

# WHO WILL GUARD THE GUARDIANS?

**SEXUAL EXPLOITATION AND ABUSE BY PEACEKEEPERS:  
FOCUS ON THE DEMOCRATIC REPUBLIC OF THE CONGO**



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Abstract: After allegations of sexual exploitation and abuse by UN peacekeeper became world-wide news, different responses have been given. It is clear that this problem requires a solution as soon as possible. This thesis will describe the case of the Democratic Republic of the Congo. What happened and how did the UN respond? Several suggestions have been made to solve this problem, both by UN representatives and academics. This thesis will also include a detailed account of the perspective of the victim; what do they need? All of these different thought and ideas have to be taken into account when assessing the complex situation of misconduct by peacekeepers. Most important of all, a holistic view is required in order to find a solution.

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## 1. Introduction

*“United Nations Secretary General Kofi Annan has said there is clear evidence that UN staff sexually abused refugees in the Democratic Republic of Congo... ... He added: "I am afraid there is clear evidence that acts of gross misconduct have taken place. This is a shameful thing for the United Nations to have to say, and I am absolutely outraged by it.”<sup>1</sup>*

*“Members of the United Nations peacekeeping forces in southern Sudan are facing allegations of raping and abusing children as young as 12, The Daily Telegraph reported today... ... It is thought that hundreds of children may have been abused.”<sup>2</sup>*

The above quotes from newspaper articles tell a terrible story; the story of people that feel like they are being protected, that finally feel safe after a long time of having lived in fear, only to be betrayed by those who they thought protected them. Sexual abuse and exploitation by UN peacekeepers were documented for the first time in Bosnia, Herzegovina and Kosovo. After that there have been cases of abuse in Mozambique, East Timor, Cambodia and Liberia (Defeis, 2008). Peacekeeping forces are generally known for the good work they do in protecting and saving lives. However, besides recorded cases of sexual abuse there also have been cases of human rights violations and involvement in illegal activities by peacekeepers. This is of course a very serious problem; the goal of peacekeeping missions and humanitarian intervention is to keep people safe, to protect them. Obviously, sexual abuse and other violations in no way support this goal, but even contradict it. Abuse and violations should never happen, and they can be even more devastating if they are committed by persons that one is supposed to trust. In these cases there is a power imbalance which makes victims more vulnerable. Finkelhor and Browne (1985) name ‘betrayal’ as one of four important factors that make sexual abuse traumatizing. Betrayal seems like a right term to describe sexual abuse and exploitation by peacekeepers.

International peacekeeping forces deployed in conflict and post-conflict zones – mostly under the aegis of the United Nations – enjoy jurisdictional immunity in territories where they are deployed. This means that they cannot be prosecuted by the United Nations or by the country in which they are deployed, and that their victims can’t achieve restoration and compensation (Zeid, 2005; Aoi, de Coning & Thakur, 2007). This leads to the central research

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<sup>1</sup> Annan admits UN DR Congo abuses, <http://news.bbc.co.uk/2/hi/africa/4027319.stm>, accessed on 25-02-2013

<sup>2</sup> Holt, K. & Hughes, S. (2007). UN staff accused of raping children in Sudan, <http://www.telegraph.co.uk/news/worldnews/1538476/UN-staff-accused-of-raping-children-in-Sudan.html>, accessed on 25-02-2013

question of this thesis:

**How can individuals victimized by international peacekeepers achieve their justice?**

The answer to this question will be found by extensively reviewing different literature sources on this subject. I have examined United Nations documents and reports, media articles on the topic, scientific articles about the case and several websites of for example non-governmental organizations (hereafter NGO's) in order to get a good view on the situation. I have studied this subject by focusing on one high-profile case; the case of the MONUC mission in the Congo. I have chosen this case study because it is one of the most well-known cases of exploitation and abuse by peacekeepers. It is mostly this case that brought the issue under the attention of the general public, and it is a case on which much literature has been written.

This thesis will be roughly divided into two parts. The first part will describe the case of sexual abuse and exploitation by peacekeepers in the Democratic Republic of Congo (hereafter the DRC). The first chapter, chapter 2, will start with a discussion on the basics of humanitarian intervention and peacekeeping missions. This will entail the rules and procedures leading to intervention, how the missions work in practice, and it will discuss the immunity that the forces have. In the third chapter I will discuss the case of the Congo; the events leading to intervention, what did the mission entail exactly, and the abuses committed by the peacekeepers. This will be followed by chapter 4, still in part I, which will be a continuation of the case study of the DRC, now focusing on the aftermath of the abuse; for the victims, the perpetrators, but also how the media and the different authorities involved reacted. The second part of this thesis will discuss possible justice avenues for the victims. First, in chapter 5, we will go in to the punishment that the abusers get. This punishment is in most cases very light. How can this happen, and in what way can this be changed without touching state sovereignty? Chapter 6 will discuss the needs of the victims; their abusers are far away from them and the victims often don't even know if the offenders are getting punished and how. How can we make sure that justice is not only achieved in the greater sense, by punishing the offender, but also on a smaller scale; by helping the victim. I will conclude this thesis with an answer to the central research question, a review of the research process for this thesis, and advice on what to do with the findings of this research.

## 2. Peacekeeping operations

### 2.1 The basics of peacekeeping and humanitarian intervention

After the first world war the League of Nations was founded, with the goal of preventing wars through collective security and disarmament, and solving international problems with negotiation. The League of Nations had some other goals as well (Labor conditions, arms trade, etc.), but preventing war was its primary objective. Though the League of Nations clearly failed (it could not prevent the second world war), it can be seen as the predecessor of the United Nations and therefore has not been a complete failure (Kolb, 2010). The United Nations (hereafter UN) was created immediately after the second world war. One of the first things that was established was that the five permanent Member States; China, France, Russia, the United Kingdom and the United States got the right to veto. Currently the UN consists out of 193 Member States.

Article 1 of the UN states its purposes; *'1. To maintain international peace and security... 2. To develop friendly relations among nations... ..strengthen universal peace. 3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character... 4. To be a center for harmonizing the actions of nations in the attainment of these common end.'* (White, 2002, p. 13).

The first purpose of the UN is especially relevant when we are talking about peacekeeping and humanitarian operations. There is a difference between peacekeeping missions and humanitarian intervention. Humanitarian intervention happens with the goal of ending human rights violations in a country. It is often decided upon without permission of the state where the human rights violations take place, and therefore interferes with that state's sovereignty. The UN Security Council has to authorize any military action that is undertaken; article 53: *'No enforcement action shall be taken under regional arrangements or by regional arrangements without the authorization of the Security Council'* (White, 2002, p. 142). Peacekeeping is less intrusive, and happens in consensus with the state in question. In many cases it is requested by the state itself. Peacekeeping forces oversee cease-fires and the implementation of peace agreements. Peacekeeping forces are often unarmed, or armed only lightly; they are often not authorized to use force except in cases of self-defense. This means that they cannot do anything if major hostilities break out again. There has been much discussion about this issue, because there have been cases in which UN peacekeepers were merely bystanders during mass murders, such as the massacres in Rwanda in 1994 and Srebrenica in 1995. The UN forces were at the right place to intervene, but they didn't have

the authorization to do so because their mandate was limited to peacekeeping only (White, 2002). There has been a slight increase in the amount of force peacekeepers are allowed to use over the past years (Kolb, 2010). Before the 1990s the missions were often limited to monitoring the cease-fires and the implementation of the peace agreements. The tasks to be performed by peacekeepers have increased since the 1990s: The missions now often also entail civilian administrative tasks, monitoring the human rights situation, humanitarian aid, training of local police officers, sometimes participating in nation building activities, the supervising of fair and free elections and more (Kolb, 2010; White, 2002).

Once the creation of a mission is approved, member states are asked for a contribution (soldiers, equipment, money, etc.). The member states are obliged to pay their share of peacekeeping costs. At this moment, Pakistan and Bangladesh are the states that contribute the highest number of troops to UN peacekeeping missions worldwide. About 4.5% of the troops come from the European Union (hereafter EU) and less than 1% comes from the United States of America (hereafter US). Developing countries tend to participate more in peacekeeping operations<sup>3</sup>. A reason for this could be that the UN reimburses the countries for every participating peacekeeper. Besides salaries, the soldiers get training and equipment; this enables those developing countries to have larger armies than they otherwise would have had.

## **2.2 Different categories of personnel, jurisdiction and immunity**

We refer to the soldiers that are sent by member states as national contingents. They are however not the only UN-related personnel in a mission. The people that join a UN peacekeeping force have different statuses (Notar, 2006); they come from a different background and different rules and laws apply to them. There can for example be a civilian component, a military component and a civilian police component (Zeid, 2005). What rules and codes of conduct (see section 2.3) personnel has to subject to, or whether or not they enjoy certain immunities depends on the category of personnel they belong to.

As mentioned before, one of the categories is national contingents. These often form the largest part of an operation (Hampson & Kihara-Hunt, 2007). They are employed as a part of their country and therefore fall under the jurisdiction of their home country. They are granted immunity from the jurisdiction of the host state, which means that the host state cannot prosecute them. Neither can the UN; in international law there is no legal obligation to follow orders of the Force Commander (Hampson & Kihara-Hunt, 2007). When national

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<sup>3</sup> Troop and police contributors, <http://www.un.org/en/peacekeeping/resources/statistics/contributors.shtml>, accessed on 10-05-2013

contingents commit crimes, it is up to the troop contributing country to take legal action. Military observers are a different category of personnel that is involved in peacekeeping missions. These are recruited as individuals, however they still fall under the criminal and disciplinary jurisdiction of the sending state. They also, like national contingents, enjoy immunity from jurisdiction of the host state. During the mission they fall under the command of the UN (Hampson & Kihara-Hunt, 2007). Another category of personnel that is recruited through the sending state is civilian police (hereafter CIVPOL). These have to be either retired or serving police members. They are supposed to fall under the jurisdiction of the sending state, because the sending state is obliged by the Geneva convention to make sure that it can exercise jurisdiction over all its armed forces (Hampson & Kihara-Hunt, 2007). In some cases states have failed to do this, for example when they hadn't expected to send police forces to the host state; provisions for jurisdictions may not exist. They also enjoy immunity from jurisdiction of the host state. They fall under the command of the CIVPOL commander. This commander follows the orders of the Special Representative of the Secretary-General (Hampson & Kihara-Hunt, 2007).

A fourth category of personnel are international civil servants. These have different levels. There are those that are protected by absolute immunity; these are very senior officials. There is vagueness about whether or not this also protects them from jurisdiction of their home country (Hampson & Kihara-Hunt, 2007). There are also UN civil servants, officials, that have functional immunity. With functional immunity is meant immunity but only for acts that are carried out in official capacity, for the interest of the UN and not for personal benefit (Zeid, 2005). UN civilian staff that is not considered as officials also enjoys functional immunity, but only to protect them from jurisdiction of the host state. All UN civilian staff is subject to UN staff rules (Hampson & Kihara-Hunt, 2007).

