Furthermore, the current accountability mechanisms often fail to hold peacekeepers, States, the UN and regional organisations accountable.

Considering how difficult it is to collect statistics that accurately represent sexual exploitation and abuse in the peacekeeping context,<sup>230</sup> it is difficult to evaluate whether the use of an international and regional, legal and policy framework has decreased the number of cases of sexual exploitation and abuse in peacekeeping

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<sup>230</sup> As demonstrated in the research methodology of chapter one

settings, and therefore been effective. However, the existence of so many significant problems with the framework suggests that the use of the framework in the prevention of sexual exploitation and abuse has not been as effective as it could be in addressing the issue. Chapter four has aimed to demonstrate how the outlined problems detrimentally impact on the success of the framework in the prevention of sexual exploitation and abuse by peacekeepers.

Therefore, it is argued that the use of an international and regional, legal and policy framework in the prevention of sexual exploitation and abuse by peacekeepers has not been very effective, and that the effectiveness of the framework could be greatly improved.

## **Chapter 5.**

### **Improvements to the framework**

In order to improve the international and regional, legal and policy framework for the prevention of sexual exploitation and abuse of women and children by peacekeepers, it is necessary to address the problems highlighted in chapter four, while simultaneously continuing to address the overarching problems highlighted in chapter two. Various interventions have been put forward over the years to improve the laws and policies within the framework, as identified in the above literature review.

Chapter five will explore four main interventions to improve the framework: the development and adoption of a new convention on the criminal accountability of UN personnel; the increased engagement of international human rights institutions in sexual exploitation and abuse by peacekeepers; the adoption of regional policies; and the use of whistleblowers in the prevention of sexual exploitation and abuse by peacekeepers.

Chapter five will conclude by synthesising the main arguments put forward in this dissertation, evaluating how this dissertation has aimed to contribute to the current literature, and by identifying how to move forward in terms of research.

### 5.1. New convention on the criminal accountability of UN personnel

One recommended intervention that has received a considerable amount of attention is the draft convention on the criminal accountability of UN personnel. Drafted by a working group of legal experts in 2006,<sup>231</sup> the draft convention facilitated the ability of host and troop-contributing States to ensure that non-military peacekeepers could be held criminally accountable for sexual exploitation and abuse. It promoted the use of host States in the discipline of peacekeepers, and gave them priority in exercising jurisdiction.<sup>232</sup> The draft convention also suggested that trials be held in host States whenever appropriate, and that the capacity of host institutions to handle cases would be built up.<sup>233</sup> The draft convention also encouraged increased cooperation between host and troop contributing States.<sup>234</sup>

A convention on the criminal accountability of UN personnel would be a useful intervention in several ways. A new convention would allow for greater consistency in the discipline of peacekeepers, and would ensure the effective criminal accountability of non-military peacekeepers. By focussing on the role of the host State, the Group of Legal Expert's draft convention would allow local communities the

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<sup>231</sup> UN report (2006), *op. cit.* note 45, at 29

<sup>232</sup> *Ibid.* at 2

<sup>233</sup> *Ibid.* at 13

<sup>234</sup> *Ibid.* at 37, article 10

opportunity to see justice being done. Such a convention would contribute towards the elimination of the underlying culture of impunity, and provide a more powerful deterrent to non-military perpetrators.

### 5.1.1. Challenges

On the other hand, the development of a new convention has faced considerable challenges and criticisms. Deen-Racsmány has criticised the draft convention's exclusion of military peacekeepers<sup>235</sup> and some commentators and States have that the narrow interpretation of sexual offences would need to be reformed.<sup>236</sup>

By significantly relying on host States to discipline peacekeepers, a new convention also runs the risk of assigning the accountability of peacekeepers to under-resourced and damaged host State infrastructures. The proposed intervention would therefore require a considerable amount of funding. However, it could alternatively be a very successful improvement in the long term, and a better alternative to the current situation of significant impunity.

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<sup>235</sup> Z. Deen-Racsmány, ' "Exclusive Criminal Jurisdiction over UN Peacekeepers and the UN Project(s) on Criminal Accountability: A Self-Fulfilling Prophecy?' (2014) Forthcoming in Issues 1-2 of The Military Law and the Law of War Review (2014) Prepublication version of 22 August 2014. Available at SSRN: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2488424](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2488424), accessed on 13 March 2016

<sup>236</sup> E.E. Defeis, (2008) op. cit. note 26, at 202

## 5.2. Taking a rights-based approach to sexual exploitation and abuse by peacekeepers

The second recommendation put forward by this dissertation is the increased engagement of international human rights law in the problem of sexual exploitation and abuse of women and children by peacekeepers.

