

UK Parliament International Development Committee Sexual exploitation and abuse in the aid sector inquiry

Submission of Written Evidence
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Summary

1. This submission focuses on the criminal accountability of aid workers for sexual exploitation and abuse.
2. This submission responds narrowly to the question:

“Are there any wider measures that might be appropriate and effective in tackling the issue of sexual exploitation and abuse overseas; for instance via changes to the so-called “sex tourism” provisions of the Criminal Justice and Immigration Act 2008?”

Background to the Author of the Submission

3. The author is a faculty member of the School of Law, University of Essex, who until January 2018 was the Director of the international human rights organization REDRESS.¹ In recent years, the author has carried out research and published a number of studies and reports on the phenomenon of sexual exploitation and abuse in peacekeeping.² The bulk of this research has focused on the criminal accountability of peacekeepers, and the challenges for victims of such acts to secure remedies and reparation from those responsible – both the individuals directly responsible and the institutions that employed them. The author has also given written and oral evidence to the House of Lords Select Committee on Sexual Violence in Conflict,³ on the specific issue of peacekeeping abuses.
4. The difficulties to address sexual exploitation and abuse in peacekeeping bear important correlations with the subject matter of the current inquiry.

The criminal accountability of aid workers for sexual exploitation and abuse

5. Criminal accountability is important for specific and general deterrence. It provides a clear signal of society’s condemnation of these acts and the commitment to eradicating them. To investigate and prosecute such acts is also an important acknowledgment to victims, their communities and the Host State that what was done to the victims was unacceptable. The development of a framework for criminal accountability may also serve as a useful impetus for other countries to do the same, thereby contributing to the global eradication of impunity for such acts.
6. At present, UK legislation does not provide for the prosecution in UK courts of the bulk of acts which form the basis of ‘sexual exploitation and abuse’ occurring abroad.

¹ www.redress.org

² See, list of relevant publications with links, annexed to this submission

³ The report of the Select Committee is: Sexual Violence in Conflict: A War Crime, 12 April 2016 - HL Paper 123

Only a narrow subset of sexual exploitation and abuse – in particular, criminal acts against children, perpetrated by individuals with some degree of connection to the UK - can be prosecuted under current legislation. It is submitted that UK legislation should be amended to better capture the range of alleged acts that form part of this inquiry.

7. The Criminal Justice and Immigration Act 2008 criminalises sexual offences that occurred abroad to the extent that the acts in question:
 - a) are perpetrated by a British national and the acts in question would constitute a sexual offence to which this section applies [these comprise an array of sexual offences against child victims]; OR
 - b) are perpetrated by a British resident, the act is an offence under the law in force in the country where the act occurred and the acts in question would constitute a sexual offence to which this section applies [sexual offences against child victims]; OR
 - c) are perpetrated by a person who is not a national or resident at the time the acts were allegedly committed, but the person subsequently becomes a resident or national and is such at the time proceedings are lodged; the act is an offence under the law in force in the country where the act occurred and the acts in question would constitute a sexual offence to which this section applies [sexual offences against child victims].
8. The **formal limitations** of the Criminal Justice and Immigration Act 2008, from the perspective of the alleged acts which form the basis of this inquiry, are as follows:
 - a) The requirement of a connection to the UK
9. The general requirement of a connection to the UK will leave out the bulk of alleged offenders. Many of the persons employed by British aid agencies in the field will have no other connection to the UK besides their contract of employment; they will be nationals of either the Host State or of other countries. Those persons would not be captured by the Act as currently framed. The only other possibilities for their prosecution are if the Host State asserted jurisdiction or if their State of nationality had jurisdiction to prosecute, both of which are unlikely. Consequently, the inquiry should consider recommending that jurisdiction be extended to cover any individual employed by a UK registered aid agency.
10. The Host State will have criminal law jurisdiction assuming that the acts in question are recognised as crimes under the Host State's domestic law (which will not always be the case). Staff of aid agencies will not normally benefit from any immunities. Nevertheless, the Host State is unlikely to exercise jurisdiction because of the prevailing practice of aid agencies (as confirmed by some of the evidence presented to this inquiry) to avoid informing the Host State of such allegations and/or of cooperating with the Host State in the conduct of investigations. The practice tends to be to only deal with such allegations as breaches of the aid agency's code of conduct and to take disciplinary action leading up to and including severance from the post. Part of the rationale for failing to inform the Host State may be the aid agency's

perception (whether valid or not) that the legal system of the Host State is not functioning adequately and may not produce a fair trial.