Besides the types of staff mentioned above there are other types of personnel involved in peacekeeping operations. This staff can either be national (citizen of the host state) or foreign. The rules and laws for foreign staff (for example people that work NGO's, or others such as security guards or lorry drivers) depend on the type of contract they have with their employers. There is often (especially with NGO's) a disciplinary code in their contract. Whether or not the law of their home state applies to them depends on their home country's legal system. In practice it is often difficult for the home state to exercise jurisdiction (Hampson & Kihara-Hunt, 2007). National staff often enjoys some limited functional immunity. Like foreign staff they are subject to the disciplinary codes of the organizations that employ them. Their home country (the host state) has jurisdiction over them (Hampson &



Kihara-Hunt, 2007).

As for national contingents, their rules are often put in writing in a status-of-forces agreement (hereafter SOFA). This is an agreement between the host country and the country that sends troops there. It establishes the rights and privileges of foreign troops. For every UN mission a SOFA has to be signed. The UN has a model status-of-forces agreement to govern troops when the actual agreement has not been signed yet (Zeid, 2005). The model has been developed in 1990 and is ‘*subject to modifications that may be agreed upon between the parties in each case*’ (UN, 1990, pp. 1). The model SOFA includes the assurance of impartiality, articles about identification as UN personnel, articles about communication and the use of communication resources in the host country, articles about transport, articles about facilities, supplies services, about the hiring of local personnel, residence, and articles about the settling of disputes. The issues of (functional) immunity and jurisdiction are also in this model SOFA (UN, 1990). In early years of peacekeeping, a practice was followed that obliged troop contributing countries to sign a country-specific memorandum of understanding. In this memorandum of understanding countries gave formal assurances that they would exercise jurisdiction over crimes committed by their troops during peacekeeping missions (Zeid, 2005). For example, in 1957, Finland gave formal assurances to exercise jurisdiction over all of their contingents that committed crimes in the area of the mission. The UN however no longer does this in practice (Zeid, 2005). We will get back to the possibility of reinstating this in chapter 5.

### **2.3 Rules and codes of conduct**

Since its creation in 1948, the UN has developed several documents on policy and guidance, under which are codes of conducts for personnel on peacekeeping missions. One recent example of these are the two documents that were published in 2003<sup>4</sup>: The first document is called “*We are United Nations Peacekeepers*”. This document states that peacekeepers represent the UN and that the Universal Declaration of Human Rights is the basis for their standards. It includes points on respect for the local population and the environment, act with impartiality, support and help the sick and weak, and respect colleagues and other UN personnel. It also states that UN peacekeepers will never; discredit the organization or jeopardize the mission, abuse alcohol or drugs, treat people with unnecessary violence, in any way cause harm and suffering to the local population, get involved in sexual relations with the

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<sup>4</sup> Policy and guidance, <http://www.un.org/en/peacekeeping/resources/policy.shtml>, accessed on 06-06-2013

local population, damage UN property, participate in illegal activities, or attempt to use the position as a peacekeeper for personal benefit<sup>5</sup>. The second document is called: “*Code of personal conduct for blue helmets*”. This document contains ten rules on how UN peacekeepers are supposed to behave (UN, 2003). The documents make clear that the UN does not tolerate illegal activities and sexual exploitation and abuse.

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<sup>5</sup> We are United Nations peacekeepers, [http://www.un.org/en/peacekeeping/documents/un\\_in.pdf](http://www.un.org/en/peacekeeping/documents/un_in.pdf), accessed on 06-06-2013

### **3. The case of the Congo**

#### **3.1 Background of the war**

In 1885 the Congo officially became the private property of King Leopold II of Belgium. Under his command the people of the Congo were exploited terribly. It is impossible to say how many people died exactly, but it has been said that during King Leopold's rule, the Congolese population was reduced by half (Reybrouck, 2010). Mostly due to international protests against this practice the Belgium government took over the Congo in 1908. The Congo became a colony of Belgium. Though the situation in the Congo improved, there was still a lot of resentment between the Congolese and the Belgian people. This was mostly a result of the condescending attitude of the Belgians towards the indigenous people (Reybrouck, 2010). The Congo became independent in 1960, Patrice Lumumba from the MNC (Mouvement National Congolais) became prime minister after parliamentary elections and Joseph Kasavubu (from the Alliance des Bakongos – Abako. A political party that helped the MNC in achieving independence) was elected by the parliament as president. Lumumba appointed Joseph Mobutu as the chief of staff of the Congolese army. When a leadership crisis came to exist between Kasavubu and Lumumba, Mobutu took advantage; he gained so much support from the army that he convinced them to commit mutiny. Mobutu was supported by the United States and Belgium (this support was a result from Mobutu's very anti-communistic attitude) and this enabled him to pay the soldiers. Mobutu declared himself head of state after his successful coup and made sure (through political reforms) that he was to stay in power. The first years of Mobutu's regime the Congo seemed to achieve peace and stability. However the Mobutu government was guilty of many human rights violation and there was a lot of corruption (Reybrouck, 2010).

In 1996 the Congo (at this time named Zaire) was a refugee site for Rwandan Hutu militia forces. These forces joined the Zairian armed forces in order to fight the Tutsi's that lived in the east of the country. This caused a lot of general instability in the eastern part of the Congo/Zaire. When this became known Rwandan and Ugandan forces invaded the Congo and overthrew Mobutu's government. These forces joined the opposition within the country, led by Laurent-Désiré Kabila. In 1997 Mobutu fled and Kabila declared himself president. This is known as the first Congo war (Reybrouck, 2010). Later, Kabila feared that the Rwandan forces, who ran the Congolese army, were planning a coup. He asked both the Ugandan and Rwandan forces to retreat. Following this, both Rwanda and Uganda helped

start rebel movements. These two rebel movements with the support of the Rwandan and Ugandan forces started the second Congo war in 1998.

### **3.2 The second Congo war and the MONUC mission**

During the second Congo war Angola, Zimbabwe and Namibia helped the Congolese government. Later, Chad, Libya and Sudan joined their side. The second Congo war is often referred to as the African world war, because so many African countries got involved. Since 1998, over 5.4 million people have died because of the war and the humanitarian crisis following the war. It has to be noted though that this is a disputed number. These numbers make this the deadliest war since World War II.<sup>6</sup> Besides that the second Congo war and its aftermath are marked by human rights violations, of which the UN documented 617 cases in its 2010 mapping report.<sup>7</sup>

The UN Security Council called for a ceasefire, and in July 1999, the warring parties signed the Lusaka ceasefire agreement (Democratic Republic of Congo, 1999). Following this, the UN created the United Nations Organization Mission in the Democratic Republic of Congo (hereafter MONUC) (Notar, 2006). This was established in a resolution in November 1999 in order to observe the ceasefire and disengagement of forces and keep up liaison with all parties that had signed the agreement. MONUC's mandate was later on expanded to monitor the implementation of the peace agreement, and they were assigned other related tasks, such as: Working with the parties to achieve the release of all war prisoners, facilitating humanitarian assistance and monitoring human rights (with special regards to vulnerable groups like women, children and demobilized child soldiers), providing support and technical assistance to the Facilitator of the National Dialogue and coordinate mine action activities. MONUC had initial authorization for 5.537 troops, 500 military observers and the appropriate civilian component. The maximum authorization (Given with a resolution on 24 February 2007) was 22.016 total uniformed personnel (19.815 military, 760 observers, 391 police, 1.050 personnel of formed police units). Many countries contributed to both military and police personnel, but the countries that were involved in contributing troops the most were (in descending order) India, Pakistan, Uruguay, Egypt, Bangladesh, South Africa, and Nepal.<sup>8</sup>

In the year 2000 the DRC was still suffering from violent fighting in different cities,

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<sup>6</sup> Special report: Congo, <http://www.rescue.org/special-reports/special-report-congo-y>, accessed on 29-04-2013

<sup>7</sup> DRC: Mapping human rights violations 1993-2003,

<http://www.ohchr.org/en/Countries/AfricaRegion/Pages/RDCProjetMapping.aspx>, accessed on 29-04-2013

<sup>8</sup> MONUC facts and figures, <http://www.un.org/en/peacekeeping/missions/monuc/facts.shtml>, accessed on 17-04-2013

despite the presence of UN troops. In 2001 some success was achieved in the disengagement of forces, and the withdrawal of some of the forces from Rwanda and Uganda. Improvements continued in 2002, but there was also an upsurge in ethnic violence. This was especially the case in the Ituri region, in 2003 the violence there got so bad that it endangered the peace process (Reybrouck, 2010). As a result of this the UN secretary-general Kofi Annan suggested a reorientation of the mission, towards protecting security in key areas of the country.<sup>9</sup> Member States of the UN were asked for additional help (troops, supplies, etc), which was given. The MONUC troops improved security, but their increased involvement cause them to be targeted by militias. In 2004 the mandate was again expanded; MONUC tasks now included: Contributing to the security in the country, providing support for conflict resolution in politically violent areas, improving border security, and gathering and analyzing of military and other information on spoilers.<sup>10</sup> The peacekeepers protected thousands of civilians from murder, rape and other human rights violations. They also disarmed militia groups with danger to their own lives (Notar, 2006). Despite the good that they do 2005 was still full of turmoil. That year a temporary European Union (hereafter EU) mission was deployed in the DRC to support the MONUC mission. The EU mission ended in November 2006. By 2008 stability was still not reached in the DRC and the MONUC mission kept needing reinforcements. Human rights watch and other humanitarian organization also asked for this. Their reports showed atrocities committed to civilians and large-scale suffering in many areas of the country. The humanitarian situation in the Congo was deteriorating.

From the 1<sup>st</sup> of July 2010, MONUC was renamed the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (Hereafter MONUSCO). This renaming was done in order to reflect the new phase the country had reached. In 2011 the minister of international cooperation in the DRC asked for an orderly withdrawal of MONUSCO troops due to normalization of relations with neighboring countries, and the containment of rebel actions in a few areas. This led to the withdrawal of 2000 troops. At this time, the MONUSCO mission is still active in the DRC (Menondji, 2013).