As chapter four highlighted, the international and regional response to the issue of sexual exploitation and abuse by peacekeepers has largely been dictated by UN internal policy, which has led to an overreliance on the UN internal framework, and a dearth of independent mechanisms that can hold the UN and its personnel effectively accountable. However, by implementing a rights based approach to the framework for the prevention of sexual exploitation and abuse of women and children by peacekeepers, the framework could open up to a variety of international and regional judicial and quasi-judicial human rights bodies, with the capacity to address systemic issues that enable sexual exploitation and abuse to go unpunished, and to impartially hold UN personnel accountable.<sup>237</sup>

A rights-based approach and the increased engagement of international human rights law in the framework for the prevention of sexual exploitation and

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<sup>237</sup> Rosa Freedman, 'When UN peacekeepers commit atrocities, someone has to act' *The Conversation online*, 17 November 2014, available at <http://theconversation.com/when-un-peacekeepers-commit-atrocities-someone-has-to-act-34317>, accessed on 13 March 2016

abuse by peacekeepers could also encourage the explicit development of sexual exploitation and abuse by peacekeepers as a violation of human rights.

The explicit recognition of sexual exploitation and abuse of women and children by peacekeepers as a human rights issue, and not simply a UN internal issue, could also provide a useful political incentive for States and the UN to comply with their pre-existing obligations.

There are various ways in which the international community could impose a rights-based approach on the problem of sexual exploitation and abuse by peacekeepers.

One suggestion is the development of a General Recommendation by the Committee for the Elimination of Discrimination Against Women that explicitly recognised the unique nature of sexual exploitation and abuse by peacekeepers, including its unique kind of power imbalance, and the underlying relationship with discrimination against women in peacekeeping missions, and a culture of hyper-masculinity.

Another possible suggestion is to further enhance the 'Human Rights Up Front' initiative,<sup>238</sup> launched in late 2013 by the UN Secretary-General. The initiative works to 'ensure the UN system takes early and effective action... to prevent or respond to

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<sup>238</sup> 'Human Rights Up Front' available at <http://www.un.org/sg/rightsupfront/doc/RuFAP-summary-General-Assembly.shtml>, accessed on 13 March 2016

large-scale violations of human rights... by realizing a cultural change within the UN system.<sup>239</sup>

However, it can be argued that the implementation and adoption of further guidance documents does not go far enough in ensuring that States and the UN comply with their human rights obligations. Therefore, the implementation and adoption of a convention on violence against women could prove more beneficial to the prevention of sexual exploitation and abuse by peacekeepers. By imposing an explicit legal norm that recognises violence against women as a violation of international human rights, States would be under significantly more pressure to comply with their pre-existing obligations. A legal convention would also lead to the introduction of an independent judicial body that could deal specifically with violence against women.

### **5.3. The adoption and implementation of regional internal policies**

The third intervention examined by this dissertation is the adoption and implementation of explicit regional internal policies for the prevention of sexual exploitation and abuse of women and children by peacekeepers. As chapters three and four explored, some regional organisations have taken steps to prevent sexual exploitation and abuse, however, there is still a significant lack of clear and explicit regional

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<sup>239</sup> Ibid.

policies that effectively address sexual exploitation and abuse by regional peacekeepers.

The adoption and implementation of regional internal policies would be extremely important for the improvement of the overall framework. The implementation of regional internal policies would ensure that regional peacekeepers were held accountable, and create greater consistency amongst peacekeepers across the framework. The use of regional internal systems in the prevention of sexual exploitation and abuse by peacekeepers would also strengthen the deterrent effect on potential perpetrators, and signal a serious commitment to the prevention of sexual misconduct by peacekeepers.

### **5.3.1. Requirements for regional internal policies**

As mentioned in chapter three, regional organisations are complex and diverse, and therefore, the adoption and implementation of regional internal systems for the prevention of sexual exploitation and abuse by peacekeepers in regional peacekeeping operations would need to reflect the requirements of their specific regional organisations. Different regional organisations have approached the problem in different ways. For instance, the African Union developed a draft policy on prevention and response to sexual exploitation and abuse,<sup>240</sup> whereas the European Union has established generic standards of conduct for its

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<sup>240</sup> L. Bader & S. Muscati (2014) op. cit. note 37

peacekeepers.<sup>241</sup> Furthermore, the various cultural backgrounds in regional organisations significantly influence their approaches to issues such as gender.