11. The employee's State of Nationality is unlikely to have jurisdiction for the same reasons that the UK does not currently have jurisdiction over the bulk of such acts, occurring outside of its territory.
12. The Act distinguishes between UK nationals and residents. UK nationals can be prosecuted for acts perpetrated abroad so long as the acts constitute sexual offences against child victims punishable under the UK Act. Persons who are residents but not nationals must satisfy the additional requirement that the acts in question must be punishable under the laws of the Host State. This added requirement applies to persons who were UK residents at the time the offences were allegedly committed, and to those who subsequently became UK residents. In the latter category, the UK has jurisdiction to prosecute if the individuals became UK residents by the time criminal proceedings are lodged.
13. This 'dual criminality' requirement – that the crimes are also recognised as crimes in the Host State - will be difficult to satisfy, particularly in the types of countries where aid agencies are typically engaged which often have weak legal systems. Sexual offences against children may well be criminalised, but not with the degree of precision to match the UK legislation. Furthermore, should the UK Government decide in future to expand the scope of offences which would be subject to prosecution to include sexual exploitation and abuse involving adults, there will be an even higher risk that dual criminality requirements will not be satisfied. Many countries do not criminalise prostitution or other exploitative behaviour short of rape, involving adult victims. Thus, jurisdiction over UK residents will be difficult to achieve without further amendment. Thus, the inquiry should consider recommending the abrogation of the dual criminality requirement for sexual offences.
 - b. The restriction to sexual offences involving child victims
14. The main rationale of the Criminal Justice and Immigration Act 2008 to extend the jurisdiction of UK courts extraterritorially to cover sexual offences involving child victims, was to deal with the particular scourge of child sex tourism. Underlying this rationale, was the recognition of the particular vulnerability of children and the need to adopt special measures to address that conduct occurring overseas.
15. Aid workers are present in some of the most difficult countries with populations ravaged by war, famine and oppression. The significant imbalances between the host population and the staff of aid agencies operating in these fragile environments is stark. There is real potential for significant abuses of power sparked by poverty and deprivation. These contextual factors, it is submitted, elevate the gravity of the acts in at least two ways: i) certain acts which might in ordinary circumstances amount to a lapse in judgment or a breach of a code of conduct (and not necessarily crimes) should be recognised as crimes; ii) other acts which may constitute crimes are aggravated by the context in which they are perpetrated.
16. It is therefore appropriate to extend the scope of jurisdiction of UK criminal law to sexual offences involving adult victims. The challenges to doing so are that not all of

the acts which form the subject matter of this inquiry are recognised as crimes under UK criminal law. Thus, to legislate appropriately there is a need not only to extend extraterritorial jurisdiction over sexual offences involving adults, but in addition, to review the UK law on sexual offences and to determine whether additional crimes are warranted.

17. The **informal barriers to criminal prosecutions**, from the perspective of the alleged acts which form the basis of this inquiry, are as follows:
 - a. Difficulties for victims to report sexual exploitation and abuse
18. It is important for the inquiry to consider what steps aid agencies have taken, or are being planned to enable victims to report abuse and to whom. Many of the lessons learned from peacekeeper sexual exploitation and abuse are applicable here.⁴ Victims will not know that they can report and they will not know where to report. Furthermore, the imbalance of power is such that they may not wish to report abuse to the aid agency, particularly where aid agencies are providing essential services. A general lack of follow up may give victims the impression that there is no point to reporting. An independent country-level ombudsman or similar structure operating at the country-level may be worth exploring, to deal with complaints between the host population and the international community. This should not be led by the UN.
 - b. Failure of aid agencies to report allegations concerning their personnel to the competent criminal law authorities
19. The evidence proffered to this inquiry to date demonstrates that there has been a failure to report allegations to the criminal law authorities of the Host State AND to the criminal law authorities in the United Kingdom, for a variety of reasons.
20. It is submitted that the inquiry should consider how to make reporting to criminal law authorities mandatory. Aid agencies should not place themselves in the position of criminal law authorities and/or feel that they have any discretion whether to report allegations. Aid agencies who fail to report allegations of sexual exploitation and abuse in good time to the competent authorities should face administrative and/or criminal sanction, as appropriate. This should be considered specifically by the inquiry.
 - c. Challenges to gather evidence to secure a conviction
21. Sexual offences are notoriously difficult to prosecute under ordinary circumstances. The challenges are aggravated in the humanitarian and peacekeeping sectors given the complex operating environments and the transnational elements. In respect of extraterritorial prosecutions, securing evidence of crimes occurring abroad can be challenging and if there is to be any prospect of a successful prosecution before UK courts, it is important for UK investigators to be involved at the earliest possible stage. It would be appropriate for the inquiry to seek clarity from the Crown

⁴ See generally, *Sexual Exploitation and Abuse in Peacekeeping Operations: Improving Victims' Access to Reparation, Support and Assistance*, REDRESS, September 2017, <https://redress.org/wp-content/uploads/2017/08/REDRESS-peacekeeping-report-English.pdf>

Prosecution Service about the challenges to secure sufficient evidence for extraterritorial prosecutions, and for those challenges to be factored in to procedures for the reporting of complaints and the taking of evidence.

ANNEX – LIST OF RELEVANT PUBLICATIONS

Ferstman, C (2013). *Criminalizing Sexual Exploitation and Abuse by Peacekeepers*, Special Report 335, United States Institute of Peace, September 2013,
<https://www.usip.org/sites/default/files/SR335-Criminalizing%20Sexual%20Exploitation%20and%20Abuse%20by%20Peacekeepers.pdf>

Ferstman, C., (2017). *Sexual Exploitation and Abuse in Peacekeeping Operations: Improving Victims' Access to Reparation, Support and Assistance*, REDRESS, September 2017,
<https://redress.org/wp-content/uploads/2017/08/REDRESS-peacekeeping-report-English.pdf>

Ferstman, C., (2017). *International Organizations and the Fight for Accountability: The Remedies and Reparations Gap* (Oxford: Oxford University Press, 2017)
<https://global.oup.com/academic/product/international-organizations-and-the-fight-for-accountability-9780198808442?cc=gb&lang=en&>