### **3.3 The abuse – Violations by peacekeepers**

A groundbreaking study of UNICEF in 1996 (Machel, 1996) drew a link between the arrival of peacekeeping forces and a rapid rise in child prostitution. This happened for example in

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<sup>9</sup> MONUC mandate, <http://www.un.org/en/peacekeeping/missions/monuc/mandate.shtml>, accessed on 14-04-2013

<sup>10</sup> MONUC mandate, <http://www.un.org/en/peacekeeping/missions/monuc/mandate.shtml>, accessed on 14-04-2013

Mozambique, where after the signing of a peace treaty in 1992, UN peacekeeping forces (ONUMOZ) recruited girls between the ages 12 and 18 into prostitution. In the study done for the UNICEF report, of 12 countries studied, in 6 of them the arrival of peacekeeping troops coincided with a rise in child prostitution (Machel, 1996). The same thing happened when the MONUC mission entered the DRC. A UN report written by Jan Rasmussen (2005) states that there was already prostitution when the mission arrived, however it was not widespread. By 2004, prostitution happened a lot more (Rasmussen, 2005). We are now talking about both child prostitution and regular prostitution. There are several external circumstances that contribute to this widespread prostitution. Firstly, there are many women and children with little family support, because they lost many during the war. Secondly, there is a high level of poverty and few possibilities to generate income, which forces some into prostitution in order to survive. Thirdly, attitudes towards sexual violence have changed. The high incidence of (sexual) violence during the war has led to a degree of acceptance of sexual violence among the Congolese population (Zeid, 2005). All these factors contributed to the emergence of prostitution, and consequently, sexual exploitation.

Besides this sexual exploitation, there have also been incidents of sexual abuse reported from early on in the mission. These incidents include the raping of children (Holt & Hughes, 2004; Rasmussen, 2005; Woudenberg, 2004). Kate Holt and Sarah Hughes (2004) published some specific cases; a South African colonel in Goma, who sexually molested his young interpreter and was later found to have requested interpreters from under the age of 18 since the start of the mission. They also tell the story of Anna, a 12 year old girl who lived in a shelter for women and girls. When Anna walked past a group of South African UN soldiers they offered her a biscuit. Once Anna had reached them one of the soldiers grabbed her, pulled her into his car and raped her. Notar (2006) writes about several girls that were raped by UN peacekeepers. After that they were abandoned by their families because of the rape. This forced them to keep engaging in sex with peacekeepers in order to survive (Notar, 2006). Similar stories as these were heard on a daily basis during the MONUC mission (Holt & Hughes, 2004). Besides the direct emotional and physical damage these rapes cause, another result is that a lot of Congolese girls become pregnant. Rasmussen (2005) also writes about the issue of children fathered and later on abandoned by MONUC soldiers in his report. Gerald Caplan (2012) describes one of these cases; two 14 year old girls encounter two Uruguayan MONUC soldiers in Uvira, Eastern Congo. The girls were raped and both got pregnant. The Uruguayan peacekeepers later on return to Uruguay without leaving any support or trace. These Congolese girls have already been through hell during the Congo war,

and are still living in a struggling community. Besides worrying about themselves they now also have to worry about and take care of their children, all by themselves (Caplan, 2012).

As said before, many different countries contributed soldiers to the MONUC mission. Rasmussen (2005) doesn't mention anything in his report about the nationalities of the perpetrators of the abuse in the DRC. Various authors however have named South African, Indian and Uruguayan soldiers as main perpetrators (Holt & Hughes, 2004; Caplan, 2012). Whether the soldiers of these nationalities are really the main instigators of the abuse or not, it is important to note that not only the perpetrators are complicit in these actions. Besides perpetrators, there were many peacekeepers that likely knew about the abuses and actively covered them up for their friends and colleagues, and many chose to look the other way (Rasmussen, 2005). In cases of abuse and sexual exploitation, there are many signs that can raise suspicion. These signs have in many cases been ignored by the larger part of MONUC personnel. Rasmussen describes in his report examples of incidents in which abuse surfaces:

*\* Price disputes between prostitutes and MONUC clients, not infrequently leading to physical violence;*

*\* Threats by the community or family members of sexual exploitation and abuse victims to MONUC personnel;*

*\* Beatings and assaults by MONUC personnel on pregnant girlfriends;*

*\* Threats by MONUC personnel to local or military guards who try to enforce curfews and access regulations;*

*\* Vehicle accidents involving the transport of prostitutes, including sexual services while driving. ' (Rasmussen, 2012; p. 5).*

The fact that Rasmussen describes these incidents as ways of recognizing the abuse proves that these are incidents that have repeatedly occurred.

One severe consequence of the sexual abuse by UN peacekeepers is the spreading of the HIV/Aids virus. There have been several recorded cases of young women (or children) being raped by Peacekeepers, peacekeepers carrying the HIV virus which they pass on to their rape victims. When those victims get pregnant as a result of the rape, their children are infected as well. Married rape victims have been known to pass the virus on to their husbands. In some cases the victims knew that their perpetrator has the virus, in other cases they only found out by the time their health deteriorated (Harrington, 2005).

## **4. The aftermath of the scandal: What were the consequences?**

In the previous chapters we have discussed the basis of UN peacekeeping and the case of the second Congo war. We have discussed the MONUC operation and the abuse by peacekeepers in that mission. This chapter will be about the aftermath of the abuse. The first section will discuss the victims; how did they react, and what were the practical and psychological consequences for the victims of the different types of abuse? After that we will focus on the media; the national and international attention that was given to the case. The last section of this chapter discusses the aftermath for the authorities; the UN, but also local (Congolese) authorities and the authorities of the home countries of the perpetrators. What did they do and not do about the abuses? What were the consequences for the perpetrators?

### **4.1 Consequences of sexual exploitation and abuse for victims**

Regardless of who the perpetrator is, sexual exploitation and abuse always have severe consequences on its victims. It is important to know these consequences in order to determine the best way in which to help the victims, which we will do in the second part of this thesis. This section will discuss these consequences more thoroughly. Victims of abuse and sexual exploitation suffer from both physical and psychological consequences, which show their effects both on short term and on the long term (Zeid, 2005).

#### 4.1.1 Short term physical consequences

The first short term physical consequence of sexual abuse is very obvious; it hurts, it causes pain. The amount of pain and injuries that are caused by for example rape depends on the brutality of the act, but several known consequences of rape are: Chronic pain, lesions and scars on the body, tears in the vagina and anus, rectal and vaginal fistulas leading to chronic incontinence, dysfunction of the hips and legs, and infertility(Allais, 2011).<sup>11</sup> Besides that there is a high risk of contracting a sexually transmitted disease, such as the HIV virus. Sexual abuse and exploitation can also cause unwanted pregnancies.

#### 4.1.2 Long term physical consequences

The above named short term physical consequences also have very serious long term effects. The health care situation in post conflict areas such as the DRC is far from advanced. Because

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<sup>11</sup> Say Kuna, N. Physical and psychological impact of rape, <http://congowomen.org/essays/the-democratic-republic-of-congo-physical-and-psychological-impact-of-rape/>, accessed on 08-05-2013



of the lack of sufficient health care for women, injuries remain untreated. In case of pregnancies, this can lead to complications such as obstetric fistula (an abnormal opening between the bladder and the vagina, resulting in urinary incontinence (Wall, 2006)) and infant and maternal mortality.<sup>12</sup> In some cases of unwanted pregnancies, girls and women resort to abortion, carried out illegally, baring huge risks (Allais, 2011). The girls and women that do keep their babies and survive labor then have the responsibility of having to take care of someone else besides themselves (Caplan, 2012). We are talking about women that were already struggling to keep themselves alive, who in some cases turned to prostitution to survive. These women now have another mouth to feed and this obviously is a huge burden for both their own health and the baby's.

We have already named the contracting of HIV and other sexually transmitted diseases (hereafter STD's) as a consequence of sexual abuse and exploitation. This poses both a short term and a long term risk, because a disease like HIV you carry with you for the rest of your life. Due to the previously mentioned lack of adequate health care, there is not sufficient treatment for these infections. Besides that, the continuous spreading of these diseases is a serious problem; in some cases women don't know that they have it and pass the disease on to their husband and unborn children. And even if they do know that they have HIV or another STD, there is still almost just as great a risk of spreading it (Harrington, 2005).

#### 4.1.3 Short term psychological consequences

Some psychological consequences that often surface shortly after the act of abuse of sexual exploitation are feelings of worthlessness and shame, and feelings of guilt and culpability.<sup>13</sup> Besides that victims often also suffer from a lot of fear; in many documented cases of sexual exploitation and abuse by peacekeepers the victims were afterwards threatened; '*He told me if I said anything he would find me and hurt me*' (Holt & Hughes, 2004). As we have discussed before, sexual abuse can cause severe physical damage; this physical damage almost often goes hand in hand with a lot of stress to deal with this damage. Whether it is pain, a disease, a pregnancy or a combination of those, it is always accompanied by a significant amount of psychological complaints.

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<sup>12</sup> Say Kuna, N. Physical and psychological impact of rape, <http://congowomen.org/essays/the-democratic-republic-of-congo-physical-and-psychological-impact-of-rape/>, accessed on 08-05-2013

<sup>13</sup> Say Kuna, N. Physical and psychological impact of rape, <http://congowomen.org/essays/the-democratic-republic-of-congo-physical-and-psychological-impact-of-rape/>, accessed on 08-05-2013

#### 4.1.4 Long term psychological consequences

There are also some important long term psychological consequences that emerge as a result of sexual abuse and exploitation. Some of the short term feelings can be an indicator of long term consequences such as depression, paranoia and apathy.<sup>14</sup> In some cases victims of sexual abuse develop posttraumatic stress disorder<sup>15</sup> which severely affects their well-being and their ability to live a (relatively) normal life.

Being sexually abused, raped, or exploited can lead to stigmatization in society and rejection by family and community (Notar, 2006). Victims are often left by their husbands and separated from their children. They become socially isolated.<sup>16</sup> Because of this isolation victims often don't have access to economic, social and emotional support. They are on their own, and in order to survive they are often forced to engage in further exploitative relationships with peacekeepers (Allais, 2011; Zeid, 2005). The same is true for babies born after (forced) sex between Congolese women or girls and UN peacekeepers; these babies face stigmatization by their community from the moment they are born.

The women and girls (and sometimes boys) that become a victim of UN peacekeepers are already victims to begin with; victims of a war. They are often displaced, have lost relatives and have seen and experienced terrible things. They are then victimized even further when they are forced (either directly by the peacekeepers, or by their circumstances) to engage in sexual activities with the MONUC soldiers. War distorts societies. Children that grow up in a war often don't know any better. They see violence and sexual abuse on a regular basis. This can often lead to new conflicts in the future.<sup>17</sup> A war distorts a child's view on good and bad, and this view gets even more distorted if the bad continues once they are supposed to be in a safe place. Children need to grow up in a safe environment, and the lacking of this safe environment makes them get used to violence and cruelty. As said in section 3.2, the sexual violence during the conflict had already led to a degree of acceptance of sexual violence and exploitation among the local population (Zeid, 2005). If the sexual exploitation and abuse continues after the war, the degree of this acceptance will only become higher. The peacekeepers are supposed to protect the Congolese people. If the Congolese people are abused and exploited by the peacekeepers they can develop serious trust issues.