However, as chapter three identified, there are still some common trends between regional organisations,<sup>242</sup> which means that it is still possible to identify some basic requirements necessary for the effective adoption and implementation of a regional internal policy for the prevention of sexual exploitation and abuse.

The UN Secretary-General's 2003 bulletin is an effective starting point for the development of these standards, not only due to its inclusive definitions and detailed obligations, but also because it is the authoritative UN source for normative standards, and would therefore maintain consistency across the framework.

Human Rights Watch has identified some important requirements for regional internal policies when suggesting improvements to the African Union's peacekeeping mission in Somalia.<sup>243</sup> The first requirement is the inclusion of explicit normative standards that define sexual exploitation and abuse by peacekeepers, prohibit sexual exploitation and abuse

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<sup>241</sup> EU generic standards of conduct (2003) op. cit. note 147

<sup>242</sup> Chapter three highlighted the common trends amongst regional organisation internal policies for the prevention of sexual exploitation and abuse by peacekeepers.

<sup>243</sup> L. Bader & S. Muscati op. cit. note 37

by peacekeepers, and impose positive obligations on regional peacekeepers and their organisations to prevent misconduct.

The second requirement is the development of complaint mechanisms, conduct and discipline units, and independent and well-resourced investigative mechanisms. The third requirement is the implementation of a systematic data collecting mechanism that delineates between the different kinds of sexual exploitation and abuse, victims, and perpetrators. The systematic vetting of forces would also be necessary in a regional internal system for the prevention of sexual exploitation and abuse by regional peacekeepers.

Another important aspect to the development of regional internal policies should be the development of regional gender mainstreaming policies. As has been explored in previous chapters, gender mainstreaming plays a significant role in addressing the underlying problems of discrimination against women and hyper-masculinity present in peacekeeping operations. Therefore, regional organisations must also recognise the need to address these problems by committing to gender mainstreaming explicitly, either by legally committing to the UN's Security Council resolutions, or by implementing their own gender mainstreaming policies.

### **5.3.2. Challenges**

On the other hand, the adoption and implementation of regional internal policies for the prevention of sexual exploitation and abuse by

peacekeepers faces some challenges. Considering the lack of evidence and research into the sexual exploitation and abuse of women and children by regional peacekeepers, regional organisations do not feel the same pressure to take specific action against sexual misconduct by peacekeepers. Therefore, it could be difficult to persuade regional organisations to invest time and funding into a problem that has not been proven to exist.

However, research into regional peacekeeping is increasing,<sup>244</sup> and it can be argued that it is only a matter of time before regional organisations begin to experience similar pressure and damage to their reputations.

#### **5.4. Improving protection of whistleblowers**

The final intervention to the framework that this chapter will examine is the improvements to the protection of whistleblowers. As chapter four has highlighted, the lack of accountability of the UN and its staff is a significant obstacle to the effective use of an international and regional, legal and policy framework for the prevention of sexual exploitation and abuse of women and children by peacekeepers. Whistleblowing, although often controversial, has historically been very useful in exposing misconduct by the UN, and ensuring accountability, to a certain extent.<sup>245</sup> Whistleblowers

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<sup>244</sup> H. Yamashita (2012), *op.cit.* note 39 at 1

<sup>245</sup> K. Bolkovac & C. Lynn *op. cit.* note 2

provide an accountability mechanism that is completely independent from the UN itself.

However, whistleblowers often do not have any protection from retaliation and threats, which discourages potential future whistleblowers. Therefore, there is a need for more effective protection of whistleblowers, especially within the UN. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression recently published a report, outlining recommendations to improve the protection of whistleblowers.<sup>246</sup> These recommendations included the development and revision of national legal frameworks protecting whistleblowers, the active promotion of respect for the right to access to information, and the adoption of effective norms and policies of transparency.<sup>247</sup>

#### **5.4.1. Challenges**

However, the recommendations for further protection of whistleblowers face some challenges in their implementation. Despite the UN's commitment to human rights, including the right to freedom of expression, the UN has a history of covering up any damaging information or allegations against it, and the idea of increasing the protection of whistleblowers may feel counterintuitive to the current norms and practices

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<sup>246</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (2015), op. cit. note 36 at 23

<sup>247</sup> Ibid at 24

of the UN. There is therefore likely to some reluctance amongst UN staff for increased transparency, which could significantly handicap the development of whistleblower protection policies through the UN bureaucratic channels.

