



Note No. 207/2008

The Permanent Mission of the Republic of South Africa to the United Nations presents its compliments to the United Nations Secretariat and, has the honour to attach herewith South Africa's input on the issue of criminal accountability for UN personnel and experts on mission to the Office of Legal Affairs to the United Nations.

The South African government is concerned at the reports of sexual exploitation and abuse committed by United Nations (UN) personnel, as it not only undermines the integrity, purpose and credibility of the peacekeeping mission specifically but also of the UN generally. Therefore, the need for eliminating criminality and implementing a zero-tolerance policy with respect to serious crimes committed by UN officials and experts on mission is a priority.

South Africa therefore welcomes any effective initiatives undertaken to address this problem. While we remain to be completely convinced about the need for a Convention we are open to discussions in this regard. However, we remain cognisant that pending a long term solution to a very real and immediate problem, in the interim, other short and medium term measures can and should be taken to address the problem. To this end, South Africa, like other common law countries, does not, save in limited circumstances, exercise extraterritorial jurisdiction on grounds of nationality and except for its soldiers deployed externally. Bearing in mind however the serious light in which criminal conduct by UN officials and experts on mission is viewed, South Africa has taken measures to establish extraterritorial jurisdiction in certain circumstances. Some of these measures are directly applicable to the matter under discussion.

For example the Defence Act, which is administered by our Department of Defence, makes provision for criminal jurisdiction over military and civilian elements deployed beyond South Africa. Consequently, South Africa as a troop contributing country can prosecute offences by its defence force. The Defence Force has also created a policy on the prevention and eradication of all forms of gender-based violence.

Similarly, the South African Police Service (SAPS) also has occasion to deploy members of its force abroad and is in the process of drafting legislation which will establish jurisdiction over its members who perform duties outside the Republic.

Furthermore, The South African government is amending its Criminal Procedure Act, 1977, to enable prosecution against South African nationals who committed serious offences while serving abroad, the amendment Bill will be introduced into Parliament in the first half of this year.

The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 has been passed by the South African Parliament which came into operation in December 2007. This Act establishes extraterritorial jurisdiction over citizens and those ordinarily resident in the Republic who are alleged to have committed a sexual offence or other offence under the Act outside of its borders.

Furthermore, South Africa is of the view that an issue that needs to be addressed is the current methodology of investigations conducted by the UN. The Office of Internal Oversight Services (OIOS) is mandated by the UN to conduct investigations. Sadly, in terms of OIOS procedure, the collation of evidence is, in terms of South African law of Evidence, irregular and inadmissible; meaning that in the case of the Republic of South Africa, any information gathered by the OIOS would not be beneficial to the South African authorities when asked to prosecute a matter. Our delegation is of the view that a protocol of cooperation and liaison between Member States and the OIOS be developed to allow State investigators to work in concert with the OIOS.

The Permanent Mission of the Republic of South Africa to the United Nations avails itself of this opportunity to renew to the United Nations Secretariat the assurances of its highest consideration.

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