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<sup>14</sup> Say Kuna, N. Physical and psychological impact of rape, <http://congowomen.org/essays/the-democratic-republic-of-congo-physical-and-psychological-impact-of-rape/>, accessed on 08-05-2013

<sup>15</sup> Boulware, C. Do I have an anxiety disorder? <http://www.psychotherapist.net/anxiety-panic-attack-phobia.htm#anchor360012>, accessed on 08-05-2013

<sup>16</sup> Say Kuna, N. Physical and psychological impact of rape, <http://congowomen.org/essays/the-democratic-republic-of-congo-physical-and-psychological-impact-of-rape/>, accessed on 08-05-2012

<sup>17</sup> Visie en missie, <http://www.warchild.nl/missie>, accessed on 08-05-2013

Will they even be able to put their faith in UN peacekeeping missions again? Sexual exploitation and abuse destroy the image and credibility of a mission, it also damages the operation's impartiality in the view of the local population. How can a peacekeeping operation advise a government on complying with international human rights, while the operation itself doesn't? The exploitation and abuse interfere with the effectiveness of the peacekeeping mission (Zeid, 2005).

#### 4.2 Reactions of the media

Abuse by people that are supposed to be protectors. This is something we can certainly call a scandal. As with every scandal, the media was keen to write about this. The first media reports on the abuse appeared in 2004, making the scandal a worldwide known issue. One of the first journalists to report on the MONUC abuse was Kate Holt. Kate Holt is a photojournalist who specializes in post conflict areas. In May 2004, she went to Bunia (the capital of the Ituri district in the DRC), where a large internally displaced persons (hereafter IDP) camp was located, on a photographic assignment. There she found out that UN soldiers in that town were sexually exploiting and abusing young Congolese girls who were already victims of the war. The story was published in the Independent (a large British newspaper) and this newspaper also backed Holt to continue the investigation.<sup>18</sup> Kate Holt published several articles about this case, most of them together with Sarah Hughes (a journalist who also writes for the Independent). The articles include interviews with victims of the abuse which contain very specific details: *'Then he ripped of my dress and made me do it with him. I was really scared...'* (Holt & Hughes, 2004). *'Sometimes the UN men will take me with them in their cars to a hotel for an hour or two.'* *'They tell me that they will hurt me if I tell anyone'* (Holt & Hughes, 2005). The opinion of Holt and Hughes about the UN is very strong: *'The UN has a problem of accountability and abuse; of an organization sent to police the world which remains unable to police itself...'* (Holt & Hughes, 2005). They report about the UN not paying sufficient attention to the allegations of abuse and about cover-ups of abuse by peacekeepers in the past. The story of the MONUC scandal quickly spread and other newspapers and bloggers started writing about it too. The UN was portrayed as the villain in most of the articles, as is already shown with titles such as: *'Peacekeepers gone wild: How much more abuse will the UN ignore in Congo?'* (Caplan, 2012).

Even though there had been earlier allegations of abuse by peacekeepers in earlier

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<sup>18</sup> Holt, K. Kate, <http://www.kateholt.com/kate>, accessed on 03-05-2013

peacekeeping missions, this was the first time the situation became a world-wide scandal, mostly due to the media attention. This attention forced the UN to take action. In a UN report on the MONUC abuse Jane Rasmussen (2005) describes the action that the UN took to investigate allegations of abuse. The UN was already aware of this since the beginning of the mission and they had been investigating this already before the case got so much attention in the media. However, the media attention did force the UN to speed up the investigation process and undertake more action than they were doing at first. According to Kate Holt<sup>19</sup> the findings of her story forced Kofi Annan (secretary-general of the UN back then) to announce a 'zero-tolerance policy' within the UN with regards to sexual exploitation and abuse. So even though the UN was taking the matter seriously already before the media got a hold of it, the media attention did have an important influence on the further handling of the matter. The next paragraph will explain in more detail what the investigations and the zero-tolerance policy of the UN exactly entail. Besides discussing the UN's reactions, it will also discuss the reaction to the abuse of local authorities and the authorities of the UN soldier's home countries.

#### **4.3 Response to the sexual exploitation and abuse by the UN**

In 2005 the UN published a report on the actions that were undertaken after the allegations were made of sexual exploitation and abuse in the MONUC mission (Rasmussen, 2005). After the first allegations a few investigations were made, however it has been suggested that the issue was then not taken seriously yet, and some allegations were not even followed up by an investigation. No action was taken by the Mission to stop the abuse (Rasmussen, 2005). Rasmussen (2005) claims that an explanation for this resistance against addressing the problem is the complicity of so many MONUC personnel; not only by perpetrating, but also by looking the other way or actively covering up for their colleagues.

One response to the first cases of abuse and exploitation was the MONUC code of conduct which was adopted in 2002 and specifically considered sexual exploitation and abuse (Rasmussen, 2005). The code of conduct is very clear, it prohibits:

- Any act of sexual abuse and sexual exploitation, or other form of sexually humiliating, degrading or exploitative behavior;*
- Any type of sexual activities with children (persons under the age of 18 years); Mistaken belief in the age of a person is not a defense;*
- Use of children or adults to procure sexual services for others;*

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<sup>19</sup> Holt, K. Kate, <http://www.kateholt.com/kate>, accessed on 03-05-2013

- *Exchange of money, employment, goods or services for sex with prostitutes or others;*
- *Any sexual favor in exchange of assistance provided to the beneficiaries of such assistance, such as food or other items provided to refugees;*
- *Visits to brothels or places which are declared off-limits.* (UN, n.d.).

The code of conduct also states that violating the code will lead to '*drastic disciplinary measures, including suspension, immediate repatriation or summary dismissal*' (UN, n.d.).

Besides this code of conduct, the UN has developed a general UN code of conduct for blue helmets (UN, 2003) and issued a bulletin on the matter. The UN also started to train MONUC personnel on the code of conduct before they were deployed (Citizens for Global Solutions, 2005) and to train the management personnel (Rasmussen, 2005). A zero-tolerance policy was adopted and implemented towards sexual engagement with local women and girls. There are doubts about the effectiveness of this policy though, because it does not apply to all UN-related personnel (Quénivet, 2007). As explained in chapter 2, the people involved in the missions fall under different categories, and different rules apply to them (Aoi, de Coning & Thakur, 200&). This is true for the codes of conduct as well (Zeid, 2005). Another reaction to the abuse cases in the MONUC mission was the appointment of a Personnel Conduct Officer; someone to have centralized information and reports on the sexual exploitation and abuse in the mission. This happened in April 2004 (Rasmussen, 2005), almost simultaneously with the publishing of Holt's article (2004) about abuses in Bunia. These allegations were immediately investigated by the Personnel Conduct Officer, and found to be true. This led to a widespread investigation on the abuse reports (Rasmussen, 2005). The Personnel Conduct Officer found that the abuse was well known among the military staff and civilian security agents, but not well documented or previously investigated at all. In October 2004, the first three civilian staff members were removed from the mission area because of misconduct. In April 2005, the UN had investigated 150 allegations of sexual exploitation. This led to 20 case reports, and the perpetrators were only positively identified in 6 cases (Citizens for Global Solutions, 2005; Notar, 2006). It can be very complicated to proof individual cases of sexual exploitation and abuse; victims and witnesses are often intimidated and threatened, so they are too scared to say anything. The victims are insecure and not always able to identify their foreign attackers. For cases involving prostitution there is often no economic motivation to report (Zeid, 2005). Another difficulty is that the Board of Inquiry which is supposed to investigate and make findings on exploitation and abuse doesn't seem to work quickly enough before the military personnel in question have rotated out of the mission (Rasmussen, 2005).

Once allegations of sexual exploitation and abuse are proven to be true, the concerning

staff members are expelled from the mission and sent home. The UN cannot prosecute its own personnel because of legal limitations: Their staff enjoys immunity, and national contingents fall under the jurisdiction of their home country. The UN sends the offenders home and turns over the results of their investigation to the home country of the staff member in question, however, troop contributing countries are under no legal obligation to investigate or prosecute perpetrators (Citizens for Global Solutions, 2005). While some Member States take their responsibility and prosecute and try the offenders, many countries don't. In fact there are actually very few countries that choose to prosecute peacekeepers when they get home. An example: In 2008 about 100 UN soldiers from India were accused of paying for sex with young girls from the Congo. The Indian army then investigated the case and found all the accused innocent. The bad guy in the story was found to be the UN, for falsely accusing their soldiers (Caplan, 2012).

Concluding, the UN did not ignore the problem once allegations of exploitation and abuse in the Congo became publicly known. However, these allegations were impossible to ignore because of all the media attention they got. There have been allegations of abuse by peacekeepers in the past, for example in Bosnia and Kosovo, East Timor and Liberia (Defeis, 2008). These allegations never got such an elaborate response by the UN as the allegations in the Congo did. This makes one wonder whether it is the media attention that forced the UN to finally handle the situation? However, this could also be explained by the large scale at which the abuse in the DRC took place, pointing out the seriousness of the problem. The UN has faced many critique about the way they handled and are still handling the exploitation and abuse in peacekeeping missions (Quénivet, 2007). We must keep in mind though that the UN's hands are tight by strict rules and laws.

## **5. Punishment of the offenders**

The situation of peacekeepers abusing and sexually exploiting the people of the Congo; the people that they are supposed to protect, is a very grave one. The case is even more terrible because the offenders, the peacekeepers, often get away with what they have done without any form of punishment, without taking responsibility for what they have done. The victims of the peacekeepers get no recognition, compensation, and have to live with what happened to them without any form of help. This leaves us with two problems: 1. Offenders that are not being punished, and 2. Victims that don't get any support whatsoever. This chapter will discuss the first of these two problems: the offenders; it will start with a reminder on why the offenders are not being punished, followed by suggestions to solve this problem. This is a difficult problem to solve, because it has an incidence on state sovereignty, and we don't want to discourage member states from participating in UN missions.

As discussed in chapter 4, many peacekeepers that have been accused of sexually exploiting and abusing the Congolese population have not been prosecuted. Due to the UN zero tolerance policy most of these soldiers have been sent straight home after UN investigations found them guilty (Quénivet, 2007). However, after that it is the soldiers' home country's responsibility to prosecute and punish them (Zeid, 2005; Aoi, de Coning & Thakur, 2007). In practice this almost never happens, and many perpetrators walk freely. The UN is then powerless, because they are not allowed to prosecute and punish the offenders. This is the same for the Congolese authorities (Zeid, 2005; Aoi, de Coning & Thakur, 2007). After the allegations of abuses by peacekeepers were found to be true, several reports have been written, which give recommendations on how to deal with this matter. In section 1 of this chapter we will discuss the recommendations given by UN representatives. Section 2 will then go in to the matter even deeper, by suggesting possibilities given by academics. This chapter will be concluded in section 3, which will entail a conclusion on the best suggestions given so far.

### **5. 1 Suggestions from UN representatives**

In July 2004, Kofi Annan invited Prince Zeid Ra'ad Zeid Al-Hussein, Permanent Representative of Jordan, to act as his adviser on the problem of sexual exploitation and abuse by UN peacekeeping personnel in the MONUC mission. Prince Zeid wrote a report on this in 2005 (Zeid, 2005).