### **5.5. Concluding remarks**

This dissertation has examined the use of an international and regional, legal and policy framework in the prevention of sexual exploitation and abuse of women and children by international and regional peacekeepers, and how the framework can be improved.

By exploring and identifying the main aspects to the problem of sexual exploitation and abuse of women and children by peacekeepers in chapter two, including the power imbalance between peacekeepers and local people, and the societal norms of impunity, hyper-masculinity, and discrimination against women, this dissertation explained how the problem of sexual exploitation and abuse is broader than the misconduct itself.

Chapter three identified how the framework has aimed to address the broader problem by: prohibiting sexual exploitation and abuse by peacekeepers; imposing obligations on peacekeepers and other relevant parties; imposing gender mainstreaming policies that work towards the elimination of discrimination against women in peacekeeping operations and the reduction of hyper-masculine cultures; imposing accountability mechanisms for the failure to comply with the prohibition and obligations;

and by recognising the role of power imbalance in sexual exploitation and abuse by peacekeepers. By conceptualising the various international and regional laws and policies as a singular framework, this dissertation aimed to provide a coherent representation of the problem from a legal perspective.

Chapter four highlighted the main problems associated with the framework. These included problems with the normative standards of the framework, and problems with the accountability mechanisms. In light of these significant problems, chapter four concluded that the international and regional, legal and policy framework has not been very effective in the prevention of sexual exploitation and abuse by peacekeepers, and could be greatly improved.

This dissertation has therefore attempted to demonstrate how the current use of the international and regional, legal and policy framework for the prevention of sexual exploitation and abuse of women and children by peacekeepers is not very effective, and that it can be improved through various interventions, as examined in chapter five.

The recommendations put forward in chapter five included the implementation and adoption of a new convention on the criminal accountability of UN personnel; the increased engagement of a rights based approach; the development of explicit regional internal policies for the prevention of sexual exploitation and abuse by peacekeepers; and the increased protection of whistleblowers. Despite the challenges that the

above recommendations face, they all share the common emphasis on a need to address the problem of sexual exploitation and abuse by peacekeepers from a broader perspective, and to recognise the use of mechanisms outside of the UN's internal toolkit.

This dissertation has attempted to contribute to the literature on sexual exploitation and abuse of women and children by peacekeepers by providing a comprehensive account of the relevant laws and policies that are relevant to the sexual exploitation and abuse of women and children by peacekeepers. This dissertation has identified an overarching framework and by doing so, attempted to highlight significant normative and accountability gaps in the framework.

This dissertation has also attempted to contribute to the literature on sexual exploitation and abuse by peacekeepers by emphasising how important it is for the various areas of international and regional law and policy to engage with each other to further enhance the success of the framework. For instance, this dissertation has highlighted how sexual exploitation and abuse of women and children by peacekeepers is a human rights and humanitarian issue, and the increased involvement of international women's rights and humanitarian legal institutions could ensure greater accountability of peacekeepers and UN staff in their obligations to prevent this misconduct. The increased recognition of the role of whistleblowers in the accountability of the UN could also be extremely useful.

Furthermore, by identifying and unpacking how regional organisations fit into the overall framework, this

dissertation has attempted to prepare for the increasing involvement and reliance on regional organisations in international peacekeeping.

By focussing on desk-based research, this dissertation has not collected data on the prevalence of sexual exploitation and abuse by regional peacekeepers in regional peacekeeping operations nor has this dissertation collected independent statistics to verify the UN's claims. This dissertation therefore recommends and wishes to highlight the continuous need for independent research that provides systematic data on the prevalence of sexual exploitation and abuse in UN and regional peacekeeping settings.

Continued legal research into the applicability of international law to international organisations is also essential for the development of independent accountability mechanisms for the UN.

Sexual exploitation and abuse of women and children by peacekeepers is particularly disturbing. The exploitation and abuse of vulnerable people by peacekeepers, in a position of considerable power, is unique, and must be recognised explicitly across all relevant international and regional laws and policies. Despite international and regional commitment to prevent this unique misconduct, the current framework is currently failing to effectively prevent the sexual exploitation and abuse of women and children by peacekeepers, and there is much that can still be done to ensure that women and children feel safe in peacekeeping operations.

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