One problem that Prince Zeid addresses is the problem of different rules and different

codes of conduct which apply to different groups of UN personnel. In theory, there is a very easy solution for this; the codes of conduct should apply for all UN personnel. This is what Prince Zeid suggests (Zeid, 2005). Furthermore, he urges the UN to increase awareness on these codes of conduct among troop contributing countries, for example by having all personnel sign an agreement that states that they know what the rules are, and that they understand that breaking the rules results in being sent home immediately. Besides that, the rules should be printed on cards in the languages of the troop contributing countries (they are now only printed in the official languages of the UN). The troop contributing countries should provide the translation, the costs will be taken care of by the mission. UN personnel should also be trained on these codes of conduct prior of deployment (Zeid, 2005). Troop-contributing countries would have to make sure that this happens (Zeid, 2005). These are some clear, good, easy to implement suggestions. However, it is definitely not enough to stop abuse and exploitation.

Prince Zeid (2005) writes that one of the reasons that troop contributing countries are reluctant to prosecute peacekeepers is that the investigations that are done during the missions are not considered to be good. The countries often complain that evidence that is gathered is not sufficient under their national law, or that it is not gathered in a way which is substantiated by their national law (Zeid, 2005). Besides that, the troop contributing countries often don't get all the documentation because the UN has a policy of not releasing documents which might be used by others to make claims against the organization (Zeid, 2005). The Prince recommends the Secretary-General to establish one permanent professional investigative capacity, which should be totally independent from the missions. It should have authority, the mission would have to cooperate with it fully, and it should report to the Secretary-General or the Deputy-Secretary-General in order to ensure independence. The investigative capacity should have access to professionals and experts on these types of crimes, and (when necessary) access to modern techniques of forensic identification. This capacity should also include investigators from the troop-contributing countries. This way all documentation would be available to those countries, and those investigators can make sure that evidence is gathered in ways that comply with their domestic laws (Zeid, 2005). In my opinion, these suggestions are definitely very good, and they should be implemented; something which is not very hard to do. However, there have to more ways to make sure that the investigators are really independent. Especially the investigators that are from the troop-contributing countries have to be thoroughly checked in order to ensure their objectivity. A strong point of the investigative capacity is that it consists of investigators from different



states; so they will be able ensure each other's independence.

*'Soldiers are only as good as their commander'* (Zeid, 2005, p. 21). The Secretary-General sees managers as very crucial, as becomes clear in the 2003 bulletin mentioned in section 4.3. Managers are responsible for creating an environment without sexual abuse and exploitation, by implementing the programs and policies against this which were developed by the UN. They are also responsible for taking action against perpetrators. They are supposed to set the tone, to be role models. It is therefore very important to reward managers/commanders that actively deal with the sexual abuse and exploitation issues. According to Prince Zeid (2005, p. 21) they should be rewarded with *'appropriate notations in the performance appraisal mechanisms used to assess their suitability for higher office'*. He also suggests that managers and commanders that do not implement policies set by the UN should be removed from their functions. The same should happen for cooperation; those who cooperate with the Department of Peacekeeping Operations in investigations should be commended. Those who do not, or even obstruct investigations, should be repatriated, and their payment should be withdrawn. Again, in my opinion, these are some very good suggestions which should definitely be used. By punishing or rewarding managers and commanders the UN will increase their motivation to be role models and implement UN policies. Again, however, this is not enough. It might decrease sexual exploitation and abuse, but it is not a solution, neither does it really punish offenders.

Prince Zeid made some more suggestions in his report (2005) which are definitely a good way of improving the situation but are not enough to stop the abuse and the exploitation, or punish the offenders. These are some of the suggestions he made: **1.** A system should be developed in which both allegations and the mission's response to the allegations are tracked. This database would enable senior staff to immediately have an overview on the situation. Besides that it is a useful tool to prevent the rehiring of offenders. **2.** The Department of Peacekeeping Operations has appointed personnel conduct officers in several missions, which is very good. There should also be a team that specializes in this at the headquarters, in order to give advice and guidance, ensure appropriate application of disciplinary measures and to make recommendations for policy changes. **3.** There should be an increase in female peacekeeping personnel, because this could improve meaningful contact with vulnerable groups and NGO's. Also, victims are more likely to report crimes to women, and the presence of women will improve the creation of an environment without sexual abuse and exploitation. **4.** Condoms are given to peacekeepers in order to prevent the spreading of HIV. This might send a message that sexual relations with local population are approved of. In order to prevent

this, the HIV/AIDS awareness training that is given to personnel should include information on the zero-tolerance policy. **5.** Non-specific allegations of sexual exploitation and abuse should not be dismissed, but seen as an early warning. **6.** Troop-contributing countries should be encouraged to send already established units to missions because the discipline and cohesion is better in established units than in assembled units. Also, commanders are more likely to know the strengths and weaknesses of their soldiers. **7.** Some mission-specific measures should be taken; some missions need to install curfews, off-limit areas, mobile patrols, always wear uniforms, military police that is from a different country than the troop-contributing country, or the banning of all sexual relations with local populations. It differs per mission which of these measures should be taken. **8.** There should be some measures to ameliorate the living conditions in the mission (recreational facilities for example) (Zeid, 2005). All the above suggestions are definitely valuable suggestions which can significantly improve the situations in missions. However they are far from sufficient.

The final chapter before the conclusion in Prince Zeid's report (2005) discusses individual disciplinary, financial and criminal liability. Earlier in this section we mentioned investigative problems that underlie troop-contributing country's reluctance to prosecute offenders. This is not the only problem though; troop-contributing countries are often very reluctant to admit to wrong-doing and therefore often lack the will to punish offenders. Besides that, the legal system in peacekeeping areas often barely or in many cases does not meet international human rights standards. This makes it difficult for the Secretary-General to abandon the immunity of personnel that is accused. Prince Zeid suggests disciplinary action to be taken against UN personnel that violates the codes of conduct: They should be sent away from the mission, and in cases of serious misconduct they should be suspended without pay. He calls this a severe punishment. Furthermore, troop-contributing countries are responsible for carrying out further investigation and undertaking further disciplinary actions (Zeid, 2005). If the earlier mentioned suggestions are implemented, specifically the one about proper investigation, troop-contributing countries would have to be more inclined to punish offenders than they are now; they would not be able to complain about the investigation that is already carried out anymore. However, this suggestion still doesn't ensure a proper punishment for offenders. Could we really call suspension without pay a 'severe punishment'? Depending on specific offenses, if a sex-offender in a country with a well-developed legal system would be punished by being fired or suspended without pay, this would probably not be considered a sufficient punishment. So how can we think of it as a severe punishment in the case of sexual abuse by peacekeepers? Fortunately, Prince Zeid suggests some additions to this: The UN

staff rules permit the imposition of fines on its staff members. In addition to dismissing staff members that violate the rules on sexual abuse and exploitation, they should also be given a fine. However, this possibility currently is not there for civilian police and military observers. The UN should change this, it should also be possible for them to get fines. When it comes to national contingents, troop-contributing countries are responsible, they have disciplinary authority. So here, again, punishment is left up to them and there is no way suggested of guaranteeing that this happens (Zeid, 2005).

One of the most important issues when trying to achieve justice is criminal accountability. As explained in chapter 2, military forces are under the authority of their home country, the troop-contributing country. Neither the UN nor the host state has jurisdiction over them. Because of this, the model status-of-forces agreement (see chapter 2) includes that the Secretary-General should obtain formal assurances by the troop-contributing countries that they will exercise jurisdiction if their forces commit crimes in the mission area. The model has a footnote in which it says that these formal assurances should be included in the country-specific memorandum of understanding. This regularly happened in the early years of peacekeeping, but it never happens in practice nowadays (Zeid, 2005). Prince Zeid suggests this habit to be reinstated. He recommends a clause in which it says that when an investigation (carried out in the manner suggested above) by the Department of Peacekeeping Operations concludes that a peacekeeper is guilty, the troop-contributing country is obliged to bring the case to its national authorities. They are not obliged to prosecute however, because that is a case of state sovereignty. Prince Zeid however also suggests that the troop-contributing countries should be obliged to submit a report to the Secretary-General, explaining the progress of the case (within 120 days after a case has been referred to that country); if the troop-contributing country decides not to prosecute, this should also be explained in the report. This is a very good recommendation; it forces troop-contributing countries to handle the cases that are referred to them with care, and to take them seriously. After the first report, the countries should keep the Secretary-General informed while the case is being handled, by sending a report every 120 days (Zeid, 2005). This procedure should be documented in the country-specific memorandum of understanding, and this memorandum should be a condition for the acceptance of a country's troops. When forces are deployed before the memorandum is concluded, the model memorandum of understanding should govern the troops, the Security-Council should adopt a resolution for this (Zeid, 2005). In order to motivate the troop-contributing countries to comply with the sending of reports, the Secretary-General should in his annual report to the Special Committee give up the details of the cases (the name of the

country, the alleged conduct) in which troop-contributing countries failed to send the reports (Zeid, 2005). This is an effective idea, because most countries do not want to look bad (Notar, 2006). Besides that it shows the international community that sexual exploitation and abuse are not tolerated.

Criminal accountability is a different issue for UN personnel; as is described in chapter 2, they enjoy certain immunities and privileges. The Secretary-General has the right to waive the immunity of UN staff, for example to prevent abuse that is connected to those immunities. Personnel only enjoys functional immunity, so if acts were not performed in the line of duty, there is no functional immunity for those acts, and local authorities are allowed to prosecute. However, a difficulty here is that not all acts of sexual exploitation and abuse are considered criminal in some host states. For example, engaging in sex with prostitutes that are older than 18 is not considered a crime in many countries. In some host states the legal system is underdeveloped or devastated, and therefore doesn't meet international human rights standards. Waiving immunity of a staff member and letting them be prosecuted under such a legal system may not be in the best interest of the UN, and it may not be the most effective method for stopping sexual exploitation and abuse (Zeid, 2005). Making UN personnel criminally accountable depends on the laws of the prosecuting state, it also depends on the laws on obtaining evidence and doing a proper investigation. Because of this prosecution rarely happens, and UN personnel can easily get away with what they have done, even though the UN would like them to be prosecuted. Prince Zeid (2005) offers two solutions: One could be to develop an international convention that would subject UN staff to the jurisdiction of state parties for specified crimes. There is also a similar convention that addressed crimes committed against UN staff. This would be an improvement, but not a complete solution because it would only be viable for parties to the convention. Another solution could be to make an agreement with the host state which allows the UN to assist in criminal proceedings against UN personnel. This would make sure that those case meet international human rights standards. However, a problem would be that this would mean working with two standards of justice, one for UN personnel and one for local people. This is not very attractive, but it would at least help holding UN officials criminally accountable for their actions (Zeid, 2005). Prince Zeid (2005) further suggests that the UN hires experts on these complex legal matters, in order to find a better solution.

Earlier in the report though, Prince Zeid (2005) came with another idea, an idea which he doesn't refer back to when talking about criminal accountability, something I find remarkable. He suggests the use of on-site courts martial. A host-state should probably have

no objections to this, also because the offenders don't fall under their jurisdiction. The conducting of on-site courts martial offers many advantages; evidence and witnesses are close by, and even more importantly, it sends out a message. It would send out a message to other soldiers that sexual exploitation and abuse is not tolerated, and it shows this to the local population, the victims, as well (Zeid, 2005). Besides the on-site court martial being a way of punishing perpetrators, it also has a big symbolic value for the victims. We will talk more about this in the next chapter. An on-site court martial would carry with it some practical difficulties, it has to be in the troop-contributing country's national legislation for example, but it is definitely not impossible to arrange. Many of the suggestions given above (about proper investigation and dealing with immunity for example) will still have to be implemented in order for the court martial to be successful. It would also require a large amount of cooperation from the troop-contributing countries; because their contingents have to be tried by them, there would have to be officials from that troop-contributing country participating in the court martial. The on-site courts martial however, will not be appropriate for UN staff unless they are carried out by the host-state. Punishing UN personnel still faces the same problems that were described in the previous section. In the next section we will discuss some other possibilities.

## **5.2 Suggestions by academics**

Several academics have discussed the problem of accountability for peacekeepers that are guilty of sexual exploitation and abuse. While some merely discuss the problem and the issues at stake, others go a step further by suggesting solutions to this problem. One of these authors is Susan Notar, who wrote the article "*Peacekeepers as perpetrators*" in 2006. In this article Notar first discusses the suggestions given by prince Zeid. After that she continues by stating her own ideas. What is important to note is that although the UN is in itself not a state party to human rights conventions, it should still remain subject to these international laws and norms (Notar, 2006; Murray, 2003). The UN Charter, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC) all include articles and provision that protect the rights of women and children; sexual exploitation and abuse are violations of these rights, and the UN recognizes this (Notar, 2006). After having established this, we move on to accountability. The problems of accountability have been discussed several times already, and in the previous section we discussed some solutions. Notar (2006) explores other options, for

example prosecution by the International Criminal Court (hereafter ICC). This idea is quickly dismissed though; the ICC only has jurisdiction over crimes of genocide, crimes against humanity, war crimes and the crime of aggression<sup>20</sup> (Notar, 2006). Sexual exploitation and abuse by peacekeepers does not qualify as crimes of genocide or as crimes against humanity. They might constitute as war crimes, but the ICC prosecutor only prosecutes the most terrible crimes. Even though sexual exploitation and abuse by peacekeepers is horrible, there unfortunately are crimes committed that are far worse (Notar, 2006).

Notar's article continues by discussing some special rules that apply to United States peacekeeping personnel and then continues with some general recommendations for the UN. Most of these are a repetition of the suggestions made by prince Zeid in his 2005 report. One of the extra suggestions that is made by Notar (2006) is to prevent peacekeepers from being repatriated while they are under investigation. A second suggestion builds on prince Zeid's suggestion to get formal assurances of troop-contributing countries that they will investigate and if necessary prosecute their contingents; she strengthens this suggestion by recommending that countries that fail to do so are excluded from sending troops to UN missions in the future. Notar admits that this could have the negative impact of reducing the amount of peacekeeping forces, but she states that this is compensated by the improvement of the overall reputation of the UN. This is of course a matter of opinion; what is more important? And it depends on how many countries will be excluded from sending troops in practice. If the UN were to take this measure, it would have to be very strict in its following of this, because if the UN would merely threaten to do this without actually putting it into practice, this could also damage the UN's reputation; member states might not take the UN seriously anymore. Besides that, peacekeeping missions are dependent on troop-contributing countries. Is it worth it to understaff a mission simply because the misconduct of a few was not properly investigated? Wouldn't this mean that in the end fewer people are protected because a few individuals are hurt? Deciding in this is very difficult, especially because we cannot predict the actual numbers of troop-contributing countries that would be expelled from sending troops. We cannot predict what consequences this would have on the amount of peacekeepers. However, in my opinion there might be other ways of punishing countries that refrain from investigating and if necessary prosecute their contingents, ways that have less of a negative effect on the missions. Prince Zeid already mentioned making it known to the general public when states fail to follow up on the agreements they made; as said, this would

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<sup>20</sup> Rome Statute, <http://untreaty.un.org/cod/icc/statute/romefra.htm>, accessed on 13-06-2013

make those states lose face, which is something they'll want to avoid. Another idea might be to impose fines on states that fail to investigate their contingents. The money that is collected with these fines might be put into the victim trust fund.

Finally, Notar (2006) suggests that UN missions focus more on the improvement of the quality of life of the local people. This will stop women and girls from having to engage in prostitution. Clearly this is a good suggestion, but Notar (2006) only mentions it briefly, without going into detail. This is true for all the extra suggestions she makes in her article; she mentions her ideas without discussing how to put them into practice, and without discussing the ramifications of those ideas thoroughly.

Another academic that discusses the problem of accountability of peacekeepers is Zsuzsanna Deen-Racsmány (2011). Deen-Racsmány evaluates measures that the UN took to ensure accountability, such as getting formal assurances of investigation through a memorandum of understanding. The memorandum of understanding was adjusted in 2007, following the advice of prince Zeid (2005). The rules of conduct are explained more specifically and the memorandum states that troop-contributing countries are required to ensure that their contingents comply with this. The troop-contributing countries are also required to investigate allegations and report to the UN about this. The UN can only investigate when national authorities fail to do so, and this is a step back: The model memorandum of understanding is subject to state sovereignty, and therefore national investigative teams perform the entire investigation; the UN has very little to say (Deen-Racsmány, 2011). Through the memorandum of understanding the UN is obliged to share evidence with the troop-contributing countries. This can be a good thing, but also a bad thing because the troop-contributing countries can quickly decide to repatriate their soldiers to whom allegations have been made, before further evidence can be collected (Deen-Racsmány, 2011).

Though Deen-Racsmány (2011) recognizes that the adjusted model memorandum of understanding is definitely a step in the right direction, she notes that it is still somewhat vague compared to the suggestions prince Zeid gave (2005). The prosecution of national contingents is still for a large part dependent on the willingness of the troop-contributing state. The amended model memorandum of understanding has a lot of potential, but the attitudes of troop-contributing countries have to change as well (Deen-Racsmány, 2011). Deen-Racsmány therefore proposes that the UN should put more effort into bringing prince Zeid's suggestion of on-site court martials into practice. This already happened a few times, with good results such as increased confidence amongst the local population (Deen-Racsmány, 2011). Another

option would be to extend the project on the ‘Criminal Accountability of UN Officials and Experts on Mission’ to national contingents. This has not been done yet because it is said that this would limit the exclusive jurisdiction of sending states over their military troops. Some states might not want to sign something like this because it might seem to interfere with their state sovereignty. A way of thinking that leads to an acceptance of the extending of this convention to national contingents might be to see the exclusive jurisdiction of sending states as a form of immunity that is only related to functionality, and might not be relevant for the crimes we are talking about in this thesis. If the exclusive jurisdiction of troop-contributing states is limited to the UN-host state-troop-contributing state relationship, the extension of this convention to military members of national contingents might become a possibility (Deen-Racsmany, 2011). This would enlarge the accountability of national contingents and that might motivate troop-contributing country to exercise jurisdiction.

Natalie Gilliard (2011) approaches the problem of sexual exploitation and abuse by peacekeepers from a different angle. She sees it as a problem that can be explained by gender theory. Some peacekeepers see nothing wrong in offering local women food or money in exchange for sex. These actions are explained by a biological male sex-drive, which legitimizes it (Gilliard, 2011). In the DRC women are seen as subordinate and patriarchy thrives. Women are especially vulnerable because of their weak economic position. Even though the UN pursues gender equality, in its training programs women are often stereotyped as vulnerable, which is not an effective way to reach equality. A better suggestion would be to promote jobs for women, making them independent. Gilliard sees gender inequality as the core problem of sexual exploitation and abuse, and feels that the solution should be found in that. She recognizes that this is difficult; in the post-conflict DRC, many people want to return to the comfort of their patriarchal society, in which gender inequality is the norm. With her article Gilliard offers us a very different perspective on the abuse problem by peacekeepers. Focusing on the empowerment of women might be an effective way to reduce at least some sexual exploitation and abuse.

### **5.3 Concluding**

Prince Zeid’s report (2005) is a very good one. Prince Zeid discusses the core of the problems that are at stake and offers valid suggestions to combat these. The main concern of the report is to stop sexual exploitation and abuse by UN peacekeepers, which clearly is an important goal to pursue. His suggestions cover a broad range of aspects that are important to consider; aspects of accountability but also aspects of prevention. Many of the recommendations he



gave in his report have been put into action. Still, his suggestions were not completely followed, as is described by Deen-Racsomány (2011). This is largely due to the political consequences that such changes might bring. Deen-Racsomány recognizes the steps that have been made as a step in the right direction, but she adds a few suggestions that might improve the situation even further. Her suggestions might be seen as too drastic, and therefore implementation of them might not be realistic. However it is definitely worth pursuing them. As for the suggestions made by Notar (2006), it is important that states that fail to investigate and when necessary prosecute their contingents guilty of misconduct, are punished. However, I doubt whether expelling them from future missions is the way to go; this might not be beneficial for the UN. We should look into other forms of punishment. Another suggestion Notar (2006) makes is to invest in programs that prevent women from engaging in prostitution. Although she does not specify what kind of programs this should be exactly, Gilliard (2011) might tell us that; programs should focus on the empowerment of women.

In short, many valuable suggestions have been made which are definitely worth putting into practice. Some of prince Zeid's ideas have already proven to be effective, but his suggestions can be implemented even better. The three academics we discussed offer some extra suggestions that might improve the situation even further. Though Notar (2006) and Gilliard (2011) focus on programs that help the local population, most of the other suggestions that have been made were merely focused on punishing the perpetrators. It sometimes even seems as though the main motivation for stopping sexual exploitation and abuse by peacekeepers is to make sure that UN missions and the UN itself do not get discredited. Even though Prince Zeid definitely pays attention to the victims in his report, this attention is minimal. It seems as though his suggestions are made more out of concern for the organization, and less out of concern for the victim. Quotes such as '*Sexual exploitation and abuse damage the image and credibility of a peacekeeping operation...*' (Zeid, 2005, p. 9), show this. Besides that, the entire report is written from the perspective of the UN. It is about what the UN, troop-contributing countries, etc. should do about the situation. The report considers the victims as being entitled to and deserving of help, however it does not discuss the needs of the victims as detailed as it discusses the 'needs' of the UN. And even though some of the academics pay attention to strengthening the local population in order to prevent sexual exploitation and abuse, they do not focus on remedies to help the victims that have already been made. In the next chapter we will discuss the needs of victims in more detail.

## **6. Attention to the victim**

The victim has gained a stronger position within the legal system. While earlier, a victim could only participate in his or her case as a witness, currently, victims can participate as victims, and for example give a victim impact statement in certain countries. Rights for victims have been adopted by international and national legislation. In 1985, both the United Nations and the Council of Europe issued documents that promoted the rights of victims; The UN adopted the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, and the Council of Europe the Council of Europe Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure (Groenhuijsen and Letschert, 2012). Both of these documents are soft law, and therefore not binding. However, being the first of their kind, they are very important for the process of implementing victims' rights; first of all there are states that make an effort to implement soft law, secondly by making people/states more aware of victims' rights, and last but not least they can be seen as a step towards hard, binding law (Groenhuijsen and Letschert, 2012).

In the previous chapter we have focused on offenders; what happens or does not happen to them, and how can we improve the process of holding them accountable for their actions. What has not been discussed yet are the victim-centered responses. Chapter 4 discussed the severe consequences sexual exploitation and abuse can have on the victims. In this chapter we will discuss the best ways to help them. We will use the UN Declaration on victim rights as a guideline for this; this Declaration contains minimum standards that should be met for victims, according to the UN. These standards should definitely be met for persons victimized by UN staff, or contingents that work in the name of the UN. Some rights that, according to the UN Declaration, should be given to victims are: Access to justice and fair treatment, restitution, compensation and assistance (UN, 1985), all of which we will discuss in this chapter.

### **6.1 Access to justice and fair treatment**

According to the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) victims should have access to justice and a fair treatment. This means that they should be entitled to access the mechanisms of justice, provided for by national legislation (UN, 1985, article 4). Article 5 states that *'Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress*

*through formal or informal procedures that are expeditious, fair, inexpensive and accessible?*

This already poses several problems: 1. The legal systems of host states are often underdeveloped or devastated due to the conflict. It often doesn't meet minimum international human rights standards (Zeid, 2005). If the entire legal system is unable to fulfil its role, how can we expect victim rights to be well established and enforced? It is expected from host states to work on the establishment of a decent legal system (Zeid, 2005), and while they are working on that they can also incorporate victim rights. However, in many cases a lot of work has to be done and it will take a long time for the legal system to be fully developed, meeting human rights standards again. 2. In cases of national contingents being the perpetrators, victims cannot do anything through their own national legislation, because that legislation does not apply to their offenders. This also poses some practical obstacles; there is a language barrier for example. Most of the victims only speak their mother language and if this language is different from the language spoken in the offender's country, it is generally not easy for victims to access that legal system on their own. Besides that, these victims are often living in poor conditions. They most often don't have a computer, or a telephone, so how can they possibly find and reach the appropriate person in a foreign country? An example of this is the situation mentioned in section 3.3, the two 14-year old girls that were raped and got pregnant by peacekeepers from Uruguay.

Article 6 of the UN Declaration on victims' rights (1985) continues by naming some specific responsibilities that judicial processes should take towards victims. These include informing the victims about the proceedings, allowing the victim to present his or her views and concerns, providing assistance throughout the legal process, minimize the victim's inconvenience by for example protecting their privacy and ensure their (and their family's) safety, and avoiding unnecessary delay (UN, 1985). These are pretty high demands to ask from a legal system that in itself does not meet international human rights standards, or to ask from a legal system that is located in a different continent. Nonetheless, they are very important and efforts definitely have to be made to implement them. If these conditions as described in article 6 of the Declaration are met, many of the practical obstacles victims get to deal with when trying to get access to the justice system, would already be solved.

Concluding from this, victims need a place where they can go for advice and assistance. This place has to be easy to reach and it should include people that can give advice and assistance on cases which have to be referred to the host state's legal system, but also people that can advise and assist on cases that fall under other countries' jurisdiction.

## 6.2 Restitution and compensation

The next rights that the UN Declaration mentions are the right to restitution and the right to compensation (UN, 1985). With restitution we are talking about reimbursing the expenses made by the victim as a result of a crime, and also payment for the harm or loss suffered. This is especially relevant when property is damaged for example, but we can also apply this to victims of sexual exploitation and abuse. As mentioned in chapter 4, sexual exploitation and abuse can result in the victim being stigmatized and rejected by their family and community (Notar, 2006). When it is necessary for a victim to move, restitution would include covering the costs for relocating. Besides that, rejection may lead to the losing of economic support. This also falls under restitution. Article 11 in the Declaration is especially important here. This article states that: *‘Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted.’* (UN, 1985, article 11). If the abuse happened by national contingents, these are officials/agents of their home country. This means that the troop-contributing country is responsible for paying restitution. Clearly, before this can happen the troop contributing country has to take responsibility for the actions of their contingents and exercise jurisdiction. This problem we have already discussed. One possible solution for this problem was to get formal assurances of sending States that they would exercise jurisdiction, through a memorandum of understanding (see sections 5.1 and 5.2). Once this measure is in place, it might be a good possibility to add the responsibility of restitution to this memorandum of understanding as well. This way a troop contributing country would give formal assurances that they will pay restitution when necessary. An objective person will have to be in charge of determining the amount of restitution, it might be an idea to include this in the investigations that are made after allegations; once they are proven to be true, the investigative capacity will determine the damage that has been done and the amount of restitution that is needed (in cooperation with the victim). This seems most practical because the investigative capacity will have all the evidence and information.

Moving on to the right to compensation. A difference between compensation and restitution is that compensation is financial, whereas restitution does not have to be (for example when stolen property is returned). Another difference can sometimes be that restitution is mostly meant to restore things to the way they were; make sure that the victim is in the same position as he or she was before the crime. Compensation can have something

extra. The exact difference between restitution and compensation can differ per state, but the UN Declaration does not specify it (UN, 1985). According to article 12 of the Declaration, States are responsible for compensation when an offender is not able to provide for this. Article 13 encourages the setting up of funds for compensation; both national and other funds (UN, 1985). The articles do not make clear which State is responsible for compensation in case of crimes where the perpetrator and the victim are of different nationalities. There is one sentence in article 13; *'Other funds may be established... ...in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.'* (UN, 1985, article 13). This seems to indicate that the home country of the victim is responsible instead of the State where the perpetrator is from. This would be very unfair though. I believe that this is meant for States of which both the victim and the perpetrator are a national. No matter which State is responsible, in the case of the MONUC mission, the DRC is not in a position to compensate victims; first of all due to problems we already mentioned, like the underdeveloped legal system. Second of all because in the DRC, almost every national is a victim; a victim of the war. It would be impossible to compensate an entire country, and unfair to only compensate a few. Compensation therefore cannot come from the DRC. The best and fairest solution would of course be if compensation came from the perpetrator. This also has a bigger symbolic value for the victim (Young, 2002). In some cases this is not possible. Some offender are not in the position to provide for compensation, and in some cases the offender might not be known. The home country of the perpetrator could be held responsible, under the authority of article 11 on restitution perhaps, however it is not explicitly said in the UN Declaration that that State is also responsible for compensation. One solution could be to also put this in the memorandum of understanding as to get formal assurances that the State to which the offender is a national will pay for compensation. Prince Zeid (2005) however offers us a better and fairer solution. He suggests the setting up of a trust fund for victims. Several services for victims (which we will come back to later in this chapter) will be paid from this, including compensation. All UN related staff will be encouraged to make donations to this fund. Besides that, the UN staff rules permit the UN to pose fines on staff members that violate the rules. It is recommended that any UN staff member that is found guilty of sexual exploitation or abuse is given a disciplinary fine, besides being sent home. The money of the fine will also go into the victim trust fund. We have already discussed the different types of personnel involved in a mission (see chapter 2). The posing of fines is only applicable for UN staff and not for national contingents. For them Prince Zeid (2005) proposes that their disciplinary directives are amended to include that

when they are found guilty of misconduct, their daily allowance will be paid to the victim trust fund. This will happen through recovery of future payments from the troop contributing country. The troop contributing country however can take action to recover those sums, because they have disciplinary authority over their troops (Zeid, 2005). But this would still be a good step in order to increase the amount of money in the victim trust fund.

Compensation and restitution are both very relevant in the case of babies born out of sexual liaisons between peacekeepers and local women. These women should be given child support, either directly by the father, or else through the victim trust fund. The UN should also assist local women in the enabling of DNA tests in order to ensure paternity (Zeid, 2005). This is easier said than done because the logistics of conducting these tests between women that live in refugee camps and men that are peacekeepers who might not even be in the mission area anymore might be very difficult (Notar, 2006). However, in some cases it is necessary to prove paternity, and therefore DNA testing should be an option which the UN should provide.

### **6.3 Assistance and protection; dealing with underreporting**

Assistance to victims is another important item that is documented in the UN Declaration in victims' rights. Articles 14, 15, 16 and 17 of the Declaration describe the types of assistance that should be available for victims. This is first of all the necessary material, medical, psychological and social assistance. Secondly, victims should have access to health and social services; they should also be informed about them. Personnel that is involved in victim care and assistance should get training to sensitize them to the needs of victims. Also, special attention should be given to victims with special needs for example because of the nature of the harm (UN, 1985). As mentioned in the previous section, in the case of the Congo almost every individual is a victim, a victim of the conflict. It is unrealistic to ask the government to provide these kinds of assistance to all the people in the country, especially because in the post-conflict situation the DRC is in, the government is not even fully developed yet.<sup>21</sup> It would be better if this assistance for victims made by peacekeepers came from the UN. The UN is then responsible for the providing of trained personnel that can assist the victims, and also for informing the victim about the available assistance. As prince Zeid writes in his report (2005): *'This assistance should be seen as an expense incidental to the Organization's general responsibility for the conduct of a peacekeeping operation.'* (Zeid, 2005, pp. 21). A

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<sup>21</sup> World report 2012: Democratic Republic of Congo, <http://www.hrw.org/world-report-2012/world-report-2012-democratic-republic-congo>, accessed on 13-06-2013

good idea would be for the UN to work together with NGO's to provide the best assistance possible. As said, victims also have to be informed about the assistance options. They should get this information directly when they report their victimization.

This brings us to a crucial point: Victims have to report a crime before they can get assistance, access to justice, restitution and compensation. However many abuses are not reported; victims are threatened and scared (Notar, 2006; Holt & Hughes, 2005). In cases of prostitution exploitation is not reported because victims profit from it and do not want to lose (or cannot lose) the economic benefits they get from it (Zeid, 2005). A third problem is of a more practical nature; there might be a language barrier, and victims have to know where they can report crimes. All of these reporting problems need a different solution. For the first reporting problem; scared and intimidated victims, it is important to offer protection. Victims have to be able to be sure that when they report a crime, the peacekeeper in question and his colleagues won't be able to hurt them or their families. The first step to achieve this is an outreach programme to the local population (Zeid, 2005). The programme has to make the local people aware that exploitation and abuse are not tolerated by the UN. It has to explain the UN's policy against this and it has to make clear that retaliation against those who report crimes is not tolerated. In the previous section we have mentioned the importance of increasing awareness about codes of conduct among UN personnel. It is also important to increase awareness among the population of the host state, in this case the Congo (Zeid, 2005). If they know that abuse is not tolerated they might be more inclined to report, because they know that their reports will be taken seriously. Besides that, the outreach program will have to enable people to make complaints in a confidential setting, and offer the people protection. At first victims might be skeptic to believe that the protection that is offered will actually been given, therefore it is important to really offer the best protection possible; examples will have to proof the reliability of the program.

For the second reporting problem; the lack of an economic incentive to report prostitution, we need a different program. The vulnerable population needs help developing other methods than prostitution to provide for food and other necessary products (Notar, 2006). Their economy has to be rebuilt. This is likely to take a long time; the entire country has to be rebuilt. Part of the mission's mandate is to support the government of the DRC in stabilization efforts<sup>22</sup>. This might be a first step towards a stable economy. As said, this is a long way to go, and therefore it is still best to handle the problem of prostitution from the

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<sup>22</sup> MONUSCO Mandate, <http://www.un.org/en/peacekeeping/missions/monusco/mandate.shtml>, accessed on 13-06-2013

other side; the customers. It is unlikely that prostitution will stop because the women and girls engaging in prostitution have found other jobs that pay just as much. It is a more realistic goal to stop prostitution by stopping the customers from engaging in prostitution. Ways to do this have been mentioned in the previous chapter. However, every program to prevent people from prostitution should be encouraged.

The third reporting problem might be easy to solve. Victims need to know where they can report crimes. They can get this information through the outreach program described above. It is important that the place where they can report crimes is nearby and easy to reach. There have to be people present that speak the local language in order to deal with the language barrier. We will go in to this further in the next section.

#### **6.4 A victim centre**

In the previous section we have established that victims should have access to justice and fair treatment, they should get restitution and compensation, and they should be offered assistance and protection (protection also to solve reporting issues). Also, victims have to have a place that is easy to reach where they can report crimes. I therefore propose the setting up of victim centres in the peacekeeping areas. In the centres the victims will be provided with all the care they need; there will be legal experts present to offer access to the justice system and to help victims access foreign legislation in the case of national contingents being perpetrators. These experts will also help them file claims for restitution and compensation. Besides these experts, that can represent the victims, there have to be objective officials to help determine the fair amount of restitution and compensation that is required. Assistance will also be given at these centres. The centres will work together with NGO's and might refer victims to certain NGO's in order to get extra (mental) health care. The first care will be given at the centres. The employees of the centres will also assist the victims during investigations. They have to be able to speak the local language in order to avoid a language barrier. Furthermore, protection will also be offered through these centres. The centres will have to be at a central point in order to make them as easy to reach as possible for the largest amount of people.

These centres will cost money. The money to pay for the centres will mostly come from the victim fund that is proposed by prince Zeid (2005). I have already described ways in which the victim fund will get its money in section 6.2. If this is not enough, extra funding will have to come from the UN. It is both in the benefit of the reputation of the organization as well as in the success of the mission that victims are being taken care of. These costs should therefore be seen as a necessary expense to a peacekeeping operation. Working together with NGO's



might save some costs, for example when victims are able to there for further mental health care.

The victim centre might cause some problems though. It is specially developed for those victimized by peacekeepers. If we install these centres, victims of sexual exploitation and abuse by peacekeepers will be taken care of in the best of ways; they will get restitution and compensation, they will get medical and mental health care. So what about the people that were victimized during the war? Sexual violence has been used as a weapon during the second Congo war (Longombe, Claude & Ruminjo, 2008), and those victims suffer from the same consequences as the victims that were made by peacekeepers. Don't they deserve the same treatment? The same care and assistance? Of course they do! However it is unrealistic for the UN to help all of those victims, simply because there are too many. It is harsh, but the centres can only take care of the victims made by the peacekeepers. Other victims should be referred to NGO's and other local organizations and systems.

A second problem might be non-victims pretending to be victims in order to benefit from it. Especially from the restitution and compensation arrangements. In order to prevent that from happening all allegations have to be investigated thoroughly. Suggestions for proper investigations have been mentioned in chapter 5.

### **6.5 A missing link between victim and offender**

We have now discussed two problems; accountability of perpetrators, and care for victims. There is also a third problem; because the offenders, if they would get punished, would be punished in their home country, far away from their victims, their victims wouldn't know anything about this precisely because it happens so far away. They don't know the outcome of their case, they don't know what the consequences are for the perpetrator. The third problem here is the missing link between the victim and the offender in the aftermath of abuse.

As we described in section 6.4, it is important for victims to be aware that the UN does not tolerate sexual exploitation and abuse. We already mentioned promoting this awareness through an outreach program (Zeid, 2005), but what might be even more important is for the victim to know that his or her offender is being punished. This is important for several reasons. First, victims might be more inclined to report abuses when they know that their reports are taken seriously. Second, not only the victims but the entire local population has to be able to trust the UN. This is important for the mission to become a success. If offenders walk freely without being punished, people will lose faith in the UN. Third, one of the goals

of the mission<sup>23</sup> is to stabilize society. The people of the Congo have experienced terrible things, amongst which many sexual exploitation and abuse. In order to rebuild society people have to learn that sexual exploitation and abuse are not tolerated. In order to show this they have to know that offenders are being punished.

The right to information is not a part of the UN Declaration on victims' rights (1985). In many states however the right to information is a right that is generally granted to victims.<sup>24</sup> For the reasons mentioned above it is especially important that victims of abuse by peacekeepers get information. The victim center described in section 6.5 can play crucial role in providing victims with information. This is a central point where victims can go for legal assistance, but also for other forms of care. The people responsible for the legal assistance are in the best position to provide information about what happens to the offender; they are working on the case and have legal knowledge.

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<sup>23</sup> MONUC Mandate, <http://www.un.org/en/peacekeeping/missions/monuc/mandate.shtml>, accessed on 14-06-2013

<sup>24</sup> Victim's right to information, <http://www.victiminfo.ca/en/victims-right-information>, accessed on 14-06-2013

## 7. Conclusion

In 2005, prince Zeid addressed the General Assembly about the case of sexual exploitation and abuse by peacekeepers. He gave the following remarks:

*'A peacekeeper who would exploit the vulnerabilities of a wounded population—already the victim of all that is tragic and cruel in war—is really no different than a physician who would violate the patient entrusted to his or her care or than the lifeguard who drowns the very people in need of rescue. Actions of that sort puncture, violently, the hope embodied by the very presence of the person who is there to help those in need. However rare they may be, therefore, not only are abuses by peacekeepers repugnant to us, but they strike at the very credibility of both the operation in question and this Organization as a whole.'*

*'And we, the Member States, have refrained from opening up that subject to public discourse over the past 60 years because of what? Because sentiments of pride, mixed in with a deep sense of embarrassment, have often produced in us only outright denials. And yet almost all countries that have participated in United Nations peacekeeping operations have, at one stage or another, had some reason to feel deeply ashamed over the activities of some of their peacekeepers.'* (Zeid, 2005, in Deen-Racsmány, 2011).

The problem of sexual exploitation and abuse by peacekeepers is a very complicated problem. It is without a doubt a terrible scandal, as prince Zeid describes. It is terrible for many different reasons; not only for the victims, that after a long period of suffering fall again into the hands of perpetrators, but also for the mission; these acts ruin the relations with the local population which can possibly endanger the mission. It also ruins the reputation of the UN, their peacekeeping forces were awarded the Nobel prize for peace in 1988, for all the good things they do. These good things are quickly forgotten in the light of the current scandal.

What we have learned so far is that there are many complicated structures that underlie this problem. First of all there is the general structure of peacekeeping operations; mandates are very specific on what is and what is not allowed for example regarding to the use of force. There are many different categories of personnel involved that fall under different jurisdictions and enjoy different immunities. And even though there are rules on how

to behave, codes of conduct, these different categories of personnel used to have different codes of conduct.

A peacekeeping operation takes place in a post-conflict setting. In the case of the Congo the conflict was very severe; many people were killed, tortured or sexually abused. Many people became displaced. For some the sexual exploitation and abuse continued once the MONUC mission arrived. This happened by peacekeepers. Sexual abuse and exploitation by peacekeepers has been happening for a long time, but it was only after the large scale abuse in the Congo that the issue really got the attention it deserved.

After the allegations of sexual exploitation and abuse by peacekeepers in the Congo became widely known, action was undertaken. Several measures, such as a zero-tolerance policy, were installed immediately. Much has been written about other measures that the UN should take, for example by prince Zeid (2005), but also by several academics. Some of these measures have now been implemented, but much work still has to be done. There are always political issues, such as state sovereignty, that stand in the way of some suggestions, this is why some suggestions (such as the amended model memorandum of understanding) have been implemented in a mild way. However, that is still a first step. We should consider all steps that are taken as good, because they move us into the right direction, however we should not be satisfied with only these steps, but continue to strive for improvement. Implementing all of the good suggestions that are given will take time, but it is not impossible.

One of the most important things that we have learned from this text is that the solution for this problem requires a holistic view. There are many sides to this problem, and we should consider all sides when we are trying to solve it. The legal aspect, the issue of accountability, is very important. The UN is already working on this, for example with the amended memorandum of understanding. The aspect of prevention is also crucial. Steps in this matter have already been taken by the UN; codes of conduct have been made applicable to all mission related personnel, troops are trained on the codes before they deploy, and there are stricter rules for personnel on mission, all in order to prevent sexual exploitation and abuse. These prevention measures are focussed on personnel, but prevention measures should also focus on the local population, by making them aware that sexual exploitation and abuse are not normal and not tolerated, by improving economic situations in order to prevent the necessity of prostitution, and also by empowering women. This is exactly why a holistic view on the situation is so important; there are many factors that play a role, some more visible than others.

Another aspect of this issue that requires more attention is the victim. Victims are

often overlooked, but they are the key to repairing the damage that has been done. Chapter 6 described the different ways in which victims should be helped. It is important to implement these measures, because this enables the making of amends for what has happened. Relations between the local population of the Congo and the peacekeepers have to be restored, and assisting the victims is a first step for doing that. Besides that, in order to stabilize a post-conflict society it is important that people know that sexual exploitation and abuse are not normal and not tolerated. The people of the Congo have already experienced too many terrible things, we should make it our first priority to make this stop as soon as possible.

Sexual exploitation and abuse might never be fully stopped. Incidental cases will always keep happening. The key word here is incidental. Cases of sexual exploitation and abuse have been happening on a structural base during the MONUC mission, which is unacceptable. If we keep giving this problem the attention it deserves, and approach it with a holistic view (a view which I hope to have provided during this text), we will be able to eliminate structural sexual exploitation and abuse during peacekeeping operations.

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